DEPOSIT GUARANTY IN EIGHT STATES
During the Period 1908-1930

By Clark Warburton

I

Introduction
Oklahoma
Kansas
Texas
Nebraska

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March 6, 1959

MEMORANDUM

TO: Dr. Cramer

FROM: Clark Warburton
CW

Herewith is the manuscript of Deposit Insurance in Eight States during the Period 1908-1930.

For convenience, the various chapters have been placed in separate binders, except that the introductory and concluding chapters are in the same binder. [Now in two binders. CW 12/27/65]

I have not read the various chapters since their typing, and there may possibly be a few errors which will be disclosed when I do so. Also, I have notes about a few desirable revisions in most of the chapters, particularly Mississippi, which was completed prior to my field trips.

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DEPOSIT INSURANCE IN EIGHT STATES

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by

Clark Warburton

Federal Deposit Insurance Corporation

1959

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FOREWORD

When proposals for Federal deposit insurance were under consideration by committees of Congress, and after its adoption in 1933, it was widely and bitterly opposed by most bankers and by numerous other persons familiar with the history and operations of banks in the United States. A considerable part of this opposition was the result of the experience of several States with deposit insurance during the preceding quarter of a century.

Officials of the Federal Deposit Insurance Corporation, soon after its organization, felt that a survey of the character of these State systems, and of the reasons for their difficulties and abandonment would be helpful in developing the policies of the Corporation. The Board of Directors of the Corporation is glad to be able to make the results of these studies available to the general public as a companion volume to the study of Insurance of Bank Obligations in Six States during the Period 1829-1866.

, Chairman
Federal Deposit Insurance Corporation

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PREFACE

This study of insurance of deposits in eight States is a part of a larger project on the history of insurance of bank obligations and of proposals for such insurance prior to establishment of the Federal Deposit Insurance Corporation. For a brief description of the larger project, see the Preface to the companion volume, Insurance of Bank Obligations in Six States.

This book has been written by Mr. Clark Warburton, Chief of the Banking and Business Section of the Corporation's Division of Research and Statistics. His work on the study was begun in 1934, but has been intermittent because of absorption of his time by other responsibilities and projects. Most of the work was done during a six month's period in 1934-35, a two-year period from 1941 to early 1943, and a four-year period from the autumn of 1954 to the end of 1958. During the first of these periods he was assisted by Miss Florence Helm and Mrs. Ethel Bastedo; during the second by Miss Carol Colver and Miss Wilhelmina Sharpe; and during the third by Miss Helen Thompson and Miss Jeanette Karp. Typing and clerical service have also been given by Miss Ida Mullins and in lesser degree by several other persons.

Edison H. Cramer, Chief
Division of Research and Statistics

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CHAPTER ONE

INTRODUCTION 1/

Failure of a bank has results of far-reaching significance. The amount of the means of payment, or circulating medium, of the community is suddenly and sharply curtailed. Such curtailment creates immediate confusion throughout the community: general inability to meet the terms of contracts, paralysis of commerce, interruptions in the flow of goods and services, and consequent disturbances to the lives of large numbers of people. The reserves of purchasing power of many people not associated with business and unprepared to take the risks of investors become unusable and subject to serious loss.

Under these circumstances it is to be expected that the public would exert strong pressure upon governments to find ways and means of preventing bank failures, and of reducing the disturbances and losses resulting from such failures. This has been, in fact, the case. Throughout the entire period of American history as a nation there have been repeated, almost continuous efforts to provide unequivocal assurance to the holders of bank obligations that their claims are secure. Almost all banking codes and banking reforms have been directed, in part at least, to this purpose. Deposit insurance is one of the major devices adopted with this specific purpose.

Prior to establishment of theFederal Deposit Insurance Corporation by the Federal Government, fourteen States had made use of the insurance principle to provide protection for bank depositors or note-holders,

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1/ In large part, this chapter is an adaptation of Part Three of the Annual Reports of the Federal Deposit Insurance Corporation for 1952, pp. 66-72, and 1956, pp. 47-73. Some of the data have been revised.

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or both. Six of the systems were established prior to passage of the National Bank Act and none of these continued after the levy of a prohibitive tax on State banknotes in 1865. It was anticipated that the most important part of the nation's money supply, or circulating medium, would thereafter be guaranteed by the Federal Government, as the notes of national banks, which were given such a guaranty, would take the place of the notes previously issued by State banks.

It was apparently not foreseen in the 1860's that deposits, rather than circulating notes, would come to constitute by far the largest portion of the nation's circulating medium. In 1860 the two items were about equal in amount. By 1870 deposits were about twice, and by the end of the century seven times, circulating notes. It was against this setting that efforts were renewed to guard against the disastrous effects of the destruction of circulating medium through bank failures and to provide a greater degree of protection for bank creditors. During the 1880's and 1890's various proposals were made to provide insurance or guaranty of deposits, both in the Federal Congress and in State legislatures.[1] After the financial panic of 1907 such proposals became numerous; and from 1907 to 1917 eight States established deposit insurance systems that operated for varying lengths of time, some of them until 1930.

The adoption of State deposit insurance programs between 1907 and 1917 was also a consequence of difficulties many of the States were meeting in attempting to provide for stable banking systems. ~~It will be noted in Table 32 that~~ Seven of the eight States involved were located west of the Mississippi River. Problems similar to those of ~~New York, Vermont,~~ eastern States ~~and Ohio~~ a half century earlier were current. The other was a southern State which had not previously adopted a general banking code. All the eight States were predominantly agricultural areas. Six were in the Great Plains region east of the Rocky Mountains: North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. The other two were in Mississippi and Washington.

Character and extent of insurance. The bank-obligation insurance systems of the 1908-1930 period pertained to deposits only. They were known as "deposit guaranty" systems, but in all cases the guaranty was that of a fund derived from assessments on the banks; in no case did the State guarantee the deposits, though in one the remaining obligations of the system after its closing were assumed by the State through a bond issue. The limitation of the insurance to deposits reflects, of course, the fact that State-chartered banks did not issue circulating notes, as they had done when the systems of the 1829-1866 period were in operation.

The principal provisions of the deposit insurance plans in each of the eight States are summarized in Table 1. A more detailed analysis for each State is given in the succeeding chapters.

[1] Proposals for Federal legislation for deposit insurance, beginning in 1886, are described in the Annual Report of the Federal Deposit Insurance Corporation for 1950, pp. 68-101.

[2] Throughout this chapter, and in the concluding chapter, these plans are referred to as deposit insurance systems. However, in the chapters dealing with the respective systems they are generally described as deposit guaranty systems.

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Table 25. PRINCIPAL PROVISIONS OF DEPOSIT INSURANCE PLANS ADOPTED BY EIGHT STATES, 1907-1917

State	Deposits insured	Banks participating[1]	Assessment on insured deposits[2]	Payment of depositors
Oklahoma Act of 1908[3] as amended or modified 1909, 1911, 1913	All deposits not otherwise secured and on which rate of interest was within limits specified by law	Compulsory for all State banks and trust companies	Annually 1/5 of 1% until fund equaled 2% of base. If fund reduced, special assessments at same rate annually[4]	In cash by Bank Commissioners immediately upon taking possession of bank. If fund insufficient, in 6 percent certificates of indebtedness to be paid in order of issue. After 1913 certificates sold at not less than par for purpose of securing cash for depositors
Kansas Act of 1909 as amended or modified 1911, 1921, 1923	All deposits not otherwise secured and on which rate of interest was within limits specified by law	Voluntary for all incorporated State banks. Trust companies and private banks excluded. Banks organized after passage of Act eligible to apply after operating one year	Annually 1/20 of 1% of base less capital and surplus until fund equaled $1 million. If fund reduced below $500,000 special assessment for amount necessary	In interest-bearing certificates of indebtedness, reduced as proceeds of liquidation become available. Deficiency, if any, paid from fund
Nebraska Act of 1909 as amended or modified 1911	All deposits except money deposited on a collateral agreement or condition other than an agreement for length of time to maturity and rate of interest	Compulsory for all incorporated State banks	Semi-annually 1/20 of 1% until fund equaled 1-1/2% of base. If fund reduced below 1% assessment renewed and special assessments if necessary not to exceed 1% of base in any one year	In cash from fund immediately after determination by the court of amount due depositors less cash immediately available to the receiver for such payments
Texas Act of 1909 as amended or modified 1921, 1923	Non-interest-bearing deposits not otherwise secured. Excluded public deposits, secured deposits, certificates of deposit, deposits made for the purpose of converting a loan into a deposit covered by the fund, certificates of deposit converted to non-interest-bearing deposits within 90 days of failure	All State chartered banks required to choose between guaranty fund system or bond security system	Annually 1/4 of 1% of base until fund equaled $5 million. If fund reduced below $2 million, or below level of preceding January 1, special assessments not to exceed 2%	In cash immediately, out of cash in failed banks and fund
Mississippi Act of 1914	All deposits not otherwise secured nor bearing interest exceeding 4% per annum	Voluntary until May 15, 1915. Thereafter compulsory for all banks operating under State law including trust companies and savings banks	Annually 1/20 of 1% of "average guaranteed deposits", less capital and surplus until fund approximated $500,000 over and above initial contribution. If fund depleted, special assessments at same rate not to exceed five in any one year	In interest bearing certificates of indebtedness, reduced as proceeds of liquidation become available. Deficiency, if any, paid from fund
South Dakota Act of 1915 as amended or modified 1921	All deposits not otherwise secured. Deposits could not pay interest in excess of 5% unless authorized by depositors guaranty fund commission and in no case, more than 5-1/2% per annum	Compulsory for all State and private banks	Annually 1/4 of 1% until fund equaled 1-1/2% of base. Resumed whenever fund reduced to 1% of base	In cash immediately from fund. If fund deficient, Commissioner to issue certificates of indebtedness at 5% and not to exceed 7% if sold to secure cash for depositors
North Dakota Act of 1917 as amended or modified 1923	All deposits not otherwise secured and on which interest was within limits specified by law	Compulsory for every corporation in business of receiving deposits or buying and selling exchange except national banks	Annually 1/20 of 1% until fund equaled 2% of base. If fund reduced to 1-1/2% of base, assessments resumed. Special assessments at same rate at option of Bank Commissioners, not to exceed four per year	In cash from fund after certification of net amounts due depositors. If fund deficient, in certificates of indebtedness
Washington Act of 1917 as amended or modified 1921	Deposits subject to check or other forms of withdrawal and not otherwise secured. Payment of interest at rates higher than authorized by guaranty fund board subjected bank to loss of insurance	Voluntary for all State banks including trust companies but excluding mutual savings banks	Annually 1/10 of 1% until fund equaled 3% of base. If fund reduced, special assessments not to exceed 1/2 of 1% in any one year	In warrants on fund issued on proof of claim; if fund deficient warrants to bear 5% interest until paid

[1] National banks were prohibited from participating in State insurance plans by ruling in July 1908 of Attorney General of the United States.

[2] In terms of percentage of average daily insured deposits for preceding calendar year, unless otherwise noted. Excludes initial payments or contributions where applicable.

[3] The banking laws of Oklahoma were codified, revised and re-enacted May 25, 1908, with little change in guaranty law.

[4] Special assessments in addition to regular annual assessment authorized 1914-1916.

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Membership. In two States, Kansas and Washington, membership in the guaranty plan was voluntary, in the remaining six States compulsory. In Mississippi, however, the plan was voluntary during the first year; and in Texas the banks had the option of joining the guaranty fund or of depositing bonds or other securities with the Commissioner of Insurance and Banking.

Banks were generally required to undergo special examinations prior to admission, presumably with the intention, except in the two States with voluntary membership, of forcing weak banks to liquidate or to improve their financial condition. For the most part, however, these examinations appear to have been perfunctory. Except in Mississippi, inadequate time was allowed for making examinations; and supervisory officials doubtless were reluctant to close banks which they had previously permitted to remain in operation.

The period of operation of each of the systems and a summary of participation in them are given in Tables ~~28 and 29~~ 2.

Table ~~28~~ 2. PARTICIPATION OF OPERATING BANKS IN STATE DEPOSIT INSURANCE SYSTEMS, DECEMBER 31, 1908-1930

State	Period of operation[1]	Number of participating banks[2]		Percent of eligible banks[3]		Percent of all banks in State[4]	
		Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Oklahoma	1908-1923	463	695	100.0%	100.0%	50.9%	75.3%
Kansas	1909-1929	39	714	4.7	65.6	3.5	51.9
Texas	1910-1927	34	990	4.3	96.6	2.2	57.7
Nebraska	1911-1930	647	1,009	100.0	100.0	73.0	84.7
Mississippi	1914-1930	258	306	100.0	100.0	88.1	91.1
South Dakota	1916-1927	322	566	100.0	100.0	76.3	~~81.8~~ 81.1
North Dakota	1917-1929	337	723	100.0	100.0	~~71.7~~ 78.5	~~81.4~~ 80.8
Washington	1917-1921	46	116	16.1	37.9	12.6	28.9

[1] In each State the system operated for only a part of the initial year or of the terminal year, or both.
[2] For data by years, see Table ~~36~~ 10.
[3] In five States all incorporated State banks which accepted deposits (except trust companies in Oklahoma after 1911, and mutual savings banks in Washington) were required to participate. In the other three States participation was voluntary. For data by years, see Table ~~38~~ 12.
[4] Banks ineligible for participation were predominantly national banks, but included trust companies in Oklahoma after 1911, trust companies and private banks in Kansas, and the State-owned Bank of North Dakota in that State. For data by years, see Table ~~38~~ 12.

~~Except~~ In Oklahoma the number of insured banks reached a peak in ~~the post-World War I boom years~~. Cessation of the rapid rate of growth in number of banks in the early 1920's coupled with an increasing number of bank failures and, in several States, withdrawals from the insurance system or conversions to national banks resulted in a decline in the number of insured banks beginning about 1921.

None of the eight State deposit ~~guaranty~~ insurance systems included national banks, though in five States the law authorized their participation. However, such provisions were inoperative as a consequence of a ruling by the Comptroller of the Currency in 1908 forbidding such action by national banks.

At the time of maximum participation, insured banks constituted more than half the banks in each of seven States and in five of these States were more than three-fourths of all banks. However, insured banks, on the average, were smaller than noninsured banks. This is

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reflected [redacted] by the fact that in none of the States was the percentage of deposits held by insured banks as high as the proportion of banks participating in insurance. The proportion of deposits in the participating banks are shown in Table 3.

Table 3. DEPOSITS IN BANKS INSURED UNDER STATE DEPOSIT INSURANCE SYSTEMS, DECEMBER 31, 1908-1930

State	Amount (in thousands)[1]		Percent of total deposits in eligible banks[2]		Percent of total deposits in all banks in State[2]	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Oklahoma	$31,617	$190,900	100.0%	100.0%	19.1%	51.8%
Kansas	3,340	204,669	1.6	74.4	.7	43.8
Texas	2,750	321,008	1.2	95.9	.6	30.9
Nebraska	73,890	281,547	100.0	100.0	38.2	59.0
Mississippi	45,493	187,850	100.0	100.0	66.8	79.2
South Dakota	63,317	184,098	100.0	100.0	55.1	67.3
North Dakota	59,773	130,837	100.0	100.0	41.6	61.1
Washington	39,823	79,814	26.8	41.1	12.4	18.9

[1] For data by years, see Table 37.
[2] For data by years, see Table 38.

None of the eight States, except Kansas for a brief period, placed a limit on the size of account, or amount of deposits owned by a depositor, protected by the insurance; but all the States excluded some types of deposits or those to which specified conditions were attached. In Texas the insurance was limited to non-interest bearing deposits payable on demand. In Kansas, for the first two years, insurance on savings deposits was limited to $100 per person and to accounts bearing not over 3 percent interest per year; and on other interest-bearing accounts to those with the same interest limitation and with a six-month to one year maturity date. In the other States, and in Kansas after 1911, the insurance applied to both demand and time deposits. In these States a maximum rate of interest payable on deposits was prescribed by law or required to be set by the bank supervisory authority, and except in Nebraska payment of a higher rate of interest made a deposit ineligible for insurance. All the States except Nebraska excluded deposits otherwise secured. In Kansas, Mississippi, South Dakota, North Dakota, and Washington the insurance did not cover deposits that represented rediscounts or money borrowed by the banks. In Nebraska, deposits with a collateral agreement or condition other than length of time to maturity and rate of interest were excluded. In Texas public deposits, certificates of deposit, deposits made for the purpose of converting a loan to the bank into a deposit, and after 1923 certificates converted to non-interest bearing deposits within 90 days of a bank's failure were not eligible for insurance. In Mississippi after 1916 cashiers' checks, certified checks, and sight exchange were excluded.

In Washington the guaranty law applied to all deposits in commercial banks, but did not apply to mutual savings banks. At the time there was one such bank, holding about one-sixth of the savings deposits of all banks organized under the State laws.

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In most of the States the statutory provisions regarding coverage were supplemented by court decisions resulting from litigation. Such litigation arose both as to whether certain obligations were deposits, and if deposits whether they were protected. Thus in Texas special deposits, trust funds, and cashiers' checks not arising from deposit accounts were excluded; and in several States payment of a bonus for making or renewing a deposit was construed to be interest.

Banks in financial difficulties. The number of participant banks which suspended operations because of financial difficulties during the periods the funds were in operation ranged from 1 in Washington to 372 in North Dakota. In several of the States some of the suspended banks were reorganized or taken over with no contribution from or obligation falling on the insurance fund. Table 30 shows the total number of suspended banks in each State, and the number entailing obligations on the respective insurance funds, together with the ~~total and insured~~ deposits involved in the latter cases. Data by years for those resulting in obligations on the funds are shown in Tables 39 and 40, pages 69 and 70.

Table 30. FAILED BANKS AMONG PARTICIPANTS IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930

State	Total number of suspended banks	Reopened without obligations on the insurance funds[1]	Entailing obligations on the insurance funds[2]			
			Number[3]	Total deposits (in thousands)[3]	Insured deposits	
					Amount (in thousands)[4]	Percent of total deposits
Oklahoma	140	1	139	$29,486	$25,068	85.0%
Kansas	141	22	119	25,265	21,151	83.7
Texas	154	16	138	37,627	25,469	67.7
Nebraska	360	43	317	61,489	61,790	100.5
Mississippi	64		64	14,550	14,833	101.9
South Dakota	324	82	242	56,585	48,375	85.5
North Dakota	371	31	340	89,694	24,274	62.1
Washington	1		1	10,443	8,452	80.9

[1] Includes some banks taken over by other banks.
[2] Includes a few cases with no eventual loss to the insurance funds because proceeds of liquidation, including assessment on stockholders, were sufficient to repay all deposit liabilities.
[3] For data by years, see Table 39.
[4] For data by years, see Table 40.

In some of the States, because of the deposits excluded from insurance, there was a substantial difference between the deposits of a failed bank, as reported at the time of failure, and the deposits finally adjudged to be covered by the insurance. This was particularly true in Texas where interest-bearing deposits were excluded, and in North Dakota where many depositors' claims for insurance were rejected by the Depositors' Guaranty Commission on the ground that they bore a higher rate of interest than that permitted, or were discounts representing an exchange of credit that was not a deposit of cash or its equivalent, or were cashiers' checks representing merely a transfer of funds and not a deposit in the bank. In Mississippi and Nebraska, on the other hand, the deposit obligations finally paid from the insurance funds, or judged to be covered by the insurance, exceeded the deposits of the banks as reported at time of failure.

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Table 31 shows average annual failure rates among the participants in these deposit insurance systems, with the banks grouped by size. The proportion of all participating banks that failed ranged from about one in 300 per year for Washington to five per 100 per year in North Dakota. There was also a wide range in the average annual amount of deposits in failed banks relative to the deposits in operating banks, but the rates differ substantially from those pertaining to number of banks because of differences in the size of the banks involved.

Table 31. BANK FAILURE RATES AMONG PARTICIPANTS IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930[1]

	All participant banks	Banks with deposits of—					
		$100,000 or less	$100,000 to $250,000	$250,000 to $500,000	$500,000 to $1,000,000	$1,000,000 to $2,000,000	More than $2,000,000
Average annual number per 100 operating banks							
Oklahoma	1.6	1.2	1.7	2.9	3.3	1.7	10.0
Kansas	1.2	1.8	1.2	.8	1.4	.5	1.8
Texas	1.1	.8	1.2	.8	1.6	2.0	1.5
Nebraska	2.0	2.6	2.1	1.4	1.5	.6	.....
Mississippi	1.4	3.7	1.6	1.2	.6	.3	.....
South Dakota	4.2	4.9	4.4	3.7	4.0	1.5	4.5
North Dakota	5.0	9.2	4.0	2.5	2.0	.....	.....
Washington	.3	.....	.....	.....	.....	.....	8.8
Average annual deposits in failed banks per $100 of deposits in operating banks							
Oklahoma	$2.34	$1.31	$1.70	$3.17	$3.84	$1.92	$8.51
Kansas	1.13	1.55	1.20	.77	1.89	.50	2.34
Texas	1.42	.82	1.19	.77	1.75	2.14	1.00
Nebraska	1.69	2.62	1.98	1.42	1.56	.72	.....
Mississippi	.70	2.79	1.49	1.17	.61	.25	.....
South Dakota	3.87	4.98	4.32	3.53	4.29	1.45	11.47
North Dakota	3.58	7.46	3.62	2.33	1.96	.....	.....
Washington	4.18	.....	.....	.....	.....	.....	8.13

[1] Covers failed banks entailing obligations on the insurance funds (see Table 30).

The distribution of failure rates by size of bank indicates that in Nebraska, Mississippi, and North Dakota there were relatively more failures among the smaller banks than among the larger banks; but in Oklahoma the failure rate was highest in the larger banks, and in Washington the only failure was the largest bank in the system. In fact, in both of the latter States, and also in Kansas and South Dakota the largest bank participating in the insurance system was among the failures.

Methods used in paying depositors of banks in financial difficulty. In six of the eight systems—Oklahoma, Nebraska, Texas, South Dakota, North Dakota, and Washington—the deposit insurance law provided that depositors of a failed bank were to be paid by the fund in cash immediately, either in full or to whatever extent could not be paid from the readily available assets of the bank. In Kansas the de-

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positors were given interest-bearing certificates of indebtedness which were reduced as the proceeds of liquidation became available, with the final deficiency paid from the fund. However, it was expected that depositors would be able to obtain their deposits promptly because the certificates were negotiable and it was assumed that operating banks would acquire them from the depositors of a closed bank. The same procedure was used in Mississippi for several years, and then modified to provide for payment from the insurance fund whenever it appeared to the officer in charge of liquidation of a failed bank that the amount to be collected was likely to be insufficient to pay the depositors.

In most of the States in which the depositors were to be paid in cash, provision was also made for the issue of certificates of indebtedness in the event that there was insufficient money in the fund, with such certificates to be paid from future receipts. In these cases also it was expected that the operating banks would regard the certificates as suitable assets and would, therefore, acquire them from depositors who needed their funds immediately.

In Oklahoma, the first of the systems to be established, the procedure of paying the depositors of a failed bank in cash was followed in only a small number of cases. In the majority of cases, the Bank Commissioner, under his powers with respect to the handling of closed banks, approved a reorganization of a failed bank or the assumption of its deposits by another bank, with a payment from the fund, in cash or in certificates of indebtedness payable from future receipts, or with a guaranty that the fund would provide the difference between the deposits assumed and the proceeds of liquidation. This procedure was also followed to some extent in Texas, and in a very small number of cases in some other States.

Assessments on participating banks. In all of the States the insurance funds relied upon assessments on participating banks as a means of obtaining the money necessary to pay depositors in failed banks. The assessments were based on total deposits, or on deposits other than those excluded from insurance. In six of the States—Oklahoma, Kansas, Nebraska, Mississippi, South Dakota, and North Dakota—such assessments were levied annually at specified rates, with a larger initial rate in three of the States, and except for South Dakota with provision for an additional assessment if necessary. In the cases where additional assessments were authorized, a maximum rate in any one year was established, either at the beginning of the system or after it had been in operation for a few years. In Texas an annual assessment was levied for the purpose of accumulating a revolving fund usable for the immediate payment of depositors of a closed bank. The amounts withdrawn were restored by a special assessment upon the participating banks for each failure, with a maximum for such assessments of 2 percent per year. In Washington an initial assessment was levied with no provision (until 1921) for an annual assessment thereafter but with a provision for special assessments as needed, with a specified maximum in any year.

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In certain of the States which had an initial assessment of 1 percent of deposits, a similar rate was assessed on the increase in deposits each year, usually with a rebate if deposits declined. In most cases the assessments collected in any one year were levied on average deposits for the preceding year; and in cases where certain classes of deposits (particularly interest-bearing or secured deposits in Texas) were not insured, such deposits were omitted from the assessment base. In all the States special provisions were made for assessments on new banks, usually a specified rate on the bank's capital to be adjusted later on the basis of deposits. In Kansas, operating banks joining the system after it was established were required to contribute their proportionate share to the fund, equivalent to what they would have paid had they joined at the beginning of the system. Because of these various provisions the average rate of assessment, as computed by comparing the amount of assessments collected in a calendar year with the reported deposits for some date in that year, sometimes varied considerably from the combined rate for regular and special assessments. Table 32 shows the principal statutory provisions in each State, and also the range in assessments levied and in the computed rate of assessments paid.

Table 32. ASSESSMENT RATES IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930

State	Statutory rates (percent of deposits)[1]			Range of annual assessment rates levied (regular and special)[1]	Computed yearly rate of assessments collected[2]		Deposits of cash or securities to secure payment of assessments (percent of deposits)[4]
	Initial	Regular annual	Special (maximum per year)		Minimum and maximum[3]	Average per year	
Oklahoma[5]	1.00	.05 to .20	2.00 to none	.20 to 1.20	.15 to 1.49	.29	1.00
Kansas		.05	.20	.05 to .25	.04 to .21	.08	.50
Texas[6]	1.00	.25	2.00	(6)	none to 1.84	.67	
Nebraska[7]	1.00	.10	1.00 to .50	.05 to .95	.13 to .91	.43	
Mississippi		.05	.20	.05 to .25	.03 to .25	.17	.50
South Dakota		.25		.25	.22 to .30	.24	
North Dakota[8]		.05	.20	.05 to .35	.05 to .32	.18	
Washington[9]	.50 to 1.00	none to .10	.50	none to 1.10	.07 to .90	.41	1.00

[1] Percent of total deposits, or of deposits covered by insurance, on basis of preceding year's daily average or specified date. In some States provisions were made for omission of assessments if the fund reached a specified size, but this did not occur except with the annual assessment for the revolving fund in Texas where after omitting the assessment for one year the specified size was raised. For rates levied by years, see Table 48.

[2] Computed from assessments collected and the total deposits of banks in system at the beginning of the year. Because of assessments on new banks and of various adjustments and refunds, and the differences between total deposits at beginning of year and the deposits used as the assessment base, the computed rates, either maximum or minimum, may be larger or smaller than the rates levied.

[3] Excluding years in which assessments covered only part of a year because of repeal of the law, or the computed rate was substantially distorted because of withdrawals from the system. See also note 6.

[4] With a minimum of $500 in each of the four States. In Washington the required deposit was dropped in 1921.

[5] Annual assessments 1/20 of 1 percent from 1909 to 1913 and 1/5 of 1 percent from 1913 to 1923; maximum special assessments per year 2 percent from 1909 to 1913, 1/5 of 1 percent from 1913 to 1915, and none thereafter.

[6] The proceeds of the initial and regular annual assessments were used as a revolving fund, with the withdrawals to pay depositors of failed banks replaced by the proceeds of special assessments. The range of rates levied is omitted because data are not available for the special assessments. The computed rate of assessment collected, both maximum and minimum and average per year, pertains only to the special assessments, because the entire amount of the revolving fund accumulated from the initial and annual assessments was returned to the participating banks.

[7] The assessment tabulated here as "initial" consisted of four semi-annual assessments of 1/4 of 1 percent each, after payment of which the regular semi-annual assessments of 1/20 of 1 percent applied. The maximum special assessment was 1 percent per year to 1923, but not more than sufficient to maintain the fund at 1 percent of deposits, and 1/2 of 1 percent subsequent to 1923. The range of rates levied shown here is approximate because data are not available for the actual special rates levied to restore the fund to 1 percent of deposits.

[8] The maximum rate levied exceeded in one calendar year the maximum permitted because the latter related to years ended June 30, and a change was made in the dates on which special assessments were payable.

[9] The original law provided for an initial assessment of 1/2 of 1 percent and annual assessments to maintain this percentage. An amendment of 1921 raised the initial assessment to 1 percent of deposits, thus requiring the banks to pay 1/2 of 1 percent in the early part of that year, and also for future annual assessments of 1/10 of 1 percent. Late in 1921 after the failure of the Scandinavian-American Bank the maximum special assessment of 1/2 of 1 percent was levied.

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In four of the States—Oklahoma, Kansas, Mississippi, and Washington—participating banks were required to deposit with the Bank Commissioner securities or cash, in an amount equal to 1 percent or one-half of 1 percent of their deposits, as security for the payment of future assessments. These, and the accumulated revolving fund in Texas, were regarded as the property of the individual banks, to be refunded, after allowance for any assessments due or necessary to meet existing obligations of the fund, if a bank went into liquidation or ceased to be a member of the system.

Custody of the insurance funds.

Two general methods of custody of funds were used: (1) Retention by the respective banks in the form of deposits subject to withdrawal by order of the administrative agency of the fund; and (2) collection by the administrative agency of the fund or the State treasurer, with funds not needed immediately to be invested along with other State funds or in accordance with special provisions. Details of carrying out these two general methods varied from State to State.

In Oklahoma the fund was at first collected by the Bank Commissioner, and in 1909 it was provided that 75 percent was to be invested in State warrants or other securities specified for State funds, the remaining 25 percent to be kept in cash (that is, deposited in banks along with other State funds). Two years later, after a large part of the fund had been tied up by the failure of the bank in which it was deposited, it was provided that the assessments were to be immediately re-deposited in the respective banks, with the banks issuing certificates of deposit to the Bank Commissioner bearing four percent interest. In 1913, the law was changed so that assessments were to be paid by cashier's check to be held by the Banking Board until it was necessary to collect them. They were to bear no interest.

In Nebraska, South Dakota, and North Dakota, the assessments levied were left with the bank, subject to call of the guaranty commission on demand. In Texas 75 percent of the payments were to be held as demand deposits credited to the State Banking Board and subject to its check; the remaining 25 percent to be paid to the State Banking Board and deposited with the State treasurer.

In Kansas and Mississippi the assessments were to be paid to the State treasurer and placed in depository banks, subject, respectively, to the call of the Bank Commissioner and of the bank examiners. In Washington the board in charge of the fund was given broad powers in designating guaranteed banks as depositories of the fund.

Insolvency of the insurance funds. In all the States except Texas the bank failures associated with the depression of 1921 or with the continued unfavorable condition of agriculture throughout the 1920's resulted in obligations upon the funds greatly in excess of the receipts from assessments. In Texas, all obligations of the fund for insured deposits were eventually met, but the fund became insolvent after most of the participating banks withdrew, with conflicting claims on the fund. There was considerable variation in the length of time the funds were able to meet their obligations as they became due. By March 1930, all of the funds had ceased to operate, though in two cases—Nebraska and Mississippi—amendments to the law provided for continuance of

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the assessments on participating banks, with the insurance inapplicable in Nebraska to future failures and in Mississippi to future failures until the obligations of the fund for past failures had been met.

The first fund to cease operations was that of Washington, the last to be established. After four years with no failure the largest bank, holding about one-fifth of the deposits of all the banks in the system, failed on June 30, 1921. The maximum assessment for that year was levied but was insufficient to meet the obligations of the fund for insured deposits after allowing for liquidation of the assets of the bank. Faced with the prospect of another relatively large assessment the next year all the participants in the system withdrew as they were permitted to do under the law in that State.

The next system to be discontinued was the first one established. The Oklahoma system ran into serious difficulties early in its history, but the procedures used in handling failed banks, together with special assessments as high as 1 percent per year, enabled the fund to survive them. However, some indebtedness of the fund remained outstanding after 1915, when because of a change in the law no further special assessments could be levied, and was not fully retired until June 1919. When a wave of failures occurred in late 1920 and throughout 1921, the fund could not meet its obligations, though the procedure used in handling most of the closed banks—that of arranging for reopening or assumption of the deposits by another institution with a guaranty by the fund—resulted in smaller outlays than would have been required had all the deposits in each case been paid immediately from the fund. It was soon necessary for the fund to resort again to issuance of warrants, or certificates of indebtedness, and to attempt to sell these to participating banks. Before long the banks became reluctant to acquire the warrants, and the State Banking Board then requested participant banks to permit their use as the security for payment of future assessments, enabling the Board to sell the United States Government bonds and other marketable securities previously deposited and to use the cash thus obtained to meet the obligations of the fund with respect to current failures. By the latter part of 1921 almost all of the previously deposited marketable securities had been used, and it became obvious that the fund could no longer meet its obligations. At a meeting of the State Banking Board in November 1921 the issuance of warrants on the fund was discontinued, which meant in practice the end of any protection to depositors by the fund. By that date the depositors of 82 failed banks had been protected by the fund. Assessments continued until the legislature early in 1923 repealed the law, though they were not fully collected, and during that period 57 more banks failed. After repeal of the law the State Banking Board proposed the issue of warrants to the depositors of these banks, with the remaining assets of the fund to be used to pay a small dividend to them and to the holders of the other outstanding warrants. This procedure was approved by a District Court in 1932, with claims that had not been presented to the court barred from participation; and early in 1933 a 7 percent dividend was paid to the warrant holders and to a few depositors of failed banks who had presented their claims, with the fund retaining a portion of the balance on hand because some holders of the earliest-issued warrants refused to accept the District Court's award and appealed to the State Supreme Court. In 1934 the State Supreme Court ordered the remnant of the fund paid to the appealing warrant-holders.

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The next State to repeal its guaranty law was Texas, in 1927. This was the most successful of all the systems. The combination of provisions for a sizable revolving fund and for special assessments to reimburse the fund for payments to depositors enabled the fund to meet promptly all of its obligations until the middle 1920's. By that time, however, the special assessments were running close to the permitted maximum of 2 percent a year, which the participating banks felt to be an intolerable burden. Under the pressure of the bankers, the Legislature considered repeal of the law in 1925, but this was rejected in favor of an amendment permitting the participant banks to withdraw, and to be refunded their respective shares of the revolving fund, by joining the alternative "bond security system" that had been established at the same time as the guaranty system. Also, the provisions for posting of security by the individual banks under the bond security system were relaxed, so that each bank could, in effect, merely segregate some of its investments to be held by the Bank Commissioner instead of in its own vault. With this change in the law most of the banks participating in the deposit insurance system withdrew. In the latter part of 1926 one of the banks remaining in the system failed, with an amount of insured deposits substantially larger than the remaining revolving fund after allowance for sums refunded or due to be refunded to the banks that had withdrawn, and eight more failures occurred before the law was repealed in February 1927. Eventually, the insured deposits of these banks were paid in full either from the proceeds of liquidation of the banks' assets, or from remaining assets of the fund upon its final settlement. In addition, the entire revolving fund was returned to the participating banks, and a considerable part of the receipts from special assessments was also repaid from the proceeds of liquidation of the assets of the failed banks.

South Dakota also repealed its deposit insurance law in 1927. The fund had run into difficulties early in 1923. Depositors in 16 failed banks had been paid in full, but in the next case, the fund was able to pay only half of the deposits. From that time until repeal of the law no payments were made to depositors of failed banks, but they were given certificates of indebtedness of the fund for the amounts of the deposits approved as insured, and the regular annual assessments continued to be collected. In 1932, in accordance with a decision of the State Supreme Court, the remaining assets of the fund were used to pay a dividend of 3/4 of 1 percent on the balances of the certificates remaining unpaid after dividends from liquidation, and a final dividend of 23/100 of 1 percent was paid in 1939. These dividends went to depositors of 225 banks.

In Kansas, where participation in the deposit insurance system was voluntary and withdrawal permitted at any time, the system operated successfully until failure of the American State Bank, Wichita, in 1923. This had been the largest bank in the system and it was apparent that

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the fund would be unable to meet the resulting claims, though under the Kansas law the fund was not called upon until completion of liquidation of a failed bank. To reduce if possible the loss which eventually would have to be met a successor bank was organized to assume most of the deposits of the failed bank, with banks participating in the insurance system subscribing to its stock and absorbing the loss on the assumed deposits. The impact of this failure on the participating banks influenced them to begin withdrawing from the insurance system; and most of them did so after a court decision in 1926 which held that they could forfeit the securities they had deposited as a guaranty of payment of future assessments without liability for such assessments as might be needed to meet the losses in the failures that had already occurred. With these withdrawals the insolvency of the fund was apparent, and the deposit insurance law was repealed in March 1929. The order of completion of liquidation of the failed banks was followed in making payments by the fund; and because of variation in the time required to complete liquidation, the order in which the guaranty fund redeemed its certificates of indebtedness differed from the order in which the banks failed. The fund eventually paid the remaining unpaid insured deposit claims in 29 banks, and more than nine-tenths of the claims in 2 additional banks; and made no payment in the case of the remaining 88 banks that failed while participating in the insurance system.

In North Dakota the deposit insurance law was also repealed in 1929. The fund had run into difficulties in the latter part of 1920. Up to that time, two banks in the system had failed, and in both cases the insured deposits were paid in full from the fund. But with numerous failures during the last few weeks of 1920, the fund was unable to meet its obligations and payments were discontinued. In addition, receivership procedures were found inadequate and difficulties encountered in determining the deposit claims that were insured. Consequently, no payments to depositors were made until near the end of 1924. At that time the Depositors Guaranty Fund Commission adopted the procedure of paying a 10 percent dividend on the insured deposits of each failed bank, in the order of failure, with the expectation that more might be paid later, as rapidly as funds became available from assessment receipts. This procedure continued until repeal of the law. By that time the 10 percent dividend on insured deposits had been paid to depositors of 201 banks, and nothing in the case of 137 other failed banks. Settlement of the affairs of the fund was made in 1932, with a payment of 1 percent dividend on insured deposits of the 137 banks.

In Nebraska, numerous failures in 1921 and 1922 led to establishment of a Bankers Conservation Fund, supported by an annual assessment not exceeding one-fourth of 1 percent of deposits on participating banks, which could be used by the Guaranty Fund Commission to operate banks in a failing condition, with the hope that they could be rejuvenated and thus reduce the losses falling on the insurance fund. However, the insurance fund itself was weakened by reducing from 1 percent to one-half of 1 percent of deposits the maximum special assessment per year on the participating banks which could be levied to pay depositors of banks placed in receivership.

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By 1926, though all depositors in banks placed in receivership were being paid, it appeared that the Nebraska insurance fund might be headed toward insolvency because of the large losses in the banks that were operated by the Guaranty Fund Commission.

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←The next year, when the Commission began to place in receivership the banks it had been operating, depositors could not be paid from the insurance fund. An investigation and audit of the fund was ordered by the Legislature, and in March 1930, after a report to the Governor, the law was repealed. A plan was adopted for a final settlement fund to be made up of a small assessment on participating banks for the next ten years, collection of assessments already levied which many of the banks had not paid, and a State bond issue large enough to permit payment of all deposits of the failed banks to the date of repeal. However, the bond issue was rejected by the voters at a referendum, and the State Supreme Court, in a decision that the Supreme Court of the United States declined to review, declared the plan for continued assessments and the regular and special assessments for the insurance fund during its last two years were unconstitutional because under the changed conditions the law served no public purpose and the assessments were confiscatory. A final settlement of the affairs of the fund, made in 1934, resulted in payment of depositors in two banks, and a partial payment in another, in which no previous payments had been made by the insurance fund. In all, depositors of 129 banks that failed from the beginning of the system to the early months of 1927 were paid in full, those of 24 banks that failed during the next three years received partial payments from the fund or the final settlement fund before that was declared unconstitutional, and depositors of 164 banks failing from 1927 to the time of repeal received nothing from the insurance fund.

In Mississippi, where the insurance system also appeared to be successful during its early years, difficulties in the cotton areas in the middle 1920's brought about bank failures with obligations on the fund that could not be met. The original law in Mississippi, as in Kansas, provided for the issue of negotiable interest-bearing certificates to the depositors of a failed bank, with dividends paid from proceeds of liquidation and the final deficiency by the insurance fund. In 1924, an amendment provided for immediate payment from the fund, with a proviso that if the fund were insufficient, the depositors would be issued interest-bearing certificates payable from future receipts of the insurance fund. For several years, operating banks purchased the certificates, thus giving prompt recovery to depositors who wanted immediate payment. However, the amount of such obligations outstanding became so great that operating banks were no longer willing to purchase them. In March 1930 the legislature approved an amendment to the deposit insurance law providing that the guaranty would not be applicable to future failures until existing obligations had been met, though the amount outstanding was so large that the projected collections from assessments would be absorbed for nearly twenty years. Two months later, the legislature approved a bond issue to provide funds for retirement of the outstanding certificates, with the bonds to be retired from the assessments on operating banks. When the bonds were ready for issue, they could not be sold under the terms set by the legislature, but an arrangement was worked out through which the bonds were exchanged for the outstanding certificates of indebtedness of the fund and therefore were eventually paid when the bonds became due. The assessments on insured banks continued until 1934, when the entire deposit insurance law of the State was repealed.

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Disbursements to depositors and unpaid obligations of the funds. Table ~~38~~ summarizes the experience of the eight States with respect to the extent to which the obligations falling upon the respective insurance funds were met by the funds or were never paid. The table shows how insured deposits were paid, and the extent to which they remained unpaid. Recoveries from liquidation of assets, directly or through the insurance funds, ranged from 17 percent in North Dakota to 75 percent in Washington. Recoveries from the insurance funds, in addition to those made possible by liquidation of assets, ranged from 6 percent in South Dakota to ~~46~~ 44 percent in Texas. The insured deposits which were never paid from any source ranged from none in Texas and Mississippi to ~~70~~ 75 percent in North Dakota. Recoveries and losses in the banks that failed each year in each of the States are given in Tables ~~41~~ 15 and ~~42~~ 16, pages ~~71~~ 25 and ~~72~~ 26.

Table ~~35~~ 1. INSURED DEPOSITS AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS, STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930

	Insured deposits[1]	Recovered directly from liquidation of assets[2]	Recovered through insurance funds		Paid from other sources[5]	Not paid[6]
			Paid by fund and recovered from liquidation of assets[3]	Paid by fund and not recovered from assets (loss to fund)[4]		
Amounts (in thousands):						
Oklahoma[7]	$25,068	$11,175	$2,913	~~$4,745~~ 4,754		$6,225
Kansas	21,151	11,241		2,435	$1,424	6,051
Texas	~~25,469~~ 26,390	~~7,490~~ 8,412	6,333	11,646		
Nebraska	61,790	19,420	2,456	16,608		23,306
Mississippi	14,883	7,080	640	2,834	4,279	
South Dakota	48,375	~~10,885~~ 10,924	~~1,289~~ 700	3,023		33,728
North Dakota	24,274	4,154	~~18~~ 26	~~1,820~~ 1,812		18,282
Washington	8,452	6,361		851		1,240
Percentage of insured deposits						
Oklahoma	100.0%	44.6%	11.6%	19.0%		24.8%
Kansas	100.0	53.1		11.5	6.7%	28.6
Texas	100.0	31.9 ~~29.4~~	24.0 ~~24.9~~	44.1 ~~45.7~~		
Nebraska	100.0	31.4	4.0	26.9		37.7
Mississippi	100.0	47.7	4.3	19.1	28.8	
South Dakota	100.0	22.6 ~~21.5~~	1.4 ~~2.6~~	6.2		69.7
North Dakota	100.0	17.1	.1	7.5		75.3
Washington	100.0		75.3	10.1		14.7

[1] Insured deposit claims arising from bank failures. Excludes interest on certificates of indebtedness issued by the funds. For data by years, see Table ~~40~~ 14.

[2] Includes dividends by receivers or liquidators to insured depositors, and insured deposits assumed by other banks in excess of payments from the funds. For data by years, see Table ~~41~~ 15.

[3] Recoveries by the funds on subrogated deposit claims which the funds had paid. In Mississippi, includes recoveries on deposit claims paid from proceeds of bond issue.

[4] Payments on insured deposits by the fund adjusted for recoveries received by the funds from liquidation of assets of the failed banks; i.e., loss to the funds. For data by years, see Table ~~41~~ 15.

[5] In Kansas, loss to banks participating in the insurance system in the reorganization of the American State Bank, Wichita. In Mississippi, paid from the proceeds of a State bond issue, adjusted for subsequent recoveries on the claims paid.

[6] Loss to depositors, or holders of certificates of indebtedness of the funds. For data by years, see Table ~~42~~ 16. See also note 7.

[7] In addition to the unpaid deposits, approximately $1,113,000 of warrants, or certificates of indebtedness of the fund, mostly held by the banks participating in the system, were never paid.

Note: Because of rounding, data may not add precisely to the indicated totals.

A summary of the income and expenditures of each of the insurance funds is given in Table ~~34~~ 8. Most of the income was derived from assessments on the participating banks. For two States—Oklahoma and Kansas—the amounts shown in the table as assessments collected include the value of securities which had been deposited by participating banks to assure payment of future assessments, but had been diverted to the use of the fund through the substitution of warrants that were never paid or through forfeiture to the fund upon the banks' withdrawal from

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the system. In six States there were small amounts received from interest or other sources. The bulk of the expenditures consisted of payments on insured deposits or to banks that assumed such deposits. In three States—Oklahoma, Kansas and Mississippi—interest payments were made on guaranty fund certificates outstanding before they were retired, and in three States portions of the funds collected were lost in the failures of banks in which they had been deposited. Provisions for operating expenses were varied, being met in whole or in part, in some of the States, from funds appropriated or collected through examination fees for support of the State banking department. In five of the States a portion or all of the operating expenses of the deposit insurance systems were met from the deposit insurance funds.

Table 34. INCOME AND EXPENDITURES OF STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930

(In thousands)

State	Income[1]			Expenditures			
	Total[2]	Assessments[3]	Other[4]	Total[2]	Payments on insured deposits[5]	Interest and losses[6]	Operating expenses[7]
Oklahoma	$5,303	$5,279	$24	$5,310	$4,754	$304	$252
Kansas	2,821	2,678	143	2,797	2,435	361	.....
Texas[8]	~~17,729~~	~~17,729~~	.....	11,646	11,646	.....	.....
Nebraska	~~16,483~~	~~16,483~~	.....	16,608	16,608	.....	.....
Mississippi[9]	3,656	3,604	52	3,614	2,834	681	99
South Dakota	3,647	3,585	62	3,646	3,023	545	78
North Dakota	2,054	2,002	52	~~2,042~~ 2,054	~~1,820~~ 1,812	59	~~163~~ 183
Washington	937	921	16	937	851	26	60

[1] Excludes receipts by the funds from proceeds of liquidation of failed banks, which are not comparable because of differing provisions of law regarding the procedures for payment of depositors.

[2] Except for Texas (see note 8), differences between total receipts and total expenditures represent balances remaining at latest available statements for the insurance funds, or transferred to the general fund of the State, or unexplained differences in data derived from various sources where complete information is not available.

[3] In Oklahoma, includes $1,539,000 of guaranty fund warrants or other securities deposited as security for payment of future assessments which were never paid or were sold for the benefit of the guaranty fund (see note 6 to Table ~~49~~, p. ~~731~~). In Kansas, includes securities deposited as security for payment of future assessments that were forfeited when most of the participating banks withdrew, but does not include the loss of $1,424,000 taken by participating banks in the reorganization of the failed American State Bank, Wichita. In Texas, relates to the special assessments for paying depositors of failed banks, not to the annual assessments to accumulate a revolving fund. In all States excludes assessments refunded because of adjustments or other reasons, except the refunds in Texas from the proceeds of liquidation of failed banks.

[4] Chiefly interest received, but includes some income from other sources in South Dakota and from fees in North Dakota.

[5] Net after allowance for recoveries by the insurance funds from proceeds of liquidation of the banks. Includes payments to operating banks which assumed the insured deposits of failed banks (in Oklahoma and Texas and a few cases in other States).

[6] In Oklahoma, estimated amount of interest paid on guaranty fund warrants. In Kansas, represents interest paid on principal of insured deposits in the 29 banks for which such deposits were paid in full; and in Mississippi, interest on the guaranty certificates (representing insured deposits) that were paid by the insurance fund, on bills payable, and on the State bond issue for one year. In South Dakota mostly and in Washington entirely, loss on portions of the insurance funds deposited in banks that failed. In North Dakota uncollectible accounts.

[7] In Oklahoma, Mississippi, and North Dakota, a portion of the operating expenses and in Kansas all of such expenses were met from proceeds of examination fees, special assessments on operating banks, or appropriations from the State. In Nebraska, operating expenses were met largely from assessments on the banks in receivership, thus becoming part of the liquidation expenses of failed banks, but in part from assessments on operating banks and legislative appropriations. For operating expenses in Texas, see note 8.

[8] Income and expenditures shown here pertain only to the special assessments, including assessment adjustments at time of final settlement of the fund, to pay depositors in failed banks. The excess of assessments over the net payments on insured deposits was returned to the participating banks. In addition, assessments for the revolving fund, which amounted to more than $5 million over the course of the years the fund operated, were also returned to the participating banks, partly at time of liquidation or withdrawal from the fund (prior to 1926) but mostly at time of final settlement of the affairs of the fund. Some interest receipts were also available for return to the banks, but expenses incurred in settling the affairs of the fund were deducted—which may have been more or less than the interest receipts; and part of the operating expenses appear to have been included with those of the Banking Department. Full information is not available for receipts and expenditures of the revolving fund subsequent to August 31, 1922.

[9] Excludes $5 million receipts from bond issue, from which the deficit on insured deposits of $4,279,000 and interest on guaranty certificates of about $524,000 were paid.

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In Table 35 the assessments collected, as given in the preceding table, are compared with the amounts that would have been necessary to meet the losses on insured deposits. In this comparison no allowance is made for income from other sources, nor for interest payments on depositors' claims, operating costs, and other expenses. Further, no allowance is made for the funds needed to make immediate payment to depositors of that portion of their insured claims eventually recovered from the liquidation of the assets of the banks. Though some of the States attempted, by providing an initial fund of 1 percent of deposits, to establish such a reserve, these provisions were inadequate except in the case of the revolving fund of Texas, and that became insufficient when the great majority of the banks participating in the system withdrew.

Table 35. Assessments Relative to Losses, State Deposit Insurance Systems, 1908-1930

(Amounts in thousands)

State	Number of years fund operated[1]	Assessments collected[2]	Assessments necessary to meet losses on insured deposits[3]	Equivalent average annual rate of assessment on participating banks (percent of total deposits)	
				Paid	Necessary to meet losses on insured deposits
Oklahoma	15.0	$5,279	$10,979	0.12%	0.87%
Kansas	19.7	2,678	9,919	.12	.44
Texas[4]	17.1	17,728	11,646	.67	.44
Nebraska	18.7	16,489	39,914	.43	1.04
Mississippi	16.0	3,604	7,113	.17	.34
South Dakota	11.5	3,585	36,751	.25	2.52
North Dakota	12.0	2,002	20,102	.18	1.84
Washington	4.5	921	2,091	.37	.84

[1] In Mississippi, to date of amendment making the insurance inapplicable to future failures; in Washington, to withdrawal of all banks in system; in other States, to repeal of the law.

[2] See Table 34.

[3] Insured deposits of failed banks in excess of recoveries from the proceeds of liquidation of the banks' assets.

[4] In Texas, the excess of assessments collected over the net payments by the insurance fund was returned to participating banks upon completion of the liquidation of failed banks or the final settlement of the affairs of the fund.

The assessments collected ranged from an amount equivalent to an average annual rate on the deposits of participating banks of about one-eighth of 1 percent in Kansas to about two-thirds of 1 percent in Texas. The amounts that would have been necessary to meet losses on insured deposits ranged from the equivalent of one-third of 1 percent per year of deposits of participating banks in Mississippi to about 2.5 percent in South Dakota. The total assessments collected varied from less than one-tenth of the amount needed to cover all losses on insured deposits in South Dakota, to full coverage of such losses in Texas.

Inadequacies and factors responsible for failure of the State deposit insurance systems.

The experience with insurance of bank obligations during the 1908-1930 period was on the whole less successful than that during the period 1829-1866. In four of the six earlier systems all claims arising from insured obligations of banks in financial difficulties were paid; this was accomplished in only two of the eight later systems, and in one of these a part of the obligations was met from proceeds of a State bond issue. All eight systems of the 1908-1930 period became insolvent, whereas four of the six earlier systems continued to operate until expiration of the charters of the participating banks or their conversion to national banks.

The experience of the earlier systems is described in the volume, Insurance of Bank Obligations in Six States During the Period 1829-1866.

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Various explanations have been given for the failure of these State experiments with deposit insurance. The most prevalent is an assumption that deposit insurance provided a great temptation toward ill-considered expansion and reckless loan management policies. This assumption is supported by the observation that in most of the States with a deposit insurance system a relatively rapid expansion occurred during the early years of the systems. Such expansion took two principal forms: in some States a large increase in the number of banks relative to population and wealth, and in most of the States an expansion of bank loans and deposits by individual banks with inadequate attention to the quality of assets acquired. The latter appears to have occurred in the larger banks to as great an extent as in the smaller banks: certainly it was a specific factor in the failure of some of the relatively large banks in the systems. Inadequate regulation of banks, with respect both to statutory requirements and to the quality of supervision provided by banking departments, is also frequently cited as an important factor in the failure of these insurance systems. Deficiencies in legislative standards are in fact suggested by the extent and nature of amendments to the banking codes after the funds had been operating a few years, or after they had ceased to function; and inadequacy of supervision appears obvious in some of the States, where there were frequent turnovers in the personnel of the bank supervisory agency, and provision for only a few examiners with salaries inadequate to retain well-qualified men.

However, it is easy to place more stress than is warranted on the presumption that deposit insurance itself led to ill-considered expansion and reckless management, and that this together with inadequate supervision was the dominant element in the failure of the systems. This is clear from the fact that in six of the systems the failure rates were lower than among State-chartered banks in several contiguous States during the same periods, and in two of the systems lower than in all State banks in the nation. The more fundamental underlying factors in the failures of the systems were the impact of the deflationary monetary policy after the close of World War I and the accompanying business depression, and the continued adverse economic circumstances throughout the 1920's in the agricultural areas of the nation.

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In a sense all the funds failed from inadequate assessments and insufficient accumulated reserves. But it would be unrealistic to assume that the rates could have been made, as a practical matter, high enough to have covered the cost. If the insurance had been required for all banks this might have been possible, because the costs would have fallen upon all establishments providing banking service and hence could have been passed on to bank customers. But with the alternative open to the banks of withdrawing from the system—under the provisions of State law or by liquidation and conversion to national banks—the rates which would have been necessary to have covered the costs could not have been maintained.

annual data information 10-17 for each of the eight States

~~Detailed tables~~ and sources of ~~data.~~ Tables ~~30-43~~ give annual data regarding the number of banks, their total deposits, insured deposits and the degree to which they were paid, and the assessments collected.

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The information from which these tables have been prepared was obtained for the most part from the respective State banking departments, partly from official reports published in State documents, partly from records remaining in the offices of the State departments which have been made available through the courtesy of the respective bank supervisory officials, and partly from data published or available elsewhere but largely derived from the records of the State banking departments. In some respects the published material, together with the available records in the offices of the banking departments, do not provide all the information needed for accurate tabulations, and in most of the States it has been necessary to supplement the data actually collected by estimates derived from partial data.

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The word participating should be broken participa-ti = see dictionary DK

Table 10. NUMBER OF BANKS, AND NUMBER PARTICIPATING IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930[1]

Year end[2]	Oklahoma		Kansas			Texas			Nebraska		Mississippi		South Dakota		North Dakota		Washington		
				Eligible			Eligible											Eligible	
	Total[3]	Participating[4]	Total[3]	Not participating	Participating	Total[3]	Not participating	Participating	Total[3]	Participating[4]	Total[3]	Participating[4]	Total[3]	Participating[4]	Total[3]	Participating[4]	Total[3]	Not participating	Participating
1908	834	546																	
1909	887	668	1,038	421	404	1,203	43	472											
1910	924	695	1,077	459	401	1,308	45	582											
1911	914	631	1,107	446	442	1,370	45	643	916	669									
1912	923	615	1,113	432	462	1,442	55	704	935	694									
1913	913	582	1,141	439	481	1,536	61	788	965	728									
1914	913	563	1,153	420	508	1,551	59	790	983	765	308	273							
1915	903	557	1,196	427	526	1,532	54	777	1,007	803	293	258	648	580					
1916	885	547	1,220	437	546	1,530	47	789	1,031	839	293	258	628	503					
1917	901	566	1,250	430	577	1,572	46	828	1,110	920	297	263	639	514	866	705	364	239	46
1918	936	581	1,291	426	613	1,579	43	841	1,133	942	299	266	647	521	877	709	364	197	85
1919	944	599	1,338	427	649	1,641	41	907	1,188	999	316	284	673	543	898	723	381	191	104
1920	977	622	1,374	409	683	1,717	41	990	1,196	1,009	337	306	702	566	874	694	401	190	116
1921	938	556	1,375	377	714	1,681	34	970	1,170	986	336	306	702	566	843	661			
1922	910	463	1,349	369	698	1,647	34	936	1,137	955	331	300	692	561	849	665			
1923			1,323	357	681	1,645	34	916	1,118	938	338	306	662	535	743	569			
1924			1,297	371	651	1,618	37	896	1,101	928	335	299	552	438	678	513			
1925			1,269	381	611	1,582	497	337	1,072	903	338	301	495	385	642	482			
1926			1,223	547	399	1,524	748	34	1,043	883	325	289	422	322	555	409			
1927			1,109	794	78				1,012	855	325	288			512	371			
1928		1153	1,102	794	39				882	726	321	285			470	337			
1929									804	647	306	271							

[1] For periods of operation of the deposit insurance systems.
[2] December 31 or nearest available date.
[3] Total number includes all banks and trust companies operating in the State. Of these, national banks were ineligible for participation in State deposit insurance systems under a ruling of the Comptroller of the Currency, and in some States certain types of banking institutions were ineligible under State law (Oklahoma, trust companies after 1911; Kansas, trust companies and private banks; Texas, private banks; Washington, mutual savings banks).
[4] Required to participate. Figure for Mississippi for 1914 includes all State banks, part of which may not have been participating banks on that date: participation was voluntary to May 15, 1915.

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Particip—pating broken wrong
See dictionary - J.K.

11.

Table 67. TOTAL DEPOSITS OF ALL BANKS, AND OF BANKS PARTICIPATING IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930[1]
(In millions of dollars)

Year end[2]	Oklahoma		Kansas			Texas			Nebraska		Mississippi		South Dakota		North Dakota		Washington		
	Total	Participating	Total	Eligible		Total	Eligible		Total	Participating	Total	Participating	Total	Participating	Total	Participating	Total	Eligible	
				Not participating	Participating		Not participating	Participating										Not participating	Participating
1908	75	32																	
1909	106	55	189	52 ~~54~~	46	274	4	47											
1910	121	61	171	43 ~~45~~	47	299	6	55											
1911	107	44	183	44 ~~46~~	55	300	7	57	194	74									
1912	123	46	194	46 ~~42~~	63	395	10	89	205	83									
1913	135	46	191	37 ~~41~~	66	358	10	85	214	93									
1914	129	45	211	42 ~~44~~	75	305	9	64	217	101	63	45							
1915	158	48	233	46 ~~49~~	86	390	8	93	241	114	75	55	~~111~~	~~68~~					
1916	265	85	330	62 ~~65~~	118	606	11	149	343	166	103	79	141	84					
1917	382	137	400	69 ~~73~~	152	763	12	204	419	223	141	107	195	123	~~171~~	~~105~~	322	109	40
1918	339	121	428	76 ~~80~~	170	643	12	179	478	260	159	120	239	151	210	123	363	113	53
1919	513	191	487	82 ~~88~~	205	1,132	15	321	513	279	237	188	281	184	230 ~~214~~	131	451	123	80
1920	434	161	447	92 ~~81~~ 73	191	862	14	266	432	255	160	123	219	145	187 ~~174~~	104	396	107	75
1921	360	113	411	59 ~~66~~	180	756	10	227	388	216	154	117	202	135	157 ~~152~~	85			
1922	393	75	427	54 ~~62~~	180	913	11	252	434	239	187	139	222	150	180 ~~178~~	95			
1923			411	54 ~~64~~	168	1,075	17	289	430	240	200	148	226	151	163 ~~156~~	80			
1924			484	56 ~~75~~	195	1,159	21	302	485	272	211	146	199	122	197 ~~184~~	88			
1925			457	66 ~~180~~ 73	168	1,257	1174 ~~95~~		487	282	246	167	179	106	199 ~~182~~	86			
1926			451	146 ~~154~~	79	1,066	228 ~~63~~		470	276	227	151	143	79	175 ~~168~~	70			
1927			443	201 ~~210~~	7				474	275	255	172			146 ~~149~~	65			
1928			457	208 ~~219~~	3				462	252	250	168			174 ~~144~~	60			
1929									407	192	240	161							

[1] For periods of operation of the deposit insurance systems.
[2] December 31 or nearest available date.
[3] ~~Not available because of lack of information regarding the identity of the banks that withdrew prior to January 1, 1926, or those that withdrew between that date and September 29, 1926. In May 1926, 160 banks that remained in the system had deposits of $29,657,000 (statement of Bank Commissioner, *The Texas Bankers Record*, June 1926, p. 38).~~

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Table 38. Participation in State Deposit Insurance Systems, 1908-1930

Year end	Percentage of banks participating											Percentage of deposits in participating banks										
	Oklahoma	Kansas		Texas		Nebraska	Mississippi	South Dakota	North Dakota	Washington		Oklahoma	Kansas		Texas		Nebraska	Mississippi	South Dakota	North Dakota	Washington	
	Of all banks	Of all banks	Of eligible banks	Of all banks	Of eligible banks	Of all banks	Of all banks	Of all banks	Of all banks	Of all banks	Of eligible banks	Of all banks	Of all banks	Of eligible banks	Of all banks	Of eligible banks	Of all banks	Of all banks	Of all banks	Of all banks	Of all banks	Of eligible banks
1908	65.5		49.0									42.0										
1909	75.3	38.9	48.9	39.2	91.7							51.8	24.0	45.7	17.3	92.2						
1910	75.2	37.2	46.6	44.5	92.8							50.7	27.4	51.0	18.4	90.4						
1911	69.0	39.9	49.8	46.9	93.5	73.0						41.2	29.9	54.5	18.9	89.5	38.2					
1912	66.6	41.5	51.7	48.8	92.8	74.2						37.4	32.5	59.8	22.6	90.3	40.3					
1913	63.7	42.2	52.3	51.3	92.8	75.4						34.1	34.7	61.7	23.9	89.1	43.4					
1914	61.7	44.1	54.7	50.9	93.1	77.8	88.6					34.6	35.3	62.8	21.0	87.4	46.5	72.3				
1915	61.7	44.0	55.2	50.7	93.5	79.7	88.1	81.8				30.6	36.9	63.9	23.8	91.7	47.5	73.4	56.9			
1916	61.8	44.8	55.5	51.6	94.4	81.4	88.1	80.1				31.9	35.8	64.3	24.6	93.1	48.3	76.2	59.4			
1917	62.8	46.2	57.3	52.7	94.7	82.9	88.6	80.4	81.4	12.6	16.1	35.9	38.1	67.7	26.7	94.5	53.3	75.8	62.7	60.9	12.4	26.8
1918	62.1	47.5	59.0	53.3	95.1	83.1	90.0	80.5	80.8	23.4	30.1	35.6	39.6	67.9	27.8	93.7	54.4	75.4	63.1	58.4	15.3	32.9
1919	63.5	48.5	60.3	55.3	95.7	84.1	89.9	80.7	80.3	27.3	35.3	37.2	42.0	69.9	28.4	95.7	54.3	79.2	65.5	61.1	17.7	39.4
1920	63.7	49.7	62.5	57.7	96.0	84.4	90.8	80.6	79.3	28.9	37.9	36.9	42.8	70.8	30.9	95.0	59.0	76.8	66.4	59.0	18.9	41.1
1921	59.3	51.9	65.4	57.7	96.6	84.3	91.1	80.6	78.4			31.3	43.8	73.2	30.1	95.7	55.8	75.6	66.6	56.1		
1922	50.9	51.7	65.4	56.8	96.5	83.9	90.6	81.1	78.3			19.1	42.1	74.4	27.6	95.9	55.0	74.3	67.3	55.2		
1923		51.5	65.6	55.7	96.4	83.9	90.5	80.8	76.6				40.8	72.8	26.9	94.4	55.8	74.2	66.8	51.4		
1924		50.2	63.7	55.4	96.0	84.3	89.3	79.3	75.7				40.3	72.2	26.0	93.6	55.9	69.2	61.4	47.8		
1925		48.1	61.6	21.3	40.4	84.2	89.1	77.8	75.1				36.8	67.8	7.6	35.4	57.8	67.9	59.3	47.6		
1926		32.6	42.2	2.2	4.3	84.7	88.9	76.3	73.7				17.3	38.9	.3	1.2	58.6	66.8	55.1	45.4		
1927	6.8	7.0	8.9			84.5	88.6		72.5				1.6	9.2	16	2.6	57.9	67.3		43.7		
1928		3.5	4.7			82.3	88.8		71.7				.7	1.5			54.7	67.3		41.6		
1929						80.5	88.6										47.1	67.1				

[1] See note 3, Table 37.

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Table 13. NUMBER AND DEPOSITS OF FAILED BANKS PARTICIPATING IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930

Year of failure	Number of failed banks[1]								Deposits (in thousands of dollars)[2]							
	Oklahoma	Kansas	Texas	Nebraska[3]	Mississippi	South Dakota	North Dakota	Washington	Oklahoma	Kansas	Texas	Nebraska	Mississippi	South Dakota	North Dakota	Washington
Total	**139**	**119**	**138**	**317**	**64**	**242**	**340**	**1**	**29,486**	**25,265**	**37,627**	**61,489**	**14,550**	**56,585**	**39,094**	**10,443**
1908	1								37							
1909	3								2,873							
1910	3	1							661	155						
1911	8		2						1,144		230					
1912	4		1						656		35					
1913	16		1						1,993		125					
1914	6		4	1					501		207	122				
1915	6		3						360		513					
1916	1		3	1	4	1			40		3,343	110	623	32		
1917	2				1				85				64			
1918	3		1						1,203		133					
1919	6	1	1			1	1		1,183	648	24			141	201	
1920	8	2	9	5	2	1	18		2,375	219	1,255	1,026	481	527	3,478	
1921	28	8	30	25	4	1	27	1	6,509	2,110	12,002	6,041	1,469	316	4,062	10,443
1922	33	15	19	22	10	9	7		8,404	3,357	5,815	4,758	1,169	1,991	1,071	
1923	11	19	10	15	2	39	77		1,460	7,235	2,889	2,418	171	10,173	9,136	
1924		10	15	13	3	94	61			2,593	4,246	1,546	571	27,751	6,745	
1925		15	21	20	5	38	25			2,237	4,826	5,154	1,596	6,401	2,395	
1926		27	16	22	6	47	43			3,600	1,833	5,847	1,454	7,889	4,383	
1927		17	2	22	6	11	33			2,806	151	5,629	2,294	1,364	3,691	
1928		3		46	5		30			223		7,725	1,554		2,160	
1929		1		116	10		18			82		19,835	2,172		1,772	
1930				9	6							1,278	932			

[1] Exclusive of suspended banks not placed in receivership that reopened or were taken over without payments from, or due from, the deposit insurance funds.
[2] As of date of failure or, where this is not available, last available report prior to failure. Due to rounding, data may not add precisely to the indicated totals.
[3] For the later years, many of the banks had become insolvent at earlier dates, and had been operated by the Guarantee Fund Commission.

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Table 40. INSURED DEPOSITS AND THEIR RATIO TO TOTAL DEPOSITS IN BANKS THAT FAILED WHILE PARTICIPATING IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930

Year of failure	Insured deposits (in thousands of dollars)[1]								Percentage ratio: insured deposits to total deposits at date of failure							
	Oklahoma[2]	Kansas[3]	Texas[4]	Nebraska[5]	Mississippi[6]	South Dakota[7]	North Dakota[8]	Washington[9]	Oklahoma	Kansas	Texas	Nebraska	Mississippi	South Dakota	North Dakota	Washington
Total	25,068	21,151	25,469	61,790	14,833	48,375	24,274	8,452	85.0	83.7	67.7	100.5	101.9	85.5	62.1	80.9
1908	37								100.0							
1909	1,741								60.6							
1910	588	47							88.9	30.1						
1911	1,065		152						93.1		66.2					
1912	535		28						81.5		80.3					
1913	1,716		98						86.1		78.2					
1914	451		162	122					90.0		78.3	99.7				
1915	332		378						92.2		73.7					
1916	40		2,196	111	623	26			100.0		65.7	100.7	100.0	81.6		
1917	84				64				99.1				100.0			
1918	1,078		105						89.6		78.9					
1919	906	497	19			128	87		76.6	76.7	80.7			90.7	49.2	
1920	2,009	190	961	968	481	496	2,098		84.6	86.5	76.6	94.3	100.0	94.0	60.3	
1921	5,415	1,910	8,044	6,303	1,465	210	2,619	8,452	83.2	90.6	67.6	104.3	99.8	66.5	64.5	80.9
1922	8,033	2,637	3,807	4,916	1,149	1,843	591		95.6	78.5	65.5	103.3	98.3	92.6	55.1	
1923	1,038	5,825	1,846	2,648	166	8,494	5,668		71.1	80.5	63.9	109.5	97.5	83.5	62.0	
1924		2,226	2,860	1,470	571	24,718	4,721			85.8	67.4	95.1	100.1	89.1	70.0	
1925		2,081	3,258	5,005	1,976	5,409	1,619			93.0	67.5	97.1	123.8	84.5	67.6	
1926		3,280	1,410	5,963	1,431	5,859	2,276			89.7	76.9	102.0	98.4	74.3	51.9	
1927		2,244	144	5,941	2,176	1,191	2,326			80.0	95.1	105.5	94.9	87.3	63.0	
1928		197		7,874	1,614		1,334			88.5		101.9	103.9		61.7	
1929		69		19,307	2,170		935			83.9		97.3	99.9		52.7	
1930				1,162	945							90.9	101.4			

[1] The major part of the differences between insured deposits, as given here, and total deposits at date of failure, shown in Table 39, is due to deposits excluded from insurance coverage (see text, pages 50-51). However, some differences are due to deposit claims allowed that were not on the books or not included in those tabulated as of date of failure, or to deposits on the books for which claims were not filed or which were disallowed on the ground that they were not deposit liabilities.

[2] Estimated for a large proportion of the banks as the amount of deposits at date of failure, excluding those of banks and government and cashier's checks. For failed banks that were liquidated without being taken over or reorganized, such deposits exceeded by 1½ percent the claims of the guaranty fund against the receivers. For the majority of the failed banks the actual amount of insured deposits is unavailable, because the claims of the guaranty fund represented payments to an absorbing or successor bank that assumed the deposits of a failed bank without a definite determination of the deposits covered by insurance.

[3] Guaranty fund certificates issued (estimated for a few banks for which the amount of certificates issued is not available). The figure for 1923 includes the esimated amount of insured deposits of the American State Bank, Wichita, which were assumed by the successor bank and represented on the liquidation accounts of the American State Bank by receivers' certificates instead of guaranty fund certificates.

[4] Claims paid or payable by the guaranty fund (estimated for some banks, chiefly those absorbed by another bank with a payment by the fund).

[5] Claims payable by the guaranty fund (estimated for a few of the banks).

[6] All deposits eventually paid from assets, the guaranty fund, and proceeds of a State bond issue (estimated for one bank).

[7] Amount paid by guaranty fund for 16 banks for which all guaranteed claims were paid, and amount of guaranty fund certificates issued for the remaining failed banks.

For additional notes, see p. 71.

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Table 41. RECOVERIES ON INSURED DEPOSITS IN BANKS THAT FAILED WHILE PARTICIPATING IN STATE DEPOSIT INSURANCE SYSTEMS, 1908-1930
(In thousands of dollars)

Year of failure	Recoveries from liquidation of assets[1]								Net payments to depositors from insurance fund[2]							
	Oklahoma	Kansas	Texas	Nebraska	Mississippi	South Dakota	North Dakota[3]	Washington	Oklahoma	Kansas	Texas	Nebraska	Mississippi	South Dakota	North Dakota[3]	Washington
Total	**14,088**	**11,241**	**13,823**	**21,876**	**7,720**	**11,624**	**4,172**	**6,361**	**4,754**	**2,435**	**11,646**	**16,608**	**2,834**	**3,023**	**1,820**	**851**
1908	37															
1909	1,125								616							
1910	347	18							241	29						
1911	526		109						540		43					
1912	385		16						150		12					
1913	1,187		97						529		1					
1914	290		158	103					161		4	19				
1915	245		367						87		11					
1916	38		1,919	67	389	26			3		277	44	235			
1917	84				32								32			
1918	1,043		105						35							
1919	823	94	19			53	7		83	402				75	80	
1920	997	93	499	318	177	123	232		1,012	96	462	649	303	372	285	
1921	2,588	1,485	3,176	3,320	484	85	367	6,361	1,285	329	4,868	2,983	982	125	244	851
1922	3,792	1,051	2,343	1,695	560	270	20		14	1,041	1,464	3,221	589	1,573	58	
1923	582	2,459	1,236	580	105	1,074	589			366	611	2,068	61	604	550	
1924		1,410	1,298	349	382	7,031	1,165			173	1,562	1,121	189	177	438	
1925		1,216	1,848	2,177	1,306	1,168	279				1,411	2,828	356	42	99	
1926		1,613	589	3,026	698	1,455	416				827	2,937	87	45	22	
1927		1,589	50	1,067	678	338	566				93	567		9	23	
1928		156		1,482	677		252					154			12	
1929		57		7,045	1,582		279					17			9	
1930				645	649											

[1] Includes dividends paid directly to depositors, and those paid to the insurance funds on depositors' claims, and estimated amount of insured deposits assumed by absorbing or successor banks with payments from the insurance funds.

[2] Payments to depositors by the insurance funds, or to absorbing or successor banks, less recoveries by the fund.

Note: Because of rounding, data may not add precisely to indicated totals.

Notes to Table 40—continued

[3] Claims approved by Guaranty Fund Commission, estimated as follows: for 2 banks paid in full by the fund, the amount of deposits paid; for banks on which a 10 percent dividend was paid, ten times the amount of such dividend allowed; for banks on which a 1 percent dividend was paid, one hundred times the amount of those dividends; total deposits in a few cases paid in full by receivers.

[4] Warrants issued for the guaranteed deposits.

Note: Because of rounding, data may not add precisely to the indicated totals.

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Table 42. Losses on Deposits and Other Liabilities in Banks that Failed While Participating in State Deposit Insurance Systems, 1908-1930

(In thousands of dollars)

Year of failure	On insured deposits[1]								On noninsured deposits and other liabilities							
	Oklahoma	Kansas[2]	Texas	Nebraska	Mississippi[3]	South Dakota	North Dakota	Washington	Oklahoma	Kansas	Texas	Nebraska	Mississippi	South Dakota	North Dakota	Washington
Total	6,225	7,475	none	23,306	4,279	33,728	18,282	1,240	[4]	1,958	2,968	1,704	[4]	2,859	23,719	141
1908																
1909																
1910										52						
1911																
1912																
1913																
1914																
1915																
1916																
1917																
1918																
1919																
1920							1,582			21	215			6	1,697	
1921	1,542	97					2,008	1,240		188	1,548	278		26	2,207	141
1922	4,227	545					513			256	121	60		142	808	
1923	456	2,999				6,818	4,530			827	182	91		600	6,782	
1924		644				17,509	3,118			22	192	134		1,141	4,668	
1925		864			314	4,199	1,241			97	498	31		435	1,385	
1926		1,617			646	4,359	1,838			227	208	74		419	2,716	
1927		655		4,306	1,498	845	1,737			142	9	48		90	1,611	
1928		42		6,237	937		1,070			3		142			1,018	
1929		12		12,245	588		646			[4]		780			828	
1930				517	296							65				

[1] Insured deposits never repaid to depositors, either from the insurance fund or liquidation of assets, except for a portion of the loss in Kansas (see note 2) and the loss in Mississippi which was assumed by the State (see note 3).

[2] Of this loss, $1,424,000 was assumed by the participating banks in the reorganization of the American State Bank, Wichita, which failed in 1923.

[3] Paid from proceeds of a State bond issue.

[4] Data not available.

[5] Less than $500.

Note: Because of rounding data may not add precisely to indicated totals.

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Table 17. Assessment Rates and Collections by State Deposit Insurance Systems, 1908-1934

Year	Assessment rates (percent)[1]								Net collections from assessments (in thousands of dollars)[2]							
	Oklahoma	Kansas	Texas[3]	Nebraska[4]	Mississippi	South Dakota	North Dakota	Washington	Oklahoma	Kansas	Texas	Nebraska	Mississippi	South Dakota	North Dakota	Washington
Total									4,854	2,678	17,723	16,483	3,604	3,585	2,002	921
1908	1.00								199							
1909	.95	.05							327	17						
1910	.20	.05	.....						285	18	.....					
1911	1.20	.05	.....	.25					601	23	.....	177				
1912	.95	.05	.37 .84	.50					511	23	133	407				
1913	.40	.05	.....	.30					202	28	.....	272				
1914	.40	.05	.08 .07	.10 .15	.05				148	32	61	141	5			
1915	.40	.05	.03	.10 .15	.05				162	30	18	145	14			
1916	.20	.05	.27 .22	.20 .15	.05	.25			90	37	200	421 182	15	139		
1917	.20	.05	.05 .04	.10 .15	.10	.25	.05	.50	133	48	62	220	44	186	48	139
1918	.20	.05	.....	.10 .15	.15	.25	.10 .05	.....	209	71	.....	318	98	255	103 60	74
1919	.20	.05	.....	.30 .20	.20	.25	.05	.....	232	84	.....	802 506	153	330	75	39
1920	.20	.05	.....	.30 .20	.10	.25	.05	.....	302	97	.....	639	118	427	62	86
1921	.20	.05	1.50 1.50	.90 .95	.25	.25	.25	1.10	} 247	{ 107	3,991	2,318	238	442	285	588
1922	.20	.10	2.33 1.84	.90	.25	.25	.25			157	4,179	1,972	199	335	249	
1923	.20	.05	1.82 .49	.80 .85	.25	.25	.25		82	78	1,245	2,046	228	350	205	
1924		.25	1.03 .84	.40	.25	.25	.30 .25			344	2,416	1,005	253	330	222 256	
1925		.25	1.26 1.25	.60	.25	.25	.30 .25			343	3,772	1,616	251	274	255 202	
1926		.25	2.00	.60	.25	.25	.25			129	976 984	1,672	289	264	186 205	
1927		.25	2.00 2.84	.60	.25	.25	.25			25	737 147	1,653	299	253	169 167	
1928		.25		.35 .30	.25		.25			9		885	309		148	
1929		.05		.05	.25		.10			1		123 309	296		44	
1930					.25								292			
Additional[5]									1,549	975	574 564		502			

[1] Includes initial, regular annual, and special assessments (excluding regular annual assessment in Texas of 0.25 percent per year for revolving fund). The assessment base to which the rates were applied was a daily or call-date average of deposits for the preceding year, excluding uninsured deposits in most of the States.

[2] Collections from assessments described in note 1, and from banks entering the system, with allowance for refunds and other adjustments.

[3] Relates to special assessments only; computed from assessments collected and deposits of participating banks at the beginning of the year. No information is available regarding ~~rates levied~~. Excludes assessments revoked by decision of the State Supreme Court.

[4] Rates for some years are approximations to include additional assessments to bring fund to 1 percent of deposits, for which rate information is not available.

[5] Not available. Assessments collected in 1908-1921 were on deposits of banks admitted and assets in liquidation of other participants at initial rate.

[6] In Oklahoma, includes $426,000 in guaranty fund warrants or other securities deposited as security for payment of future assessments by banks that had nationalized and which were cancelled or sold for the benefit of the guaranty fund; $1,113,000 of warrants outstanding and not paid upon final settlement of the affairs of the fund, most of which had been deposited by participating banks as security for payment of future assessments; and $10,000 unpaid assessments collected at time of final settlement as a condition for the return of securities deposited as security for payment of future assessments. In Kansas, amount is difference between total receipts of the fund (except interest) and assessments collected in the respective years, and consists mostly or wholly of proceeds from sale of securities deposited for payment of future assessments that were forfeited by withdrawing banks. In Texas, consists of adjustments at time of final settlement of the affairs of the fund to cover insured deposits in failed banks for which assessments had not been levied. In Mississippi, consists of assessments at the 0.25 percent annual rate from the end of 1930 after deposit insurance had ceased to apply to current failures, to early 1934, when the guaranty law was repealed.

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DEPOSIT GUARANTY IN OKLAHOMA

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March 1958

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DEPOSIT GUARANTY IN OKLAHOMA

The Oklahoma law for the guaranty of deposits was approved December 17, 1907, at the first session of the Legislature after admission of Oklahoma into the Federal Union as a State. The law became effective February 14, 1908, and continued in full operation for 13 years. In November 1921, when the liabilities of the fund exceeded its receipts and further borrowing on warrants became impracticable, the law became inoperative with respect to protection of depositors in closed banks, but the legal liability of the fund for such protection and the liability of the banks for payment of assessments continued until the repeal of the law in 1923. The affairs of the fund were not fully settled until 1934.

Of the eight States which established deposit guaranty funds during the period, 1907-1917, Oklahoma was the first, and was regarded as a pioneer in the movement to provide safety for bank deposits through application of the insurance principle. When the Oklahoma law was enacted, forty years had elapsed since the State bank-obligation insurance systems of the nineteenth century had been in operation, and very little was known about their character or the success of their operations.

CHARACTER OF THE GUARANTY LEGISLATION

When Oklahoma became a State in November 1907, incorporated banks operating in the former Oklahoma Territory, other than national banks, had been subject to examination and supervision by a Bank Commissioner, and private banks had been prohibited for a decade. Banks in the former Indian Territory, comprising the western part of the State,

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operated as private banks or with charters obtained under the general incorporation law of Arkansas, which had been extended to the Indian Territory by Act of Congress. However, neither the private nor the incorporated banks were examined or supervised. In May 1908, about three months after the deposit guaranty legislation became effective, the banking laws of the State were codified, revised, and reenacted. A few minor changes in the deposit guaranty provisions were made at that time. More important revisions occurred in 1909, 1911, and 1913.

Admission of banks. Participation in the deposit guaranty plan was made compulsory for all banks operating under a State charter. At the time the deposit guaranty law was enacted 484 banks, excluding national banks, were operating in Oklahoma. Of these, 294 were located in the former Oklahoma Territory, and 190 in the former Indian Territory.[1/] Under a ruling of the attorney general the guaranty became effective immediately upon the levy of the first assessment, which was required to be made within 60 days after passage of the law.

The guaranty law in Oklahoma also provided that any national bank in the State might voluntarily come under the protection of the depositors' guaranty fund with the approval of the Bank Commissioner. The Attorney-General of the United States in July 1908 ruled that national banks could not legally participate in a State system of deposit guaranty.

1/ First Annual Report of the Bank Commissioner, 1908, p. v, and Linwood O. Neal, The History and Development of State Bank Supervision in Oklahoma (thesis in Rutgers University library).

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Under the revised banking code of 1908 the deposit guaranty law was extended to trust companies. In 1911 trust companies thereafter organized were prohibited from doing a banking business, and the deposit guaranty law was amended to exclude from its provisions, after September 1 of that year, corporations doing a trust business. The latter change excluded only two institutions, holding about one percent of the aggregate deposits previously covered by the guaranty. One of these relinquished its trust company charter and became a State bank, thus coming back under the guaranty system, about eighteen months later; the other consolidated with a national bank in 1914. In 1919 trust companies were authorized to establish savings departments, with a segregation of capital and with the deposit guaranty law applying to the savings department.

Deposits guaranteed. Deposit guaranty in Oklahoma originally covered all deposits, the law providing that the State Banking Board should draw from the depositors' guaranty fund whatever amount, in addition to the cash which could be made immediately available in a failed bank, was necessary to meet the deposits of the bank. Under decisions of the State Banking Board, cashier's checks, certified checks, and drafts outstanding were not recognized as deposits. Application of the guaranty to secured deposits was excluded by decisions of the State Supreme Court referring to moneys belonging to counties and to school funds deposited in banks which became insolvent. In cases where the assets of a failed bank were insufficient to pay the general depositors, the court ruled that deposits of public funds were not entitled to protection by the depositors' guaranty fund, since the statute provided a specific system

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for the protection of such deposits. The court also ruled that neither the owners of such deposits nor a surety company which had paid such a deposit was entitled to share in the assets of the institution until the guaranty fund had been repaid in full, because the law gave the State priority in such distribution on behalf of the guaranty fund.[1/]

In 1913 the law was amended to exclude from protection by the fund deposits otherwise secured, and deposits on which a greater rate of interest was paid than was authorized by the Bank Commissioner. Two years later, another amendment provided that surety companies paying a deposit of public funds for which they were liable in a failed bank were entitled to a pro rata share with the depositors' guaranty fund in the proceeds of the assets of such failed banks. This amendment, however, was declared void by the State Supreme Court.[2/] These decisions did not reduce the protection afforded school or other public funds, but prevented surety companies from recouping, out of the guaranty fund or the assets of a closed bank, any part of their losses in Oklahoma banks so long as the guaranty fund afforded protection to unsecured depositors but was not fully repaid from the proceeds of liquidation of the assets of the banks.[3/]

1/ Columbia Bank & Trust Co. v. United States Fidelity and Guaranty Co. (1912), 33 Okl. 535, 126 Pac. 556; Lovett et al., v. Lankford et al. (1914), 47 Okl. 12, 145 Pac. 767; and United States Fidelity & Guaranty Co. v. State et al. (1917), 67 Okl. 14, 168 Pac. 234.

2/ State ex rel. Short, Atty. Gen. v. Johnson et al. (1923) 90 Okl. 21, 215 Pac. 945. The ground on which this decision was made was a technicality, namely, that the preference right of the depositors' guaranty fund against the assets of a failed bank had been impaired, and that this was not expressed in the title of the amendatory act.

3/ After the guaranty fund, in November 1921, ceased to pay depositors, a Federal court decided that a surety company that had paid secured deposits in an Oklahoma bank that failed was entitled to share in the distribution of assets of the bank ratably with unsecured depositors, on the ground that with no payment from the guaranty fund, nor issuance of warrants on the fund, to the depositors the State had no preferred claim against the failed bank. Strain et al. v. United States Fidelity & Guaranty Co. Circuit Court of Appeals, Eighth Circuit (1923), 292 F. 694, affirmed by the United States Supreme Court, 264 U.S. 570, 68 L. Ed. 854. However, the State Supreme Court, in a later case, ruled that the unsecured depositors in a failed bank retained, until repeal of the law, a preference over other creditors in the distribution of assets of the bank. State ex rel. Walcott v. Zoll (1925), 240 Pac. 1035.

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Assessments. The original deposit guaranty law in Oklahoma provided for an initial assessment of 1 percent of average daily deposits, excluding State funds properly secured, during the preceding year. In the 1908 revision of the law, deposits of the United States were also excluded. Annual assessments at the same rate were to be made on the growth of deposits.[1/] If the fund became depleted, it became the duty of the State Banking Board to levy a special assessment sufficient to restore the fund to 1 percent of average daily deposits.

In 1909, about a year after the initial assessment was levied, the assessment provisions were revised. The new law provided for the accumulation of a fund amounting to 5 percent of average daily deposits by an initial payment of 1 percent of average daily deposits, with a credit for the assessment previously paid, and subsequent annual payments of one-twentieth of 1 percent of average daily deposits. Each bank was also required, once a year, to make such additional payment as was necessary to adjust its total payments into the fund in proportion to any growth in its deposits. Special assessments for restoration of the fund when reduced by payments to depositors of closed banks were limited to 2 percent in any calendar year. All assessments were computed on the basis of average daily deposits during a period of a year, the deduction for United States and State funds being eliminated.

Further changes in assessments were made in 1913, following two years in which the total assessments averaged over 1 percent of deposits per year. The regular annual assessment was raised to one-fifth of 1 percent of average daily deposits, excluding secured deposits, and the maximum fund to be accumulated was reduced to 2 percent of deposits. Assessments for restoration of the fund, when reduced below 2 percent of average

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1/ No provision was made for refund if the deposits of a bank decreased.

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daily deposits, were limited to one-fifth of 1 percent in any year. Also, special assessments not exceeding one-fifth of 1 percent each year were expressly authorized during the following three years and forbidden thereafter. These provisions remained in force during the subsequent duration of the fund.

The 1913 amendment to the guaranty law also provided for the posting with the State Banking Board, by each bank, of State or local government obligations approved by the Board in an amount not less than 1 percent of average daily deposits, with a minimum of $500, as security for the payment of its liabilities to the fund.

A problem of collecting the assessment arose from the conversion of State banks to national banks. Under a State Supreme Court decision in 1915 a bank subject to the law of 1909 which had become a national bank was liable for the full 5 percent assessment, payable in accordance with the instalment payments imposed by that law. The court held that the State bank, though it had ceased to exist as a State corporation, did not thereby escape liabilities incurred by it during its continuance as a State bank, and that the effect of surrendering its charter and organizing as a national bank was neither to mature nor discharge the deferred payments of the assessment.[1/] However, this decision was reversed four years later, when the Court decided that the bank was liable only for such payments as matured or were payable while it was doing business as a State bank.[2/]

1/ State ex rel. West, Atty. Gen. v. Farmers' National Bank of Cushing (1915) 47 Okl. 667, 150 Pac. 212.

2/ Citizens National Bank of Broken Arrow v. State ex rel. Freeling, Atty. Gen. (1919) 76 Okl. 94, 184 Pac. 63.

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Banks organized subsequent to the enactment of the deposit guaranty law, excluding those formed by reorganization or consolidation of banks subject to the law, were required to pay into the fund at the time of opening for business 3 percent of the amount of their capital stock. Until 1913 this payment was a credit fund, subject to adjustment at the end of one year to the rate on average daily deposits levied on other banks.

Administration and custody of the fund. Supervision and management of the depositors' guaranty fund in Oklahoma were placed in the State Banking Board, composed of the Governor, Lieutenant Governor, the President of the Board of Agriculture, State Treasurer, and State Auditor. This Board was empowered to adopt all suitable rules and regulations not inconsistent with law for the management and administration of the fund. In 1911 the composition of the State Banking Board was altered to consist of the Governor and two other members appointed by the Governor, with the approval of the Senate, to be remunerated on a per diem plus expenses basis. The Bank Commissioner was made ex officio secretary of the State Banking Board.

Two years later the composition of the State Banking Board was again changed. After that date the Board was composed of the Bank Commissioner as ex officio chairman and three members appointed by the Governor with the approval of the Senate. The Commissioner was selected by the Governor from a panel of three persons, and the other members from a panel of nine persons, recommended by the executive council of the State Bankers Association, an association consisting of a representative selected by the board of directors of each bank. After two years' experience with this method of appointment, the recommendation of persons for Commissioner by the State Bankers Association was dropped, and the

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Commissioner was appointed by the Governor.

The original law contained no provision regarding investment of the guaranty fund, but in 1909 provision was made for the investment of 75 percent of the guaranty fund in State warrants or such other securities as were specified for State funds. Two years later, after a large part of the fund kept in cash had been tied up by the failure of the bank in which it was deposited, the law was amended to provide for the redeposit of the entire fund in the respective banks, according to the amounts of their assessments, the banks issuing to the Bank Commissioner certificates of deposit bearing 4 percent interest. In 1913 the law was again amended to provide for the payment of the assessment in the form of cashier's checks to be held by the State Banking Board until it was necessary to collect them. Such cashiers' checks were to bear no interest. The requirement of deposit of securities as surety for the payment of assessments, adopted at this time, has been mentioned above.

Indebtedness of guaranty fund. The original law contained no provision against the contingency that the assessments collected might be inadequate to pay all of the deposits in closed banks, other than the provision for such additional assessments as might be needed. In 1909, when a maximum was placed upon the special assessments which could be levied in any one year, the State Banking Board was authorized, in the event that the assessments were insufficient to meet the claims of depositors in failed banks, to issue certificates of indebtedness bearing 6 percent interest to the depositors. Such certificates were to be consecutively numbered and to be paid by the State Banking Board as soon as possible in the order in which they had been issued.

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The foregoing provisions were in effect until 1913, when they were replaced by a method of borrowing designed to provide immediate cash with which the guaranty fund could pay the depositors of failed banks. The State Banking Board was authorized to issue "Depositors' Guaranty Fund Warrants" of the State of Oklahoma, bearing 6 percent interest, which could be disposed of, at not less than par value, in such manner as the Board saw fit to facilitate the liquidation of failed banks. These warrants were given a first lien upon future receipts of the guaranty fund from assessments or from the proceeds of liquidation of failed banks, and were to be retired in order of issue. The warrants were made nontaxable; and were authorized as investments of trust funds and of sinking funds of the State and local governments, and as collateral required to be deposited for the security of public funds. Any trust company, building and loan association, or insurance company was authorized to purchase the warrants to the extent of its capital and surplus. In 1915 the investment of a bank in such warrants was limited to its surplus and 10 percent of its capital stock. When sale of the warrants became difficult, the practice was followed of exchanging them, with the permission of the individual banks, for other collateral posted by the banks as security for the payment of assessments. The collateral was then sold and the proceeds used by the guaranty fund in meeting its obligations.

Method of paying depositors and of liquidating failed banks. Depositors in a failed bank were to be paid by the State Banking Board in cash when the Bank Commissioner took possession of the bank. From 1909 to 1913, as has been indicated, the Board issued certificates of indebtedness to the depositors if the amount in the fund was insufficient. After 1913, the Board was authorized to sell warrants and use the proceeds therefrom to make immediate payment to the depositors.

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The State was given a first lien, for the benefit of the depositors' guaranty fund, upon the assets of any failed bank, including the personal liabilities of stockholders, officers, directors or other persons to the bank. In 1909 an amendment to the law provided that the funds realized by the Bank Commissioner from the assets of a failed bank should first be applied to the expenses of liquidation, then to payment to the depositors' guaranty fund of all money paid by that fund to depositors of the bank concerned, then to the refunding of any emergency assessments levied upon the guaranteed banks.

The liquidation of failed banks was placed in the hands of the Bank Commissioner. In practice, with the approval of the State Banking Board, most of the failed banks were liquidated through sale of their assets to another bank or to a newly organized successor. In such cases a payment was made from the guaranty fund sufficient to enable assumption of the deposits, or the total liabilities, of the closed bank. In many cases, the guaranty fund assumed an additional contingent liability if the assets taken over should yield upon collection less than their estimated value.

Expenses of administration. Under the original law expenses incurred by the State Banking Board in administering the depositors' guaranty fund were paid from the deposit guaranty fund. In the 1908 revision of the law these expenses, and the Bank Commissioner's salary and other expenses of his office were paid from the proceeds of fees levied upon the banks for each examination made. However, in 1909 the salaries of the Commissioner and of his assistants, and in 1913 the expenses of the State Banking Board the members of which served without compensation, were made payable from the general revenue fund of the State.

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In 1917 all expenses of the Banking Department became payable from the general revenue fund, with all fees and other charges collected by the Commissioner to be paid into the general revenue fund.

CONSTITUTIONALITY OF THE DEPOSIT GUARANTY LAW

Bankers objected to the deposit guaranty law in Oklahoma, and a test of the constitutionality of the law was made by the Noble State Bank. This bank asked the district court of Logan County for an injunction restraining the levy of the first assessment by the State Banking Board.

The Noble State Bank contended that the guaranty law was in conflict with several sections of the Constitution of the State of Oklahoma, for the following reasons:[1/]

1. That the law deprived the bank of the enjoyment of the gains of its own industry for the benefit of depositors of other banks in which the plaintiff had no interest.

2. That the law deprived the bank of its property without due process of law.

3. That the law violated the contract between the bank and the State of Oklahoma, evidenced by its charter, patent, and certificate of authority.

4. That the property of the bank was taken for private use without compensation and against the consent of the bank.

5. That, if it be held that the property was taken for public use, then it was taken without compensation and not in accordance with the form prescribed.

6. That the law embraced more than one subject.

1/ It was claimed that the law violated the following sections of the State Constitution: (1) Sec. 2, Art. 2; (2) Sec. 7, Art. 2; (3) Sec. 15, Art. 2; (4) Sec. 23, Art. 2; (5) Sec. 24, Art. 2; (6) Sec. 57, Art. 5; (7) Sec. 8, Art. 10; (8) Sec. 9, Art. 10; (9) Sec. 14, Art. 10; and (10) Sec. 1, Art. 14.

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7. That, if the law be construed as levying a tax, this tax was assessed upon an arbitrary basis without regard to the fair cash value of the property assessed.

8. That, if the law be construed as levying a tax, this tax exceeded the maximum permitted.

9. That, if the law be construed as levying a tax, this tax was levied for private purposes rather than public use.

10. That the deposit guaranty law did not provide for the protection of individual stockholders in the bank.

The Noble State Bank also contended that the depositors' guaranty fund law violated the Constitution of the United States: (1) by impairing the obligation of the contract between the bank and the State of Oklahoma as evidenced by its articles of incorporation, patent, and certificate of authority; and (2) by depriving the bank of its property without due process of the law, denying to it equal protection of the law.[1/]

Decisions of the State courts. The district court of Logan County refused to grant the injunction requested by the Noble State Bank. The bank appealed the case to the Oklahoma Supreme Court, which upheld the decision of the lower court.

The State Supreme Court, in a lengthy opinion, maintained the point of view illustrated by the following quotation:[2/]

1/ It was claimed that the law violated the following sections of the Constitution of the United States: (1) Sec. 10, Art. 1; (2) Fourteenth Amendment.

2/ Supreme Court of Oklahoma, Noble State Bank v. Haskell et al., September 11, 1908, 22 Okl. 48, 97 Pac. 590.

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> Banks are chartered by the state, not with the paramount view of enabling the stockholders to make investments and derive profits therefrom, but to meet a public necessity. The stockholders, having made investments therein, should be protected, but private interest must always be subordinated by the state, in the reasonable exercise of its police power, to the public welfare or good. With the view that the depositor, as well as the stockholder, and the general public with an incidental interest therein, may be protected, banking is regulated, and limitations, restraints, and requirements are imposed. The imposition of double liability upon the stockholders; the requirement of reserve funds; stipulations as to what capital stock cannot be invested in; prescribed qualifications of the directors--all these having been tried, in the judgment of the Legislature the further restriction that active officers should not borrow from the bank without incurring pains and penalties was deemed salutary. In addition to further and more completely protect the depositors, the depositors' guaranty fund is created, the Legislature acting pursuant to the mandatory declaration of the Constitution ...

Decision of the United States Supreme Court. The Noble State Bank was dissatisfied with the decision of the Oklahoma Supreme Court and appealed to the United States Supreme Court. While the case was pending, similar cases came before the United States Supreme Court regarding deposit guaranty laws in Nebraska and Kansas, on appeals from decisions of the Circuit Courts of the United States for the Districts of Nebraska and Kansas, respectively.

The United States Supreme Court heard the arguments regarding the three cases at its fall term in 1910. On January 3, 1911, the Court rendered its decision on the Oklahoma case, which was also applied to the Nebraska and Kansas cases.[1/]

The principal point in the cases considered by the United States Supreme Court was the contention that the deposit guaranty laws took the private property of one bank for the private use of another bank without compensation. The opinion of the court, by Justice Holmes, admitted

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1/ Noble State Bank v. Haskell, (1911) 219 U.S. 104, 55 L. Ed. 112.

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that this might be the case, but pointed out that such transfers of property are constitutional if there is sufficient purpose and necessity.

> In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use... And in the next, it would seem that there may be other cases beside the everyday one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume... At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said. 1/

The opinion then discussed the application of police power to the guaranty of bank deposits as follows:

> It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If then the legislature of the State thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object, and is justified in the same way. ... The power to compel, beforehand, co-operation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end... So far is that from being the case that the device is a familiar one. It was adopted by some states the better part of a century ago, and seems never to have been questioned until now.2/

1/ Op.cit., 55 L. Ed. 116.
2/ Ibid., pp. 116-17.

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The conclusion of the court was stated in the summary of its opinion as follows:

> The levy and collection, under a State statute, from every bank existing under the State laws, of an assessment based upon average daily deposits, for the purpose of creating a depositors' guaranty fund to secure the full repayment of deposits in case any such bank becomes insolvent, is a valid exercise of the police power, and cannot be regarded as depriving a solvent bank of its liberty or property without due process of law... The police power of a State extends to the regulation of the banking business, and even to its prohibition, except on such conditions as the State may prescribe. 1/

This decision is notable not only because it affirmed the constitutionality of the deposit guaranty legislation, but also because of the grounds on which that affirmation was made. The decision is based on the ground that safety of payments made by check is one of the primary conditions of successful commerce, that the police power covers any regulations necessary to make the currency of checks secure, and to make safe the money kept on hand by depositors in the form of bank deposits. The decision thus rests on the idea that the purpose of the legislation is the protection of circulating medium.

The problem of the constitutionality of a deposit guaranty or insurance plan designed primarily to protect the invested savings of individuals was not considered by the Supreme Court in this case. The Court neither asserted nor implied that assessments upon one bank for the purpose of protecting interest-bearing deposits, or other deposits not subject to check, are, or are not, constitutional, except as such protection may be incidental to the protection of deposits which are part of the circulating medium.

1/ Ibid., pp. 112-13.

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SUPERVISION AND REGULATION OF GUARANTEED BANKS

Supervisory authority. Under the original deposit guaranty law and the revised banking code of May 1908, the State Banking Board was given no duties other than administration of the deposit guaranty law. The Bank Commissioner was charged with the following duties: certification of compliance with the law by persons organizing new banks and authorization of such banks to open for business, examination of all State-chartered banks and trust companies and of national banks if they should apply for the benefits of deposit guaranty, reporting of violations of law to enforcement authorities, handling of banks closed because of insolvency or for violations of law, and other duties, such as obtaining reports of condition, associated with bank supervision. In 1913, the State Banking Board was required to approve, in its discretion, the opening of any new bank, and to see that each operating bank was examined at least twice each year.

Under the 1908 law the Bank Commissioner was appointed by the Governor, with the advice and consent of the Senate, for a term of four years. The Bank Commissioner must have had, prior to appointment, at least three years' practical experience as a banker, but at the time of appointment could not be an officer or employee of any bank or any person interested as an owner or stockholder of a bank. In 1913, when the Bank Commissioner was made ex officio chairman of the State Banking Board and the appointment was required to be made from a panel of three persons named by the State Bankers Association, the practical banking experience required of the person appointed was raised to five years. The last of these provisions was retained when, two years later, the requirement of selection from a panel was dropped.

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Examination of banks for admission to guaranty. The first task of the State Banking Board and the Bank Commissioner after enactment of the deposit guaranty law was to examine all banks in the State, other than national banks, before the deposit guaranty law should become effective. The Commissioner did not have sufficient examiners to make these examinations, particularly in view of the fact that the banks in the former Indian Territory had not previously been examined. A special force of 31 examiners selected from among bankers in the State was employed and 513 examinations were made within a period of six weeks.

The Bank Commissioner, in his report for 1908, stated that those banks whose condition or past record did not justify a continuation of business were ordered to discontinue receiving deposits and to liquidate, and that they did so. According to a report prepared by a later Commissioner, 24 banks failed to meet the standards required for continuance in business and admission to guaranty, and were forced to liquidate during the first year of the fund's operation, and 30 banks were reorganized under new charters to meet the requirements.[1/] However, the Commissioner also stated:

> On account of the unfavorable financial situation at this time it was extremely difficult in many instances to meet every requirement immediately. If the bank was solvent and showed a disposition to comply with the law as promptly as possible the department endeavored to be fair and give them an opportunity...
>
> While a large number of banks were technically not in harmony with every provision of the banking laws their general condition was such that the department did not feel justified in closing them and upon their promise to correct the objectionable features of their business they were allowed to continue in operation. 2/

1/ Linwood O. Neal, The History and Development of State Bank Supervision in Oklahoma, (1942), pp. 64 and 65.

2/ First Annual Report of the Bank Commissioner, 1908, pp. viii-ix.

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The Bank Commissioner in office four years later held a less optimistic view of the condition of the banks admitted to the guaranty system.

> The only near fatal mistake made in our Guaranty Law was that after its passage, the immediate taking in under the guaranty system of all banks without first the most careful and rigid examination of banks, men and methods. They should have been tried out under the most thorough test and the incompetent and dishonest should have been eliminated from our financial institutions, and none but the strongest and best men permitted to engage in banking. 1/

Thomas Bruce Robb, who made a detailed study of the Oklahoma situation after the guaranty law had been in operation, commented in similar fashion on the Commissioner's statement in the 1908 report:

> But this description of the condition of the banks was far too roseate. It is now well known that a goodly number of banks, especially on the Indian Territory side, were positively insolvent. 2/

Supervisory powers of the Bank Commissioner. The supervisory powers given the Bank Commissioner related chiefly to examinations, the capital position of the banks, and conditions under which a bank could be closed. The Commissioner also had some powers relating to the opening of new banks and to the quality of bank management. Part of the Commissioner's powers, particularly with respect to the handling of closed banks and after 1913 the opening of new banks, were shared with or exercised under the control of the State Banking Board. The powers of the Commissioner and of the Board are summarized in Table 1.

1/ Third Biennial Report of the Bank Commissioner, 1912.
2/ T. Bruce Robb, The Guaranty of Bank Deposits, p. 41.

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Table 1. SUPERVISORY POWERS OF BANK COMMISSIONER, AND OF STATE BANKING BOARD, IN OKLAHOMA

Item	Powers 1/
Opening of new banks	Commissioner to approve incorporators and to issue certificate of authority to transact a banking business after specified requirements for incorporation have been filed, capital stock paid-up, and bank examined. 2/ In 1913, amended to give full discretionary power to Commissioner and Banking Board to approve issue of certificate to engage in the banking business.
Examinations and reports of condition:	
Frequency of examinations	At least twice a year and whenever deemed advisable by Commissioner. 3/
Scope of examinations	A full and careful examination.
Reports of condition	Commissioner to prescribe form and set dates, at least four times a year; and to require additional reports whenever deemed necessary to obtain full and complete knowledge of bank's condition.
Bank management:	
Removal of undesirable assets or discontinuance of undesirable practices	No specific provision.
Impairment or deficiency of capital	Commissioner to require impairment of capital below legal minimum to be made good within 60 days; in 1909, amended to 30 days, and to require increased capital and surplus if below minimum ratio to deposits. 4/
Removal of bank officers, directors, or employees	Commissioner may order removal by Board of Directors of any officer found upon examination to be dishonest, reckless, or incompetent.
Taking possession or closing a bank	Commissioner authorized to take possession and liquidate a bank: If found insolvent, by court or Commissioner's examination, with following conditions defined as insolvency: when cash market value of assets insufficient to meet liabilities; when unable to pay creditors in usual and customary manner; when legal reserve not made good as required by law.

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Table 1. SUPERVISORY POWERS OF BANK COMMISSIONER, AND OF STATE BANKING BOARD, IN OKLAHOMA - continued

Item	Powers
Taking possession or closing a bank - continued	If officers refuse to submit bank to examination or be examined under oath. If officers or directors violate any provision of the act. If affairs placed by bank under control of Commissioner.
Handling of closed banks:	
Return to owners	Commissioner may authorize reopening of bank if solvency restored by stockholders and any indebtedness to Guaranty Fund repaid.
Liquidation	Unless returned to owners, closed bank to be liquidated by Commissioner.
Sale of assets or capital stock	Commissioner may sell assets upon order of District Court or judge thereof.

1/ As of May 26, 1908, with subsequent amendments during the period of operation of the deposit guaranty system. For the most part the act of May 26, 1908, was a codification of the previous banking statutes, including the territorial banking law and the deposit guaranty law enacted December 17, 1907.
2/ The requirement that the incorporators be approved by the Bank Commissioner was inserted by the Act of May 26, 1908.
3/ In 1921, examinations by Federal Reserve System of State banks members of the Federal Reserve System to be acceptable, at the discretion of State banking authorities, in lieu of State examinations.
4/ See Table 2 for minimum capital stock, and after 1909 maximum ratio of deposits to capital and surplus.

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Supervisory experience. During the early years of the deposit guaranty system supervision of State banks in Oklahoma was handicapped by the small size of the examining staff and frequent changes of personnel. Each of the first three Bank Commissioners held the office less, or only a little more, than a year. Lists of examiners in the second and third biennial reports of the Commissioner show only one or two names appearing in the preceding report. However, after 1911 there was more stability, with one person holding the Commissioner's office for eight years. The improvement in the quality of supervision was described by T. Bruce Robb as follows:

> The reconstruction of the state banking department has produced most salutory results. It will be recalled that the state banking board is now appointed by the governor from a list nominated by the state bankers themselves. This has completely divorced the board from politics. Mr. J. B. Lankford, who served as bank commissioner from 1911 to 1919, organized a most efficient bank supervision. This department is indefatigable in ferreting out incompetent and reckless banking. 1/

The problem of supervision during the early years of the guaranty system was also made very difficult by an extremely rapid growth in the number of banks. At a call date two weeks after the law became effective 470 State banks were in operation. During the next two years approximately two hundred banks commenced operations under State charters, about half of which had formerly operated under national charters. During the latter part of 1910 the Commissioner, who had taken office on June 1, attempted to use his power to refuse certificates of authorization to open for business if conditions in the various communities did not justify additional

1/ Robb, The Guaranty of Bank Deposits, p. 105.

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banks, but found that under the law and a decision of the State Supreme Court he was required to issue the certificates when the incorporators had complied with the specific requirements of the law. He recommended that the Commissioner and State Banking Board be given power to regulate the number of banks organized in any town or city, and that no person be permitted to engage in the banking business without a license from the Board granted only after a thorough investigation of the character and ability of the applicant. 1/ In 1913, the law was amended to require the approval of the Commissioner and of the State Banking Board before issuance of a charter for the organization of a bank. No specifications were given in the law for the guidance of the Board in exercising its discretion in passing on applications, but the Bank Commissioner, in his report for 1914, laid down the following principles:

> Under the present system ... no charter is issued unless positive proof be furnished that the banking facilities of the community are not adequate to the public needs. There must be convincing evidence at hand that the enterprise will be an assured success. Those applying for a charter must be men in every way worthy of confidence and the proposed officers must be of the highest honesty and integrity, having ample banking experience. 2/

The efforts of the Commissioner, and the change in the law, successfully checked the high rate of formation of new banks, for the largest number of State banks reporting at any call date was 695 in January 1911.

1/ Second Biennial Report of the Bank Commissioner, 1910, pp. xii-xiii.

2/ Fourth Biennial Report of the Bank Commissioner, January 1, 1915, p. vii.

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The Bank Commissioner's powers to close a bank for insolvency or violation of law were ample. Except under the circumstance of a general decline in values and business depression, these powers, rigorously used, were adequate to result in the closing of most banks that were badly managed or in poor condition before their condition became sufficiently acute to involve the guaranty fund in serious loss. However, closing of a bank is a drastic action that may have a severe impact on the community, and in practice bank supervisory authorities find it difficult to take such action in the early stages of the deterioration of a bank's condition. In Oklahoma, action to close insolvent banks was also delayed because of hesitancy in making large enough assessments to enable payment of depositors by the guaranty fund. Toward the end of 1912, Bank Commissioner Lankford reported to the Governor:

> Within the first few months of my administration the fact was disclosed that the department had many insolvent banks on hand; some of which it was imperative to take charge of and liquidate at once; others should have been liquidated soon thereafter, but as our Guaranty Law provides that all depositors shall be paid at once, in full, there being no funds on hand, and our banks as a whole being unable to stand additional excessive and heavy assessments, the Department was prevented from handling them in the proper manner at the time. 1/

The powers of the Bank Commissioner to take action in the case of incompetent or improper management of a bank, without closing it, also appear to have been reasonably adequate, particularly after 1913, when amendments to the law provided penalties for various types of illegal acts of bank officials and employees. These penalties, together with the Commissioner's power to remove from office any bank official whom he found

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1/ Third Biennial Report of the Bank Commissioner, Dec. 1912, p. v.

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to be dishonest, reckless, or incompetent, made it possible to raise the standard of bank management throughout the State. At the beginning of 1915, Commissioner Lankford reported that he had displaced over 125 incompetent and unscrupulous managing officers of banks. However, he also reported that of 27 prosecutions of bank officers for violation of the criminal statutes, only seven convictions had been secured, in part because of insufficient legal assistance.[1/]

The quality and adequacy of bank examinations appear also to have been hampered by the limitation of available funds and salaries permitted. The annual cost of the Bank Commissioner's office, including expenses of the State Banking Board, during the time the law was in effect, was approximately $50,000 to $70,000, or about $80 to $140 per participating bank.[2/] From 1913 to the repeal of the deposit guaranty law in 1923 the salary of the Bank Commissioner was fixed by law at $4,000, and those of his 12 specifically authorized assistants at $2,000 each.[3/] Of these assistants, one was designated by law as Assistant Bank Commissioner, and one as building and loan auditor. The remaining ten constituted the bank examining force.[4/] Since the number of operating

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1/ Fourth Biennial Report of the Bank Commissioner, Jan. 1915, pp. viii-ix.

2/ From 1909 to 1916, when part of the expenses of the Commissioner's offices was met from the proceeds of examination fees, appropriations for the Banking Department ranged from $37,000 to $50,000; from 1917 to 1922, when the examination fees were paid into the general revenue fund, the appropriations for the Department ranged from $64,000 to $71,000.

3/ In January 1919, the Commissioner recommended a minimum salary for examiners of $2,500, with an annual increase of $200 for five years. Sixth Biennial Report of the Bank Commissioner, p. 4.

4/ The reports of the Bank Commissioner state that in 1912 the Department had one special and eight regular examiners; in 1914 ten examiners. In some of the later years the appropriation bill provided for only eight examiners.

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State banks was about six hundred, and two examinations per year were required, each examiner was apparently required to make about 120 bank examinations per year, too large a number to permit as thorough examinations as would have been desirable.[1/]

Bank Commissioner Lankford unsuccessfully urged that employees of the Banking Department be given civil service status. In his last biennial report he stated:

> Six years ago, and at each successive meeting of the Legislature thereafter, this office has in the strongest possible terms recommended that this Department be placed under civil service rule, for ... a Banking Department is easily destroyed and when once under a cloud it is difficult to regain confidence in the public mind. [2/]

The validity of this observation was borne out by subsequent events. After 1919, the quality of bank supervision in Oklahoma deteriorated. No further reports of the Bank Commissioner were published, except for one at the end of 1920 containing statements of the individual banks but no text. The Bank Commissioner at that time was indicted a year later for accepting a bribe from a bank in bad condition, and after leaving the State for two years, was convicted.[2/] A few years later the author of a thesis on the guaranty of bank deposits at the University of Oklahoma commented as follows on this Commissioner's handling of his office:

1/ The Federal Deposit Insurance Corporation in 1941 had two examiners and two assistant examiners in Oklahoma to make one examination per year of approximately 160 banks, or an average of 40 examinations per year per member of the examining force. Comparison of the examining task in 1941 with that during the period of operation of the guaranty fund does not appear to be invalidated by differences in the size distribution of the banks examined. From 1916 to the repeal of the guaranty law, the average proportion of banks in the size groups above $500,000 of deposits was nearly the same as the proportion in those groups of banks examined in 1941 by the Corporation.

2/ Thornton Cooke, "The Collapse of Bank-Deposit Guaranty in Oklahoma and Its Position in Other States," Quarterly Journal of Economics, XXXVIII (November 1923).

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> Mal-administration of the banking department of no state in the Union has been more odious or harmful than that by Fred Dennis of Oklahoma. 1/

Other appointees to the Bank Commissioner's office, up to the time of repeal of the deposit guaranty law, occupied the position only a short time, and were unable to restore the office to its former effectiveness.

One feature of the Oklahoma banking code may be mentioned here because of its potentialities for reducing the risk to and losses falling upon the deposit guaranty fund, though its use does not appear to have had such an effect in practice. This was the statutory prohibition, after 1909, on the receipt of deposits, excluding deposits of other banks, in excess of ten times paid-up capital and surplus. If the reports of a bank indicated deposits in excess of this ratio, it became the duty of the Commissioner to require the bank to increase its capital or surplus or to cease to receive deposits. This provision of law could have been made a valuable weapon in maintaining the banks in a sound condition and in preventing unwise bank expansion, had the ratio been computed on the capital and surplus as appraised by bank examiners instead of being computed on capital and surplus as stated in the reports of the banks, and had the examining force been sufficiently large and competent to provide good appraisals. The law specified that action was to be taken on the basis of the reports submitted by the banks, such reports to be in the form required by the Commissioner; but did not specify that the Commissioner could require the banks, in submitting reports of assets and liabilities for this purpose, to adjust valuations in accordance with examiners' appraisals.

Statutory limitations on bank operations. The principal statutory limitations on banking operations, under the 1908 law and the amendments adopted while deposit guaranty was in force, are summarized in Table 2.

1/ George Marion Crisp, The Guaranty of Bank Deposits, thesis for M. A. degree at University of Oklahoma, 1926, p. 55.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN OKLAHOMA

Item	Provisions of law 1/
Responsibility of officers, directors, and stockholders:	
Examination of bank	Directors to make thorough examination twice a year of books, records, funds and securities, to be recorded in detail and copy forwarded to bank commissioner and each stockholder.
Losses resulting from violations of law	Officers, directors, and any other persons participating in a violation of law liable for all damages incurred as a result of such violation.
Liability of stockholders	Additionally liable for amount of stock owned.
Bonding of active officers and employees	Board of Directors to require cashier and any officers handling funds to give good and sufficient bond to be held by Banking Board.
Limitations on loans and investments	
Loans to bank examiners	No provision.
Loans to officers and employees	Either direct or indirect loans to active managing officers forbidden.
Loans to directors	No specific provision.
Loans to stockholders	Total indebtedness of stockholders limited to 50 percent of paid-up capital.
Maximum to single borrowers (not to apply to bills of exchange or discounts collateralled by warehouse receipts under specified conditions)	Limited to 20 percent of paid-up capital.
Maximum secured by real estate	20 percent of the aggregate loans of the bank, on real estate secured by first mortgages running not longer than one year.
Secured by own capital stock (applicable also to purchase of own stock)	Prohibited unless necessary to prevent loss on debt previously contracted and to be disposed of within six months of acquisition.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN OKLAHOMA - continued

Item	Provisions of law
Limitations on ownership of real estate and stocks	
Maximum in banking house and equipment	One-third of paid-up capital.
Time limit on real estate acquired by collection of debt	Five years and to be disposed of within thirty days thereafter.
Other real estate	Prohibited.
Bank stocks	Prohibited, except stock in Federal Reserve bank, unless acquired to prevent loss on debt.
Other corporate stocks	Prohibited.
Limitations relating to deposits	
Maximum aggregate deposits	May be fixed by Commissioner in proportion to paid-up capital and surplus. In 1909, amended to ten times paid-up capital and surplus, excluding deposits of other banks.
Maximum rate of interest payable on deposits	To be fixed at discretion of Commissioner.
Receipt of deposit when insolvent or in failing circumstances	Prohibited.
Required reserves	
Total required	Until 1915, 20 percent of entire deposits in areas with population under 2,500, and 25 percent in areas with population over 2,500, or if bank a reserve depository; in 1915 amended to 15 percent and 20 percent, respectively. 2/
In actual cash in bank	One-third.
Character of balance	Balances to be held in solvent banks selected from time to time by Commissioner.
Limitations on borrowing	
Maximum amount	50 percent of paid-up capital for temporary deficiencies; Commissioner to prohibit borrowing for relending. 3/
Maximum value of assets pledgeable as security	Not specified (may pledge assets).

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN OKLAHOMA - continued

Item	Provisions of law
Limitation on payment of dividends	
Earnings to be carried to surplus prior to dividends	1/10 of net profits until surplus 50 percent of paid-up capital.
When losses equal or exceed undivided profits	Forbidden.
When reserve is impaired	Forbidden.
When insolvent or capital impaired	Forbidden.
Maximum	Amount determined by directors to be expedient after deducting losses and bad debts.
Minimum capital stock	
New banks 4/	Graduated by population of city or town: 20,000 or more population - $100,000 6,000 to 20,000 population - 50,000 1,500 to 6,000 population - 25,000 500 to 1,500 population - 15,000 500 or less population - 10,000
Other banks	See limitation on deposits (above).

1/ As of May 26, 1908, with subsequent amendments during the period of operation of the deposit guaranty system. For the most part the act of May 26, 1908, was a codification of the previous banking statutes, including the territorial banking law and the deposit guaranty law enacted December 17, 1907.
2/ Savings banks not transacting general banking business required to keep 10 percent of deposits in cash and 10 percent invested in federal, state, county or municipal bonds. After 1921, State banks members of Federal Reserve System to comply with reserve requirements of Federal Reserve.
3/ After 1921, State banks members of Federal Reserve System not subject to limitations on borrowing.
4/ Until 1909, ranged from $10,000 in places with population of less than 2,500 to $25,000 in places with more than 10,000.

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INSUFFICIENCY AND CLOSING OF THE GUARANTY FUND

Inadequacy of the guaranty fund. In September 1909, less than twenty months after the deposit guaranty law went into operation, the largest bank participating in the system failed, with liabilities far larger than the accumulated fund. The crisis in the fund's affairs resulting from this failure was met by using the power to issue certificates of indebtedness, an emergency assessment on the participating banks, and unusual methods of handling the affairs of the closed bank.[1/]

For nearly a decade the fund was continuously in debt. The limitation on assessments after 1913, and particularly the prohibition of special assessments after 1916, drastically curtailed the possibility of rapid retirement of obligations issued to make payments to depositors of failed banks. During most of this period of indebtedness, the major part of the fund's debt was owned by the participating banks, with much of it deposited with the State Banking Board as security for payment of future assessments.[2/] This procedure had become possible under the provisions of the 1913 law regarding issue of "Depositors Guaranty Fund Warrants," and assured a ready market for the warrants. There were, however, diverse attitudes towards the warrants. In January 1916 the Treasurer of the State Banking Board referred to the warrants as "the only 6 per cent investment I know of in the state that you can buy at par that is absolutely good."[3/] But a banker commented on them as follows,

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1/ The Banking Board was able to delay or adjust payments to some depositors with large accounts who were closely associated with the management of the bank. The closing of this bank and the handling of its affairs are described in Robb, The Guaranty of Bank Deposits, pp. 43-57.

2/ "With the money collected from the assets of failed banks being applied on the outstanding secured warrants, and with the state banks gradually taking up more warrants with cash in lieu of depositing security with the Banking Board, it will not be long before all the warrant indebtedness of the Guaranty Fund will be held by the state banks themselves." Editorial in The State Banker, official organ of the Oklahoma State Bankers Association, October 1915, pp. 16-17.

3/ The State Banker, January 1916, p. 22.

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after asking whether the item of "Securities with the State Banking Board", carried as an asset, is such or a liability:

> I venture the assertion that should an examiner find in my case a note that had the appearance of being as slow as he knows my securities with the State Banking Board are bound to be, he would require me to charge it off though I might be able to prove to him that it would be paid years before my Guarantee Warrants...Why should we carry these warrants and pay ourselves interest on them when we must pay the interest ourselves to ourselves? Is it to fool ourselves or to fool the people? We may fool ourselves but be assured that we cannot fool the people. 1/

This question of the worth of the warrants soon began to appear theoretical. The increased yield of the regular assessments for the guaranty fund and the reduced frequency of failures during the inflationary period of World War I made it possible to retire all outstanding warrants by the middle of 1919. For a year thereafter the guaranty fund was out of debt.

Suspension of payments from the fund. In the latter part of 1920 and in 1921 came the nationwide wave of bank failures accompanying the deflationary policies of that period. The impact of the deflation on banks in Oklahoma was doubtless accentuated by the laxity of bank supervision after 1919, but the major factor in the situation was the collapse in values, particularly in farm products. Further, the guaranty system, with assessments limited to one-fifth of 1 percent per year, was much less capable of meeting an adverse situation than it had been at its beginning. But for a year the obligations of the fund to the depositors of failed banks were met through issuance of warrants, which, as in the earlier period, were mostly sold to the participating banks and deposited with the

1/ J. L. Pryor, "Guaranty Fund Warrants," The State Banker, January 1916, p. 42.

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Banking Board in lieu of other collateral as security for payment of future assessments. In this period the impetus to this procedure appears to have come as much from the State Banking Board as from the participating banks, and by the latter part of 1921 only about one-tenth of the participating banks had securities other than guaranty fund warrants deposited with the State Banking Board.[1] By that time there was no other cash market for the warrants. They could legally be issued to the depositors of banks that closed, but the depositors would have little hope of eventual payment. This resulted from the fact that the earliest issued outstanding warrants, with interest at 6 percent per year, had priority of payment from the guaranty fund, both from the proceeds of future assessments on participating banks, and from the proceeds of liquidation of failed banks. Recoveries from the assets of additional banks that might fail would therefore be used to pay obligations arising from earlier failures. It was estimated that the interest on outstanding warrants would absorb a large share of the assessment receipts, and retirement of the outstanding warrants from the remainder of the receipts would take twenty years.[2]

On the first of November 1921, the second largest bank then participating in the guaranty system failed. Two weeks later, at a meeting of the State Banking Board, the Board discussed the condition of the banks and of the guaranty fund, and talked with the State Governor about them.

1/ From evidence presented at the litigation regarding disposition of the remaining assets of the fund after repeal of the law.

2/ Thornton Cooke, "The Collapse of Bank-Deposit Guaranty in Oklahoma and Its Position in Other States," loc. cit.

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> At this informal meeting with the Governor, the further issuance of warrants to depositors in failed banks was thoroughly discussed, and each member of the Board was asked what his attitude would be toward calling on the State Banks of Oklahoma for additional securities, said securities being necessary before the issuing of warrants could be made practical as outlined by the opinion of Judge Zwick of the Attorney-General's office. Each member of the Board expressed himself as being unwilling to call on the State Banks for additional security at this time, knowing their strained condition, and knowing that to enforce same would mean the closing of numerous other banks. 1/

This was followed, at a subsequent meeting of the State Banking Board, by a resolution "that the moneys and funds on hand shall be used in the liquidation of contracts now in effect, and that they will not make any contracts or promises that are contingent on the future collections of the assets of the Guaranty Fund until said funds are available for distribution." 2/

Repeal of the deposit guaranty law. With numerous additional failures in 1922, and a sharp contraction of deposits in participating banks and therefore in the income from assessments, there was no hope of restoring the system to solvency without aid from the State. A bill to issue bonds to meet the deficit in the guaranty fund was debated and defeated in the State Legislature at its session in early 1923. A bill which repealed all assessments and the provisions for issuing certificates and warrants, without releasing banks and their officers from obligations already incurred, was thereupon passed and became effective on March 31 of that year. The repeal of the law was followed by litigation regarding the distribution of the assets remaining in the Guaranty Fund, which delayed settlement of the affairs of the fund until 1934.

1/ Minutes of the State Banking Board, meeting of Nov. 16, 1921.
2/ Minutes of the State Banking Board, meeting of Jan. 9, 1922.

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NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number and deposits of participating banks. The number of banks operating in Oklahoma which participated, and the number which were not eligible to participate, in the deposit guaranty system each year, are given in Table 3. The participating banks include all State banks and, during the years 1908-1910, trust companies. The nonparticipating banks include national banks and, after September 1911, trust companies operating under State law.

During the first two years of deposit guaranty the proportion of banks in the State operating under the guaranty system rose rapidly, due primarily to the conversion of national banks to State banks. After the third year the proportion operating under the guaranty system declined, primarily as the result of conversions of State to national banks.

The deposits of the participating banks and nonparticipating banks, for each year, are given in Table 4. During the first two years of deposit guaranty the proportion of all bank deposits in the State which were held by the participating banks rose rapidly. After 1910, however, the proportion held by banks in the guaranty system declined.

The deposits of participating banks given in Table 4 exceed the amount of deposits covered by guaranty, because certified and cashier's checks, public funds, and, after 1913, other secured deposits, were excluded from guaranty.

Concentration of bank deposits. Table 5 shows the amounts of deposits held on November 10, 1910, and December 29, 1920, by State banks in Oklahoma grouped according to their deposits. In 1910, 11 percent of the deposits, and in 1920, 15 percent, were concentrated in the ten largest banks. The largest bank in 1910 held 2.2 percent, while the largest bank in 1920 held 2.7 percent, of the deposits of all State banks.

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Table 3. NUMBER OF OPERATING BANKS IN OKLAHOMA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1908-1922, BY YEARS

Date 1/	All banks operating in Oklahoma	Participating in deposit guaranty 2/	Not participating in deposit guaranty 3/	Percentage participating
Feb. 1908	782	470	312	60.1
End of year				
1908	834	546	288	65.5
1909	887	668	219	75.3
1910	924	695	229	75.2
1911	914	631	283	69.0
1912	923	615	308	66.6
1913	913	582	331	63.7
1914	913	563	350	61.7
1915	903	557	346	61.7
1916	885	547	338	61.8
1917	901	566	335	62.8
1918	936	581	355	62.1
1919	944	599	345	63.5
1920	977	622	355	63.7
1921	938	556	382	59.3
1922	910	463	447	50.9

1/ End of year data are for call dates on or nearest to December 31. The call dates for State and national banks are not identical in several years.

2/ Includes all banks and trust companies operating under State law, except 2 trust companies in 1911, 2 in 1912, and 1 in 1913. After 1911 trust companies were excluded from deposit guaranty, but none is reported as engaged in banking operations after 1913. Figures for 1908-1920 from biennial reports of the Bank Commissioner; figures for 1921 and 1922 from Federal Reserve Bulletin, November 1937, p. 1117. Reports of the Bank Commissioner were not published subsequent to 1920.

3/ Includes national banks operating in Oklahoma, and also 2 trust companies in 1911, 2 in 1912, and 1 in 1913, operating under State law but excluded from deposit guaranty.

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Table 4. DEPOSITS OF OPERATING BANKS IN OKLAHOMA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1908-1922, BY YEARS

(Amounts in thousands)

Date 1/	All banks operating in Oklahoma	Banks participating in deposit guaranty 2/	Banks not participating in deposit guaranty 3/	Percentage of deposits in all banks held by participating banks
Feb. 1908	$63,288	$18,720	$44,568	29.6 %
End of year				
[illegible]	75,238	31,617	43,621	42.0
1909	105,815	54,769	51,046	51.8
1910	121,012	61,309	59,703	50.7
1911	106,698	44,004	62,694	41.2
1912	122,802	45,878	76,924	37.4
1913	135,233	46,131	89,102	34.1
1914	129,301	44,773	84,528	34.6
1915	158,153	48,460	109,693	30.6
1916	265,349	84,799	180,550	31.9
1917	381,935	137,392	244,543	35.9
1918	338,998	120,660	218,338	35.6
1919	513,071	190,900	322,171	37.2
1920	434,364	160,673	273,691	36.9
1921	359,691	112,579	247,112	31.3
1922	392,990	75,027	317,963	19.1

1/ End of year data are for call dates on or nearest to December 31. The call dates for State and national banks are not identical in several years.

2/ Deposits of all State banks and trust companies, with deposits of trust companies deducted as follows: 1911, $600,000 (est.); 1912, $701,000; 1913, $500,000 (est.). Figures for 1908-1920 from annual reports of the Bank Commissioner; figures for 1921 and 1922 estimated by averaging the deposits for the preceding and succeeding June 30, as given in the annual reports of the Comptroller of the Currency. Reports of the Bank Commissioner were not published subsequent to 1920. The amounts of deposits given here exceed the amounts of deposits protected by the depositors' guaranty fund, since certified and cashier's checks, public funds, and after 1913 other secured deposits, were excluded from guaranty.

3/ Deposits of national banks plus the deposits of trust companies given in note 2.

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Table 5. NUMBER AND DEPOSITS OF STATE BANKS IN OKLAHOMA, NOVEMBER 10, 1910, AND DECEMBER 29, 1920

Banks grouped by amount of deposits

	Number of banks	Amount of deposits (in thousands)	Percentage of number of banks	Percentage of aggregate deposits
All State banks, November 10, 1910 1/	693	$61,612	100.0%	100.0%
Banks with deposits of --				
$100,000 or less	520	26,590	75.0	43.2
$100,000 to $250,000	133	19,150	19.2	31.1
$250,000 to $500,000	34	11,178	4.9	18.1
$500,000 to $1,000,000	5	3,362	0.7	5.5
$1,000,000 to $2,000,000	1	1,332	0.1	2.2
Largest bank		1,332		2.2
Largest 5 banks		4,157		6.7
Largest 10 banks		6,513		10.6
All State banks, December 29, 1920 1/	621	$158,960	100.0	100.0
Banks with deposits of --				
$100,000 or less	174	12,053	28.0	7.6
$100,000 to $250,000	268	43,671	43.2	27.5
$250,000 to $500,000	119	40,437	19.2	25.4
$500,000 to $1,000,000	41	27,512	6.6	17.3
$1,000,000 to $2,000,000	14	19,833	2.3	12.5
$2,000,000 to $5,000,000	5	15,454	0.8	9.7
Largest bank		4,222		2.7
Largest 5 banks		15,454		9.7
Largest 10 banks		24,507		15.4

1/ Tabulated from statements for individual banks given in the reports of the Bank Commissioner. Totals differ slightly from the figures given in summary tables for the same dates in the Commissioner's reports, which are as follows: November 10, 1910, 694 banks with deposits of $61,442,000; December 29, 1920, 622 banks with deposits of $160,673,000.

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The figures for 1910 do not show as great a concentration of the risk falling upon the guaranty fund as actually existed during the early years of the guaranty system. The largest bank in the State, with deposits of $2,742,000, had failed in September 1909. At the time of its failure, this bank held approximately 5 percent of the deposits of all banks covered by the guaranty system.

Number and deposits of failed banks. During the 15 years of the guaranty system in Oklahoma, 140 participating banks closed, or were absorbed or reorganized with financial support from the guaranty fund, because of financial difficulties. The aggregate deposits of these banks at time of suspension amounted to approximately $30 million. Several of the banks that closed were banks which had previously suspended and had reopened or reorganized. One of the suspended banks reopened without a payment, or obligation due, from the guaranty fund.

Failures entailing obligations on the guaranty fund occurred each year that the system was in operation. The average annual rate of failure, computed as the number which failed per 100 in operation at the beginning of the year, was 1.6. The deposits of the suspended banks averaged $2.34 per year for each $100 of deposits in operating banks. Data by years are given in Table 6.

The heaviest failure rates, with respect to the number of banks, were in 1921, 1922, and early 1923. A substantial part of these failures occurred after the fund was exhausted in the autumn of 1921 and the officials had ceased to pay off the depositors of closed banks. In terms of deposits, failures in 1921, which exhausted the fund, were less serious relative to the deposits of the participating banks than those in 1909 and

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Table 6. NUMBER AND DEPOSITS OF STATE BANKS IN OKLAHOMA CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, FEBRUARY 14, 1908, TO MARCH 31, 1923, BY YEARS 1/

Banks entailing obligations on the depositors guaranty fund

Period	Number	Deposits (in dollars)	Number suspended per 100 participating banks	Deposits in closed banks per $100 of deposits in participating banks
Total	139	$29,486,076	1.6	$2.34
Sub-totals for selected periods				
1908-1919	59	10,736,964	.9 2/	1.46 2/
Jan. 1920-Oct. 1921	23	5,342,982	2.1 2/	1.65 2/
Nov. 1921-March 1923	57	13,406,130	7.3 2/	8.46 2/
Year				
1908 3/	1	36,745	.2 2/	.22 2/
1909	3	2,872,514	.5	9.09
1910	3	661,308	.4	1.21
1911	8	1,143,882	1.2	1.87
1912	4	655,983	.6	1.49
1913	16	1,993,450	2.6	4.35
1914	6	501,216	1.0	1.09
1915	6	360,451	1.1	.81
1916	1	40,337	.2	.08
1917	2	84,998	.4	.10
1918	3	1,202,975	.5	.88
1919	6	1,183,105	1.0	.98
1920	8	2,375,357	1.3	1.24
1921	28 4/	6,509,045 4/	4.5	4.05
1922	33	8,404,257	5.9	7.47
1923 5/	11	1,460,453	9.3 2/	7.63 2/

1/ In addition, 1 bank with deposits of $94,000 suspended in 1921, and reopened without any payment, or obligations due, from the fund.

2/ Computed on an annual basis.

3/ After February 14.

4/ Of these banks, 15 with deposits of $2,967,625 closed prior to the time payments to depositors ceased because of insolvency of the fund.

5/ To March 31.

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in 1913. In fact, the fund was as insolvent in 1909, after the failure of the largest bank in the State, with deposits of $2,742,000, as it was when payments to depositors ceased in 1921. However, the 1909 crisis was succeeded by a period with failure rates sufficiently low and assessment rates sufficiently high to permit the fund to be recouped, while the failures in 1921 and 1922 resulted in obligations so great that, with the reduced maximum rate of assessment, many years would have been required to meet them.

Nearly one-half of the closed banks were very small, having less than $100,000 deposits each. These banks held about one-tenth of the deposits of all of the suspended banks. Only three of the closed banks had deposits of more than $1,000,000, but these accounted for 22 percent of the deposits of all of the closed banks. A distribution of the closed banks and of their deposits according to the amount of deposits held is given in Table 7, and compared with an average of the size distributions of operating banks for dates for which such data are available.

During the period of the guaranty fund, that is, from February 14, 1908, to March 31, 1923, failures among State banks were positively correlated with size of bank. The smallest banks had the lowest, and the largest banks the highest, failure rate. Failures among banks with less than $100,000 of deposits, for the entire 15-year period, were about one-sixth of the average number of operating banks of this size, while failures among banks with more than $1,000,000 deposits were four-fifths of the average number of such banks in operation. If failure rates are computed for the period up to October 31, 1921, when payments to depositors in closed

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Table 7. SIZE DISTRIBUTION OF FAILED BANKS IN OKLAHOMA COMPARED WITH AVERAGE SIZE DISTRIBUTION OF OPERATING STATE BANKS: PERIOD OF OPERATION OF DEPOSIT GUARANTY SYSTEM

	Average number of operating banks 1/	Number of failed banks 2/	Percentage of total number		Average annual number of failed banks per 100 active banks
			Operating banks	Failed banks	
Total number of banks	592	139	100.0	100.0	1.6
Banks with deposits of --					
$100,000 or less	359	66	60.7	47.5	1.2
$100,000 to $250,000	166	42	27.9	30.2	1.7
$250,000 to $500,000	48	21	8.1	15.1	2.9
$500,000 to $1,000,000	14	7	2.4	5.0	3.3
$1,000,000 to $2,000,000	4	1	.7	.7	1.7
$2,000,000 or more	1	2	.2	1.4	10.0

	Average deposits of operating banks (thousands of dollars) 1/	Deposits of failed banks (thousands of dollars) 2/	Percentage of total deposits		Average annual amount of deposits in failed banks per $100 deposits in operating banks
			Operating banks	Failed banks	
Total deposits	$78,157	$29,486	100.0	100.0	$2.51
Banks with deposits of --					
$100,000 or less	18,056	3,556	23.1	12.1	1.31
$100,000 to $250,000	25,174	6,412	32.2	21.7	1.70
$250,000 to $500,000	15,911	7,564	20.4	25.7	3.17
$500,000 to $1,000,000	9,540	5,487	12.2	18.6	3.84
$1,000,000 to $2,000,000	5,716	1,656	7.3	5.6	1.92
$2,000,000 or more	3,760	4,807	4.8	16.3	8.51

1/ Averages of number operating on dates for which data regarding individual banks are available in the reports of the Bank Commissioner, as follows: September 23, 1908; November 10, 1910; November 26, 1912; December 8, 1914; November 17, 1916; November 17, 1918; and December 29, 1920.

2/ Banks closed because of financial difficulties which entailed payments, or obligations due, from the guaranty fund, during period of operation of the deposit guaranty system, February 14, 1908, to March 31, 1923.

Note: Because of rounding, data may not add precisely to the indicated totals.

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banks ceased, the same relationship holds. This relationship of failures to size of bank was also characteristic of national banks in Oklahoma during the same period. The failure rate of national banks with more than $1,000,000 of deposits was five times as high as that for banks with deposits under $100,000.

Comparison with failures in other States. The number of bank failures during the years, 1908-1922, relative to active banks, was nearly twice as large in Oklahoma as in the United States as a whole, or as in the six States contiguous to Oklahoma combined. However, in one of the contiguous States (New Mexico), the relative number of State bank suspensions was higher, and in two other contiguous States (Colorado and Arkansas), the rate was nearly as high as in Oklahoma. In terms of deposits the Oklahoma rate for State banks was apparently higher than in any of the contiguous States, though not far above that in New Mexico. A comparison of the Oklahoma rates with those for contiguous States and the United States is given in Table 8.

In two of the contiguous States, Kansas and Texas, deposit guaranty systems were operative during most of the period embraced by these figures. The failure rates for both of these States were far below those for Oklahoma.

These figures suggest that the existence of deposit guaranty in Oklahoma was not a significant causative factor in the high rate of bank suspensions, as has been claimed by opponents of the principle of deposit insurance. The high rate of failures in the State appears more probably due to causes which operated also in New Mexico and Colorado, and to a lesser extent in Arkansas and Texas, but were of much less consequence in Kansas and Missouri.

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Table 8. ANNUAL BANK FAILURE RATES IN OKLAHOMA, 1908-1922, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES 1/

	Failures per 100 operating banks			Deposits in failed banks per $100 in operating banks		
	State and national banks	State banks	National banks	State and national banks	State banks	National banks
Oklahoma	1.1	1.5	0.3	$1.07	$2.42	$0.29
Six contiguous States	0.5	0.6	0.2	.31	.56	.09
Kansas	0.3	0.4	0.1	.28	.44	.06
Missouri	0.2	0.2	...	.09	.17	...
Arkansas	1.0	1.1	0.6	.61	.73	.41
Texas	0.5	0.8	0.3	.62	1.85	.15
New Mexico 2/	2.3	3.0	0.8	.80	1.92	.28
Colorado	0.9	1.3	0.3	.22	.43	.14
Entire United States	0.5	0.6	0.2	.20	.31	.07

1/ Tabulated from data from the following sources: reports and records of bank commissioners in the various States; Willis, Banking Inquiry of 1925; annual reports of the Comptroller of the Currency; Federal Reserve Bulletin, September 1937.

2/ For the years 1912-1922.

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Causes of bank failures. Numerous circumstances contribute to the financial difficulties which result in bank failures. However, in most cases the factors responsible for failure are predominantly associated with one of the following groups: (a) dishonesty on the part of officers or employees; (b) excessive loans directly or indirectly to certain business interests, often to the interests of an influential official or stockholder; (c) adverse economic conditions in a dominant industry and collapse of property values associated therewith; and (d) general managerial incompetence.

For 35 failures which occurred during the years 1909 to 1918, the Biennial Reports of the Bank Commissioner of Oklahoma contain brief comments regarding the cause of failure, the character of the bank's management, or other aspects of the bank's operations. In about one-half of these cases sufficient information is given to indicate the major factor responsible for the failure. In twelve cases defalcation by officers or employees is mentioned, and was assigned primary responsibility for the failure in the majority of these cases. In four cases excessive loans to certain interests were noted, and in four cases failure was ascribed to bad or incompetent management. In only two cases was any mention made of business depression or of adverse economic circumstances.

The operation of the deposit guaranty law in Oklahoma during the first 12 years of its history, from 1908 to early 1920, was carefully studied by Thomas Bruce Robb.[1/] Of 57 failures during that period, a number were selected as typical. In 18 cases Mr. Robb cites specific

1/ Robb, The Guaranty of Bank Deposits, pp. 42-73.

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causes of failure, or gives sufficient information to warrant classification. Of these, six were attributed chiefly to fraud or defalcation on the part of bank officers, and 12 to speculative and excessive loans to interests associated with the bank managements.

The Comptroller of the Currency, in his report for 1921, summarized the experience of States with deposit guaranty plans in operation. His statement regarding the causes of bank failures in Oklahoma is as follows:

> The closing of 42 of the 95 banks was due to a decline in the value of the assets, poor management, and slow loans, inability to realize on loans, injudicious investments, and shrinkage in deposits. In 34 cases closing was due to criminal acts on the part of officers, including embezzlement, misapplications, or use of the banks' funds in speculation for private gain. In 19 cases the cause of closing is not on record here. 1/

The failures described in the Bank Commissioner's reports, and those reviewed by Mr. Robb, took place prior to the collapse in prices of farm products and the business depression in 1921. The failures in 1921 and in 1922 were more directly associated with adverse economic circumstances than were those in the preceding years, though such evidence as is available indicates that incompetent management and speculative loans also played a part in these failures. There is no evidence that the number of failures during this period was affected by the insolvency of the guaranty fund. High failure rates in 1921 and 1922, in comparison with those during the previous decade, occurred not only among the State banks in Oklahoma, but also among national banks in the State, and among both State and national banks in most of the contiguous States.

1/ Annual Report of the Comptroller of the Currency, 1921, p. 188.

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Procedures used in handling failed banks. The affairs of the first three banks that failed after establishment of the deposit guaranty system in Oklahoma were liquidated by the Bank Commissioner. Of the 79 other banks that failed before the State Banking Board discontinued payments from the guaranty fund, only seven were liquidated directly by the Bank Commissioner. In the other cases, the liabilities of the failed bank, or most of them, were assumed by another operating bank or by a newly organized bank, or the affairs of the failed bank were liquidated by another bank, with an immediate payment or a guarantee, or both, by the depositors' guaranty fund. The reasons for using these procedures were given by the Bank Commissioner as follows:

> ... we can liquidate a bank much more economically through another bank located in the same town, or by permitting the failed bank to be reorganized under another name. The notes are paid or secured more readily, and the Banking Board is only required to handle such paper as the Bank purchasing the assets is unable to collect or have renewed to their satisfaction. By this method, a very small amount of money will take care of the liquidation of a failed bank, and no financial disturbance whatever is created in the community where the bank is located. 1/

There was considerable variety in the details of the arrangements made with the successor, absorbing, or liquidation-handling bank. This is illustrated by the following cases described in the reports of the Bank Commissioner:

> Bank of Ochelata, closed December 31, 1909.
>
> The Commissioner entered into an agreement with Mr. G. D. Davis of Claremore and his associates, to liquidate the Bank of Ochelata, through a new institution to be known as the Oklahoma State Bank... the Commissioner agreeing that the State Banking Board would protect the said Oklahoma State Bank against loss in assuming the obligations to the depositors of the Bank of Ochelata. On July 25, 1910, the Oklahoma State Bank submitted a report...showing that there was due them for notes which they were unable to collect, the sum of $18,968.48. The Banking Board issued their warrant for the above amount and took up the notes.

1/ Second Biennial Report of the Bank Commissioner, 1910, p. xii.

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Oklahoma State Bank, Durant, closed April 28, 1910.

An agreement was entered into with the Guaranteed State Bank, of that city, to liquidate the Oklahoma State Bank, and the State Banking Board deposited with the said Guaranteed State Bank, the sum of $25,000 to protect it against loss.

Creek Bank & Trust Company, Sapulpa, closed November 11, 1910.

Mr. M. Jones of Bristow and his associates offered to reorganize the bank under the name of the Oklahoma State Bank, of Sapulpa, and pay in the 100 percent assessment, on the condition that the Bank Commissioner enter into an agreement to place all cash and accounts on the books in balance, and obtain the guarantee of the State Banking Board on such notes belonging to the assets of the Creek Bank & Trust Company, as the Oklahoma State Bank might desire to have guaranteed after thirty days' investigation. Such an agreement was entered into and the same was confirmed by the Banking Board at a meeting on Dec. 1st, 1910. 1/

Bank of Commerce, Geary, closed May 5, 1911.

The American State Bank of Geary assumed all of the deposits of the said bank and took over certain of its assets. The Banking Board paid it the difference between the deposits which it assumed and the assets which it took over.

Citizens Bank, Mountain Park, closed April 10, 1911.

A new charter was granted to the Planters State Bank of Mountain Park and it purchased the good assets of the Citizens Bank, and the Banking Board made up the difference between the assets purchased and the liabilities of the failed bank...

Night & Day Bank, Oklahoma City, closed June 7, 1911.

The Night & Day Bank was taken over by the Wilkin-Hale State Bank, September 18, 1911, the Banking Board taking all doubtful assets not accepted by the Wilkin-Hale State Bank, and paying them the difference between the liabilities assumed and assets taken over...

First State Bank, Shattuck, closed October 3, 1911.

This bank was voluntarily liquidated through the Guarantee State Bank of Shattuck...The Banking Board advanced $20,004.29. in the liquidation...

Farmers State Bank, Tushka, closed September 28, 1911.

The Banking Board made an agreement with the stockholders that if they would pay in their double liability and put up an additional capital stock, that they would be protected. 2/

1/ Second Biennial Report of the Bank Commissioner, 1910, pp. ix, x, and xi-xii.

2/ Third Biennial Report of the Bank Commissioner, 1912.

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The records of the amounts paid by the fund suggest that the objectives of reducing the liquidation cost and the disbursement of the guaranty fund were not always achieved, particularly in some of the cases in which the fund made an immediate payment to the absorbing bank and also gave a guaranty against additional loss on the liquidation of the assets. In some cases liabilities other than guaranteed deposits were protected, with direct or indirect losses to the fund, and in some cases the absorbing or successor banks do not appear to have been diligent in making collections. A particularly striking case was the Citizens State Bank of Coalgate, which closed November 19, 1920, with deposits of $496,000, of which $429,000 are estimated to have been covered by the guaranty. The initial payment to the successor bank was $328,000, partly in cash and partly in warrants of the depositors guaranty fund. During the next twelve months several additional payments were made, as the successor bank reported its inability to collect on assets taken over, bringing the total disbursement of the fund to $498,000. The reported recovery by the fund was only $26,000.[1/] In several other failures in the latter part of 1920 or in 1921 the disbursement by the fund, less the reported recovery, was nearly as large, or larger, than the deposits at date of failure. These large losses may have been due to inefficiency, or corruption, in the administration of the Bank Commissioner's office: they occurred during the time when Fred Dennis, later convicted for taking a bribe from a bank in difficulty, was Bank Commissioner.

1/ Minutes of the State Banking Board and other records in the Bank Commissioner's office.

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A large majority of the banks that failed after cessation of payments from the guaranty fund, up to the repeal of the law, were liquidated by the Bank Commissioner. The method of liquidation used in these cases, and in liquidating such assets as were acquired by the fund from the failed banks that were succeeded or absorbed, was also expensive. The procedure was described by a later Bank Commissioner as follows:

> In fairness to the guaranty fund system of Oklahoma, it should be mentioned that during most of the time it was in operation the cost of liquidating failed banks was an expensive process. Liquidations were handled on a fee basis. The contracts of liquidating agents usually called for ten per cent of collections the first year, twenty-five per cent the second year, and fifty per cent the third year. In addition to this, they were allowed all traveling and other expenses, and when it was necessary to place an instrument in the hands of an attorney for collection, another large fee had to be paid. With such a contract it is not unreasonable to suppose that most collections were made during the second and third years. Anyway the cost of liquidation in virtually all instances amounted to fifty per cent or more of a bank's assets... 1/

FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. Published information regarding the operation of the Oklahoma depositors guaranty fund is inadequate. No statements of the fund were published in the reports of the Bank Commissioner except for the last three months of the years, 1914, 1916, and 1918. For several years, from 1911 to 1919, quarterly statements were made available to the participant banks and published or summarized in local and regional banking journals. A partial statement for the entire period up to the end of 1922 appears in a report made to the

1/ Linwood O. Neal, The History and Development of State Bank Supervision in Oklahoma, p. 71.

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Oklahoma House of Representatives.[1] Some additional information is available in surveys of deposit guaranty plans made by students and agencies outside the State.[2]

Information is given in the published reports of the Bank Commissioner regarding the cost to the guaranty fund of most of the banks that failed during the period 1908-1919. Additional information regarding some of these failures is given by Robb in his book published in 1921.[3] For the failures from January 1, 1920, to the cessation of payments from the fund in October 1921 no information is given in reports of the Bank Commissioner regarding bank failures or the operations of the fund, except the names of banks taken over by the Commissioner during the year 1920.

Considerable additional information has been obtained from surviving records of the fund, consisting of minutes of the State Banking Board and various registers and ledgers, in the office of the Bank Commissioner.[4] These records provide statements of the fund for certain periods, and a complete register of the guaranty fund warrants outstanding from 1911 to 1923, but no file of the quarterly statements of the fund. The minutes of the State Banking Board include an audit of guaranty fund transactions for individual failed banks as of February 9, 1922, showing the amounts advanced by the fund in the respective failed banks, the amounts returned to the fund, and the balance due on that date.

1/ House Journal, February 21, 1923, pp. 773-75.

2/ These include Robb, The Guaranty of Bank Deposits (Houghton Mifflin Company, 1921); Thornton Cooke, articles in the Quarterly Journal of Economics, November 1913 and November 1923; Federal Reserve Board, in Federal Reserve Bulletin, September 1925; Blocker, The Guaranty of Bank Deposits (The School of Business, University of Kansas, 1929).

3/ Robb, op. cit., pp. 57-73.

4/ These records were examined by the writer of this report in December 1955.

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Another audit, or "inventory," as of October 1930 also provides figures for the amounts paid out in the case of most of the individual failed banks, but not for recoveries or the balances due. An undated volume, apparently prepared at some intervening date, gives asset and liability statements as of date of failure for each bank in which a payment had been made from the guaranty fund, with a few exceptions, together with the amounts paid by and returned to the guaranty fund.

Information regarding the banks that failed between the date of cessation of payments from the fund and the repeal of the law was not found in the surviving records in the Commissioner's office. For these banks the principal source of information is schedules submitted in 1931, prepared from records in the Commissioner's office at that time, to the Federal Reserve Committee on Branch, Group, and Chain Banking.

The data for the individual failed banks from the various sources show some inconsistencies, but for the most part these are relatively small. No data have been found for the amount of deposits in the respective banks subject to the protection of the fund under the provisions of the guaranty law, nor for the amount of guaranteed deposits assumed by banks taking over the business or liquidating the affairs of the failed banks. However, in most of the cases the amount of guaranteed deposits must have been approximately the same as the amount of deposits shown in the statements of the banks at time of closing, excluding cashier's checks, which were not regarded as deposits, and accounts of governments and of banks, which were mostly secured and therefore excluded from guaranty.

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The court records pertaining to the final disposition of the fund provide some additional information regarding the fund's operations, particularly as to assessments levied that were not collected, the assets and liabilities of the fund in 1929 when the court proceedings were initiated, the claims approved by the District Court and by the State Supreme Court, and the remaining assets applied to those claims under the decisions of the courts.[1/]

Income, expenses, and indebtedness of the guaranty fund. An estimate of the receipts and expenditures of the Oklahoma depositors' guaranty fund during its entire existence is given in Table 9. The figures take into account receipts and disbursements subsequent to repeal of the law, including the final disposition of the fund in 1934. The estimates in this table exclude borrowings of the fund which were eventually repaid, and also payments to depositors of failed banks made directly from the cash or liquidated assets of those banks.

The total receipts of the fund throughout its entire period of operation, including borrowings from participant banks that were never repaid, amounted to more than $8 million. Nearly half of the receipts were from assessments on the participating banks, about one-fifth from diversion to the fund of assets pledged by the participant banks as a guaranty of payment of future assessments, and about two-fifths from the liquidation of assets of failed banks acquired by the fund. The fund paid out about $7.7 billion to depositors or to banks that assumed the deposits of failed banks, and spent approximately $0.6 million in interest and administrative expenses.

1/ District Court records, case no. 60838, at the Oklahoma City Court House, and Supreme Court records, case no. 24551, at the State Capitol. These records were examined in December 1955.

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Table 9. RECEIPTS, EXPENDITURES AND UNPAID OBLIGATIONS OF THE OKLAHOMA DEPOSITORS GUARANTY FUND 1/

Receipts	
Assessments collected to 1925 2/	$3,729,937
Additional assessments, and securities pledged for payment of future assessments diverted to the fund 3/	1,549,402
Total collections from participating banks, including warrants of the fund sold to those banks that were never paid	5,279,339
Recoveries from assets of failed banks 4/	2,913,174
Interest on daily balances 5/	23,729
Total receipts 6/	$8,216,242
Expenditures	
Payments to depositors of failed banks or to banks for assuming insured deposits 4/	7,667,311
Interest on warrants 5/	304,016
Operating expenses 7/	252,261
Total expenditures 6/	8,223,588
Unpaid obligations	
To depositors of failed banks 8/	6,225,437

1/ All items are partly estimated.

2/ As given in Federal Reserve Bulletin, September 1925, p. 631. See Table 10.

3/ For method of estimate and component items, see note 6 to Table 10.

4/ Tabulated from data for the individual banks. See Table 11.

5/ Amounts reported in periods for which income and expense data are available, plus estimated amounts for other periods.

6/ Difference between expenditures and receipts is attributable to errors of estimate for the various items.

7/ Warrants issued to January 31, 1923, for salaries, expense of examiners, office supplies, bank robbers and miscellaneous. House Journal, February 21, 1923.

8/ Losses to depositors in banks that failed from cessation of payments by the fund to repeal of the law. See Table 11.

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Annual data regarding assessments and the cash balance and indebtedness of the fund are shown in Table 10. The information available does not permit a tabulation by years of the disbursements of the fund, nor of the receipts from assets of failed banks.[1/]

The annual range of assessments ranged from a high of one and one-fifth percent in 1911, when a special assessment of 1 percent was levied, and a low of one-fifth of 1 percent in 1916 and subsequent years, when additional assessments were not permitted. The amounts collected ranged from a maximum of about $600,000 in 1911 to a low of about $90,000 in 1916.

The maximum amount of outstanding warrants, or indebtedness, of the fund prior to the World War I period was $844,000 in June 1914. This was all retired by 1919. The warrant indebtedness arising from the failures of 1920 and 1921, up to the time of cessation of payments from the fund in October 1921, was $2,404,000 at its maximum. This was reduced to about $1,300,000, and remained close to that figure until the final settlement of the affairs of the fund. Unfulfilled obligations to depositors of banks that failed from October 1921 to the repeal of the law in March 1923, as shown in the preceding table, amounted to more than $6 million.

Insured deposits and losses in failed banks, by years. Table 11 gives the estimated amount of insured deposits of the banks that failed each year while participating in deposit guaranty, and the estimated

---

1/ Only about one-half of the quarterly statements, for the period for which they were made available, have been located in banking journals, and some of these are incomplete. Only part of the earlier and later years are covered by statements found in the surviving records of the guaranty fund.

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Table 10. RATES AND AMOUNTS OF ASSESSMENT, CASH BALANCE, AND WARRANTS OUTSTANDING, OKLAHOMA DEPOSITORS GUARANTY FUND, BY YEARS

Year	Rate of assessment (percent of deposits) 1/	Amount of assessment 2/	Cash balance (end of year) 3/	Warrants outstanding (end of year) 4/
Total		$5,279,339		
1908	1.00	198,837	5/	5/
1909	.95	327,388	5/	5/
1910	.20	285,433	5/	5/
1911	1.20	600,538	$61,120	$318,847
1912	.95	511,054	72,510	146,000
1913	.40	201,825	15,131	660,889
1914	.40	148,084	44,714	768,682
1915	.40	161,817	77,703	680,009
1916	.20	89,964	153,738	666,379
1917	.20	133,356	35,560	389,936
1918	.20	208,800	45,691	136,961
1919	.20	231,962	371,536	none
1920	.20	301,658	5/	588,534
1921	.20	)	103,697	2,222,118
1922	.20	246,771)	5/	1,413,246
1923	.20	82,451	5/	1,303,916
Additional 6/		1,549,402		

1/ Includes regular and special assessments. These rates were applied to average daily deposits during the preceding year, except in the case of the initial assessment which was applied to deposits as of December 11, 1907. Rates for 1908-1920 from Robb, The Guaranty of Bank Deposits, p. 73; for 1921-1923, according to provisions of law.

2/ For 1908-1920 amount of assessments levied, Federal Reserve Bulletin, September 1925, p. 631, originally derived from Robb, op. cit., p. 73. Assessments collected for these years probably did not differ greatly from the amount levied though there were some refunds and adjustments. For 1921-1922, estimated as the difference between net collections (i.e., total collections less refunds and adjustments) to the end of 1922 from House Journal, February 21, 1923, amounting to $3,647,486, less the total levied for the years 1908-1920, amounting to $3,400,715. For 1923, difference between total assessments collected to 1925 as given in the Federal Reserve Bulletin, op. cit., amounting to $3,729,937, and the net collections to the end of 1922. Most of the assessment levied in 1923 remained unpaid. Assessments due at the time of repeal of the law, as given in court records pertaining to the disposition of the fund, amounted to $109,928. For the amount indicated in this table as "additional" see note 6.

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Notes to Table 10.

3/ From quarterly statements of the fund published in banking journals and in the Bank Commissioner's reports, and statements for the fund for certain periods in the surviving records in the Bank Commissioner's office. The figures indicated for 1919 and 1921 are for May 31, 1920, and February 9, 1922, respectively.

4/ From warrant register in the surviving records in the Bank Commissioner's office. The maximum amount of warrants outstanding in 1914 was $844,342 in June, and the maximum outstanding in 1921 was $2,403,618 in November.

5/ Not available.

6/ Includes: (a) $10,064 of assessments due by banks to which securities posted as security for payment of future assessments were returned under the court decision regarding settlement of the fund and which were required to be paid as a condition for such return; (b) $395,224 of guaranty fund warrants deposited as security for payment of future assessments which were cancelled by the State Banking Board because the banks concerned had nationalized or liquidated; (c) $31,000 of other securities deposited as security for payment of assessment by banks that had nationalized which were sold for cash by the State Banking Board; and (d) $113,114 of guaranty fund warrants outstanding at the time of final settlement of the affairs of the fund which were never paid. The last item is included because almost all these warrants were owned by the participating banks and deposited as security for payment of future assessments with the cash derived from their sale having been used by the guaranty fund, and thus in effect represented an additional final assessment upon such banks. By the time of settlement of the affairs of the fund almost all of the guaranty fund warrants which had been issued to depositors of failed banks or to successor or absorbing banks had been retired and were no longer outstanding.

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Table 11. INSURED DEPOSITS, AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS PAID AND UNPAID, OKLAHOMA DEPOSITORS GUARANTY FUND, BY YEARS, 1908-1923

Year or period of failure	Insured deposits 1/	Insured deposit obligations paid and unpaid				
		Paid directly from liquidation of assets 2/	Paid by fund			Unpaid (loss to depositors) 4/
			Total	Recovered from liquidation of assets 3/	Not recovered from liquidation of assets (loss to fund) 4/	
Total	$25,067,885	$11,175,137	$7,667,311	$2,913,174	$4,754,137	$6,225,437
Subtotals						
1908-1919	8,573,019	4,120,026	4,452,993	2,010,163	2,442,830	--
Jan. 1920-Oct. 1921	5,537,038	2,264,142	3,172,539	903,011	2,269,528	100,357
Nov. 1921-March 1923	10,957,828	4,790,969	41,779	--	41,779	6,125,080
1908	36,745	11,781	24,964	24,964	--	--
1909	1,741,078	61,156	1,679,922	1,064,289	615,633	--
1910	587,959	313,082	274,877	34,250	240,627	--
1911	1,065,149	294,981	770,168	230,577	539,591	--
1912	534,837	312,209	222,628	72,778	149,850	--
1913	1,715,525	798,443	917,082	388,498	528,584	--
1914	451,124	202,178	248,946	88,120	160,826	--
1915	332,463	198,720	133,743	46,544	87,199	--
1916	40,337	37,837	2,500	--	2,500	--
1917	84,217	84,217	--	--	--	--
1918	1,077,546	1,028,628	48,918	14,389	34,529	--
1919	906,039	776,794	129,245	45,754	83,491	--
1920	2,008,581	686,646	1,321,935	309,887	1,012,048	--
1921	5,415,002	1,994,874	1,878,083	593,124	1,284,959	1,542,045
1922	8,033,344	3,791,672	14,300	--	14,300	4,227,372
1923	1,037,939	581,919	--	--	--	456,020

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Notes to Table 11.

1/ Estimated as the deposits at date of failure, excluding cashier's checks and accounts of governments and banks (tabulated from statements for the individual banks in the surviving records of the guaranty fund, with estimates for a few cases for which such statements are unavailable), or as the amount paid by the fund if in excess of the foregoing.

2/ For banks with deposits assumed by another bank or paid from the fund, residual between the estimated insured deposits and the payment by the fund. For banks with no payment from the guaranty fund, recoveries from liquidation as reported to the Federal Reserve Committee on Branch, Group and Chain Banking in 1931.

3/ From data for the individual banks in the surviving records of the fund, with an allowance for recoveries subsequent to repeal of the law derived from data for the status of the fund.

4/ Balance of the estimated insured deposits.

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eventual recoveries and losses on those deposits. Table 12 shows for each year the percentage of the deposits of the failed banks estimated to have been insured, and of the insured deposits the percentages paid by the guaranty fund and recovered from the liquidation of assets.

For the years, 1908-1919, over 70 percent of the insured deposits in the failed banks were eventually paid directly or indirectly from liquidation of the assets of the failed banks. But in subsequent failures, to the repeal of the law, recoveries from liquidation of assets amounted only to about one-half of the insured deposits. The difference between the 1908-1919 and the 1920-1923 failures is doubtless due in part to the great decline in prices and property values associated with the depression of 1921 and the continued adversities of agriculture. In part, however, the difference between the two periods should be attributed to the deterioration in the quality of bank supervision and the handling of the Bank Commissioner's office.

Information is not available regarding the recoveries and losses on secured deposits and cashier's checks, which were not covered by the guaranty. However, up to the time of cessation of payments by the guaranty fund, such losses were negligible, because successor or absorbing banks usually assumed all the liabilities of the closed bank, or if not, the fund assumed the remainder. For the banks closed in 1922 and 1923, and not taken over by another bank, some losses may have been incurred on secured deposits, because the pledged collateral may have been disposed of at a loss, and losses on cashier's checks were presumably at the same percentages as on insured deposits.

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Table 12. PERCENTAGE OF DEPOSITS INSURED, AND PERCENTAGE OF INSURED DEPOSITS PAID BY GUARANTY FUND AND RECOVERED FROM LIQUIDATION OF ASSETS, BANK FAILURES UNDER THE OKLAHOMA DEPOSIT INSURANCE SYSTEM, BY YEARS

Year or period of failure	Percentage of total deposits insured	Percentage of insured deposits				
		Total	Paid directly from liquidation of assets	Paid by guaranty fund		Unpaid (loss to depositors)
				Recovered from assets	Not recovered; i.e., loss to fund	
Total	85.0	100.0	44.6	11.6	19.0	24.8
Subtotals						
1908-1919	79.8	100.0	48.1	23.4	28.5	--
Jan. 1920-Oct. 1921	103.6	100.0	40.9	16.3	41.0	1.8
Nov. 1921-March 1923	81.7	100.0	43.7	--	.4	55.9
1908	100.0	100.0	32.1	67.9	--	--
1909	60.6	100.0	3.5	61.1	35.4	--
1910	88.9	100.0	53.2	5.8	40.9	--
1911	93.1	100.0	27.7	21.6	50.7	--
1912	81.5	100.0	58.4	13.6	28.0	--
1913	86.1	100.0	46.5	22.6	30.8	--
1914	90.0	100.0	44.8	19.5	35.7	--
1915	92.2	100.0	59.8	14.0	26.2	--
1916	100.0	100.0	93.8	--	6.2	--
1917	99.1	100.0	100.0	--	--	--
1918	89.6	100.0	95.5	1.3	3.2	--
1919	76.6	100.0	85.7	5.0	9.2	--
1920	84.6	100.0	34.2	15.4	50.4	--
1921	83.2	100.0	36.8	11.0	23.7	28.5
1922	95.6	100.0	47.2	--	.2	52.6
1923	71.1	100.0	56.1	--	--	43.9

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For the entire period during which the guaranty law was on the statute books, about 56 percent of the insured deposits, and more than 60 percent of the total deposits of the failed banks were eventually paid from the proceeds of liquidation of the assets of those banks. The guaranty fund provided additional recoveries equivalent to 16 percent of the total deposits of the failed banks.

Comparison of assessment receipts and losses in failed banks. Table 13 compares the amount of assessments levied or collected each year with the eventual net loss to the guaranty fund or, after cessation of payments from the fund, to depositors in the banks that failed in that year. The figures are also shown cumulatively, with the cumulative excess or deficiency of assessments. Such an excess or deficiency, it should be noted, is a different concept than that of the accumulated surplus or deficit of the fund. It does not take account of interest paid or accrued on the fund's indebtedness, nor the amounts used or needed to pay depositors that were eventually recovered or recoverable from liquidation of the assets of the failed banks. What the deficiency figures in this table show is the additional assessment that would have been necessary to have paid all insured deposits without incurring interest costs or other expenses.

For the first twelve years of the fund, except for 1909 and 1910, there was a cumulative excess of receipts. This was achieved because the heavy losses of the fund during its early years were met by large special assessments in 1909, 1911, and 1912. By the end of 1919, with smaller special assessments during the years 1913-1915 and none thereafter, the cumulative excess of assessments over losses amounted to about $650,000.

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Table 13. ANNUAL ASSESSMENT RECEIPTS, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, OKLAHOMA DEPOSITORS' GUARANTY FUND

Year	Assessments collected 1/	Net deposit liability of the fund 2/	Cumulative			
			Assessment receipts	Deposit liability of the fund	Excess of receipts	Deficiency (excess liability)
1908	$198,837	--	$198,837	--	$198,837	--
1909	327,388	$615,633	526,225	$615,633	--	$89,408
1910	285,433	240,627	811,658	856,260	--	134,010
1911	600,538	539,591	1,412,196	1,395,851	16,345	--
1912	511,054	149,850	1,923,250	1,545,701	377,549	--
1913	201,825	528,584	2,125,075	2,074,285	50,790	--
1914	148,084	160,826	2,273,159	2,235,111	38,048	--
1915	161,817	87,199	2,434,976	2,322,310	112,666	--
1916	89,964	2,500	2,524,940	2,324,810	200,130	--
1917	133,356	--	2,658,296	2,324,810	333,486	--
1918	208,800	34,529	2,867,096	2,359,339	507,757	--
1919	231,962	83,491	3,099,058	2,442,830	656,228	--
1920	301,658	1,012,048	3,400,716	3,454,878	--	54,162
1921	246,771)	2,827,004	3/	6,281,882	--	3/
1922	)	4,241,672	3,647,487	10,523,554	--	6,876,067
1923	82,451	456,020	3,729,938	10,979,574	--	7,249,636
Additional	1,549,402	--	5,279,340	10,979,574	--	5,700,234

1/ From Table 10.

2/ Deposits paid from the fund, adjusted for recoveries, plus deposits unpaid (loss to depositors). From last two columns of Table 11.

3/ Not available.

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However, a part of this had been used to pay expenses and interest on warrants, so that the cash balance of the fund in May 1920, when no warrants were outstanding, was only about $370,000. This was less than one-fifth of 1 percent of the deposits in the participating banks, whereas the original law contemplated that the fund would always be restored, by special assessments, to a figure equal to 1 percent of the deposits of the participating banks.

The large losses in the failures from the latter part of 1920 to the repeal of the law, together with the limitation of assessments to the regular rate of one-fifth of 1 percent per year, resulted in a rapidly mounting cumulative deficiency relative to losses. By the date of repeal of the law, it had reached more than $7 million. If the warrants of the fund and other securities deposited by participating banks as surety for payment of future assessments that were forfeited to the fund or never repaid are treated as additional assessments, the final deficiency of the assessments relative to losses was somewhat less than $6 million.

In Table 14 the rate of assessment levied each year, and the amount collected per $100 of deposits in the participating banks, are compared with the rate that would have been necessary to meet the eventual losses from the failures in that year. During the first five years of the system the collections, because of the initial levy and the special assessments, averaged nearly nine-tenths of 1 percent of deposits in the participating banks. Had this average been maintained until the date of repeal of the law, it would have been sufficient to meet all the losses in the failed banks, including the abnormally large losses of the early

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Table 14. COMPARISON OF ANNUAL RATES OF ASSESSMENT WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, OKLAHOMA DEPOSITORS' GUARANTY FUND, BY YEARS, 1908-1923

Year	Assessment rate per $100 of deposits	Per $100 of deposits in participating banks at beginning of year		Per $100 of total capital accounts in participating banks at middle of year	
		Assessments collected 1/	Losses on deposits in failed banks 2/	Assessments collected 3/	Losses on deposits in failed banks 3/
1908-1923 average	$0.44	$0.41	$0.86	$2.52	$5.24
1908	1.00	1.06	--	2.47	--
1909	.95	1.04	1.95	2.78	5.22
1910	.20	.52	.44	2.04	1.72
1911	1.20	.98	.88	4.84	4.34
1912	.95	1.16	.34	4.26	1.25
1913	.40	.44	1.15	1.80	4.71
1914	.40	.32	.35	1.36	1.48
1915	.40	.36	.19	1.48	.80
1916	.20	.19	.01	.82	.02
1917	.20	.16	--	1.10	--
1918	.20	.15	.03	1.45	.24
1919	.20	.19	.07	1.42	.51
1920	.20	.16	.53	1.50	5.04
1921	.20	.09)	1.76	.75)	13.97
1922	.20	)	3.77	)	33.54
1923	.20	.11	2.44 4/	.71	15.67 4/
Additional		2.07 5/		13.31 5/	

1/ Computed from assessment receipts (Table 13) and deposits in participating (i.e., State) banks in Table 4.

2/ Computed from deposits paid from the fund, adjusted for recoveries, plus deposits unpaid (loss to depositors) from Table 13 and deposits in participating banks (Table 4).

3/ Total capital accounts used in computing these ratios are from the revised Federal Reserve tabulations.

4/ Annual rates (i.e., four times the rate for failures occurring prior to March 31, 1923).

5/ Relative to deposits and capital accounts as of December 31, 1922, and June 30, 1923, respectively.

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1920's. Had the guaranty law remained in its original form or as amended in 1909, under which the special assessments were limited to 2 percent per year, but without the assessment amendments of 1913, it would have survived the impact of the depression of 1921, though borrowing in 1922 and 1923 would have been necessary. If, in addition, the quality of bank supervision and the efficiency of handling the affairs of closed banks had not deteriorated after 1918, it is probable that the fund would not have found borrowing necessary except to pay depositors promptly while proceeding with the liquidation of the affairs of closed banks.

The assessments paid by the banks, including their losses on warrants and other deposited securities, averaged about $2\frac{1}{2}$ percent per year on their capital investment, as measured by their reported total capital accounts. Had all the losses to depositors been met by assessments, the average would have been a little over 5 percent per year on their total capital accounts.

Settlement of the affairs of the guaranty fund. Settlement of the affairs of the guaranty fund, after repeal of the law, was delayed because of pending suits and other problems pertaining to the completion of liquidation of the affairs of the various closed banks. In 1929 litigation was instituted to determine the method of disposition of the remaining assets of the fund, including such collections as had by that time been made from assets of failed banks whose depositors had been paid by the fund. The Bank Commissioner recommended treatment of the remaining assets of the guaranty fund as a trust fund to be distributed pro rata among holders of the outstanding warrants and unpaid depositors of banks that had failed from the time of cessation of payments from the fund to the date of repeal of the law.

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The District Court in charge of the litigation set a date by which all claims should be submitted. The claimants who filed claims fell into four classes: (1) holders of the numerically first outstanding and unpaid warrants of the fund, who claimed that under the law they had priority; (2) holders of other outstanding warrants, who contended that because of the insolvency of the fund and repeal of the law the remaining assets should be applied pro rata on all warrants outstanding; (3) banks seeking recovery of securities, other than warrants of the fund, pledged with the Banking Board to secure payment of future assessments; and (4) holders of other claims, mostly for unpaid deposits in certain banks that failed between the date of cessation of payments from the fund and the date of repeal, who claimed they should be paid pro rata with the warrant holders. The District Court appointed a referee to review the claims presented, who conducted numerous hearings over a period of nearly two years. In 1932 the final report of the referee was made and the District Court entered its judgment: (1) that securities, other than warrants, remaining with the Banking Board and pledged to secure payment of future assessments should be returned to the respective banks, provided that those with unpaid assessments prior to repeal of the law were first required to pay the same; and (2) that the approved claims, including all unpaid warrants and other allowed claims, were to share pro rata in the distribution of the assets of the fund. Under this judgment pledged securities, valued at about $110,000, were returned to 65 banks; and it was estimated that a dividend of about 15 percent would be paid on the allowed claims, which included $1,197,000 of unpaid warrants and $375,000 other claims. The small amount of claims other than warrants indicates that only a few of the depositors of the banks that failed subsequent to cessation of payments from the fund presented their claims.

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Eight banks, holding some of the earliest-issued outstanding warrants, did not accept the judgment of the District Court, and appealed to the State Supreme Court, holding that those warrants, with interest, should have priority over other claims. The remaining warrant holders accepted the judgment of the District Court. Consequently, a sufficient portion of the remaining assets to meet the claims of the appealing banks was held pending the decision of the State Supreme Court, and the remainder of such assets was used for a pro rata dividend of 7 percent on the rest of the approved claims. This was disbursed in February 1933. In September 1934, the State Supreme Court held that the decision of the District Court had been in error, and ordered the remnant of the fund paid the holders of the earliest-issued warrants who had appealed. The eight banks received about $130,000 on those claims, of which about one-half was the principal of the warrants and about one-half the accumulated interest.[1/]

APPRAISAL OF THE OKLAHOMA DEPOSIT GUARANTY SYSTEM

The burden of assessments. To bankers in Oklahoma the assessments levied during the first few years of the Depositors' Guaranty Fund appeared to be heavier than could be borne by the banks. They pointed to the fact that the assessments amounted to what they deemed an extremely high percentage of their capital and surplus, averaging during the first six years of the fund approximately 3 percent per year of the total capital and surplus of the banks, and thus presumably absorbing a very large proportion of the profits available for dividends to stockholders.

1/ Security Bank and Trust Co., of Miami, Oklahoma, et al., v. Barnett, et al., no. 24551, Supreme Court of Oklahoma, Sept. 11, 1934, 36 Pac. 874.

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Whether the assessments did in fact absorb a large proportion of profits which would otherwise have been available for dividends is unknown. No figures of profits or dividends of State banks in Oklahoma during the period are available. Nor is information available regarding the extent to which the limitation on the rate of interest paid on deposits, imposed by the deposit guaranty law, reduced the expenses of operation of the banks.

The problem of making adequate profits is not so much a problem of the magnitude of expenditures which have to be borne by all banks as a part of their cost of business, as it is of the margin between the charges which they can make for their services and the aggregate expenses which they must incur. Since the rate of interest currently charged on loans by the banks in Oklahoma was very high, judged by average rates in eastern money centers or by average rates for the United States as a whole, and the rate of interest paid by the banks on deposits was also comparatively high, and since the latter rates are determined by competition among the banks themselves, it should have been possible for the banks participating in deposit guaranty to have maintained their profit position by reducing the rate of interest paid to depositors.

However, the presence of another group of banks in the State, operating under national rather than under State law, provided a competitive situation which made it difficult for State banks as a group to make these adjustments. For two years prior to 1913, when the law was amended in such a way that adequate assessments could no longer be levied, there had been a substantial tendency for State banks to convert to national banks. The proportion of the total number of banks operating under State law and therefore participating in the deposit guaranty system had declined from 75 percent to 67 percent, and the proportion of aggregate

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deposits in the participating banks from 51 percent to 37 percent of all banks in the State.

There is good reason to believe that the guaranty system could have been successful had it embraced all banks operating in the State, and had the original assessment provisions, or those of 1909, been retained. If all banks in the State had been covered, without affecting the quality of bank supervision or other factors determining the number of failures, the necessary assessment rate for the entire 15-year period would have averaged less than four-tenths of 1 percent per year.

High failure rate. The high rate of assessment which would have been necessary to have prevented insolvency of the Oklahoma depositors' guaranty fund was much higher than the rate necessary to have operated a similar fund on a national scale during the same period of time because of the relatively high frequency rate of bank failures in the State. This abnormally high failure rate, as has been noted above, was due in substantial part to deliberate bank mismanagement - sheer dishonesty, participation in unduly speculative enterprises, and overextension of loans to enterprises with which bank officials or favored customers were connected.

It should also be noted that the abnormally high failure record of the larger banks in the system was an important influence in the rate of assessment which would have been necessary to have met the burden falling upon the guaranty fund. Approximately one-fourth of the total loss in failed banks during the 15-year period was incurred in four banks in the larger size groups. The failures of large banks were also responsible for the periods of crisis in the operation of the guaranty fund. The

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Columbia Bank and Trust Company, of Oklahoma City, which failed in September 1909, when the guaranty law had been in operation less than two years, had become the largest bank in the system after a mushroom growth which increased its assets and liabilities by sevenfold. Also, it was primarily the failure of the Bank of Commerce, Okmulgee, the second largest bank in the system, at the beginning of November 1921, which increased the outstanding obligations of the guaranty fund so much that guaranty fund warrants could no longer be sold and the fund became inoperative.

Inadequate supervision. The high bank failure rate among participants of the Oklahoma deposit guaranty system could probably have been considerably reduced had there been a continuity of reasonably effective supervision.

The powers of the Bank Commissioner, which have been outlined above, appear sufficient, had they been adequately used, to have checked many of the malpractices of Oklahoma banks. The two examinations required to be made each year, if thoroughly conducted, would have disclosed, long before failure, the conditions described in Robb's account of the affairs of the chief banks which failed. Use of the legal power of the Commissioner to close banks for violation of the banking law by its officers, and more vigorous use of the power to order the removal from office of bank officials found to be dishonest, reckless or incompetent, would have prevented much of the dissipation of bank assets.

During the early years of the system, as shown by Robb's careful study, examinations and supervision were inadequate. Later, after several years of more competent supervision under J. D. Lankford, the

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Bank Commissioner's office was not only inefficient but also corrupt. However, the severity of the losses to the guaranty fund in that period should not be attributed solely, or even primarily, to the laxity of bank supervision and the corruption of the Commissioner's office. With the best of supervision, the failures resulting from the collapse of values of the 1921 depression would have been severe.

Nevertheless, one conclusion of vital importance to the success of other systems of deposit guaranty or insurance can be drawn with certainty. That is, that dishonesty, favoritism to special interests, and speculative activities on the part of the largest banks in the system will lead to disaster, and that the supervisory authorities must be alert and vigorous in watching the policies of the banks in which the risk is concentrated.

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DEPOSIT GUARANTY IN KANSAS

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DEPOSIT GUARANTY IN KANSAS

The Kansas law for guaranty of bank deposits was approved on March 6, 1909, and became effective on June 30 of that year. The Kansas law differed in many respects from that of Oklahoma. The law remained in operation until it was repealed on March 14, 1929. However, it became of relatively slight importance in 1926, when the great majority of the participating banks withdrew from the fund.

CHARACTER OF THE GUARANTY LEGISLATION

Admission of banks. Participation in the Kansas deposit guaranty plan was voluntary. An incorporated State bank which desired to participate in the guaranty system was required to be examined by the Bank Commissioner, and approval was dependent upon his finding that the bank was solvent, properly managed, and conducting its business in strict accordance with the banking law. In addition, the bank was required to have a paid-up and unimpaired surplus fund equal to ten percent of its capital. Trust companies and private banks were not eligible to participate in the guaranty system, but were authorized to reorganize as State banks, and thereby become eligible, by filing an amended charter. Banks organized subsequent to enactment of the guaranty legislation, if located in cities or towns where all existing banks had failed to become guaranteed banks within six months after passage of the act, were eligible for admission to the guaranty system; and, if located elsewhere, eligible after operating for one year. In 1921 the requirement of a year's operation was extended to all newly organized banks.

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A State banking department had been in operation in Kansas for 18 years prior to the adoption of deposit guaranty, and the banks had been subject to more careful examination than in many other States. How many banks which applied for admission to the guaranty system were rejected by the Bank Commissioner is unknown.[1/] By the close of the year 1909, nearly one-half of the banks operating under State law had been admitted.

The law also provided that any national bank, at its option and after an examination by and with the approval of the State Banking Commissioner, could participate in the deposit guaranty system. However, the ruling of the Attorney-General of the United States with respect to participation by national banks in the deposit guaranty system in Oklahoma was applicable to national banks operating in other States. Consequently no national banks were able to join the system in Kansas.

Withdrawal or exclusion from the guaranty system. A bank which decided to withdraw from the bank depositors' guaranty fund was permitted to do so by displaying a notice to that effect and by notifying the Bank Commissioner, effective at the expiration of six months.

The participation of a bank which, on examination was found to be violating any provision of the deposit guaranty law and failed to comply within thirty days after notice by the Bank Commissioner, was required to be terminated by the Bank Commissioner.

1/ The tenth biennial report of the State Bank Commissioner, dated September 1, 1910, p. xvi, states that applications were received from several hundred banks to participate under the guaranty law, but gives no information regarding the number approved or disapproved.

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Deposits guaranteed. Deposit guaranty in Kansas, under the original law, covered all deposits not bearing interest, time deposits payable in not more than one year nor in less than six months and bearing interest not in excess of 3 percent per annum, and savings accounts not exceeding $100 for any one person and bearing interest not in excess of 3 percent. At the same time payment of interest by guaranteed banks at a rate higher than 3 percent per year, except for existing contracts, was prohibited.

In 1911 the limitation on the guaranty of savings deposits to $100 per person was removed, and the guaranty extended to all deposits not otherwise secured. The prohibition of payment of interest on deposits by guaranteed banks at a rate in excess of 3 percent per annum was modified to prohibit payment of a rate in excess of that approved from time to time by the Bank Commissioner. The maximum rate was to apply to both guaranteed and non-guaranteed banks and to be uniform within each county. County, township, city and school funds were brought under the protection of the guaranty fund by a provision that no further security was required for the deposit of such funds in a guaranteed bank. This provision was repealed in 1927.

The guaranty law, both in its original form and as amended, provided that the guaranty should not apply to deposits which were primarily rediscounts or money borrowed from the bank, nor to deposits otherwise secured. The law also provided that the guaranty should not apply to a bank's obligations as endorser upon bills rediscounted, nor to bills payable, nor to money borrowed temporarily from its correspondents or others. An amendment to the law in 1923 defined as "borrowed money" and therefore excluded from guaranty any deposit on which a greater rate of interest was paid, directly or indirectly, than that approved by the Bank Commissioner; and also excluded from guaranty any deposits or credits obtained by fraud or

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in violation of law or evidences of debt fraudulently issued.

Various cases arose in connection with the definition of guaranteed deposits which were carried to the Supreme Court of the State for decision. In one case certificates of deposit and a draft issued by a bank's cashier in connection with a land deal were held to have been issued in transactions outside the business of the bank and therefore not protected by the guaranty fund, nor, in fact, an obligation of the bank.[1/] In another case a certified check, which the payee had been unable to collect because of the insolvency of the bank and had returned to the drawer, was held not protected by the guaranty fund, though it had been issued in exchange for a check on the drawer's account.[2/] In other cases, certificates of deposit were found to have been, under the circumstances of their issue, loans to the bank and therefore not protected by the guaranty fund.[3/] However, an agreement to maintain a smaller reciprocal balance was not evidence that a certificate of deposit represented a loan.[4/]

Other cases of litigation reaching the State Supreme Court involved the question of whether certain certificates of deposit or deposit accounts were excluded from protection by the fund because they were otherwise secured or violated the Commissioner's interest rate regulation. A deposit otherwise secured, according to theCourt decision, remained unprotected by the guaranty fund even though the security was inadequate, and the personal endorsement of a certificate by the bank president made it "otherwise secured," and therefore not protected by the guaranty.[5/] A certificate of deposit bearing interest at

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1/ Fourth National Bank of Wichita v. Wilson, 204 Pac. 715, 110 Kans. 380.
2/ Lloyd v. Butler County State Bank, 253 Pac. 906, 112 Kans. 835.
3/ American State Bank v. Wilson, 204 Pac. 709, 110 Kans. 520; Mulberry State Bank v. Peterson, 236 Pac. 814, 118 Kans. 728.
4/ Farm Mortgage Trust Co. v. Wilson, 205 Pac. 610, 110 Kans. 786.
5/ City of Osawatomie v. Bone, 247 Pac. 432, 121 Kans. 545; American State Bank v. Wilson, 204 Pac. 709; 110 Kans. 520.

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the maximum annual rate permitted under the Commissioner's regulation, but compounded quarterly instead of semi-annually as specified in the regulation, was not protected by the guaranty fund; and payment of a bonus is equivalent to contracting for a higher rate.[1/] However, payment of a bonus to a depositor by a third party was not an indirect payment of interest by the bank and therefore did not exclude the deposit from protection by the fund.[2/] A certificate of deposit payable in "6 or 12 months," and a certificate "not payable in less than 6 months and not extending for more than one year", were held to have a definite date of maturity, as required by the Commissioner's interest rate regulation, and therefore were protected by the fund; but a certificate with interest payable for "all full months if left six months," did not have a definite maturity date and was excluded from protection by the fund.[3/]

Assessments. Assessments for meeting the cost of deposit guaranty were levied upon the banks on the basis of deposits covered by the guaranty, with a minimum of $20. The law provided for annual assessments of one-twentieth of 1 percent until the fund should reach a maximum of $500,000; and for special assessments, if the fund should become depleted, at the same rate, with the number of such assessments limited to five in any calendar year. This was interpreted to include the regular assessment, so that the maximum annual assessment was one-fourth of 1 percent.

To secure payment of the assessments, each guaranteed bank was required to deposit with the State Treasurer selected bonds or cash amounting

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1/ Burnaman v. Peterson, 232 Pac. 1047, 117 Kans. 612; American State Bank v. Wilson, 204 Pac. 709; 110 Kans. 520.

2/ Farm Mortgage Trust Co. v. Wilson, 205 Pac. 610, 110 Kan. 786; Farmers' & Merchants' State Bank of Claflin v. Foster, 210 Pac. 490, 112 Kans. 141.

3/ Songer v. Peterson, 220 Pac. 1060, 114 Kans. 900; Merchants' Reserve State Bank v. Peterson, 230 Pac. 1056, 117 Kans. 186; Barrett v. Foster, 223 Pac. 1091, 114 Kans. 804, 115 Kans. 557.

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to one-half of 1 percent of the bank's guaranteed deposits, with a minimum of $500. In case of voluntary liquidation or withdrawal from the fund, the bonds or cash deposited were to be returned to the bank after the closing of affairs of all failed banks in liquidation at the effective date of withdrawal and payment of the assessments levied to meet losses in those banks. In case of termination of participation because of violation of law the deposited bonds or cash were to be forfeited, with the bank (after 1923) remaining responsible for assessments to meet losses in banks that failed prior to the termination of its participation.

Interest on bonds deposited with the State Treasurer belonged to the banks depositing them. The original law contained no provision regarding interest on deposits of cash in lieu of bonds; an amendment in 1917 required such cash to be deposited by the State Treasurer in a guaranteed bank, with the interest credited to the bank depositors' guaranty fund.

These provisions remained unchanged until 1921, when the maximum fund to be accumulated was raised to $1,000,000. Two years later, another amendment provided that assessments in addition to the regular annual assessment should be made whenever the fund was reduced below $500,000, but only in amounts necessary to cover losses which had matured and became claims payable upon demand against the guaranty fund, and limited, as previously to not more than five assessments per year of one-twentieth of 1 percent each. The added limitation was of considerable importance because of the method of paying depositors in failed banks, described below, for it prevented an assessment to cover losses in a failed bank until the bank had been completely liquidated.

Method of paying depositors in failed banks. In Kansas the depositors' guaranty fund was not responsible for the immediate payment of the

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deposits in a failed bank. The fund was responsible for the payment, upon completion of the liquidation of a failed bank, of guaranteed deposits which had not been paid from the proceeds of liquidation of the assets of the bank.

When a bank participating in the guaranty plan was found by the Bank Commissioner to be insolvent, the Commissioner was required to take charge of the bank and to wind up its affairs. The depositors, upon proof of claim, were given interest-bearing certificates for the amount of their deposits (at the contract rate on interest-bearing deposits, and at six percent on deposits with no contract rate), which were paid so far as possible from the proceeds of sale of assets of the bank and collections of double liability of stockholders. When these assets were exhausted, the balances due on guaranteed deposits were paid from the bank depositors' guaranty fund.

Interest on certificates issued to depositors of closed banks was abolished in 1925 by an amendment to the law. This amendment as enacted applied both to certificates to be issued in the future and to those then outstanding, but the elimination of interest on outstanding certificates was declared unconstitutional by the State Supreme Court.[1/]

One other State, among those which adopted deposit guaranty plans during the period 1908-1917, originally provided for payment of guaranteed deposits upon completion of the liquidation of a failed bank. The other six States, and Mississippi after a few years, provided for immediate payment upon presentation and proof of claim.

Indebtedness of guaranty fund. No provision was made for borrowing by the depositors' guaranty fund in the event that assessments collected should be insufficient to meet the obligations of the fund.

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1/ Thompson v. Bone, Bank Commissioner (1926), 122 Kans. 195, 251 Pac.178.

The law provided that, if the available money in the guaranty fund after collection of the maximum assessments should be insufficient to pay the guaranteed deposits of failed banks, the depositors were to be paid pro rata to the extent of the money available, with the balance to be paid from the next assessment.

Administration and custody of the fund. The administration of the Kansas depositors' guaranty law was placed in the hands of the Bank Commissioner. The Bank Commissioner was appointed by the Governor with the advice of the Senate, and must have had three years, (after 1927, five years), of practical knowledge of banking or have served at least one term as bank commissioner.

Assessments under the deposit guaranty law were paid to the State Treasurer and placed in depository banks for State funds subject to the call of the Bank Commissioner.

Expenses of administration. No specific provision was made in the depositors' guaranty law for expenses of administration. The cost of operating the office of the Bank Commissioner was met by appropriations of State funds. However, fees levied upon the banks for each examination, which were collected by the Bank Commissioner and paid to the State Treasurer, covered most of the expenses of the Commissioner's office.

CONSTITUTIONALITY OF THE BANK DEPOSITORS' GUARANTY LAW

Bankers in Kansas doubted the legality of the bank depositors' guaranty law. A group of State banks, and a group of national banks, and also a stockholder in a State bank, brought suits in Federal court to restrain the State officials from carrying out the law, on the ground that it violated the

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Constitution of the United States. The complaints were heard by the Circuit Court of the United States for the District of Kansas in December 1909.

The State banks contended that the guaranty law was in conflict with the Federal constitution for the following reasons:[1/]

1. That the effect of the law would be to drive them out of business, thus depriving them of their property without due process of law, unless they contributed to the guaranty fund.

2. That in case they had given credit to a bank which became insolvent, their rights of recovery would be impaired and they would be deprived of property without due process of law, since depositors in an insolvent guaranteed bank would be preferred creditors.

3. That certain conditions of the guaranty plan were unreasonable and arbitrary.

4. That taxation was required to meet the expenses of carrying out the guaranty plan.

The national banks claimed that the guaranty law was in conflict with the Federal constitution for the following reasons:[2/]

1/ This list is based on the summary of the plaintiffs' arguments given in the opinion of the United States Supreme Court in reviewing the case (see note 3, p. 12). The contentions of the State banks are given in greater detail in the opinion of the Circuit Court. (Larabee v. Dolley, State Bank Commissioner, et al.; Assaria State Bank of Assaria, Kans., et al., v. Same; Abilene National Bank of Abilene, Kansas, et al., v. Same, 175 Fed. 365). The State banks also claimed that the law violated the Constitution of the State of Kansas.

2/ These contentions were held to be in violation of the fifth and fourteenth amendments to the Constitution of the United States. This statement of the arguments of the national banks is based on the summary given in the opinion of the United States Circuit Court of Appeals, Eighth District (Dolley, State Bank Commissioner of Kansas, et al., v. Abilene National Bank of Abilene, Kansas, et. al., 179 Fed. 461). The contentions of the national banks are given in greater detail in the opinion of the Circuit Court, op. cit., 175 Fed. 365.

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1. That, since they could not avail themselves of the provisions of the statute, the law operated to deny them the equal protection of the law.

2. That the efficiency of the national banks as instrumentalities of the Federal government would be impaired, since the effect of the law would be to attract depositors from the national banks to the guaranteed State banks.

The stockholder of the State bank claimed that the act violated the Federal Constitution because it impaired the obligation of his contract as a shareholder in the bank by applying the property of the bank to the payment of private debts not contracted by the bank or by himself and without his consent and therefore took his property without due process of law.[1/]

Decisions of the Circuit Court and of the Circuit Court of Appeals. The Circuit Court of the United States for the District of Kansas agreed that the bank depositors' guaranty law was unconstitutional on the grounds claimed by the national banks and by the stockholder of the State bank, and granted a temporary injunction restraining the State officials from carrying out the law. With regard to the complaint of the State banks, the Circuit Court held that they did not have a case within the jurisdiction of the court, on the ground that they did not show that their rights were infringed. They could, the Court pointed out, meet the conditions necessary to obtain the benefit of the law, and could withdraw any credit outstanding to guaranteed banks, and thus could avoid loss of property on account of the act.[2/]

1/ The stockholder contended that the law was in violation of article 1 of section 10, and of the fourteenth amendment of the Constitution of the United States. (Opinion of the Circuit Court, op. cit., 175 Fed. 365).

2/ Op. cit., 175 Fed. 365.

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The Bank Commissioner and Treasurer of Kansas appealed to the United States Circuit Court of Appeals, Eighth Circuit, which reversed the opinion of the Circuit Court and dismissed the injunction. The grounds for this action were summarized by the Circuit Court of Appeals as follows:

> "The national banks owe their existence to the laws of the United States...Their exclusion from the operation of the statute in question is not from any design on the part of the state to discriminate against them, but results from the limitation of governmental powers...
>
> "The fourteenth amendment provides that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' A conclusive answer to the objection to the Kansas statute now being considered would seem clearly to appear from the face of the amendment itself...The amendment does not profess to secure to all persons in the United States nor all persons in the same State the benefit of the same laws. ...Jurisdictional limits are an obvious and sufficient reason for lack of universal uniformity in legislation. The equality clause of the amendment does not require indiscriminate operation of state laws, but proceeds upon due consideration of the relations of persons to the state and to the legislation in question...Such has been the consistent holding of the Supreme Court...
>
> "The effect of the Kansas statute upon the business of the national banks will at the most be indirect and incidental...
>
> "We have not considered the merits of the guaranty plan, whether practically beneficient, experimental, or illusory. Such matters are for the state Legislature. Our province is confined to the question whether the exercise of its powers is within constitutional limits so far as the national banks are concerned. We think the objections they urge are so clearly without foundation, the temporary injunction was improvidently granted." 1/

Decision of the United States Supreme Court. State bankers in Kansas were dissatisfied with the dismissal of their case by the Circuit Court of the United States for the District of Kansas and appealed to the United States Supreme Court. The United States Supreme Court heard the arguments of the Kansas bankers in December 1910, along with cases regarding the constitutionality of deposit guaranty laws in Oklahoma and Nebraska. The Court rendered its

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1/ Dolley, State Bank Commissioner of Kansas, et al. v. Abilene National Bank of Abilene, Kansas, et al., 179 Fed. 461. Decided May 20, 1910.

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decision on January 3, 1911, that the Oklahoma law was constitutional, and stated that the opinion was applicable to the Kansas law, except so far as the Kansas law showed certain minor differences from that of Oklahoma.[1] These minor differences were also dismissed as not affecting the constitutionality of the Kansas bank depositors' guaranty law.[2]

The national bankers also appealed to the United States Supreme Court from the decision of the Circuit Court of Appeals. The Supreme Court upheld the opinion of the Circuit Court of Appeals.[3]

SUPERVISION AND REGULATION OF PARTICIPATING BANKS

Chartering and supervisory authority. State banks in Kansas had been subject to supervision by a Bank Commissioner, with power to conduct examinations and require reports, for eighteen years prior to the enactment of the depositors' guaranty law. The Bank Commissioner was appointed by the Governor, with the advice of the Senate, for a term of four years. The Commissioner and each of his deputies must have had, prior to appointment, three years practical knowledge of banking or one term as Bank Commissioner. During the life of the guaranty fund no changes of major importance occurred in the powers of the Bank Commissioner, except as a member of the Charter Board with respect to the opening of new banks.

Charters for new banks, as for other corporations, were granted by the Charter Board, which consisted of the attorney-general, the secretary of

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1/ For a summary of the decision of the United States Supreme Court regarding the Oklahoma depositors' guaranty fund law see the preceeding chapter, "Deposit Guaranty in Oklahoma," pp.

2/ Assaria State Bank of Assaria, et al. v. Dolley, Bank Commissioner of the State of Kansas and Tulley, State Treasurer, United States Supreme Court Reports, 55 Law ed., U.S. 219-221, pp. 123-28.

3/ Abilene National Bank of Abilene, et al. v. Dolley, Bank Commissioner, and Tulley, State Treasurer, United States Supreme Court, 57 Law ed. 707.

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state, and the Bank Commissioner. Until 1911, applications for bank and other charters were to be granted if the purpose was a lawful one and the applicants acting in good faith; and in the case of banks the Commissioner was to make an examination and issue a certificate of authorization to transact banking business if in compliance with the banking law. In 1911 an amendment to the incorporation law provided that in the case of an application for a bank charter, the Charter Board should make a careful examination of the financial standing and character of the incorporators, the public necessity in the community in which the bank was to be located, and whether the capital proposed was commensurate with the requirements of law, and to refuse a charter if either of these was determined unfavorably.

The validity of this limitation on the organization of new banks was soon questioned by proposed organizers of a fifth bank at Abilene, on the ground that it violated the fourteenth amendment to the Constitution of the United States. The Supreme Court of Kansas ruled that the law did not contravene that amendment and was a reasonable exercise of the police power. This decision is of particular interest because of its description of the role of banks and the consequent difference between a bank failure and a failure of other types of enterprise.

> Banks are indispensable agencies, through which the industry, trade, and commerce of all civilized countries and communities are now carried on. ...banking has ceased to be, if it ever was, a matter of private concern only, like the business of a merchant, and for all purposes of legislative regulation and control it may be said to be "affected with a public interest." ...If a merchant cannot meet his bills promptly, the general public is not disturbed. He is not ruined at once, and if he should fail the effects are limited to comparatively a few persons. If a bank is unable to meet a check drawn upon it, the refusal is an act of insolvency. Its doors are closed, its business is arrested, its affairs go into liquidation, and the mischief takes a wide range. Those who have

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> been accommodated with loans must pay, whatever their readiness or ability to do so. Further advances cannot be obtained. Other banks must call in their loans and refuse to extend credit in order to fortify themselves against the uneasiness and even terror of their own depositors. Enterprises are stopped. Business is brought to a standstill. Securities are enforced. Property is sacrificed, and disaster spreads from locality to locality. All these incidents of the banking business are matters of common knowledge and experience. They clearly distinguish banking from the ordinary private business, illustrate its public nature, and show that it is properly subject to the police power of the state, vested in its Legislature. 1/

A general revision of the State banking code, separate from the deposit guaranty law, was also made in 1909. This code remained essentially the same, with relatively few modifications of the statutory restrictions on the operations of banks until the guaranty fund had become relatively unimportant through the withdrawal of most of the participating banks.

In 1925 a state banking board was established to act in an advisory capacity with the Bank Commissioner concerning all matters pertaining to the conduct of the banking department and the administration of the State banking laws. The board was composed of the Commissioner as ex officio a member and chairman, and four other members appointed by the Governor for the same term of office, all to be bankers of at least five years actual banking experience in Kansas. The members of the board were paid expenses and per diem for time actually engaged in performing their duties, with no salary.

Participation in the deposit guaranty system. Except for the special examination required for admission to the guaranty fund, and the power to terminate membership in the guaranty fund for violation of the guaranty law, the guaranteed banks were subject to the same supervision as other State banks. The absence of information regarding the results of examinations of banks for admission to the guaranty system has been mentioned above. However, the Bank Commissioner, in his Biennial Report,

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1/ Schaake, et al. v. Dolley, et al. (Supreme Court of Kansas, October 7, 1911), 118 Pac. 80, 85 Kans. 598).

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September 1, 1920, indicated that high standards were adhered to in examining banks for admission to the guaranty system.

> "We now have 676 State banks whose deposits are guaranteed by the Bank Depositors' Guaranty Fund of Kansas, and there are continual requests from the State banks to come under the law. The department has made the requirements for operation under its protection very stringent. The qualifications of the management and the condition of the bank's books, notes and records must be of the highest standard. It is our opinion, that as long as the law is optional, that these requirements should be rigid." 1/

Information with respect to terminations of membership in the fund for violation of law is also inadequate. In one case, which eventually came before the State Supreme Court, the Bank Commissioner wrote a bank that had been violating for many years the law regarding loan limitations: ~~for many years:~~ "...your bank is no longer under the depositors' guaranty law and your depositors are no longer protected thereby. Kindly remove the guaranty sign and erase any reference to guaranteed deposits from your windows, stationery or other places." The bank paid no attention to the letter. About six weeks later the bank was closed for insolvency, and the Commissioner's failure to issue guaranty fund certificates led to litigation. The Court found that the bank had complied with all provisions of the deposit guaranty law, though violating other laws, and the Commissioner's power to terminate participation was limited to cases of violation of the deposit guaranty law. In addition, the depositors had not been notified, and their right to protection was not cut off by the Commissioner's letter to the bank, even though it were assumed that the letter had the effect of cancelling the bank's participation in the system. 2/ So far as is known, this is the only action initiated by the Bank Commissioner during the entire period of the fund to terminate the participation of any bank. 3/

1/ Fifteenth Biennial Report of the Bank Commissioner of the State of Kansas, 1920, p. 5.

2/ Board of Commissioners of Labette County v. Bone, State Bank Commissioner, (Supreme Court of Kansas, April 10, 1926), 245 Pac. 123, 120 Kans. 673.

3/ In another case there is uncertainty whether the bank withdrew, or was excluded from further participation because of failure to pay the assessments levied. Reference to Wichita State Bank in State v. Bone, 244 Pac. 852, 120 Kans. 620.

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Supervisory powers of the Bank Commissioner. The powers of the Bank Commissioner over all State banks related chiefly to examinations, bank personnel, maintenance of capital and reserves, and the closing of banks. The powers of the Commissioner are summarized in Table 1.

Supervisory experience. The Bank Commissioner during the first four years of the period of operation of the deposit guaranty system, J. N. Dolley, endeavored to improve the quality of supervision by appointing examiners on a basis of qualifications as indicated by examinations and by eliminating those who had been appointed for political reasons. In 1915 the staff of the department was placed under the State civil service, with competitive examinations for examiners. Nevertheless, bank supervision was handicapped, as in other States, by frequent changes in the Commissionership and by a salary scale for examiners insufficient to retain the most competent men. During the twenty years that the system operated, eight persons held the office of Commissioner. Of these, three served the statutory four-year term, the others for shorter periods, and none was reappointed to a second term. The high turnover of examiners is indicated by the fact that the lists of examiners in the Biennial Reports of the Bank Commissioner from 1908 to 1928 show the names of 95 persons, of which 68 appear only once, 24 appear in two reports, and 3 in three reports.

Commissioner Dolley also attempted to improve the quality of bank management by raising the caliber of cashiers and managing officials. In his report to the Governor in 1910 he stated that several cashiers and managing officials of State banks had been removed from their positions for

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Table 1. SUPERVISORY POWERS OF BANK COMMISSIONER IN KANSAS

Item	Powers 1/
Opening of new banks	Commissioner to issue certificate of authorization to transact banking business if examination reveals compliance with banking laws. In 1911, as member of State Charter Board to participate in decisions regarding chartering of new banks.
Examinations and reports of condition	
Frequency of examinations	At least twice a year, by Commissioner or deputy, and whenever deemed necessary.
Scope of examinations	Full, true and careful examination.
Reports of condition	Four each year on form prescribed and when called for by Commissioner, and any additional statements when deemed necessary to obtain a full and complete knowledge of condition of bank; to be verified by oath of president or cashier and attested by signature of at least three of Directors.
Bank management	
Removal of undesirable assets or discontinuance of undesirable practices	Authorized to order any loan in excess of legal limit to be reduced to the limit within sixty days.
Impairment or deficiency of capital	Commissioner to require impairment of capital to be made good within ninety days.
Impairment and use of reserves	Commissioner to require impairment of reserves to be made good within thirty days. In 1915 empowered to regulate conditions under which checks could be drawn on portion of reserves held in other banks, and to suspend reserve requirements for specified periods of time.
Removal of bank officers, directors, or employees	Upon written order of Bank Commissioner, Board of Directors to remove any officer found to be dishonest, reckless or incompetent; failure to do so cause for cancellation of certificate of authorization to transact business.

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Table 1. SUPERVISORY POWERS OF BANK COMMISSIONER IN KANSAS (continued)

Item	Powers
Taking possession or closing a bank	Required to close and take possession of a bank: If insolvent, with following conditions determining insolvency: when cash market value of assets insufficient to pay liabilities; when unable to meet demands of creditors in usual and customary manner; when legal reserve not made good as required by law. If officers refuse to submit bank to examination or be examined under oath as to bank's condition. If examination shows bank has willfully violated any requirement of the banking law. If bank refuses or neglects to comply within ninety days with any requirements lawfully made by Commissioner in writing. If capital impaired for period exceeding 90 days. If affairs placed by bank under control of Commissioner.
Handling of closed banks	
Return to owners	Commissioner, by thorough examination, to ascertain whether bank can resume business or liquidate indebtedness to satisfaction of all creditors.
Liquidation	Unless able to resume business or self-liquidate, closed bank to be liquidated under direction of Commissioner by receiver appointed by him. In 1925, authorized to investigate and audit all receiverships of failed State banks liquidated or in process of liquidation since 1919.
Sale of assets or capital stock	On court order, and at request of Commissioner, assets may be sold by receiver.

1/ As at beginning of deposit guaranty system (i.e., as in 1909 revision of banking laws) with amendments to 1927, when most of the participants in the deposit guaranty system had withdrawn.

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various causes of inefficiency, dishonesty and questionable banking.[1] In his report in 1912, he stated that numerous incompetent and dishonest officers had been summarily removed from office and their places filled with practical and experienced bank managers.[2] In the same report he stated:

> "This department has just recently issued an order providing that any person desiring to become a cashier or managing officer of a Kansas state bank must have had at least two years' actual, continuous experience in banking, and the record of this two years' experience must show that they were persistently faithful to their work; and further than this, unless they have had at least five years' actual experience and their record first-class for that period, they must report to the banking department and take a written examination on the Kansas banking laws in general, the corporation law as it applies to banks, the negotiable instruments law, and the practical and technical points of everyday business and banking. If they pass this examination with a grade of at least seventy per cent they are issued a certificate entitling them to become the cashier or managing officer of a Kansas state bank." [3]

These efforts to improve the caliber of bank managing officers appear to have been relaxed under succeeding Bank Commissioners. About three years later the examinations for bank cashier were discontinued, and no mention is made in later reports of the Commissioners, until 1928, of use of the Commissioner's power to obtain the removal of bank officials found to be incompetent or guilty of illegal or questionable practices. The quality of supervision appears to have deteriorated in other respects also. Banks found to be insolvent or in financial difficulties were nursed along by the department instead of being closed, and Kansas bankers later reported that during this period supervision was the poorest in the history of the banking department.[4]

1/ Tenth Biennial Report of the Bank Commissioner, Sept. 1, 1910, p. xiv.
2/ Eleventh Biennial Report of the Bank Commissioner, Sept. 1, 1912, p. 3.
3/ Ibid., p. 5.
4/ Interviews in 1934 with Kansas bankers familiar with the situation during the period of deposit guaranty.

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Throughout the period when the deposit guaranty system was in full operation, supervision was handicapped by insufficient funds and operating staff. The annual cost of the banking department, from 1910 to 1926, was approximately $40,000 to $85,000, or about $45 to $85 per bank.[1/] The Bank Commissioner's salary was $2,500 up to 1915, and $4,000 from that year to 1925. Salaries of the deputies, who were the bank examiners, were $1,800 until 1919 and $2,500 from that year to 1925. The number of bank examiners ranged from 8 to 12. The number of operating banks ranged from about 800 to about 1,100. With two examinations a year, each examiner was apparently required to make nearly two hundred examinations a year.[2/]

The effectiveness of bank supervision appears also to have been handicapped by deficiencies in the statutory requirements for bank operations. The most serious defect was the absence, up to 1927, of any special limitations on loans by a bank to its own officials or directors. This omission was recognized by the Bank Commissioner, and restrictive legislation was recommended in his biennial reports in 1920 and in 1922.[3/] Another serious omission was the lack of any penalty for violation of the section of the law

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1/ Expenditures of the building and loan bureau and of the blue-sky department, which were also under the supervision of the Bank Commissioner, are not included in these figures. A special appropriation in 1925 for examination and audit of receiverships is also excluded. Appropriations for the banking department were substantially increased in 1926, with an increase in the number of examiners.

2/ The Federal Deposit Insurance Corporation in 1942 had 4 examiners and 4 assistant examiners in Kansas to make one examination per year of approximately 245 banks, or an average of about 30 examinations per year per member of the examining force. In comparing the size of the examining force with the examining task allowance should also be made for the fact that the banks examined by the Corporation are of larger size, on the average, than those examined by the State examiners in the 1920's. About one-fifth of the banks examined by the Corporation in 1940 held deposits of $500,000 or more, while only one-tenth of the banks examined by the banking department of the State in the 1920's held deposits of $500,000 or more.

3/ Fifteenth Biennial Report of the Bank Commissioner, p. 5, and Sixteenth Biennial Report of the Bank Commissioner, p. 7.

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limiting loans to a single borrower. However, it is doubtful that the powers possessed by the Bank Commissioner were used to the utmost extent. Even though no penalty was prescribed for loans in excess of the legal limit to a single borrower, the Commissioner had power to require the reduction of such loans to the legal limit, and to close a bank if it was found to have wilfully violated any requirement of the law; and any bank which failed within ninety days to comply with any lawful requirement of the Commissioner in writing, according to the law, forfeited its charter.

There was also a provision of the law in force at the time deposit guaranty was inaugurated, but which was repealed in 1917, that held great potentialities for minimizing the risks of failure. This was the requirement that a bank should not receive deposits in excess of ten times its unimpaired capital and surplus. Retention and enforcement of this provision, accompanied by thorough bank examinations and careful appraisals of each bank's net worth, could have been used as a powerful weapon in the prevention of unwise expansion and in forcing banks to correct improper financial policies long before the stockholders' cushion had been wiped out by losses.

Statutory limitations on bank operations. The principal statutory limitations on banking operations, under the banking law in force at the time of enactment of the guaranty law and amendments adopted while the guaranty law was in operation, are summarized in Table 2.

The major defect in the statutory requirements for bank operations in Kansas as indicated by comparison with provisions in other States, and by the comments and recommendations of the Bank Commissioners in their biennial reports to the Governor, was the absence of limitations on loans to officers, employees, directors and stockholders, and the absence of penalties for violation of the maximum size of loans to a single borrower.

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Table 2. STATUTORY REQUIREMENTS FOR BANK OPERATIONS IN KANSAS

Item	Provisions of law[1/]
Responsibility of officers, directors, and stockholders	
Examination of bank	Directors to make quarterly a thorough examination of the books, records, funds and securities to be recorded in detail and copy forwarded to bank commissioner.
Losses resulting from violations of law	Officers and directors personally liable for all deposits received and debts contracted knowing bank to be insolvent or in failing condition. Officers also personally liable for overdrafts.
Liability of stockholders	Par value of shares (i.e., usual double liability).
Bonding of active officers and employees	Good and sufficient bond, approved by Board of Directors and held by custodian appointed by them, required for cashier and any other officers handling funds, amended in 1919 to include employees.
Limitations on loans and investments	
Loans to bank examiners	No specific provisions; however, Bank Commissioner or deputies not to examine bank in which a stockholder in any way financially interested.
Loans to officers and employees	No provision.
Loans to directors	No specific provision.
Loans to stockholders	No provision.
Maximum to single borrowers (not to apply to discounts on bills of exchange, warehouse receipts, or commercial or business paper actually owned by the person negotiating the same)	15 percent of capital and surplus with loans in excess of this amount to be reduced within sixty days on written order of Commissioner.
Maximum secured by real estate	No provision.
Secured by own capital stock (applicable also to purchase of own stock)	Forbidden unless necessary to prevent loss on debt previously contracted; and if acquired to be disposed of within six months.

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Table 2. STATUTORY REQUIREMENTS FOR BANK OPERATIONS IN KANSAS (continued)

Item	Provisions of law
Limitations on ownership of real estate and stocks	
Maximum in banking house and equipment	33 1/3 percent of capital. In 1921, amended to 50 percent of capital and surplus.
Time limit on real estate acquired by collection of debt	Five years and to be disposed of within thirty days thereafter.
Other real estate	Forbidden, except that acquired by collection of debt, or held at time of passage of Act with latter limited after one year to 50 percent of capital (amended in 1917 to 33 1/3 percent of capital and surplus and in 1921 to 50 percent of capital and surplus).
Bank stocks	Prohibited, except Federal Reserve bank stock after 1915. 2/
Other corporate stocks	Prohibited, except when acquired through collection of debt and to be disposed of within six months.
Limitations relating to deposits	
Maximum aggregate deposits	Ten times capital and surplus continuously for six months. Repealed in 1917. 3/
Maximum rate of interest payable on deposits	3 percent on deposits eligible for guaranty. In 1911, amended to rate approved from time to time by Commissioner, to be uniform for all banks in each county.
Receipt of deposit when insolvent or in failing circumstances	Forbidden.
Required reserves	
Total required 4/	Until 1915, 20 percent of total deposits in cities and towns with population under 5,000, and 25 percent of total deposits in cities with population over 5,000, or if bank a reserve depository. In 1915, for banks in cities under 50,000 population with credits due other banks less than 20 percent of deposits - 12 percent of demand deposits and 5 percent of time deposits (amended in 1919 to 7 percent and 3 percent, respectively); for banks in cities over 50,000 population, and in smaller cities if credits due other banks are more than 20 percent of deposits - 15 percent of demand deposits and 5 percent of time deposits (amended in 1919 to 10 percent and 3 percent, respectively).

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Table 2. STATUTORY REQUIREMENTS FOR BANK OPERATIONS IN KANSAS (continued)

Item	Provisions of law
Required reserves (continued)	
In actual cash in bank	One-fourth; amended in 1915 to one-third, reducible to one-fourth upon approval of Bank Commissioner for a bank in a city with less than 1,000 population.
Character of balance	In cash or in reserve depositories located in commercial centers or other points approved by Bank Commissioner, but not in banks in which depositing bank stockholders have stock, unless such bank is approved by the Commissioner.
Limitations on borrowing	
Maximum amount	50 percent of paid-up capital, for temporary purposes; Commissioner to require cessation of borrowing for reloaning.
Maximum value of assets pledgeable as security	120 percent of amount borrowed.
Limitations on payment of dividends	
Earnings to be carried to surplus prior to dividends	10 percent until surplus equal to 50 percent of capital.
When losses equal or exceed undivided profits	Not in excess of 50 percent of net earnings until surplus restored to former amount.
When reserve impaired	Forbidden.
When insolvent or capital impaired	Forbidden.
Maximum	Not in excess of net profits on hand after deducting losses and bad debts.
Minimum capital stock	
New banks	Graduated by population of city or town: Over 15,000 population — $50,000 2,000 to 15,000 population — 25,000 under 2,000 population (after 1925) — 15,000 1,000 to 2,000 population (to 1925) — 20,000 500 to 1,000 population (to 1925) — 15,000 Under 500 population (to 1925) — 10,000
Other banks	May not reduce capital below above amounts and subject to limitations on deposits (above).

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Table 2. STATUTORY REQUIREMENTS FOR BANK OPERATIONS IN KANSAS (continued)

Footnotes

1/ As at beginning of the deposit guaranty system (i.e., as in the 1909 revision of the banking laws) with amendments to 1927, when most of the participants in the deposit guaranty system had withdrawn. Except as noted, provisions related to all incorporated State banks, whether or not participating in the guaranty system, and so far as applicable, also to private banks.

2/ In 1921 banks with minimum capital and surplus of $50,000 permitted to invest not over 5 percent of paid-in capital and surplus in one or more Edge Act corporations.

3/ Any bank accepting deposits in excess of this amount for a continuous six-month period and for 30 days thereafter subject to cancellation of charter and of participation in guaranty system.

4/ In 1915 Bank Commissioner authorized to suspend requirements for 30 day periods and to renew suspension for 15 day periods.

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INSUFFICIENCY AND CLOSING OF THE GUARANTY FUND

Inadequacy of the guaranty fund. The first failure of a participant bank occurred after the Kansas guaranty fund had been in operation a little over a year. The liquidation of this bank was completed, and the balance due depositors paid by the guaranty fund, three years later. No other failure occurred until the fund had been in operation nearly a decade, and it was, of course, still later before any obligations of the fund arising from that or subsequent failures became due, since payments from the fund were not made until completion of liquidation of a failed bank.

The system was fully operative in all respects, with the fund meeting its obligations as they became due, for nearly fourteen years. However, a large future liability was accumulated as a result of the numerous failures accompanying and following the depression of 1921. By June 1923 a total of 37 participant banks, with deposits of nearly ten million dollars, had closed because of financial difficulties. Of these, four had been reopened with no obligation falling on the guaranty fund, and three had been completely liquidated and the depositors paid in full at a cost to the guaranty fund of about $90,000. The future obligations of the fund in the other 30 banks, consisting of deposits unrecoverable from the proceeds of liquidation, together with interest to completion of the liquidation process and payment by the fund, amounted to upwards of $4 million. With so small an amount of obligations having fallen due, the income of the fund had been restricted to the regular assessments of 1/20 of 1 percent per year and one special assessment at this rate levied in 1922. By June 1923 the accumulated balance of the guaranty fund was about $835,000.

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About the middle of June 1923 the American State Bank, Wichita, was closed. This had been the largest bank operating under the State law, though it had dropped to second place at the time of failure, when it had deposits of nearly $5 million. It was apparent that liquidation of this bank by the usual process might wreck the guaranty system, in view of the fund's liability in banks still in process of liquidation. A year after its failure, the American State Bank was reorganized under the name, State Reserve Bank, with the banks participating in the deposit insurance system assuming about $1,400,000 of the loss.

Withdrawals from the system. For another two years the guaranty fund continued to pay depositors in the failed banks as liquidation was completed, using the proceeds of special assessments, which began to be levied at the maximum number per year in 1924, and depleting the previously accumulated balance. By March 1925, a total of 18 banks had been paid off by the fund. Then the Bank Commissioner ceased making payments from the guaranty fund because of difficulties encountered in determining the precise date on which the liquidation of each bank was completed and hence the order of priority of the obligations falling upon the fund. At that time, about 40 banks, with deposits at time of failure of $9 million and in which the eventual losses amounted to about $4 million, were in process of liquidation, while the balance in the guaranty fund had been reduced to a small figure.

With a prospect of continued assessments for several years at the maximum rate of one-fourth of 1 percent per year, the participating banks began to withdraw from the system. However, withdrawal was deterred by the provision of the law that six months' notice of intention to withdraw was required and the provision that banks which withdrew remained liable for

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assessments to cover losses in any banks which failed prior to the expiration of the six months' period. The bonds which the banks had deposited as surety for the payment of assessments, amounting to one-half of 1 percent of the bank's guaranteed deposits, were much smaller than the prospective future assessments to meet losses in the banks which had already failed.[1/] A test case was therefore brought to the State Supreme Court to determine whether a bank might withdraw and be released from the liability of future assessments by forfeiting the bonds deposited with the State Treasurer. The Court decided on April 10, 1926, that this could be done and most of the participating banks withdrew during the next few months.[2/]

Insolvency and disposition of the fund. With the withdrawal of most of the banks from participation in the guaranty system, the insolvency of the fund was obvious, since the liabilities in closed banks were much greater than the proceeds from the sale of the forfeited bonds. Under these circumstances depositors in some of the closed banks contended that the amount realized from the bonds should be distributed pro rata among holders of all of the unpaid certificates instead of being paid to the holders of certificates in banks the liquidation of which was completed at the earliest dates. This view was not accepted by the State Supreme Court, and the validity of the law as stated was affirmed by the Court, namely, that payments should be made to depositors in failed banks in the order of priority of completion of liquidation, and a special Commissioner was appointed as a fact-finding agent of the court to determine the priority of completion of liquidation

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1/ The losses actually sustained in the banks in process of liquidation in early 1925 were more than 2 percent of the aggregate deposits of the operating guaranteed banks at that time.

2/ State of Kansas v. Roy L. Bone, Bank Commissioner (1926), 244 Pac. 852, 120 Kans. 620, and 246 Pac. 180, 121 Kans. 151.

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of the various banks. The report of this Commissioner, which was made after holding hearings open to all interested parties, was accepted by the Court in a decision on April 7, 1928;[1/] and the proceeds from the sale of the bonds were distributed on August 1 of that year. Full payments were made on the deposits of nine banks, which, with two others that had been paid by the Commissioner subsequent to March 1925, brought to 27 the number of failed banks in which all guaranteed deposits were paid. The depositors of two other banks, which were found to have been fully liquidated on the same day, received enough, from the distribution of the proceeds of the forfeited bonds, together with a final dividend after the law was repealed, to give them a recovery of 93 percent and 95 percent, respectively, of their deposits. Except for the depositors of these two banks, all of the depositors paid by the fund received interest to the date of payment on the balances due them. Under the court decision, the cost of litigation regarding the disposition of the assets of the guaranty fund was borne by the holders of the certificates that were finally paid, and this was prorated and deducted from the total principal and interest due each depositor.

Because of variation in the length of time required to complete liquidation of the various banks, the order in which the banks were completely liquidated differed considerably from the order in which they failed. Consequently, the guaranty fund paid off the remaining claims of depositors of some of the banks which failed in each of the years 1921, 1922, 1923, and 1924, and did not pay off the depositors in other banks which failed in each of those years. No banks which failed in 1925 or in later years received anything from the guaranty fund. All of the guaranteed banks which failed prior to 1921 were paid off in full by the guaranty fund.

1/ State of Kansas v. Roy L. Bone, Bank Commissioner (1928), 128 Kans. 818, 266 Pac. 85.

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Under the decision of the State Supreme Court in 1926, banks withdrawing from the fund, and those ceasing operations through liquidation or conversion to a national bank were entitled to have returned to them the bonds or cash deposited as surety for future assessments, provided that these bonds or cash were not needed to pay claims against the guaranty fund arising from banks which had closed prior to the date of withdrawal or cessation of operations. In view of the large claims upon the fund in connection with banks which failed prior to 1926, no such refunds were made.

Repeal of the law. On March 14, 1929, the deposit guaranty law was repealed. The act of repeal authorized the return of the surety bonds or cash to banks which had paid all assessments to the date of repeal. However, the State Supreme Court held that the authorization of the return of the bonds was invalid since the certificate holders of failed banks which had been members of the fund had a vested right in the proceeds of the bonds.[1/]

NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number of participating banks. The number of banks operating in Kansas which participated in the guaranty system, the number eligible for participation which did not do so, and the number ineligible for participation, are given in Table 3. The ineligible institutions include national banks, trust companies, and private banks. The great majority of the ineligible institutions were national banks. The maximum numbers of trust companies and of private banks during this period were, respectively, 18 and 6. These institutions were authorized, under the guaranty law, to become eligible by taking out charters as State banks.

By the end of 1911, after two and one-half years of operation, about one-half of the banks which were eligible for admission to the guaranty system had become members of the system. This constituted two-fifths of all of the

1/ William A. Smith, Attorney General v. H.W. Koeneke, Bank Commissioner (1929) 128 Kans. 805, 280 Pac. 767.

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Table 3. NUMBER OF OPERATING BANKS IN KANSAS PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1909-1928, BY YEARS

Year end 1/	Total number of operating banks	Eligible to participate			Not eligible to participate 5/	Participating banks per 100 --	
		Total 2/	Participating 3/	Not participating 4/		Operating banks	Eligible banks
1909	1,038	825	404	421	213	38.9	49.0
1910	1,077	860	401	459	217	37.2	46.6
1911	1,107	888	442	446	219	39.9	49.8
1912	1,113	894	462	432	219	41.5	51.7
1913	1,141	920	481	439	221	42.2	52.3
1914	1,153	928	508	420	225	44.1	54.7
1915	1,196	953	526	427	243	44.0	55.2
1916	1,220	983	546	437	237	44.8	55.5
1917	1,250	1,007	577	430	243	46.2	57.3
1918	1,291	1,039	613	426	252	47.5	59.0
1919	1,338	1,076	649	427	262	48.5	60.3
1920	1,374	1,092	683	409	282	49.7	62.5
1921	1,375	1,091	714	377	284	51.9	65.4
1922	1,349	1,067	698	369	282	51.7	65.4
1923	1,323	1,038	681	357	285	51.5	65.6
1924	1,297	1,022	651	371	275	50.2	63.7
1925	1,269	992	611	381	277	48.1	61.6
1926	1,223	946	399	547	277	32.6	42.2
1927	1,153	872	78	794	281	6.8	8.9
1928	1,102	833	39	794	269	3.5	4.7

1/ December 31, or nearest available date.

2/ For 1911-1928, number of State banks (excluding trust companies and private banks) as given in Biennial Reports of the Bank Commissioner, or tabulated from information therein.

3/ From Bank Commissioner of Kansas, or records in the Commissioner's office.

4/ From number eligible and number participating.

5/ Number of national banks, from annual reports of the Comptroller of the Currency, plus number of trust companies and private banks, tabulated from data in biennial reports of the Bank Commissioner of Kansas. Most of these institutions were national banks, since the number of trust companies and private banks did not exceed 24 in any year.

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banks, including trust companies, operating in the State. During the next ten years the number of participating banks, and the proportions of eligible and of all operating banks, steadily increased. By the end of 1921, nearly two-thirds of the eligible banks, and more than one-half of all banks operating in the State, had become members of the guaranty system.

Early in 1922 the number of participating banks, and also the number of banks operating in the State, began to decline. During the next four years the decline in the number of participating banks was slightly more, relatively, than in the total number of banks, so that by the end of 1925 about two-fifths of the eligible banks, and somewhat less than one-half of all operating banks, were members of the system. During 1926 and 1927 the great majority of the members of the guaranty system withdrew, leaving only 9 percent of those eligible, and 7 percent of all operating banks, in the system at the end of 1927. Only 31 banks continued their participation until the law was repealed in March 1929.

Deposits of participating and nonparticipating banks. Estimates of the deposits of participating and nonparticipating banks are given in Table 4. In 1912, three years after the guaranty system was inaugurated, more than three-fifths of the deposits eligible for participation in the system, and about one-third of the deposits in all banks in the State, were in guaranteed banks. By 1921 three-fourths of the deposits of all banks eligible for participation in deposit guaranty, and over two-fifths of the deposits in all banks in the State, were in guaranteed banks. These proportions were, respectively, larger and smaller than the corresponding proportions for the number of banks, indicating that the guaranteed banks were larger banks, on the average, than the nonguaranteed State banks, but smaller, on the average, than national banks operating in the State. In 1928, when only

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TABLE 4. DEPOSITS OF OPERATING BANKS IN KANSAS PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1909-1928, BY YEARS

(amounts in thousands)

Year end 1/	Total deposits of operating banks	State banks: eligible to participate			Banks ineligible to participate		Deposits of participating banks per $100 of deposits--	
		Total 2/	Participating 3/	Not participating 4/	Private banks and trust companies 5/	National banks 6/	In operating banks	In eligible banks
1909	$189,360	$97,891	$45,523	$52,368	$1,614	$89,855	24.0%	46.5%
1910	171,039	90,061	46,827	43,234	1,700	79,278	27.4	52.0
1911	182,694	98,583	54,712	43,871	1,791	82,320	29.9	55.5
1912	194,176	103,476	63,118	40,358	2,094	88,606	32.5	61.0
1913	190,739	105,090	66,119	38,971	2,144	83,505	34.7	62.9
1914	210,952	116,693	74,530	42,163	1,999	92,260	35.3	63.9
1915	232,978	132,106	86,055	46,051	2,568	98,304	36.9	65.1
1916	330,129	180,125	118,042	62,083	3,344	146,660	35.8	65.5
1917	399,976	220,985	152,479	68,506	4,336	174,655	38.1	69.0
1918	427,824	245,419	169,559	75,860	4,369	178,036	39.6	69.1
1919	486,973	286,225	204,669	81,556	6,496	194,252	42.0	71.5
1920	446,622	264,276	190,966	73,310	7,242	175,104	42.8	72.3
1921	410,932	239,149	180,003	59,146	6,855	164,928	43.8	75.3
1922	426,727	233,991	179,721	54,270	7,520	185,216	42.1	76.8
1923	410,617	223,990	167,563	56,427	7,676	178,951	40.8	74.8
1924	484,437	261,807	195,424	66,383	8,792	213,838	40.3	74.6
1925	456,972	241,215	168,082	73,133	6,694	209,063	36.8	69.7
1926	450,608	224,874	79,192	145,682	8,623	217,111	17.6	35.2
1927	442,600	207,794	7,052	200,742	9,333	225,473	1.6	3.4
1928	457,251	211,618	3,340	208,278	11,185	234,448	.7	1.6

1/ December 31, or nearest available date.

2/ Deposits of all banks and trust companies operating under State law, from annual report for 1930 of the Bank Commissioner, adjusted to exclude private banks and trust companies (see note 5).

3/ Estimated from deposits reported for assessment from individual bank records in Bank Commissioner's office.

4/ Estimated by deducting deposits of participating banks from deposits of banks eligible to participate.

5/ Tabulated from deposits of the individual banks and trust companies as given in bankers' directories.

6/ From annual report of Controller of the Currency, 1910-1929.

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one bank in twenty of those eligible remained in the guaranty system, the deposits of the guaranteed banks were only 2 percent of the deposits in all guaranteed banks, indicating that the banks remaining in the system were comparatively small banks.

The deposits of participating banks given in Table 4 should not be considered identical with the deposits specifically covered by guaranty, since public funds otherwise secured are included in the table.

Concentration of bank deposits. Table 5 shows the amounts of deposits held on September 12, 1914, and September 15, 1922, by the banks participating in the guaranty system grouped according to their deposits. These years are chosen because they are representative, respectively, of the pre-war and the post-war parts of the period during which deposit guaranty was in operation. In both years the largest bank held slightly over 3 percent of the deposits of all participating banks, and over 14 percent of the deposits of all the participating banks were concentrated in the largest 10 banks.

Failures of participating and nonparticipating banks. During the twenty years of operation of the Kansas deposit guaranty system, 141 participating banks closed because of financial difficulties. The aggregate deposits of these banks at time of closing amounted to approximately $30 million. Twenty-two of the closed banks reopened or were taken over by other banks without a payment, or obligation due, from the guaranty fund. Of the 119 which entailed obligations on the fund, three had previously suspended and reopened.

During the entire period of operation of the guaranty fund, 79 failures occurred among banks that were not participating in the deposit guaranty system. The deposits of these failed banks amounted to about $10 million. Several of the banks had previously been participants in the guaranty system, but had withdrawn from the system more than six months prior to failure.

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Table 5. NUMBER AND DEPOSITS OF BANKS PARTICIPATING IN THE KANSAS GUARANTY SYSTEM, SEPTEMBER 12, 1914, AND SEPTEMBER 15, 1922 1/

Banks grouped by amount of deposits

	Number of banks	Amount of deposits (thousands of dollars)	Percentage of number of banks	Percentage of aggregate deposits
All guaranteed banks, September 12, 1914	491	70,329	100.0	100.0
Banks with deposits of --				
$100,000 or less	251	16,148	51.1	23.0
$100,000 to $250,000	187	28,184	38.1	40.1
$250,000 to $500,000	40	14,107	8.2	20.0
$500,000 to $1,000,000	9	5,771	1.8	8.2
$1,000,000 to $2,000,000	3	3,913	.6	5.6
More than $2,000,000	1	2,206	.2	3.1
Largest bank	--	2,206	.2	3.1
Largest 5 banks	--	6,960	1.0	9.9
Largest 10 banks	--	10,217	2.0	14.5
All guaranteed banks, September 15, 1922	703	185,915	100.0	100.0
Banks with deposits of --				
$100,000 or less	160	11,074	22.8	6.0
$100,000 to $250,000	348	57,947	49.5	31.2
$250,000 to $500,000	126	42,955	17.9	23.1
$500,000 to $1,000,000	47	32,269	6.7	17.3
$1,000,000 to $2,000,000	17	23,296	2.4	12.5
More than $2,000,000	5	18,374	.7	9.9
Largest bank	--	5,856	.1	3.2
Largest 5 banks	--	18,374	.7	9.9
Largest 10 banks	--	26,752	1.4	14.4

1/ Tabulated from statements for individual banks as given in the reports of the Bank Commissioner.

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The number and deposits of the banks closed each year are given in Table 6. Only two of the failures among the participating banks occurred during the first ten years. During this period failures among the nonparticipating banks were more frequent. However, during the latter ten years of operation of the system, failures were more frequent among the participating than among the nonparticipating banks.

A more detailed tabulation by years of the failures which entailed obligations on the deposit guaranty fund is given in Table 7. The average annual rate of failures entailing obligations on the fund was 1.2 for each 100 members of the system; and the deposits of those failures averaged $1.12 per year for each $100 of deposits in participating banks. However, as previously noted, nearly all the failures occurred during the latter half of the period of operation of the guaranty system, and for that 10-year period the failure rate was about twice as high as the average for the entire lifetime of the system.

Failures by size of bank. In Table 8 the size distribution of banks which failed during the period of operation of the fund is compared, for guaranteed banks and for nonguaranteed State banks, with the average size distribution of operating banks. The largest bank among the failures was the American State Bank, Wichita, which closed June 18, 1923, and a few months before its failure had deposits of nearly $6,000,000. At that time it was the largest bank in the guaranty system, and also the largest bank operating under State law. One other bank with deposits of more than $1,000,000 was among the failures. The deposits of these two banks accounted for over one-sixth of the deposits of all of the closed participating banks.

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Table 6. NUMBER AND DEPOSITS OF STATE BANKS IN KANSAS CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, JUNE 30, 1909, TO MARCH 14, 1929, BY YEARS

Year or period	Number of banks				Deposits (in thousands of dollars)			
	Total	Participating in deposit guaranty		Not participating	Total	Participating in deposit guaranty		Not participating
		Reopened with no obligations on the guaranty fund	Entailing obligations on the fund			Reopened with no obligations on the guaranty fund	Entailing obligations on the fund	
Total	220	22	119	79	$39,948	$4,295	$25,265	$10,388
Subtotals								
1909-1919 1/	13	--	2	11	1,554	--	803	751
1919-1929 2/	207	22	117	68	38,394	4,295	24,462	9,637
Year 3/								
1910	1	--	1	--	155	--	155	--
1913	5	--	--	5	349	--	--	349
1914	2	--	--	2	186	--	--	186
1915	2	--	--	2	94	--	--	94
1918	2	--	--	2	122	--	--	122
1919	2	--	1	1	648	--	648	4/
1920	5	--	2	3	1,305	--	219	1,086
1921	11	--	8	3	2,821	--	2,110	711
1922	20	2	15	3	4,518	879	3,357	282
1923	33	6	19	8	8,984	662	7,235	1,087
1924	13	2	10	1	3,213	605	2,593	15
1925	19	--	15	4	2,807	--	2,237	570
1926	45	8	27	10	5,820	1,431	3,600	789
1927	35	4	17	14	5,124	718	2,806	1,600
1928	22	--	3	19	3,572	--	223	3,349
1929 5/	3	--	1	2	230	--	82	148
Annual rate per 100 operating banks or per $100 deposits in operating banks								
1909-1929	1.14	1.39		.86	$1.04	$1.31		$.66
1909-1919 1/	.14	.04		.25	.11	.09		.14
1919-1929 2/	2.08	2.68		1.43	1.59	2.09		.93

1/ Midyear 1909 to midyear 1919.
2/ Midyear 1919 to March 14, 1929.
3/ No failures occurred in 1909, 1911, 1912, 1916, or 1917.
4/ Not available.
5/ To date of repeal of the deposit guaranty law, March 14.

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Table 7. NUMBER AND DEPOSITS OF FAILED BANKS ENTAILING OBLIGATIONS ON THE DEPOSIT GUARANTY FUND IN KANSAS, JUNE 30, 1909, TO MARCH 14, 1929, BY YEARS

Year or period	Number	Deposits (in dollars)	Number suspended per 100 active banks	Deposits in closed banks per $100 of deposits in active banks
Total	119	$25,265,351	1.2 1/	$1.12 1/
Subtotals				
1909-1919 2/	2	802,909	.04 1/	.09 1/
1919-1929 3/	117	24,462,442	2.25 1/	1.78 1/
Year 4/				
1910	1	155,404	.5	.68
1919	1	647,505	.2	.38
1920	2	219,478	.3	.11
1921	8	2,109,525	1.2	1.10
1922	15	3,357,030	2.1	1.86
1923	19	7,235,319	2.7	4.03
1924	10	2,593,250	1.5	1.55
1925	15	2,237,286	2.3	1.14
1926	27	3,599,881	4.4	2.14
1927	17	2,805,638	4.3	3.54
1928	3	222,930	3.8	3.16
1929 5/	1	82,105	13.0 1/	12.48 1/

1/ Annual rates.
2/ Midyear 1909 to midyear 1919.
3/ Midyear 1919 to March 14, 1920.
4/ No failure occurred among participating banks in 1909 nor 1911-1918.
5/ To repeal of law on March 14.

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Table 8. SIZE DISTRIBUTION OF FAILED PARTICIPATING AND NONPARTICIPATING BANKS IN KANSAS COMPARED WITH AVERAGE SIZE DISTRIBUTION OF OPERATING STATE BANKS: PERIOD OF OPERATION OF DEPOSIT GUARANTY SYSTEM

	Number of banks			Deposits		
	Average number of operating banks	Failed banks	Average annual number of failed banks per 100 active banks	Average deposits of operating banks (in thousands)	Failed banks (in thousands)	Average annual amount of deposits in failed banks per $100 deposits in operating banks
Participating banks--total	463	141	1.5	$111,090	$29,560	$1.35
Banks with deposits of--						
$100,000 or less	133	55	2.1	8,949	3,387	1.92
$100,000 to $250,000	203	56	1.4	33,578	9,060	1.37
$250,000 to $500,000	89	20	1.1	30,127	6,585	1.11
$500,000 to $1,000,000	26	8	1.6	17,636	5,389	1.55
$1,000,000 to $2,000,000	9	1	.6	12,291	1,216	.50
$2,000,000 or more	3	1	1.8	8,509	3,927	2.34
Nonparticipating State banks--total	509	79	.8	87,832	10,382	.60
Banks with deposits of--						
$100,000 or less	235	47	1.0	13,324	2,613	1.00
$100,000 to $250,000	185	23	.6	29,101	3,582	.62
$250,000 to $500,000	64	6	.5	21,518	2,402	.57
$500,000 to $1,000,000	18	3	.9	11,934	1,785	.76
$1,000,000 to $2,000,000	6	--	--	8,730	--	--
$2,000,000 or more	1	--	--	3,215	--	--

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More than half of the failed participating banks had deposits of less than $100,000, but these banks held only 11 percent of the deposits of all the closed participating banks. No regular relationship between size of bank and frequency of failure is shown by the figures. Among the participating banks the highest frequency rates were in the smallest and in the largest size groups.

Failure frequency rates among the nonparticipating banks, taken as a whole, and for each size group, were much lower--in most cases about half as high--as among the participating banks. This might be taken as evidence in support of the view that participation in deposit insurance tended to make banks undertake riskier loans and relax their managerial diligence. This is not necessarily the case. The difference may have been due to a greater reluctance among the stronger banks than among weaker ones to participate in the system.

Comparison with failures in other States. In Table 9 failure rates for both number and deposits are shown for guaranteed and nonguaranteed banks in Kansas, and for banks in contiguous States and in the entire United States. The period covered is 1910-1928, which includes the entire period of operation of the bank depositors' guaranty fund in Kansas, except for the last six months of 1909 and the first two and one-half months of 1929.

The total number of bank failures in Kansas during 1910-1928, relative to the number of operating banks, was lower than in the United States as a whole, and also lower than in any of the four States contiguous to Kansas. If only State banks are considered, the failure rate in Kansas was also lower than in the entire United States, and lower than in the four

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Table 9. ANNUAL BANK FAILURE RATES IN KANSAS, 1910-1928, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES

	Failures per year per 100 operating banks			Deposits per year in failed banks per $100 in operating banks		
	State and national banks	State banks	National banks	State and national banks	State banks	National banks
Kansas - total	1.0	1.2	.3	$.67	$1.08	$.14
Guaranteed banks	1.4	1.4	--	1.31	1.31	--
Nonguaranteed banks	.7	.9	.3	.34	.73	.14
Four contiguous States 1/	1.3	1.4	.8	.56	.88	.27
Nebraska	1.1	1.2	.7	.80	1.16	.39
Missouri	1.0	1.1	.2	.30	.51	.02
Oklahoma	1.9	2.4	1.0	1.19	2.64	.61
Colorado	1.6	2.1	.8	.52	.89	.38
Entire United States 1/	1.1	1.4	.5	.28	.40	.14

1/ Tabulated from data from the following sources: reports of bank commissioners in the various States; Willis, Banking Inquiry of 1925; annual reports of the Comptroller of the Currency; Federal Reserve Committee on Branch, Group and Chain Banking, "Changes in the Number and Size of Banks in the United States, 1834-1931"; and Federal Reserve Bulletin, September 1937.

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contiguous States combined, but slightly higher than in one of the contiguous States. However, the failure rate of the guaranteed banks in Kansas was higher than the failure rate of all State banks in two of the contiguous States, Nebraska and Missouri, and lower than in the other two contiguous States, Oklahoma and Colorado.

The failure rates in terms of deposits are somewhat different than for number of banks. For deposits, the failure rate of all banks in Kansas was higher than for the four contiguous States combined, and more than twice as high as that for the entire United States. This rate for all State banks was higher in Kansas than in two of the contiguous States, Missouri and Colorado, and lower than in the other two contiguous States, Nebraska and Oklahoma. When only guaranteed banks in Kansas are considered, the failure rate, in terms of deposits, was higher than for State banks in any of the contiguous States, except Oklahoma, and nearly four times as high as the corresponding rate for all State banks in the entire country.

In one of the contiguous States, Nebraska, a deposit guaranty system was operative during most of the period embraced by these figures; and in one other State, Oklahoma, a deposit guaranty system was in existence for more than one-half of the period. The other two contiguous States had no deposit guaranty. The figures for number of bank failures in these States do not indicate that the existence of deposit guaranty was a significant causal factor in the frequency of such failures. However, in the case of deposits, the failure rates in the State banks in Nebraska, in Oklahoma, and in the guaranteed banks in Kansas, were all distinctly higher than the rates for State banks in Missouri, in Colorado, and in the nonguaranteed banks in Kansas.

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Causes of bank failures. The Biennial Reports of the Bank Commissioner provide considerable information regarding the causes of bank failures during the period of operation of the bank depositors' guaranty fund.

Failures during the first 13 years of operation of the guaranty fund (1909-1922) are ascribed chiefly to dishonesty or to excessive loans to favored interests.

> "Every bank that has been in distress under the supervision of the present bank commissioner can trace its trouble directly to loans to officers and directors." 1/

> "During the two years covered by this report--September 1, 1920, to September 1, 1922--there have been failures of twenty-two state banks and one trust company...The insolvency of sixteen of these twenty-three institutions is the result of dishonesty on the part of some officer. Of the other seven, two or possibly three may be classed as failures due to the bad judgment or incompetency of officials. The failuresof the others of the seven were caused by an improper use of the banks' funds to such an extent that one would be almost justified in classing such use as criminal. In some cases the misuse of the bank's funds was represented by loans to the active officers of the bank without security. In other cases the loans were made to business concerns in which the officers and directors were interested. Without exception these loans were in excess of the legal limit." 2/

The Comptroller of the Currency, in his report for 1921, made the following statement regarding bank failures in Kansas.

> "From information furnished by Commissioner Foster it appears that during the operation of the guaranty law up to June 30, 1921, five guaranteed banks...failed. In three instances failure was caused by criminal acts of officials; one due to the failure of a large debtor, and one loss sustained upon worthless paper placed in the bank by one of the officials. In the same period there were 11 failures of 'unguaranteed' banks...In five cases failure was due to criminal acts on the part of officials, one to speculations of officer, three to injudicious banking and inability to realize upon real estate and other paper, one to failure of a large debtor, and one was closed as a result of internal dissensions." 3/

1/ Fifteenth Biennial Report of the Bank Commissioner, 1920, pp. 4-5.
2/ Sixteenth Biennial Report of the Bank Commissioner, 1922, pp. 3 and 4.
3/ Annual Report of the Comptroller of the Currency, 1921, p. 189.

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Dishonesty and loans to officers' interests are also emphasized by T. Bruce Robb, in his study of the operation of State deposit guaranty funds. At the time his book was written, only three guaranteed banks in Kansas had failed but all of these banks were wrecked by embezzlements of and excessive and illegal loans to officers. 1/

Reports of the Bank Commissioner subsequent to 1922 emphasize bad loans and frozen assets associated with a general depreciation in values, and incompetency, as the chief causes of bank failures, though dishonesty and an excessive number of banks are also considered to be important.

> "While the majority of the...bank failures in this State were due to so-called 'frozen loans', this cognomen might well be defined as 'depreciation in values', over which, all analytical thinking people will agree, no Kansas banker or group of Kansas bankers had control, and which depreciation could not have been foreseen. There were a few failures which were the result of mismanagement, and, still worse, plain dishonesty and misappropriation of funds by bank officials. These, however, were in the minority." 2/

> "An examination of the records discloses the fact that these failures were largely due to incompetency, and in some few instances dishonesty. Added to this the fact that our state is overbanked, making it difficult for the smaller banks to make earnings sufficient to absorb losses, accounts for some of the failures. We cannot ignore the fact that 'depreciation in values' also had a part in the numerous failures during the period covered by this report." 3/

In Table 10 the specific causes stated in the Bank Commissioner's reports for the failure of banks during the period of operation of the guaranty fund are classified in four categories: (a) dishonesty on the part of officers or employees; (b) excessive loans directly or indirectly to certain business interests, usually the interests of an influential official or stockholder; (c) reversal of prosperous conditions in an important industry and depreciation of property values associated therewith;

1/ T. Bruce Robb, The Guaranty of Bank Deposits, pp. 117-122.

2/ Seventeenth Biennial Report of the Bank Commissioner, 1924, p. 3. The failure of the American State Bank, Wichita, largest bank in the guaranty system, was one of those ascribed to dishonesty.

3/ Eighteenth Biennial Report of the Bank Commissioner, 1926, p. 3.

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Table 10. CAUSES OF BANK FAILURES IN KANSAS REPORTED BY THE BANK COMMISSIONER, PERIOD OF OPERATION OF THE GUARANTY SYSTEM

Biennial period ended Sept. 1	Total number of failures 1/	Number of failures ascribed in full or in part to-- Dishonesty of officials	Excessive loans to favored interests	Depreciation of values 2/	Incompetence or mismanagement	Other 3/	Cause not given
Guaranteed banks--total	139	34	2	96	39	1	10
1912	1	1	--	--	--	--	--
1920	1	--	1	--	--	--	--
1922	17	15	1	--	5	--	--
1924	43	5	--	32	4	1	--
1926	35	5	--	29	14	--	3
1928	40	8	--	33	16	--	7
1930 4/	2	--	--	2	--	--	--
Nonguaranteed banks--total	76	19	4	51	24	4	6
1914	7	5	1	1	2	--	--
1916	2	1	--	--	--	--	1
1918	2	1	1	--	--	--	--
1920	2	--	2	--	--	--	--
1922	6	4	--	--	2	--	--
1924	11	1	--	12	--	--	--
1926	10	1	--	8	5	--	2
1928	32	4	--	26	15	4	3
1930 4/	4	2	--	4	--	--	--

1/ Excludes 2 guaranteed banks and 3 nonguaranteed banks which were listed as suspensions by the Federal Reserve Committee on Branch, Group and Chain Banking, but not in the Biennial Reports of the Commissioner. There were no failures of participating banks in the bienniums ending in 1912, 1914, and 1916, nor of nonparticipating banks in the bienniums ending in 1910 and 1912.

2/ Includes causes described as "bad loans" or "frozen assets". Some of these should undoubtedly be classified in the preceding column.

3/ Includes failure of correspondent bank, other bank failures, and insufficient volume.

4/ Banks closed to March 14, 1929.

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and (d) incompetence or mismanagement. With the exception of "bad loans" and "frozen assets" the causes cited for the failure of each bank are readily classified among these four general groups of causes of bank failures. In view of the statement regarding the relation of frozen assets to depreciation of values, and the substantial declines which occurred in the prices of farm products and in land values during the 1920's, "bad loans" and "frozen assets" are here classified in group (c). In some of these cases the "bad loans" should probably be ascribed to one of the other categories.

Information regarding causes of bank failures in Kansas during the period 1921-1930 is also given on the schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking.[1/] Unfortunately, many of the causes cited on these schedules are descriptions of the situation of the bank at time of failure and do not reveal the real causes responsible for the failure. However, it is believed that a classification of the causes of failure given on these schedules throws considerable light on the factors responsible for failures in Kansas during the second decade of operation of the bank depositors' guaranty fund. In Table 11 the causes of failure listed on the schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking are grouped, so far as possible, in a manner similar to the grouping in the preceding table.

A review of the causes of failure of the banks which resulted in the largest amounts of loss to the guaranty fund and to depositors indicates that excessive loans to officers and directors and to their interests, and dishonesty on the part of officers, were more important than is indicated by the number of banks in which the loss is ascribed primarily to these causes.

1/ These schedules were prepared in the office of the Bank Commissioner from information furnished by that office to the Federal Reserve Committee.

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Table 11. CAUSES OF BANK FAILURES IN KANSAS, 1921-1930, REPORTED BY THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP AND CHAIN BANKING

Item no.	Item 1/	Number of cases: Primary cause	Number of cases: Contributing cause
	Dishonesty of officials - total	44	13
1	Defalcation	42	12
2	Dishonesty, misappropriation, shortages	2	1
	Excessive loans, speculation, irregularities - total	14	40
3	Failure of large debtor	4	7
4	Heavy or frozen loans to officers or stockholders	1	1
5	Speculation	3	2
6	Excess loans	3	23
7	Heavily overloaned	1	3
8	Irregularities	2	4
	Reversal of prosperous conditions in an industry or area and decline in values - total	6	66
9	Decline in real estate values	--	40
10	Unforeseen agricultural or industrial disasters, such as floods, drought, boll weevil, etc.	3	4
11	Crop failure, general farm conditions	--	11
12	Bad loans, poor loans, frozen loans, inability to make collections	3	8
13	Excessive real estate holdings	--	3
	Incompetent or poor management - total	167	71
14	Incompetent management	166	68
15	Insufficient diversification	1	3
	Other causes - total	21	104
16	Heavy withdrawals	5	72
17	Failure of affiliated institution	7	2
18	Failure of correspondent	4	1
19	Purchased paper, without recourse paper	1	4
20	Insufficient earnings	1	13
21	Volume of business too small	--	4
22	Depleted reserves	1	5
23	Miscellaneous	2	3

1/ Specific items are from schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking, the grouping by the author of this report. The tabulation was made by the author of this report from the schedules, which were made available through the courtesy of the Board of Governors of the Federal Reserve System.

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Five banks accounted for about one-third of the entire loss to the guaranty fund and to depositors in guaranteed banks, and for four of these banks the information available indicates that failure was due to dishonesty and excessive and risky loans to officers and directors or their interests. The other one is ascribed to bad loans and inability to make collections, without specification of the interests to which the loans had been made.

The foregoing information is sufficient to enable certain important conclusions to be reached regarding the causes of failures of State banks in Kansas during the period of operation of the bank depositors' guaranty fund. Most of the failures which occurred from 1910 to 1922, and a substantial number of those which occurred from 1922 to 1929, were due to dishonesty on the part of bank officials. The great majority of the failures during the latter period were due to managerial incompetence, or to the depressed agricultural conditions, or to a combination of these two elements. However, even during that period, most of the banks which caused the greatest losses to the fund or to depositors failed because of dishonesty and excessive and risky loans to bank officials.

Procedures in the handling of failed banks. When a bank was closed by the Bank Commissioner, or placed in his hands by the board of directors of the bank, he could retain possession of the bank for a period not exceeding twelve months (six months prior to 1913) to ascertain whether it could be rehabilitated and reopened. As indicated by the figures in the preceding tables, about one-sixth of the banks that failed while participants in the guaranty system were reorganized, or their deposit liabilities assumed by other banks. There were no payments from, or obligations of, the deposit guaranty fund in these cases, as the fund was not empowered to participate in such arrangements as in Oklahoma, and became liable for depositors' claims

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against a failed bank only after the assets of the bank had been liquidated.

Failed banks, except those reopened or taken over, were liquidated by receivers appointed by the Bank Commissioner. When the deposit guaranty system was established, the receiver was required to be a resident of the county in which the bank was located. Four years later, this was modified to require only residency in the State. This made it possible, after failures became numerous in the early 1920's, for the Bank Commissioner to appoint a "general receiver" who took charge of all closed banks, with the details handled by receivership assistants. The biennial report of the Bank Commissioner dated September 1, 1926, after this procedure had been established, stated that liquidating expenses had been greatly reduced and much time saved in winding up the affairs of the failed banks. At that time 57 banks were in process of receivership, with the personnel of the "receivership department" of the Commissioner's office listed as the general receiver, assistant general receiver, two special examiners, and three receivership assistants.

In 1927 the receivership process was scrutinized by the special commissioner appointed by the State Supreme Court to determine the order of completion of liquidation of the failed banks, and was described in the decision of the State Supreme Court the next year.[1/] The date of the dividend paid by the receiver, which he regarded as the final dividend, after collecting as much as possible from the assets and stockholders' liability, was held to be the date of completion of liquidation, though in each case some administrative details, possibly unknown liabilities, and perhaps additional recoveries on assets regarded as worthless may have remained, and a reserve fund had been retained to pay final costs of administration and unknown

1/ Kansas v. Bone (1928), 128 Kans. 818, 266 Pac. 85.

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liabilities.

FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. Published information regarding the bank depositors' guaranty fund in Kansas is not sufficient to provide an adequate analysis of its operations. The biennial reports of the Bank Commissioner contain no statements of the fund, though the balance on hand in certain years is given. For a few of the failed participant banks, some information is given for deposits, payments from the fund, or receiver's percentage dividends. Receipts and disbursements of the fund for fiscal years ending June 30 are given in the reports of the Treasurer of State, but without identification of the original sources of receipts from the Bank Commissioner nor any classification of disbursements. The decision of the State Supreme Court regarding disposition of the fund provides some information regarding failed participant banks which had been completely liquidated by 1928, with no payment to that time from the fund. Some further information is available in surveys of deposit guaranty systems in operation in various States.[1/]

Additional information has been obtained from surviving records in the office of the Bank Commissioner. These records include: a "Guaranty Fund Individual Ledger" showing admission and termination dates of participation, deposits reported for assessment and the amount assessed for each assessment date, together with totals of deposits and assessments for most of the dates; a record of the amount of principal and interest paid depositors for each of the failed banks whose depositors were paid from the fund; receivership records showing for most of the failed banks the amount of guaranty

1/ These include Robb, The Guaranty of Bank Deposits (Houghton Mifflin Company, 1921); Thornton Cooke, articles in the Quarterly Journal of Economics, November 1913 and November 1923; article and legislative summary in the Federal Reserve Bulletin, September 1925; and Blocker, The Guaranty of Bank Deposits (The School of Business, University of Kansas, 1929).

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fund certificates issued, the amount of receiver's certificates issued (representing deposits and other liabilities not covered by the guaranty), and the percentage dividends paid by the receiver; and some additional information regarding the status of the fund at various dates and the bonds and cash forfeited by banks that had withdrawn by the end of October 1927.

Income, expenses, and deficit of the guaranty fund. A summary statement of the receipts and expenditures of the Kansas bank depositors' guaranty fund, for the entire period of its existence, is given in Table 12. The figures in the table take into account receipts and disbursements subsequent to repeal of the law. They exclude payments to the depositors in failed banks which were made from the proceeds of liquidation of the assets of those banks. The losses incurred by the guaranteed banks in the American State Bank, Wichita, which was reorganized instead of being placed in liquidation and paid off by the guaranty fund, are also shown in the table since those losses were part of the cost of the guaranty system to the participating banks.

The total receipts of the guaranty fund itself amounted to $2,800,000, of which about three-fifths was derived from the assessments upon the participating banks, and about one-fourth from bonds and cash deposited as surety for payment of assessments and forfeited by banks which withdrew prior to repeal of the law. Including the loss incurred in the case of the American State Bank the participating banks paid a total sum of over $4,000,000 to meet the losses in guaranteed banks closed because of financial difficulties.

The total obligations of the bank depositors' guaranty fund, including those in the American State Bank, amounted to more than $10,000,000. This represents the deposits in guaranteed banks which failed during the

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Table 12. RECEIPTS, EXPENDITURES, AND DEFICIT OF THE KANSAS DEPOSITORS' GUARANTY FUND

	Fund and associated cost	Guaranty fund	American State Bank reorganization
Receipts			
Assessments collected, 1909-1929 1/	$1,703,360	$1,703,360	--
Other contributions by participating banks 2/	2,222,266	798,278	$1,423,988
Interest received 3/	143,423	143,423	--
Source not identified 4/	176,730	176,730	--
Total receipts 5/	$4,245,779	$2,821,791	$1,423,988
Expenditures			
Payments to depositors of failed banks, as tabulated from data for the individual banks:			
Principal of deposits	$3,859,367	$2,435,379	$1,423,988
Interest 6/	361,302	361,302	--
Additional payments or unidentified expense 7/	7,144	7,144	--
Total expenditures 8/	$4,227,813	$2,803,825	$1,423,988
Unpaid obligations			
To depositors of failed participating banks 9/	$6,051,150	$6,051,150	--

1/ As tabulated from entries in the "Guaranty Fund Individual Ledger" in the office of the Bank Commissioner. For the years 1925-1929, assessments paid were less than the amounts levied. See Table 13.

2/ Of guaranty fund, forfeiture of deposited bonds and cash by withdrawing banks, consisting of $733,900 forfeited by banks that withdrew by the end of October 1927 (statement in records in Bank Commissioner's office), $51,922 forfeited by banks that withdrew subsequent to October 1927 or participated to repeal of the law (estimated), and $10,456 premiums and interest received by fund on the sale of forfeited bonds sold in December 1927. In American State Bank reorganization, portion of deposit liability assumed by participating banks.

3/ Includes amounts reported as "interest" and as "transfers from general fund," both apparently representing interest on the fund balance.

4/ Total received from Bank Commissioner, as given in biennial reports of the Treasurer of State, less reported receipts from assessments and forfeiture of deposited bonds and cash. This amount probably consists in part of collections on delinquent assessments, in part of additional receipts from sale of forfeited bonds, and in part of receivers' collections on assets of failed banks after payment of depositors by receivers and the guaranty fund.

5/ From biennial reports of the Treasurer of State from beginning of fund to June 30, 1956. The excess of receipts over expenditures, amounting to $17,966, remained to the credit of the depositors' guaranty fund as of June 30, 1956.

6/ Includes court costs of $15,631 which were met from the fund and deducted from the amount due depositors in the banks benefiting from the court decision regarding disposition of the assets of the fund.

7/ Difference between total warrants redeemed (see note 3) and payments to depositors as tabulated for the individual banks.

8/ Total warrants redeemed, as shown in the biennial reports of the Treasurer of State from the beginning of the fund to June 30, 1956.

9/ Banks with no payments, or less than full payments, from the guaranty fund. Estimated from guaranty fund certificates issued, adjusted for percentage dividends paid by receiver.

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period of the fund in excess of the amounts recovered through receiverships and reorganizations, plus the interest on certificates paid by the guaranty fund to depositors in failed banks. It does not include accrued interest on the guaranty certificates that were never paid.

The difference between the obligations of the guaranty fund and the income of the fund is the approximate amount of the final deficit or default. This figure amounted to over $6,000,000.

Annual data regarding assessments levied and paid are shown in Table 13. Until 1924 the annual assessment remained at one-twentieth of 1 percent, except in 1922, when one special assessment was levied and the banks paid a total of one-tenth of 1 percent. From 1924 to 1928, inclusive, which were the last five full years of operation of the fund, four special assessments were levied each year, making the total assessment for each of these years one-fourth of 1 percent. However, during the later years the assessments levied were not collected in full. In addition to the regular and special assessments, banks admitted to the fund each year were required to contribute a proportionate share of the fund, equal to what they would have paid had they entered in 1909, if operating at that time, or at time of opening if commencing business in a later year.

Table 14 shows the receipts and disbursements of the guaranty fund for fiscal years ended June 30, and also the cash balance of the fund on June 30, and the amount of bonds and cash held on that date as security for payment of future assessments./ These data are from the biennial reports of the Treasurer of State. Differences between the yearly figures for receipts as shown in this table, and those from assessments in the preceding table, reflect the timing of the assessments and the dates on which bonds and cash deposited as security for future assessments were forfeited by withdrawing banks and regarded as receipts of the guaranty fund.

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Table 13. RATES AND AMOUNTS OF ASSESSMENT, AND OTHER CONTRIBUTIONS BY PARTICIPATING BANKS, KANSAS DEPOSITORS' GUARANTY FUND, BY YEARS, 1909-1929

Calendar year	Assessment rate (percent of deposits) 1/	Assessments levied 2/				Assessments paid 2/	Other contributions by participating banks 3/
		Total	Regular	Special	Initial for banks admitted		
Total	--	$1,933,682	$929,997	$902,579	$101,106	$1,703,360	$2,222,266
1909	.05	16,961	--	--	16,961	16,961	
1910	.05	17,831	17,685	--	146	17,831	
1911	.05	22,570	18,109	--	4,461	22,570	
1912	.05	23,311	21,174	--	2,137	23,311	
1913	.05	28,315	24,171	--	4,144	28,315	
1914	.05	32,360	27,615	--	4,745	32,360	
1915	.05	30,394	27,206	--	3,188	30,393	
1916	.05	37,169	33,082	--	4,087	37,170	
1917	.05	48,451	41,917	--	6,534	48,451	
1918	.05	71,023	58,490	--	12,533	71,023	
1919	.05	84,399	74,458	--	9,941	84,399	
1920	.05	97,121	85,380	--	11,741	97,120	
1921	.05	107,325	91,126	--	16,199	107,325	
1922	.10	156,885	81,042	74,920	923	156,886	
1923	.05	77,772	74,692	--	3,080	77,772	1,423,988
1924	.25	343,954	70,562	273,166	226	343,955	
1925	.25	368,209	66,668	301,481	60	342,951	
1926	.25	290,505	79,833	210,672	--	129,405	
1927	.25	65,899	32,056	33,843	--	24,896	)
1928	.25	11,746	3,249	8,497	--	8,945	)798,278
1929	.05	1,482	1,482	--	--	1,321	)

1/ Initial assessment in 1909, thereafter regular annual assessment of one-twentieth of 1 percent, plus special assessments levied.

2/ From summary given, or tabulated from entries, in the "Guaranty Fund Individual Ledger" in the office of the Bank Commissioner. Prior to 1925, the data available do not distinguish between amounts levied and amounts collected, and they are assumed to have been the same. Assessments paid do not include an allowance for a portion of the amount shown in Table 12 as receipts of the fund from unidentified sources. (see note 4 to that table).

3/ In 1923, loss to participating banks in the reorganization of the American State Bank. In 1927-29, estimated receipts of fund from forfeiture of bonds and cash deposited to secure payment of assessments, by withdrawing banks and those remaining in the fund to repeal of the law. Amount may be understated (see notes 2 and 4 to Table 12).

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Table 14. RECEIPTS, DISBURSEMENTS, AND BALANCE, KANSAS DEPOSITORS' GUARANTY FUND, BY YEARS, 1910-1950 1/

Year ended June 30	Receipts			Disbursements	Balance on June 30	Bonds and cash held as security for payment of assessments June 30
	Total	From Bank Commissioner 2/	Interest 3/			
Total	$2,821,791	$2,678,369	$143,423	$2,803,825		
1910	16,965	16,965	--	--	$16,965	$276,377
1911	39,881	38,898	983	--	56,846	290,612
1912	24,837	23,496	1,341	--	81,683	336,749
1913	29,477	28,194	1,283	--	111,160	341,502
1914	34,235	32,596	1,639	28,702	116,693	406,158
1915	33,239	30,717	2,522	--	149,931	429,801
1916	40,567	40,567	--	--	190,499	485,464
1917	51,928	47,706	4,222	16	242,411	584,114
1918	71,552	71,552	--	--	313,963	725,869
1919	91,863	87,061	4,802	--	405,826	800,047
1920	107,169	93,989	13,180	546	512,450	946,584
1921	119,240	107,806	11,434	--	631,690	1,135,622
1922	101,587	87,866	13,721	--	733,277	1,151,717
1923	173,117	151,257	21,860	60,795	845,600	1,106,998
1924	101,578	70,770	30,808	489,930	457,248	1,062,825
1925	546,786	535,019	11,767	971,463	32,571	1,105,835
1926	146,126	143,086	3,040	22,844	155,854	932,335
1927	91,302	86,468	4,834	218,593	28,563	898,944
1928	851,821	847,175	4,646	220,045	660,339	47,500
1929	65,427	60,157	5,270	672,191	53,576	34,500
1930	17,808	16,530	1,278	8,219	63,164	34,500
1931	23,257	21,671	1,586	931	85,491	--
1932	40,310	38,821	1,489	95,577	30,224	--
1933	705	--	705	3,994	26,934	--
1934	364	--	364	2,760	24,539	--
1935	491	--	491	2,153	22,876	--
1936	156	--	156	1,313	21,719	--
1937	--	--	--	637	21,082	--
1938	--	--	--	1,699	19,383	--
1939	--	--	--	388	18,995	--
1940	--	--	--	383	18,612	--
1941	--	--	--	411	18,200	--
1942	--	--	--	--	18,200	--
1943	--	--	--	144	18,056	--
1944	--	--	--	--	18,056	--

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Table 14. RECEIPTS, DISBURSEMENTS, AND BALANCE, KANSAS DEPOSITORS' GUARANTY FUND, BY YEARS, 1910-1950 - continued

Year ended June 30	Receipts			Disbursements	Balance on June 30	Bonds and cash held as security for payment of assessments June 30
	Total	From Bank Commissioner	Interest			
1945	--	--	--	--	18,056	--
1946	--	--	--	--	18,056	--
1947	--	--	--	9	18,047	--
1948	--	--	--	1	18,046	--
1949	--	--	--	7	18,039	--
1950	--	--	--	73	17,966 4/	--

1/ From Biennial Reports of the Treasurer of State.

2/ Mostly derived from assessments, and forfeiture of bonds and cash by withdrawing banks. In the later years includes an unknown amount (probably small) from recoveries on assets of failed banks.

3/ The state treasurer was required by the bank depositors' guaranty law to credit the fund quarterly with its proportionate share of interest received from state funds, computed at the minimum rate of interest provided by law, upon the average daily balance of the fund.

4/ This balance was held by the State Treasurer to the credit of the guaranty fund on June 30, 1956.

Note: Because of rounding, data for individual items may not add precisely to the totals given.

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Insured deposits and losses in failed banks, by years. Table 15 gives the amount of insured deposits of the banks that failed each year while participating in deposit guaranty, the recoveries from the liquidation of assets, payments by the fund and (in 1923) by participating banks in the American State Bank reorganization, and the losses to the depositors. The amount of noninsured deposits and other liabilities, and the recoveries and losses on them, are also shown in the same table. Table 16 shows for each year the percentage of the deposits in failed banks estimated to have been insured, and of the insured deposits the percentages recovered from the liquidation of assets or paid by the guaranty fund or participating banks.

For all the failed banks entailing obligations on the guaranty fund, 84 percent of the deposits were insured. In the case of the failure in 1910, only 30 percent of the deposits were insured, due to the fact that this Bank closed prior to the change in coverage on time and savings deposits.

For the entire period while the law was on the statute books, 53 percent of the insured deposits of the failed banks were paid from the liquidation of assets of the banks. The guaranty fund assessments, including the receipts from forfeiture by withdrawing banks of bonds and cash deposited as surety for future assessments, provided over 11 percent of the deposits, and the guaranteed banks provided an additional 7 percent through assumption of losses in the American State Bank. The remaining 29 percent of the insured deposits was lost to the depositors. This loss, of course, was concentrated in the banks which did not share in the distribution of the assets of the fund under the guaranty law and the supporting court decision that payments were to be made to depositors in order of completion of liquidation of the failed banks.

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Table 15. OBLIGATIONS TO CREDITORS PAID AND UNPAID, FAILED BANKS INVOLVING OBLIGATIONS ON THE KANSAS DEPOSITORS' GUARANTY FUND, BY YEAR OF FAILURE 1/

Year 2/	Insured deposits paid 2/				Noninsured deposits and other liabilities		
	Total 3/	Directly from liquidation of assets	By fund or participating banks 4/	Unpaid (loss to depositors)	Total 5/	Paid 6/	Unpaid
Total	$21,151,418	$11,240,901	$3,859,367	$6,051,150	$3,763,185	$1,805,042	$1,958,143
1910	46,810	18,108	28,702	--	108,594	56,469	52,125
1919	496,584	94,351	402,233	--	150,951	28,681	122,270
1920	189,740	93,388	96,352	--	36,855	15,479	21,376
1921	1,910,270	1,484,781	328,512	96,977	328,807	141,163	187,644
1922	2,636,734	1,050,565	1,040,738	545,431	500,151	244,038	256,113
1923	5,824,674	2,459,402	1,790,121	1,575,151	1,461,713	634,791	826,922
1924	2,226,155	1,409,531	172,709	643,915	91,399	69,533	21,866
1925	2,080,697	1,216,296	--	864,401	242,425	145,668	96,757
1926	3,229,600	1,612,661	--	1,616,939	431,140	203,808	227,332
1927	2,244,030	1,588,909	--	655,121	389,882	247,484	142,398
1928	197,203	155,567	--	41,636	18,596	15,527	3,069
1929	68,921	57,342	--	11,579	2,672	2,401	271

1/ Tabulated from data for the individual failed banks published in the biennial reports of the Bank Commissioner, or shown in individual claims registers, receivership reports, or other surviving records in the Office of the Bank Commissioner. In a few cases some estimation has been necessary.

2/ There were no failures of participating banks in 1909 nor 1911-1918.

3/ Guaranty fund certificates issued, plus the portion of receivers' certificates issued in the American State Bank case estimated to have represented unusual deposits.

4/ Paid by fund, except for $1,423,988 assumed by participating banks in the reorganization of the American State Bank, Wichita, in 1923.

5/ Receivers' certificates issued, excluding those in the American State Bank case estimated to have represented insured deposits.

6/ Preferred claims, assumed to have been paid in full, plus payments on receivers' certificates estimated from percentage dividends paid.

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Table 16. PERCENTAGE OF DEPOSITS INSURED, AND PERCENTAGE OF INSURED DEPOSITS RECOVERED FROM LIQUIDATION OF ASSETS AND PAID BY GUARANTY FUND OR PARTICIPATING BANKS, BANK FAILURES UNDER THE KANSAS DEPOSIT GUARANTY SYSTEM, BY YEARS

Year of failure 1/	Percentage of total deposits insured	Percentage of insured deposits			
		Total	Paid from liquidation of assets	Paid by guaranty fund or participating banks	Unpaid (loss to depositors)
Total	83.7%	100.0%	53.1%	18.3%	28.6%
1910	30.1	100.0	38.7	61.3	--
1919	76.7	100.0	19.0	81.0	--
1920	86.5	100.0	49.2	50.8	--
1921	90.6	100.0	77.7	17.2	5.1
1922	78.5	100.0	39.8	39.5	20.7
1923	80.5	100.0	42.2	30.7	27.1
1924	85.8	100.0	63.3	7.8	28.9
1925	93.0	100.0	58.5	--	41.5
1926	89.7	100.0	49.9	--	50.1
1927	80.0	100.0	70.8	--	29.2
1928	88.5	100.0	78.9	--	21.1
1929	83.9	100.0	83.2	--	16.8

1/ There were no failures of participating banks in 1909 nor 1911-1918.

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Comparison of assessment receipts and losses in failed banks.

Table 17 compares the amount of assessments collected each year with the liability of the fund on account of failures in that year. The figures are also shown cumulatively, with the cumulative excess or deficiency. Such an excess or deficiency, it should be noted, is a different concept from that of an accumulated surplus or deficit in the fund. It does not take account of interest received on the cash balance of the fund, or that accrued on the fund's unpaid obligations, nor of the lapse of time before the unpaid deposits of a failed bank became legal obligations of the fund. What the deficiency figures show is the additional assessment that would have been necessary to have paid all insured deposits without incurring interest costs or other expenses.

For nearly half of the period of operation of the fund, that is, to the end of 1918, there was a cumulative excess of receipts. For those years, most of the assessment receipts accumulated, since only one failure occurred. However, the obligations of the fund resulting from the second failure, in 1919, exceeded the entire cumulative receipts to that time. The failures of the early years of the 1920's, together with the absence of special assessments (except one in 1922), resulted in a rapidly mounting cumulative deficiency, reaching over $5 million by the end of 1923. From 1924 to the repeal of the law, the deficiency continued to mount, though less rapidly because of increased receipts with the levy of more additional assessments. The final deficiency, if no account is taken of the receipts from forfeiture of securities posted to assure payment of future assessments nor of the contributions of the banks in the American State Bank reorganization, was over$8 million; this was reduced to about $6 million if the receipts

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Table 17. ANNUAL ASSESSMENT RECEIPTS, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, KANSAS DEPOSITORS' GUARANTY FUND

Year	Assessments collected 1/	Deposit liability of the fund 2/	Cumulative			
			Assessments and contributions	Deposit liability of the fund	Excess of receipts	Deficiency (excess liability)
1909	$16,961	--	$16,961	--	$16,961	--
1910	17,831	$28,702	34,792	$28,702	6,090	--
1911	22,570	--	57,362	28,702	28,660	--
1912	23,311	--	80,673	28,702	51,971	--
1913	28,315	--	108,988	28,702	80,286	--
1914	32,360	--	141,348	28,702	112,646	--
1915	30,394	--	171,741	28,702	143,039	--
1916	37,169	--	208,911	28,702	180,209	--
1917	48,451	--	257,362	28,702	228,660	--
1918	71,023	--	328,385	28,702	299,683	--
1919	84,399	402,233	412,784	430,935	--	$18,151
1920	97,121	96,352	509,904	527,287	--	17,383
1921	107,325	425,489	617,229	952,776	--	335,547
1922	156,885	1,586,169	774,115	2,538,945	--	1,764,830
1923	77,772	3,365,272	851,887	5,904,217	--	5,052,330
1924	343,954	816,624	1,195,842	6,720,841	--	5,524,999
1925	342,950	864,401	1,538,793	7,585,242	--	6,046,449
1926	129,405	1,616,939	1,668,198	9,202,181	--	7,533,982
1927	24,896	655,121	1,693,094	9,857,302	--	8,164,208
1928	8,945	41,636	1,702,039	9,898,938	--	8,196,898
1929	1,321	11,579	1,703,360	9,910,517	--	8,207,157
Additional:						
Forfeiture of securities—	798,278	--	2,501,638	9,910,517	--	7,408,879
Contributions—	1,423,988	--	3,925,626	9,910,517	--	5,984,891

1/ From Table 13.

2/ Deposits paid from the fund, including loss to participating banks on reorganization of the American State Bank, plus deposits unpaid. From Table 15.

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from forfeited securities and the contributions in the American State Bank reorganization are included.

These estimates indicate that aggregate assessments of $10,000,000 would have been sufficient to have met all of the losses to depositors in failed guaranteed banks up to the time the law was repealed. The assessments actually collected, excluding the proceeds from forfeiture of bonds and cash held as surety for payment of assessments, and the contributions in the American State Bank reorganization were about $1,700,000. In Table 18 the assessment rate per $100 of deposits each year is compared with the assessments collected and losses on deposits in failed banks, also expressed as rates, that is, amount per $100 of deposits in participating banks at the beginning of the year. An average annual assessment of one-half of 1 percent would have provided for all losses on deposits in failed banks. The assessments collected, excluding proceeds of forfeiture of bonds and cash deposited as surety for the payment of assessments, and the contributions in the American State Bank reorganization, averaged about one-thirteenth of 1 percent per year. The total contributions of the guaranteed banks, including the forfeited securities and their loss in the case of the American State Bank, was equivalent to an average annual assessment of about one-sixth of 1 percent.

The maximum annual rate of assessment, according to the interpretation of the law by the Bank Commissioner, was one-fourth of 1 percent per year. Under the provisions of the law, it was not possible to levy assessments sufficient to meet the claims falling upon the fund. Further, the maximum permissible rate could not be levied at the time when the banks failed and it became obvious that the future liabilities of the fund were

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Table 18. COMPARISON OF ANNUAL RATES OF ASSESSMENT WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, KANSAS DEPOSITORS' GUARANTY FUND, BY YEARS, 1909-1929

Year	Assessment rate per $100 of deposits 1/	Per $100 of deposits in participating banks at beginning of year	
		Assessments collected	Losses on deposits in failed banks
1909-1929 average	$1.00	$0.08 2/	$0.44
1909	.05	.04	--
1910	.05	.04	.06
1911	.05	.05	--
1912	.05	.04	--
1913	.05	.04	--
1914	.05	.05	--
1915	.05	.04	--
1916	.05	.04	--
1917	.05	.04	--
1918	.05	.05	--
1919	.05	.05	.24
1920	.05	.05	.05
1921	.05	.06	.22
1922	.10	.09	.88
1923	.05	.04	1.87
1924	.25	.21	.49
1925	.25	.18	.44
1926	.25	.08	.96
1927	.25	.03	.83
1928	.25	.13	.59
1929	.05	.04	1.68 3/

1/ Computed from assessment receipts (Table 17) and deposits in participating banks (Table 4).

2/ If the contributions in the American State Bank reorganization and the proceeds of the forfeited securities and cash are included, this rate is $0.17.

3/ Annual rates (i.e., 4.8 times rate for failures occurring prior to March 14, 1929).

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mounting rapidly. This was because the fund did not actually become liable for any payments until a closed bank was fully liquidated.

Settlement of the affairs of the fund. The major problems in closing the affairs of the Kansas depositors' guaranty fund had been met and settled prior to repeal of the law. The great majority of the participating banks had withdrawn in 1926 or 1927, and the bonds and cash they had posted as security for future assessments had been forfeited and transferred to the guaranty fund account with the State Treasurer. The proceeds, together with undisbursed receipts from assessments and interest on the fund's cash balance had been used to pay depositors of closed banks in the order of liquidation of the banks in accordance with the decision of the Supreme Court. These payments were made in August 1928 to the depositors of the banks whose claims were met in full; and in October dividends were paid, to the extent of the amount available, to the depositors of the next two banks in order of completion of liquidation, which under the court decision were to share equally.

Upon repeal of the law, the bonds and cash deposited as surety for payment of future assessments by the banks that remained in the fund were also forfeited and transferred to the guaranty fund. The proceeds, together with assessment and interest receipts subsequent to the time of the previous dividend, made possible an additional dividend to depositors of the two banks; and this was paid on October 1, 1931. About $30,000 was retained in the fund held by the Treasurer to pay claims that had not been presented and nearly $2,000 was subsequently received as interest. Claims of about $14,000 were paid during the ensuing years up to 1950. The remainder was still held by the Treasurer of State in the guaranty fund as of June 30, 1956.[1/]

1/ See Table 14.

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APPRAISAL OF THE KANSAS DEPOSIT GUARANTY SYSTEM

The burden of assessments. Assessments during the first few years of the Kansas bank depositors' fund, at the regular rate of one-twentieth of 1 percent per year, were comparatively light; and bankers do not appear to have protested that the assessments were a financial burden upon the banks. However, as soon as it became apparent, in the early 1920's, that future assessments at the maximum rate would be necessary for several years, the banks felt that the assessments would be a heavy drain on their earnings and sought means of escaping the burden. Since participation in the system was voluntary, and under the State Supreme Court decision withdrawal could be accomplished by forfeiture of bonds amounting only to two years' assessment at the maximum rate, most of the banks chose this method of avoiding the inevitable burden of assessments. Had withdrawal not been possible on these conditions, it is probable that, as in certain other States with deposit guaranty, a larger number of State banks would have taken out national bank charters.

It is not possible to determine how much the earnings of the banks participating in the Kansas deposit guaranty system would have been affected by an assessment high enough to have met the losses in failed banks, inasmuch as earnings data are not available for the individual banks nor for the participating banks as a group. However, earnings data are available for all State banks, and an estimate can be made of the impact on earnings had all State banks participated. The earnings data and average total capital accounts for all State banks are shown in Table 19.

Had deposit guaranty covered all of the State banks during the

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Table 19. SELECTED DATA FROM STATEMENTS OF EARNINGS AND DIVIDENDS, AND TOTAL CAPITAL ACCOUNTS, ALL STATE BANKS IN KANSAS, 1909-1928

(In thousands of dollars)

Calendar year	Interest on deposits 1/	Gross losses 1/	Net profits 1/	Dividends 2/	Total capital accounts 3/
Total	$62,299	$28,113	$60,798	$44,426	$754,792
1909	797	361	2,945	1,692	21,375
1910	910	417	3,131	1,818	23,441
1911	1,007	322	2,879	1,872	25,153
1912	1,239	398	3,126	2,141	27,055
1913	1,456	642	3,143	2,108	28,381
1914	1,623	480	2,892	1,985	30,411
1915	1,847	493	3,444	2,376	32,269
1916	2,223	635	4,204	2,607	34,723
1917	3,178	849	4,371	2,933	37,028
1918	3,772	830	4,643	3,083	39,814
1919	4,291	978	5,422	3,369	43,769
1920	4,937	1,437	5,054	3,366	48,197
1921	4,820	2,093	2,984	2,669	49,757
1922	4,702	2,575	2,190	2,209	48,929
1923	4,437	2,514	1,963	1,902	47,253
1924	4,508	2,262	1,637	1,748	45,443
1925	4,625	2,519	1,675	1,780	44,657
1926	4,293	2,955	1,513	1,611	44,073
1927	3,909	2,923	1,395	1,481	42,135
1928	3,725	2,430	2,187	1,676	40,929

1/ Federal Reserve Bulletin, February 1938, p. 122. Tabulated from data in the Biennial Reports of the Bank Commissioner.

2/ From Biennial Reports of the Bank Commissioner.

3/ Capital, surplus and reserves--computed average at all call dates in year, tabulated from consolidated statements of assets and liabilities in Biennial Reports of the Bank Commissioner.

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entire 20-year period of operation of the guaranty system, aggregate assessments of approximately $12.5 million (or $8.5 million in addition to the assessments and contributions paid by the guaranteed banks) would have been necessary to meet the losses in closed banks.[1/] The net profits of the banks, after deducting the assessments and contributions which the guaranteed banks made to the guaranty system, amounted to an average of 8 percent per year on the total capital accounts of the banks. Absorption out of profits of the remaining loss to depositors in failed banks would have reduced this average rate of profit to about 6.8 percent per year on total capital accounts.

Whether an item of expense, such as an assessment for meeting losses in failed banks, comes out of profits can never be determined exactly. If the expense item is one which is borne by all or a large majority of the operating banks in the area, it is probable that certain other items of income or expense may be affected more than the profits of the banks. The banks in Kansas, during the period of operation of the guaranty system, paid interest on deposits aggregating slightly more than the net profits of the banks. A reduction of one-fifth in the interest paid on deposits would have thrown the cost of deposit guaranty entirely upon the depositors. The presence of nonguaranteed banks, both those operating under State law and those operating under national charters, made it difficult for the guaranteed banks to make this kind of adjustment as a means of preserving their profits in the face of the additional expense.

Another interesting comparison is the total cost of deposit guaranty, in a form to have met all of the losses to depositors, with the amounts actually charged off by the operating banks as losses on loans,

1/ Estimated on the assumption that percentage recoveries from assets of failed nonparticipating banks were the same as for failed participating banks entailing obligation on the guaranty fund. The recoveries and losses of the failed nonparticipating banks have not been tabulated.

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investments, and other assets. The latter figure, for the entire 20-year period, amounted to $28 million for all State banks, which is more than twice the total loss to depositors (including the loss met by the guaranty fund) in all failed banks. The losses charged off amounted to an average of 0.8 percent per year of loans and investments. An increase in this allowance for losses by one-half, or to 1.2 percent per year of loans and investments, placed in the guaranty fund, would have met all of the losses in failed banks.

Losses in mismanaged banks. In about one-third of the banks in which losses to the guaranty fund or to depositors occurred, the failure was attributed by the Bank Commissioner in full or in part to dishonesty, mismanagement, excessive loans to officers, or irregular practices. The loss in these banks amounted to about two-thirds of the total loss to the guaranty fund and to depositors in all guaranteed banks. The large percentage of the loss which occurred in banks which were dishonestly run, mismanaged, or operated improperly is due to the fact that nearly all of the larger banks which failed did so because of the way they were managed. The bulk of the failures attributed primarily to incompetence, inability to make collections, or to causes reflecting adverse economic circumstances, were small banks. Of the five banks which caused the largest losses to the guaranty fund, depositors, or participating banks, and which together were responsible for nearly one-third of all of the losses, four failed because of dishonesty or mismanagement. The failures ascribed solely to dishonesty by the Bank Commissioner include the American State Bank, Wichita, which for several years prior to its failure was the largest bank operating under State law.

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Defects of the Kansas system. The failure of the Kansas system of guaranty of bank deposits was due to the character of that particular system and the circumstances surrounding its operation, not to the impracticability of applying the insurance principle to losses from bank failures. The Kansas system suffered from several serious defects.

First. The regular rate of assessment, one-twentieth of 1 percent per year, was far too low and decidedly inadequate; and special assessments could not be levied at the time when they were obviously needed, because of the delay in making payments to depositors in closed banks until completion of liquidation of the bank.

Second. The maximum reserve fund which could be accumulated, $1,000,000, and the amount to which it could be depleted before assessments were resumed, $500,000, were too small. The maximum accumulation, which amounted to approximately one-half of 1 percent of the largest volume of deposits in guaranteed banks, was only two-thirds of the loss assumed by the guaranteed banks in one failure.

Third. Prompt payments could not be made to depositors in the failed banks. Deposit guaranty or insurance does not fulfil its proper function if depositors are unable to obtain their guaranteed funds promptly. To achieve its purposes, deposit insurance or guaranty must provide for no significant interruption in the flow of payments in the community in which a failed bank is located.

Fourth. Losses to the guaranty fund were not recognized, in the fund's accounts, at the time banks failed. As a consequence, the fund accumulated large liabilities which were not reflected on its books nor in the assessments levied. Reserves for losses should have been established at the time each bank failed, on the basis of an appraisal of the liquidating

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value of the bank's assets, so that the accounts of the fund would reflect its true condition.

Fifth. Banks were able to withdraw from the system without full responsibility for obligations which accrued while they were participants in the system.

Sixth. Provisions of law relating to loans to officers and directors and their interests, and in regard to excessive loans to single borrowers, were inadequate; and supervision over banking practices, particularly the practices of the large banks, was inadequate. This element in the failure of the Kansas deposit insurance system, as in the case of the Oklahoma system, leads to a conclusion of vital importance to the success of other systems of deposit guaranty or insurance. That is, that dishonesty, favoritism to special interests, and excessive loans to enterprises in which responsible officials of the bank are connected, will lead to disaster, and that the supervisory authorities must be alert and vigorous in watching the policies of the larger banks in which the risk is concentrated.

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DEPOSIT GUARANTY IN TEXAS

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June 1958

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DEPOSIT GUARANTY IN TEXAS

The Texas law providing for the guaranty of bank deposits was enacted on May 12, 1909, with deposit insurance to become effective January 1, 1910. At the time of enactment a deposit insurance plan was in operation in Oklahoma and laws had been enacted in Kansas and Nebraska that had not yet become effective.

The Texas law remained on the statute books for nearly eighteen years, but was in full operation only sixteen years. In February 1925 the law was amended to permit banks to withdraw from the guaranty system under specified conditions, and within a year most of the participating banks had withdrawn. In September 1926 the fund became unable to meet its obligations. The law was repealed on February 11, 1927. Litigation over disposition of the assets of the fund prevented final settlement of its affairs until 1931, at which time all remaining obligations to depositors of failed participating banks were paid and the remainder of the fund distributed among the participating banks, with additional liquidating dividends during the next two years.

BACKGROUND OF THE GUARANTY LEGISLATION

Banking prior to 1909. Prior to 1905 most of the banks operating in Texas were either private banks or national banks. The Constitution of the State of Texas adopted in 1845, when Texas became one of the United States, included the provision: "No corporate body shall hereafter be created, renewed, or extended with banking or discounting privileges." [1/] This provision was

1/ Constitution of the State of Texas, 1845, Article VII, Section 30, Vernon's Constitution of the State of Texas, Annotated, Vol. 3, p. 561.

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retained in revised constitutions in 1861 and 1866. The Constitution of 1869, adopted at the time of the reconstruction government, omitted the provision. About eighteen State banks were chartered[1] while that Constitution was in effect, some of which remained in operation after the provision prohibiting establishment of banks was reinstated in 1876.[2]

As agricultural and commercial activities expanded there developed a recognition of a need for additional financial facilities. The movement for a State banking system began to gain momentum and finally in 1904 the Constitution was amended to permit its establishment. In 1905 legislation was enacted authorizing the chartering of State banks and providing for a system of supervision and regulation. With the exception of a few amendments, this law remained in force during the entire period during which the Texas system of deposit guaranty was in operation.

Introduction of guaranty legislation. Insurance of bank deposits was proposed in Texas twenty years before it was adopted. At the fifth annual meeting of the Texas Bankers' Association, Dallas, May 8, 1889, Mr. E. M. Longcope, cashier of a national bank, gave an address urging a constitutional amendment permitting establishment of State banks and outlining a plan for guaranteeing deposits.[3] After mentioning some important aspects of a banking

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1/ Ibid., p. 172. Ten of these banks were established under a general banking law passed in 1874.

2/ In 1923, corporations operating under a charter authorized by the State of Texas prior to adoption of the Constitution of 1876 were made subject to each and every provision of the statutes regulating and controlling banks and banking within the State. General Laws of the State of Texas 1923, ch. 185, section 6 (p. 424).

3/ Proceedings of the Fifth Annual Convention of the Texas Bankers Association, held at Dallas, Texas, May 8, 9, and 10, 1889, pp. 14-19.

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code, such as reserve requirements and restrictions on loans, he said: "I come now to the discussion of a plan, the enactment of which in my humble opinion, would be the capstone to our financial system. It is a guarantee fund for depositors." He estimated the losses to depositors from failures of national banks in Texas at about 1/30 of 1 percent a year, and made the following suggestion for a deposit insurance assessment rate: "I consider one-tenth of one percent, ample, for this amount invested in first-class bonds by the banking superintendent would in twenty years be self-sustaining. At the end of that time the tax might be taken off the banks that had paid it every year for that period, but continued on the others."

After the panic of 1907 deposit guaranty became a widely debated proposal, and in 1908 the Texas State Democratic organization pledged the party to such legislation. When the Governor called this to the attention of the legislature in 1909 he found the measure was met with violent opposition. National banks were especially hostile, arguing that the State banks would be given an unfair advantage. So powerful was the opposition that the regular 1909 session adjourned without passing the law.

When the legislature reconvened in a special session to further consider the guaranty legislation it found itself divided into two factions: one wanted a deposit insurance or guaranty law; the other was interested in a plan whereby each bank would furnish a bond or some form of security to protect its own deposits. Confronted with a deadlock situation the legislature again adjourned. Finally after a stormy second session a compromise was reached and a law was passed embodying both plans, leaving to each bank the option of which method it would use. The two plans were described respectively as the "depositors' guaranty fund" and the "depositors' bond security system."

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CHARACTER OF THE DEPOSIT GUARANTY LEGISLATION

Admission of banks. Each State bank was required to make its choice by October 1, 1909, between joining the guaranty fund or depositing bonds or other securities with the Commissioner of Insurance and Banking. Private banks were authorized to join the bond security system but not to participate in the deposit guaranty plan.

Banks which chose the bond security system were required to deposit bonds or other securities equal in amount to the capital stock of the bank. The effect of this on the protection given depositors was essentially the same as a doubling of the minimum capital requirement. It was neither an insurance system nor an application to deposits of the principle applied to circulating notes in many States in the 1830's to 1850's and to national banks in 1863 that bonds or securities for the full amount of the issues should be deposited with the supervisory authority. 1/

Banks which chose to participate in the deposit guaranty plan were required to file a detailed statement of their assets and liabilities with the State Banking Board. The State Banking Board had discretionary power to reject an application for participation in the guaranty plan. If the Board declined an application, it was required to inform the bank what conditions would be necessary to make it eligible for approval. When a bank had once made its decision to participate in the deposit guaranty system, it was not permitted to change. Withdrawal from the guaranty fund was therefore impossible, until the

1/ National banknotes were protected not only by the deposit of United States government bonds, but also by United States government guarantee.

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amendment of 1925, except by placing the bank in liquidation and obtaining a new charter, national or State. However, after the early part of 1916 banks that chose the bond security system were permitted by the State Banking Board to change to the deposit guaranty system. Previous to that time only one bond security bank is known to have changed to the guaranty system, by surrendering its old charter and taking out a new charter.

During the five years that organization of State banks had been permitted prior to inauguration of the deposit guaranty system, over five hundred such banks had been established. Of these, over 90 percent chose the deposit guaranty system. By the end of 1920 another five hundred banks had been chartered by the State, and almost all of these also chose the deposit guaranty system. Less than a hundred banks chose the bond security plan.

Deposits covered by guaranty. Guaranty of deposits in Texas was limited to deposits that did not bear interest and were otherwise unsecured. Texas was the only one of the eight States with a deposit guaranty plan which limited insurance coverage to noninterest-bearing deposits. However, this limitation excluded from insurance a smaller proportion of deposits than would have resulted in most States from such a provision, because Texas banks held relatively smaller amounts of time and savings deposits.

The banks which participated in the deposit guaranty system at its beginning held about 90 percent of the deposits of all banks eligible for participation, but only about 16 or 18 percent of the total bank deposits in the State. The small size of the latter percentage resulted primarily from the fact that national banks and private banks, most of them banks that were in operation prior to establishment of the State banking system in 1905, together

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held over four-fifths of all bank deposits in the State. During the first ten years of the deposit guaranty system, the organization of additional State banks, together with some conversions from national banks and the advantages of being able to advertise that deposits were guaranteed, resulted in an increase in the deposits of banks participating in the guaranty system to about 30 percent of the total deposits of all banks in the State.

As in other States with deposit guaranty, various cases arose involving the definition of deposits. Quite a number of such cases reached the courts for decision, and some were carried to the State Supreme Court.[1/] In several cases, the question was whether particular obligations of an insolvent bank were deposits or some other form of liability. Such cases involved distinguishing the general depositor relationship from a special deposit, a trust fund, a cashier's check not arising from a deposit account, a clearing house certificate, a loan to the bank, a promissory note given in purchase of a bond, liability of the bank as guarantor on an overdue unpaid note, and liability of a bank for the value of bonds left for safekeeping and diverted to the bank's use. These various forms of bank liabilities were held not to be deposits subject to the protection of the guaranty fund. Other cases involved the question of whether particular deposit accounts were noninterest-bearing and unsecured, particularly when attempts were made in failing banks to change interest-bearing or secured deposits, or a loan to a bank, into a noninterest-bearing and unsecured status before the bank was taken over by the Commissioner for liquidation. Another group of court cases arose in relation to public funds. The State law required

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1/ For a more detailed description of court cases regarding the definition of insured deposits, see Appendix A, pp._____.

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banks that accepted public funds on deposit to give security for them. However, under some circumstances tax collectors or other officials made temporary deposits, without obtaining such security, which were held to be protected by the fund.

Because of the difficulties in defining deposits subject to guaranty the law was amended in 1923 to exclude from insurance coverage an interest-bearing or secured deposit that had been changed to a noninterest-bearing unsecured deposit within ninety days prior to the closing of a bank, and any deposit made by a creditor of a bank for the purpose of converting a loan into a guaranteed deposit. Further, the issuance of noninterest-bearing certificates of deposit was forbidden. The 1923 amendments to the law specifically provided that no public funds would be covered by the deposit guaranty.

Assessments. Banks admitted to the guaranty plan were required to pay an initial assessment of 1 percent of their average daily deposits for the 12-month period ending on November 1, 1909, excluding United States Government, State, or other public funds otherwise secured, and also excluding savings deposits. Banks organized less than one year prior to, or organized subsequent to the enactment of the law, were required to pay an assessment of 3 percent of their capital and surplus, subject to later adjustment on the basis of average deposits. Annually, after the first payment, assessments of one-fourth of 1 percent of average daily deposits on the same basis as the initial assessment were required until the fund should reach a maximum of $2 million, raised in 1921 to $5 million. The State Banking Board was also authorized to levy special assessments up to a maximum of 2 percent of average daily deposits in any one year in the event of an emergency, or if the fund became depleted below the amount on hand at the beginning of the year, or below $2 million ($5 million

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after 1921) after that figure had been reached. The annual assessments were due January 1, and hence in practice most failures entailed, under the law, an assessment to restore the fund.[1/]

Administration and custody of the fund. Administration of the guaranty fund was placed in a State Banking Board to consist of the Attorney General, the Treasurer of the State, and the Commissioner of Insurance and Banking. The Commissioner of Insurance and Banking was appointed by the Governor, while the Attorney General and Treasurer were elected biennially by the voters of the State.

The banks participating in deposit guaranty were required to pay to the State Banking Board one-fourth of the assessments levied on them, including the initial assessment. The remainder was held by the banks themselves in the form of demand deposits credited to the State Banking Board and subject to call at any time for use in paying deposits of a failed bank.

The law provided that in case of the voluntary liquidation of a participating bank, the State Banking Board was to return to the bank, after all depositors of failed banks had been paid in full, the pro rata part of the fund paid in by the liquidating bank. This provision was taken to mean that the participating banks were the owners of the fund, and the Commissioner accordingly authorized the banks to include their contributions to the fund among their assets in reports of condition. For a number of years after the

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1/ Such special assessments, it appears, would not be necessary if assessments from banks admitted to the fund after the beginning of the year exceeded the deposits of a failed bank, or for a period in 1920, when the fund was larger than $2 million. In fact, there were several cases of failed banks, during the period for which statements of the fund are available, with payments from the fund but no matching special assessment on the participating banks.

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beginning of the system, the State Banking Board levied a separate special assessment for the amount needed to pay depositors in each bank that failed, keeping the accounting therefor separate from the fund accumulated from the initial and regular annual assessments, and as the subrogated assets of the failed bank were liquidated, repaid the proceeds to the participating banks as dividends on the special assessment. The participating banks were therefore instructed to show two guaranty fund items among their assets, designated, respectively, as "Interest in the Guaranty Fund," and "Assessment, Guaranty Fund." These were described by the Bank Commissioner as follows:

> 'Interest in the Guaranty Fund.' This fund is kept intact and shall have an annual increase of one-fourth of one per cent of the average daily deposits of all member banks until same reaches a total of $5,000,000.00. The said one-fourth of one per cent is figured and based on the average daily deposits of member banks for each previous fiscal year ending November 1st. When paid in by the bank, it is likewise charged to 'Interest in the Guaranty Fund,' one-fourth sent to State Banking Board for Treasurer, and three-fourths of amount is credited to Banking Board on individual ledger.
>
> Now, we revert to the other fund known as 'Assessment, Guaranty Fund.' This is a fund that is used when any bank is assessed for the payment of any amounts assessed to take care of deposits of a failed bank. When a member bank fails, the Commissioner pays out of the permanent fund, known as 'Interest in Guaranty Fund' the amounts due the depositors, then assesses the member banks proportionately according to their list as sent in on the previous year ending November 1st, as exhibited by the 'Average Daily Deposit Report.' When paid in this restores the amount to the permanent fund as before. The banks thus assessed pay, in cash, to the Commissioner, their respective proportionate amounts for the failed bank, and charge the amount to the 'Assessment in Guaranty Fund.' Also, they should keep a subsidiary account, a miniature ledger, showing the amounts of assessments in each and every failed bank. Later, when the Commissioner has collected in from the failed banks, and pays a dividend, he sends to each contributing bank a check for respective dividends, and the bank credits 'Assessment, Guaranty Fund' with the dividend keeping that under proper head in subsidiary ledger. By keeping the subsidiary ledger, the bank is able at all times to know just how it stands on each and every liquidation. When final dividend is paid on any given liquidation then

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> the bank shall close the subsidiary ledger account on that particular liquidation thus closed, and charge the loss to 'Profit and loss' on the General Ledger, crediting the amount so charged to 'Assessment, Guaranty Fund.' 1/

Under this procedure the permanent fund accumulated from the annual assessments was a revolving fund usable for the immediate payment of depositors of a closed bank, with the amounts withdrawn for this purpose restored from the proceeds of the special assessments. 2/ The losses sustained by the guaranty fund in protecting depositors thus came out of the special assessments, not out of the regular annual assessments. The permanent fund could therefore be appropriately treated, as it was, as an asset of the participating banks. However, treating it as an asset of the participating banks did not involve any income to the banks on the portion of the fund held by the State Treasurer. This was held on a noninterest-bearing basis, and no interest appears in the accounts of the permanent fund, either in the books of the State Banking Board or as carried in the "Interest in the Guaranty Fund" accounts on the books of the participating banks.

The guaranty fund accounts maintained by the Commissioner of Insurance and Banking, and the fund statements published by the Commissioner, also kept the permanent fund separate from the special assessments to take care of deposits of failed banks and the recoveries from the assets of failed banks, until the fiscal year beginning in 1920. For the next two fiscal years the data pertaining to both were shown in a combined statement in the annual report of the Commissioner of Insurance and Banking. After the establishment of a separate Department of

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1/ J. L. Chapman, Bank Commissioner, "Exegesis of the Guaranty Fund Law," The Guaranty Fund Bulletin, December 1923, pp. 16 and 17.

2/ In several cases, amounts withdrawn were not restored by special assessments, and this was taken into consideration in the final settlement of the affairs of the fund.

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Banking in 1923, the Bank Commissioner did not publish any statements of the fund. However, in talks and correspondence the special assessments were referred to as "Contributions," thus distinguishing them from the annual assessments.

Expenses of administration. Expenses of the Commissioner in enforcing the act, and payments for salaries and expenses of bank examinations were met from the general funds of the State. However, each bank was required to pay the "just and reasonable" cost, as certified by the Commissioner, of each examination, general or special, with maximum amounts scaled according to capital stock and permanent surplus specified in the law. After 1923, the expense of examinations was assessed on the banks in proportion to the assets and resources held on the dates of examination. All examination fees collected by the Commissioner were paid into the State treasury to the credit of the general revenue fund. As a result of this procedure, no expense items appeared in the financial statements of the depositors' guaranty fund.

Method of paying depositors. Prior to the deposit guaranty legislation, an insolvent State bank was liquidated by a court-appointed receiver. Under the guaranty legislation, all insolvent State banks were liquidated under the direction of the Commissioner, through a receiver or some competent person. In the case of a closed bank participating in the guaranty plan, the Commissioner was required by law to pay as large a proportion of the deposits as possible from the cash that could be made immediately available from the assets of the bank. The State Banking Board ruled that sufficient cash should be held for the same proportionate payment on other deposits and obligations to creditors. The remainder of the guaranteed deposits were to be paid by the State Banking Board from the guaranty fund.

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Rules adopted by the State Banking Board provided that upon closing of a bank the Commissioner should immediately submit to the Board an estimate of the amount required from the guaranty fund, and that upon approval of this amount or a revision thereof by the Board, the Board should draw an order upon the State Treasurer to pay the needed amount to the Commissioner, who then paid the depositors, personally or through a State bank examiner or a special agent. Any indebtedness of a depositor to the bank was deducted from the amount due him on his guaranteed deposit. Claims for guaranteed deposits presented after 90 days (45 days prior to 1917) were not entitled to payment from the guaranty fund, but were entitled to an equitable share of the proceeds of liquidation of the assets of the bank.

Upon payment of the guaranteed deposits of an insolvent bank from the guaranty fund the Board ordered checks to be drawn by the State Treasurer upon the participating banks, in proportion to their deposits in the fund subject to his check, for the purpose of immediately restoring the cash portion of the guaranty fund. The Board also levied a pro rata assessment upon the participating banks, equal to the amount of those checks, requiring payment within five days by a credit on the member bank's books to the Treasurer's demand deposit guaranty fund account, thus restoring that portion of the fund.

In the course of liquidation of the assets of a failed bank, the Commissioner paid to or set aside for the guaranty fund the dividends to which the fund was entitled by subrogation of the rights of depositors whose claims had been paid by the fund. These amounts were then repaid by the State Banking Board to the participating banks, pro rata according to the amounts contributed to the special assessment for the failed bank. In June 1927, after repeal of the

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guaranty law, the practice of prorating and returning to the assessed participating banks the recoveries from the assets of failed banks was discontinued, and such recoveries were kept as dividends set aside for the guaranty fund.

The final dividend of a bank in liquidation could not be made until after a year subsequent to the notice given creditors of the closing of a bank. If the assets were sufficient to repay all deposits, the guaranty fund was entitled to 6 percent interest on the guaranteed deposits from the date that checks had been drawn on the participating banks. If all guaranteed deposits were paid and provision made for payment of other deposits, the Commissioner could return the bank to the stockholders for completion of liquidation.

The treatment of these various transactions on the books of the participating banks, and of the loss after receiving the final dividend from a failed bank, have been described above. This entire process, though seemingly cumbersome, appears to have worked satisfactorily up to the time that most of the participating banks withdrew following the change in the law in 1925. However, the court cases that arose in the definition of deposits or regarding the insurance status of certain accounts often delayed completion of the liquidation process. When the number of failures became relatively large in the twenties the liquidation process became further delayed.

Mention should also be made of an alternative procedure that was used in a number of cases. This was reorganization of the failed bank, or sale of its assets to a new bank, together with enforcement of the stockholders' liability and a payment from the guaranty fund sufficient to enable the successor bank to assume the liabilities of the closed bank. The law did not specifically mention this procedure, but it was permissible under the powers of the State

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Banking Board and Commissioner. A closed bank could resume business with the consent of the State Banking Board "under such condition as may be approved by it," and the Commissioner was authorized to sell the property of a closed bank on "such terms as the court may direct" and when necessary to enforce the liability of the stockholders. The legality of this process was confirmed by a court decision in a case brought by a stockholder of a bank handled in this way in an effort to avoid payment of a stockholder's assessment under the double liability provision.[1/]

SUPERVISION AND REGULATION OF PARTICIPATING BANKS

Prior to 1905, as mentioned earlier in this report, only a few State chartered banks were in operation, the banking system consisting almost entirely of private banks and national banks. State banks had been subject to supervision for about four years prior to enactment of the deposit guaranty legislation. For the most part the existing law governing the regulation and supervision of banks was left unchanged by the deposit guaranty legislation, and except for the requirement of a special examination before admission to the guaranty system the participating banks were subject to the same regulations and supervision as those choosing the bond security system.

Various changes were made in the regulatory and supervisory provisions of the banking code during the time that deposit guaranty was in operation. This was particularly the case in 1923, when rather extensive amendments to the law were made.

Powers of the Department of Banking. When the general banking law was enacted in 1905, the Commissioner of Agriculture, Insurance, Statistics and History was given the added title of Superintendent of Banking and was delegated

1/ Houston National Exchange Bank v. Chapman, State Commissioner of Insurance and Banking, Court of Civil Appeals of Texas, Galveston, May 15, 1924, 263 S.W. 929.

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the task of bank supervision. By 1909, the duties of this office had been divided, with those relating to insurance and banking exercised by a Commissioner of Insurance and Banking. This Commissioner was required to be experienced in insurance, and not personally interested in any banking corporation under his supervision.

In 1923 the Department of Insurance and Banking was divided, with the Department of Banking headed by a Bank Commissioner. The Bank Commissioner was required to be a practical banker with not less than five years actual banking experience in a position not lower than that of cashier. The law also provided for a Deputy Bank Commissioner whose experience must be that of a practical banker. The State Banking Board, which had been established by the deposit guaranty law, was continued with the Bank Commissioner serving in the place of the former Commissioner of Insurance and Banking.

Under the deposit guaranty legislation the State Banking Board was given control and management of the depositors' guaranty fund with power to adopt all necessary rules and regulations in harmony with the act for the management of the fund. The Board also had general supervision and control of the bond security system, and the power of regulation, control and supervision of all State banking corporations as provided in the Act. However, the Commissioner of Insurance and Banking retained most of the powers of supervision under the law already in force, with some additional duties prescribed by the deposit guaranty law.

A summary of the supervisory powers given the State Banking Board and the Commissioner is shown in Table 1. Those given to the State Banking Board are so designated, the others were assigned directly to the Commissioner of Insurance and Banking, or, after 1923, the Bank Commissioner.

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF COMMISSIONER OF INSURANCE AND BANKING, IN TEXAS

Item	Powers 1/
Opening of new banks	Commissioner to issue certificate of authority to transact banking business, specifying whether under guaranty fund or bond security system, and showing that bank has complied with the banking laws to the satisfaction of the State Banking Board. In 1913, charters to be approved by the State Banking Board: the Board to inform itself as to the financial standing and character of the incorporators, the public necessity for a bank in the community, and adequacy of the proposed capital, with charter to be refused if any finding unfavorable.
Examinations and reports of condition	
Frequency of examinations	At least once in each quarter of each calendar year, amended in 1923 to at least every four months; and whenever deemed necessary or expedient. 2/
Scope of examinations	Thoroughly and fully.
Reports of condition	To be submitted for any date, at least twice a year, and in form required by Commissioner; and any additional statements deemed necessary for enforcement of the deposit guaranty law.
Bank management	
Removal of undesirable assets or discontinuance of undesirable practices	Commissioner to order discontinuance of illegal, unsafe, or unauthorized practices disclosed by examination.
Impairment or deficiency of capital	Commissioner to require impairment of capital below legal requirement to be made good, and to require increase of capital if deposit-capital ratio found to be above specified limit. 3/
Removal of bank officers, directors, or employees	No specific provision. To report to Attorney General, for such proceedings as may be required, whenever director or officer has abused his trust or is guilty of misconduct or malversation, or when bank has failed to comply with orders regarding banking practices.

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF COMMISSIONER OF INSURANCE AND BANKING, IN TEXAS - Continued

Item	Powers
Taking possession or closing a bank	Required to close and take possession of a bank: If insolvent, with a bank that refuses to submit its affairs to examination or found to have violated its charter or the law, to be treated as an insolvent bank; If continuance in business will seriously jeopardize safety of depositors or other creditors; If affairs placed under control of Commissioner by the bank.
Handling of closed banks	
Return to owners	Bank may resume business upon conditions approved by State Banking Board, evidenced by written statement of the Commissioner. If bank deems itself aggrieved by Commissioner's possession or liquidation procedure may apply to district court, which may, in its judgment, order him to return the bank to its owners (repealed in 1923).
Liquidation	Unless returned to owners, closed bank to be liquidated by Commissioner, through receiver or some other competent person and under direction of district court.
Sale of assets or capital stock	No special provision, but sale of assets to successor or another bank permitted under general power to dispose of assets.

1/ As at the beginning of the deposit guaranty system (i.e., as granted in the 1905 law or as amended by the 1909 law), with amendments during the period of operation of the deposit guaranty system.

2/ In 1914 less frequent examination of banks members of the Federal Reserve System was authorized, provided such banks were examined by the Comptroller of the Currency or a Federal Reserve bank.

3/ For the maximum deposit-capital ratio scale, see Table 2.

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Supervisory experience. For the major portion of the period during which the deposit guaranty system was in operation, the effectiveness of bank supervision appears to have been hampered by various circumstances: frequent changes in membership of the State Banking Board resulting from the biennial election of two of its members, short terms for the Commissioner because of new appointees with changes in the Governorship (there were twelve different Commissioners during the period of deposit guaranty); insufficient attention to banking by the Commissioner because of the requirement that he be experienced in insurance and his attention to that part of his duties; inadequate salaries and too small an examining staff; a heavy examination workload resulting from the requirement of four examinations of each bank per year, so that examinations were not thorough; and lax enforcement of banking laws resulting from frequent failure to secure convictions in local courts when charges were made against bank officers.

Several years later a president of one of the State banks described the deficiency in bank supervision during the period of deposit guaranty as follows:

> The danger to the Guaranty Fund was caused very largely by our loose method of supervision at that time. We had to learn. We were pioneers and in granting charters we granted them without any investigation as to the need for the bank or as to the capability of the people who were going to run that bank. If they had the money and if the stockholders seemed to be good then the charter was granted, regardless of the need in the community and whether or not the people in charge were experienced in banking. You can take a list of the failures we had and half of those banks should not have had a charter . . . The examinations at that time were superficial. They were not thorough and they did not compare any more with the examinations we have today in the State system or national system than if it were a different process altogether. 1/

1/ Mr. Thos. E. Baker, President, Commercial State Bank, Nacogdoches, Texas, interview with Miss Florence Helm, Division of Research and Statistics, Federal Deposit Insurance Corporation, October 24, 1934.

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The difficulty of convicting bankers who had violated the banking code also was described at a later time by another bank president:

> Even when bankers signed statements admitting criminal violation of the state banking laws, members of the banking department tell me, that it was frequently impossible even to secure an indictment, let alone a conviction.
>
> A great deal of the trouble arose because the banking commissioner's lawful duties ended when he had presented the evidence of violations of law to the courts. The bankers had to be tried either in the county courts or in the district courts. This meant that the county attorney had to prosecute the case. Usually the county attorney or district attorney was interested in being reelected to that job or a better one. Bankers are usually rather influential people in the community and it became the practice for the county attorney to determine the vigor of his prosecution by the probable effect of such a prosecution on his election. Since, under the guaranty fund plan, no depositors lost any money, they were not very mad at bankers even when the bank failure came about as a result of simple fraud. 1/

This laxity of supervision was acknowledged by one of the Bank Commissioners several months before the repeal of the law.

> "...the speaker believes a vigorous and forceful policy of enforcing the law and strict requirements respecting the manner in which many of our banks have been conducted would have operated to prevent, to a very large extent, the enormous losses suffered by the Guaranty Fund since its establishment... No stretch of the imagination is required to assert that the Guaranty Fund as it has been administered in Texas has been a constant premium upon dishonesty and criminal recklessness, and carelessness in the management of some of the banks." 2/

Another factor that may have contributed to the cost of failures to the fund was a tendency of the banking department to delay closing banks that were known to be in a failing condition. This situation was described in 1925 by the Bank Commissioner as follows:

1/ Notes by Professor W. N. Peach, University of Oklahoma, on an interview October 5, 1941 (used by permission of Mr. Peach).

2/ Charles O. Austin, Commissioner of Banking, in (Our State Banking System," The Texas Bankers Record, 15 (June 1926), p. 37.

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> "To the best of my knowledge and belief at the present time all of the banks about which the department has had any serious concern have closed and are now in process of liquidation. Most of these failures were banks known to this department to be absolutely insolvent for a long time, but which appear to have been kept open with the hope that they might work out their own salvation. Bank failures do not develop over night, but are usually the result of conditions well known and fully recognized for a long time before the crisis develops. None of the failures which have occurred so far this year should have been any surprise to any person having access to the bank examiners' reports and most of them should have been no surprise to the public at large for the reason that the banks have been notoriously insolvent and generally discussed in the communities where they existed for many months prior to their closing." 1/

That in at least one case the Commissioner of Insurance and Banking made strenuous efforts to delay closing a bank, because he did not want to draw the necessary amount from the guaranty fund, is clear from a court decision in a case that arose after the bank was finally closed about three years later. 2/

Some of these situations were corrected, or partially so, with modifications of the banking law, especially those in 1923; but by that time the bankers were worrying about the eventual cost and had initiated the campaign against the guaranty system that led to its modification in 1925 and to repeal of the law in 1927.

Statutory limitations on bank operations. Statutory limitations on bank operations under the banking code in operation when deposit guaranty was adopted, or as amended at that time or later, are shown in Table 2. Provisions relating only to savings banks, establishment of which was authorized under the 1905 law, are not included. Very few, if any, banks appear to have been organized under these provisions, and such banks were presumably ineligible for participation in the deposit guaranty system because of the limitation of the guaranty to noninterest-bearing deposits.

1/ From statement by Bank Commissioner Charles O. Austin to the state bankers, Southwestern Bankers Journal 24 (April 1925), p. 11.

2/ First State Bank of Eastland, insolvent in 1921, but not closed for liquidation until January 1924. Austin, Banking Commissioner, v. Fleming, Court of Civil Appeals of Texas, Eastland, Feb. 11, 1927. 290 S.W. 835.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN TEXAS

Item	Provisions of law 1/
Responsibility of officers, directors, and stockholders	
Examination of bank	No provision except provide records and information for State examiners.
Losses resulting from violations of law	Officers and directors responsible for deposits received or debts contracted knowing banks to be insolvent or in failing condition.
Liability of stockholders	Par value of shares (i.e., usual double liability).
Bonding of active officers and employees	Required for officers with power of cashier or treasurer, amended in 1917 to cover all officers required to handle funds of bank, for amount approved by Board of Directors and in form approved by Commissioner.
Limitations on loans and investments	
Loans to bank examiners	Prohibited.
Loans to officers and employees	Loans to officers to be approved by Board of Directors.
Loans to directors	In excess of 10 percent of capital stock and surplus to be approved by Board of Directors.
Loans to stockholders	No provision.
Maximum to single borrowers (not to apply to bills of exchange or discounts collateralled by warehouse receipts under specified conditions)	25 percent of capital stock including permanent surplus if equal to one-half or more of the capital stock; amended in 1914 to 30 percent of capital stock; and in 1917 to 25 percent of capital stock and certified surplus. In 1914 discounts for financing movement of farm products excepted with permission of Commissioner.
Maximum secured by real estate	50 percent of reasonable value, and aggregate not to exceed 50 percent of the bank's "securities."
Secured by own capital stock (applicable also to purchase of own stock)	Prohibited unless necessary to prevent loss on debt previously contracted; and if acquired to be sold or disposed of within six months.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN TEXAS - continued

Item	Provisions of law
Limitations on ownership of real estate and stocks	
Maximum in banking house and equipment	No provision to 1923, then banking house limited to 50 percent, and furniture and fixtures to 15 percent, of capital stock and permanent surplus without permission of State Banking Board.
Time limit on real estate acquired by collection of debt	Five years.
Other real estate	Prohibited.
Bank stocks	Not over 10 percent of stock of such bank, including loans secured by such stock, unless necessary to prevent loss on debt previously contracted and in such case to be disposed of within six months.
Other corporate stocks	No specific provision but presumably illegal because of lack of enumeration in powers granted.
Limitations relating to deposits	
Maximum aggregate deposits	Capital to be increased by 50 percent if average daily deposits for year ended Nov. 1 exceeded following multiple of capital and surplus: 5 for bank with capital under $10,000 6 " " " over $10,000 and under $20,000 7 " " " of $20,000 but under $40,000 8 " " " of $40,000 " " $75,000 9 " " " of $75,000 " " $100,000 10 " " " of $100,000 or more
Maximum rate of interest payable on deposits	No provision.
Receipt of deposit when insolvent or in failing circumstances	Forbidden.
Required reserves	
Total required	25 percent of demand deposits; amended in 1914 to 20 percent for banks with capital of $25,000 or more and 15 percent for other banks.
In actual cash in bank	10 percent of demand deposits; amended in 1914 to 8 percent for banks with capital of $25,000 or more and 6 percent for other banks; requirement eliminated in 1920.
~~Character of balance~~	~~May be in cash or on deposit in any national or State~~

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN TEXAS - continued

Item	Provisions of law
Required reserves	
Character of balance	May be in cash or on deposit in any national or State bank approved by Commissioner, with capital stock of $50,000 or more, with limit in any one bank of 20 percent of total deposits, capital and surplus.
Limitations on borrowing	
Maximum amount	As approved by Board of Directors; amended in 1914 to paid-in unimpaired capital stock, or with approval of Commissioner to amount of unimpaired capital stock and surplus.
Maximum value of assets pledgeable as security	150 percent of amount borrowed.
Limitations on payment of dividends	
Earnings to be carried to surplus prior to dividends	10 percent until surplus equal to 50 percent of capital stock.
When losses equal or exceed undivided profits	Forbidden.
When reserve is impaired	No provision.
When insolvent or capital impaired	No provision.
Maximum	Net profits on hand after deducting losses and bad debts.
Minimum capital stock	
New banks	$100,000 in places with 20,000 or more population; $50,000 in places with 10,000 but less than 20,000 population; $25,000 in places with 2,500 (amended in 1923 to 800) but less than 10,000 population; $10,000 in places with less than 2,500 (amended in 1923 to 800) population.
Other banks	See limitations on deposits (above)

1/ Provisions relating to banks of deposit and discount while the deposit guaranty law was in force. For some of the items, the law contained separate provisions for trust companies, or for savings banks or savings departments, which are not enumerated here. Special provisions applicable to banks members of the Federal Reserve System, adopted in 1914 or later (relating chiefly to reserves and to rediscounts at Federal Reserve banks) are also omitted.

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MODIFICATION AND CLOSING OF THE DEPOSIT GUARANTY SYSTEM

Adequacy of the fund and cost to bankers. The deposit guaranty system of Texas, until the privilege of withdrawal was granted in 1925, did not suffer, as in the case of other State systems, from an assessment rate too low to meet the cost. The maximum permitted rate in any year, 2 percent of deposits other than savings deposits, was substantially higher than in the other States with deposit guaranty in operation during the same decades; and the accumulated fund and proceeds from the assessments were sufficient to enable payments to depositors of all the banks that failed, as promptly as the claims could be established and proved. It was only after most of the participating banks had withdrawn and the accumulated fund had been tied up in liquidation that, late in 1926, the fund could not at once meet its obligations to depositors of failed banks.

During the first decade the cost to the participating banks was small. The initial assessment of 1 percent and the regular annual assessments of 1/4 of 1 percent per year had provided by 1920 an accumulated fund to the maximum of $2 million. This was about 3/4 of 1 percent of the deposits of the participating banks after their wartime expansion. Relatively small portions of the fund had been used from time to time to make disbursements in closed banks, but the major part of such withdrawals had been repaid from the proceeds of special assessments, and the accumulated fund was considered by the banks as an item among their assets, nonearning, but of first-class quality. The special assessments to meet the cost of paying the guaranteed deposits of failed banks, after allowance for the dividends received from the liquidation of the assets of the failed banks, had averaged about 3/100 of 1 percent of the deposits of the participating banks.

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The system was hailed by the Commissioner of Insurance and Banking, and by the bankers, as a marvellous success.

The Commissioner of Insurance and Banking, in 1919, in his annual report, described the success of the system as follows:

> There is a feature of the State banking system that, while it does not stamp it as unique among the financial systems of the country, accords to it a prestige, in fact, which few of them possess. I refer, of course, to the protection of unsecured and non-interest bearing deposits. Without this protection to the public, the system, under the excellent supervision of Texas laws, would be admirable; with it, it is unsurpassed. There is no question to my mind that its steady growth to its present colossal proportions has been due in a large measure to the increasing public confidence in its impregnable solidarity and strength which this guaranty against public loss engenders.
>
> By creating this device, the Legislature has not alone accorded absolute protection to the public; it has induced the public to turn its funds freely over to the banks for use in promoting the public welfare. During all the years the guaranty fund has been in operation, it has cost the banks only about $300,000--a sum about one-tenth of one per cent. of the present deposits of the system, which in proportion to the amount of money protected at this cost over the period of years it has been established, becomes infinitesimal... the rate of insurance, computed upon the volume of losses paid, has been about .0021. Surely in dollars and cents alone, it is the best investment the banks have ever made.
>
> But the good it has wrought has not been confined to the protection of depositors' money. It has utterly eliminated from community life the injurious effects of a bank failure. State banks may close today; but if they do, the serenity of the people is not disturbed, for the depositors know that within a few weeks at the longest, their funds will be returned to them. This effect, by itself, is well worth the cost of procuring it. 1/

The attitude of bankers in 1920 was described, after the repeal of the law, by the Secretary of the Texas Bankers Association, as follows:

> Bankers of recognized ability insisted that the guaranty fund system was the greatest piece of constructive legislation ever enacted in the country. They pointed to the record of the ten years. They preached the plan at bankers' conventions. They expanded with pride over the fund's accomplishments and growing importance. 2/

1/ Forty-fourth Annual Report of the Texas Commissioner of Insurance and Banking for the year ending August 31, 1919, Pertaining to Banking, pp. 9-10.

2/ W. A. Philpott, Jr., Secretary, Texas Bankers Association, "The Failure of the Guaranty Fund in Texas," American Bankers Association Journal, March 1927, p. 659.

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In the early 1920's Texas suffered severely from the postwar depression of 1921. Fifty banks failed, requiring more than $8 million of withdrawals from the fund and of assessments on the participating banks, during the 18-month period from the early part of November 1920 to the early part of May 1922. The magnitude of these assessments, which amounted to approximately 3 percent of the deposits of the participating banks, made the bankers aware of the burden as well as the benefits of the guaranty. However, the guaranty of deposits was given credit for helping to soften the impact of the depression, and the bankers continued for the most part to support the principle of deposit insurance. The Commissioner of Insurance and Banking, in his report for the year ending August 31, 1921, stated:

> "The State Bank Guaranty Fund has rendered a signal service the past year. The non-interest bearing and unsecured deposits in each and every guaranty fund bank that has had to close its doors have been paid in full as soon as this Department could make and collect the assessments against the banks, and the claims were properly proven up. ...the State Bank Guaranty Fund is still intact with two million dollars, as the law provides. I do not hesitate to say that I firmly believe this fund has saved the situation with the State banks of Texas. It has established confidence in the minds of the depositors, and rightly so, and has been the means of keeping the money in the banks, thereby keeping it in circulation." 1/

In the summer of 1922, the vice-president of a Dallas bank who later became Commissioner of Banking, referring to the deposit guaranty law, stated:

> "For many years after the adoption of this law it was highly successful, and was rarely ever discussed as a business hazard to the banks which were members of the system. It became an outstanding and shining mark among all the States of this Union that had adopted the guaranty of deposits scheme, as a case of a successful enforcement of a guaranty of deposits law."

1/ Forty-sixth Annual Report of the Commissioner of Insurance and Banking for the year ending August 31, 1921, Pertaining to Banking, p. 4.

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"I believe I know the sentiment of the people of Texas as well as any man in Texas. I believe I know that it would be as utterly impossible to get the legislature of this State to repeal that guaranty fund act as it would be to get the legislature of this state to advise the people to remove the capitol building from Austin to the city of Fort Worth."

"Some of our neighboring states have had a disastrous record with respect to the guaranteeing of bank deposits. Some of them have had a very successful record. I think it is proper to say that the record of Oklahoma has given the guarantee scheme a black eye all over the United States, but we must consider this, gentlemen, that the conditions in Oklahoma were far different from what have existed in Texas. Oklahoma banks have been subjected to the political machinations of as unscrupulous a bunch of political highbinders, according to my information, as has ever come down the pike, if you will permit me to indulge in colloquial language." 1/

At about the same time Thomas B. Love, also from Dallas, who had been Commissioner of Insurance and Banking at the time the law was enacted, commented as follows:

"The Texas Guaranty Fund system of State Banks overwhelmingly has made good, and has had a record breaking career. It has broken all records for growth in number of banks and also for growth in their average strength and in the volume of their business, and while its record of twelve years protection of deposits... in from 500 to 1,000 separate and independent banking units without the loss of a cent to any depositor, absolutely is without a parallel, at the same time, notwithstanding the cost of the protection, it has broken all records for stockholders earnings for a considerable group of newly organized banks." 2/

In June 1922 the first convention of State bankers in Texas since the beginning of the State banking system was held, and unanimously adopted a resolution approving the guaranty fund law, and urging that no new charters be issued for banks operating under the bond security plan. The bankers made

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1/ Charles O. Austin, vice-president, Dallas Trust and Savings Bank, "Why We Are in the State Banking System," The Texas Bankers Record, June 1922, pp. 47 and 48.

2/ Thomas B. Love, "State Bank Laws and the Guaranty Fund," The Texas Bankers Record, July 1922, p. 19.

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several recommendations for clarification of the deposits protected by the guaranty and for elimination of all interest-bearing deposits from assessment, most of which were approved by the Legislature in the 1923 amendments to the guaranty fund law.[1/]

During the next two years the attitude of the bankers toward deposit guaranty changed decisively. Even after the general business recovery in the latter part of 1922 and during 1923, failures continued in sufficient numbers to require assessments above 1 percent a year. The liquidating facilities of the Banking Department were strained, and in addition the liquidation process was delayed by litigation over such matters as determination of the guaranteed deposits and collection of stockholders' liability. Consequently, only a small part of the special assessments was being recouped by the participating banks, and the amount of eventual recovery was doubtful. By 1924 many of the bankers were greatly perturbed about the burden of the assessments, some of them were converting their institutions to national banks, others were preparing to do so.

The major part of the effort of the bankers to get out from under the deposit insurance assessments was concentrated in a campaign in 1924 and early 1925 for repeal of the deposit guaranty law. They did not at that time succeed in this aim, but they were able to obtain amendments to the law permitting withdrawal from the guaranty system with a refund to each withdrawing bank of its pro rata share of the net accumulated fund, as previously had been possible through voluntary liquidation, and making the bond security system more attractive by enlarging the kinds of bonds eligible for deposit under that system.

1/ The Texas Bankers Record, Vol. 11, July 1922, p. 23.

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The resulting exodus of banks from the guaranty fund system into the bond security system was accelerated after a decision by the State Supreme Court early in 1926 that the bonds to be deposited could be taken from the bank's own portfolio.[1/] By the latter part of September of that year, only 108 banks remained in the deposit guaranty system.

On September 29, 1926, one of the remaining participating banks failed. A dividend of 30 percent was paid to depositors from the "cash and available assets of the bank," but the balance in the guaranty fund, exclusive of amounts due to be refunded to banks that had withdrawn, was insufficient to pay the remaining amount of the guaranteed deposits. By the end of the year, six other participating banks had failed, with deposits becoming a claim on the fund, and withdrawals had reduced the number of participating banks to 34. In January 1927, two more banks failed with deposits becoming a claim on the fund; and in february the law was repealed, with only 26 banks remaining as participants to the date of repeal.

NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Participating and nonparticipating banks. When the deposit guaranty and bond security systems went into operation at the beginning of 1910, more than nine-tenths of the State-chartered banks in Texas chose the deposit guaranty system. During the next decade there was a large increase in the number of State banks, with almost all of the new banks also choosing the deposit guaranty system. By 1920 the proportion of the State banks participating in deposit guaranty had increased to 96 percent, remaining at this figure until withdrawal

1/ Texas Bank and Trust Company v. Austin, Banking Commissioner, Supreme Court of Texas, Feb. 3, 1926. 280 S.W. 161.

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from the system was permitted in 1925. With the change in law, most of the participants withdrew, only 4 percent of the State banks remaining in the guaranty system by the beginning of 1927.

When deposit guaranty became effective, less than half the banks operating in the State were eligible for participation, because more than half the banks were national banks or private banks.[1/] During the next decade, when many new State banks opened, the number of private banks declined and the number of national banks increased slowly. Because of these changes, the proportion of all banks in the State that participated in the deposit guaranty system increased from 39 percent at its beginning to a maximum of 58 percent in 1921. As the assessments on participating banks became heavy during the next few years, a few took out national charters. This movement was accelerated in 1925, apparently because some of the banks, when they decided to withdraw, preferred to obtain national charters rather than to join the bond security system.

The number and percentage of banks participating and not participating in the deposit guaranty system, at the beginning of each year, are shown in Table 3. The number of private banks, it should be noted, is an estimate derived from midyear data, but the resulting error in the total number of banks is not sufficient to affect in a significant degree the computed percentage of all banks in the State participating in the deposit guaranty system.

Deposits of participating and nonparticipating banks. Deposits of banks participating in the deposit guaranty system were about 90 to 95 percent of the deposits in all State banks, but only about 17 to 31 percent of the

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1/ Though the Texas law permitted national banks to participate in the deposit guaranty system, this was impossible under a ruling of the Comptroller of the Currency. Private banks were not permitted to become members of the guaranty system.

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Table 3. NUMBER OF BANKS IN TEXAS PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY PLAN, 1910-1927

Call date nearest Jan. 1	Total number of banks	State banks and trust companies 1/			Private banks 2/	National banks 3/	Percent participating in deposit guaranty plan	
		Total	Participating in deposit guaranty	Members bond security system			Of State banks	Of all banks
1910	1203	515	472	43	170	518	91.7	39.2
1911	1308	627	582	45	167	514	92.8	44.5
1912	1370	688	643	45	166	516	93.5	46.9
1913	1442	759	704	55	171	512	92.8	48.8
1914	1536	849	788	61	171	516	92.8	51.3
1915	1551	849	790	59	169	533	93.1	50.9
1916	1532	831	777	54	167	534	93.5	50.7
1917	1530	836	789	47	164	530	94.4	51.6
1918	1572	874	828	46	159	539	94.7	52.7
1919	1579	884	841	43	152	543	95.1	53.3
1920	1641	948	907	41	141	552	95.7	55.3
1921	1717	1031	990	41	130	556	96.0	57.7
1922	1681	1004	970	34	126	551	96.6	57.7
1923	1647	970	936	34	120	557	96.5	56.8
1924	1645	950	916	34	122	573	96.4	55.7
1925	1618	933	896	37	113	572	96.0	55.4
1926	1582	834	337	497	92	656	40.4	21.3
1927	1524	782	34	748	86	656	4.3	2.2

1/ Compiled from biennial reports of the Commissioner of Insurance and Banking and records of the State department of banking.

2/ Approximate number at beginning of year. Figures are averages of number for previous and succeeding midyear dates, from the recently revised Federal Reserve tabulations.

3/ Annual reports of the Comptroller of the Currency.

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deposits of all banks in the State, during the period from the beginning of the guaranty to the time withdrawals were permitted in 1925. Deposits of participating and nonparticipating banks by years are shown in Table 4.

Neither the amount of deposits protected by the guaranty, nor the amount of unsecured and noninterest-bearing deposits, in all State banks, is available in the published data for Texas State banks.[1/] In Table 5 figures are given which are described as the "amount of deposits in these guaranty-fund banks protected by the law at the beginning of each of the 16 years," obtained from official records by the man who was Commissioner of Insurance and Banking when the law was enacted. A comparison of these figures with those for all State banks, excluding categories most likely to have been secured or interest-bearing, and making a rough allowance for the small number of banks members of the bond security system, suggests that they probably provide a reasonable estimate of the amount of guaranteed deposits. On this assumption the guaranteed deposits covered about four-fifths of total deposits in the participating banks, or about one-fifth of the total deposits in all banks in the State.

Concentration of deposits. Table 6 gives tabulations of the number and deposits of banks participating in the deposit guaranty system for the three dates of September 1911, December 1918, and December 1924. These dates

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1/ The categories of deposits in the call reports segregate savings deposits and time certificates of deposit, which were doubtless interest-bearing, but for most of the period do not segregate State and other public funds. Further, amounts reported as "due to banks and bankers", which are included in total deposits in Table 4, were also in part secured or interest-bearing, and a portion of the major deposit item, "Individual deposits", also doubtless bore interest. The annual deposit insurance assessment was based on the average daily deposits for the preceding year, excluding government deposits otherwise secured and also savings deposits; this figure (which is not now available) must have included some interest-bearing deposits.

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Table 4. DEPOSITS OF BANKS IN TEXAS PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY PLAN, 1910-1927

(In thousands)

Call date nearest Jan. 1	All banks	State banks and trust companies			Private banks 4/	National banks 5/	Percent in banks participating in deposit guaranty	
		Total 1/	Participating in deposit guaranty 2/	Members bond security system 3/			Of deposits in State banks	Of deposits in all banks
1910	$274,147	$51,473	$47,443	$4,030	$12,821	$209,853	92.2	17.3
1911	299,436	60,897	55,070	5,827	12,477	226,062	90.4	18.4
1912	299,755	63,489	56,795	6,694	12,602	223,664	89.5	18.9
1913	395,051	98,713	89,151	9,562	13,203	283,135	90.3	22.6
1914	358,169	95,983	85,484	10,499	13,850	248,336	89.1	23.9
1915	305,391	73,452	64,163	9,289	14,987	216,952	87.4	21.0
1916	390,400	101,340	92,934	8,406	15,552	273,508	91.7	23.8
1917	605,860	160,253	149,248	11,005	15,305	430,302	93.1	24.6
1918	762,863	215,821	203,935	11,886	15,976	531,066	94.5	26.7
1919	642,901	190,618	178,632	11,986	17,499	434,784	93.7	27.8
1920	1,131,551	335,545	321,008	14,537	18,064	777,942	95.7	28.4
1921	861,550	279,753	265,881	13,872	17,692	564,105	95.0	30.9
1922	756,042	237,510	227,336	10,174	17,054	501,478	95.7	30.1
1923	913,038	262,488	251,775	10,713	16,142	634,408	95.9	27.6
1924	1,075,190	306,568	289,420	17,148	15,818	752,804	94.4	26.9
1925	1,159,096	322,365	301,704	20,661	16,055	820,676	93.6	26.0
1926	1,256,577	268,586	95,084	173,502	15,566	832,425	35.4	7.6
1927	1,065,531	228,741	5,925	222,816	16,012	820,778	2.6	.6

1/ From biennial and annual reports of the Commissioner of Insurance and Banking and summaries of reports of condition of State banks published by the Commissioner.

2/ 1910-1925, residual obtained by subtracting deposits of banks participating in the bond security system from total for all State banks and trust companies; 1926, interpolated from number and deposits of participating banks on January 1, 1925 and May 1926, on basis of number participating on January 1, 1926 (in May 1926, 160 banks with deposits of $29,657,000 remained in the guaranty fund system, according to statement of the Bank Commissioner in The Texas Bankers Record, June 1926, p. 38); 1927, tabulated from deposits reported in bank directories for banks that had not withdrawn from the deposit guaranty system.

3/ 1910-1925, tabulated from deposits reported in bank directories for the banks that were members of the bond security system; 1926 and 1927, residual obtained by subtracting deposits of banks participating in deposit guaranty from total for all State banks and trust companies.

4/ Averages of deposits for previous and succeeding midyear dates, from the recently revised Federal Reserve tabulations.

5/ Annual reports of the Comptroller of the Currency.

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Table 5. DEPOSITS PROTECTED BY GUARANTY IN TEXAS, 1910-1925

About Jan. 1	Protected deposits (in thousands) 1/	Protected deposits as percent of --		
		Total deposits in participating banks	Total deposits in all State banks	Total deposits in all banks in Texas
1910	$37,856	79.8%	73.5%	13.8%
1911	47,059	85.5	77.3	15.7
1912	49,835	87.7	78.5	16.6
1913	78,153	87.7	79.2	19.8
1914	73,838	86.4	76.9	20.6
1915	55,060	85.8	75.0	18.0
1916	74,747	80.4	73.8	19.1
1917	123,012	82.4	76.8	20.3
1918	167,868	82.3	77.8	22.0
1919	126,387	70.8	66.3	19.7
1920	268,971	33.8	80.2	23.8
1921	218,186	82.1	78.0	25.3
1922	179,145	78.8	75.4	23.7
1923	201,304	80.0	76.7	22.0
1924	235,554	81.4	76.8	21.9
1925	241,378	80.0	74.9	20.8

1/ From "Guaranty of Deposits in Texas State Banks", statement of Thomas B. Love, Congressional Record, Vol. 77, Part 4, p. 3332.

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Table 6. SIZE DISTRIBUTION OF BANKS PARTICIPATING IN DEPOSIT GUARANTY IN TEXAS, 1911, 1918 AND 1924

	Number of banks [1]			Deposits (thousands of dollars) [1]		
	Sept. 1 1911	Dec. 31 1918	Dec. 31 1924	Sept. 1 1911	Dec. 31 1918	Dec. 31 1924
All participating banks	628	850	899	$48,323	$199,989	$297,365
Banks with deposits of--						
$100,000 or less	510	352	211	20,530	22,296	13,601
$100,000 to $250,000	95	294	343	14,244	44,272	56,825
$250,000 to $500,000	15	137	203	4,855	46,771	73,394
$500,000 to $1,000,000	6	34	100	5,005	24,883	67,968
$1,000,000 to $2,000,000	1	25	30	1,666	35,058	37,170
$2,000,000 to $5,000,000	1	7	11	2,023	21,290	39,340
Over $5,000,000	--	1	1	--	5,419	9,067
Largest bank	1	1	1	2,023	5,419	9,067
Largest 5 banks	5	5	5	6,438	19,520	27,759
Largest 10 banks	10	10	10	9,437	30,533	43,773
Percent of total	100.0	100.0	100.0	100.0	100.0	100.0
Banks with deposits of--						
$100,000 or less	81.2	41.4	23.5	42.5	11.2	4.6
$100,000 to $250,000	15.1	34.6	38.2	29.5	22.1	19.1
$250,000 to $500,000	2.4	16.1	22.6	10.0	23.4	24.7
$500,000 to $1,000,000	0.9	4.0	11.1	10.4	12.5	22.9
$1,000,000 to $2,000,000	.2	3.0	3.3	3.4	17.5	12.5
$2,000,000 to $5,000,000	.2	0.8	1.2	4.2	10.6	13.2
Over $5,000,000	--	0.1	0.1	--	2.7	3.0
Largest bank	.2	.1	.1	4.2	2.7	3.0
Largest 5 banks	.8	.6	0.6	13.3	9.8	9.3
Largest 10 banks	1.6	1.2	1.1	19.5	15.3	14.7

1/ For 1911, compiled from data for individual banks in the annual report of the Commissioner of Insurance and Banking. For 1918 and 1924 compiled from data for State banks published in Rand McNally Bankers Directory, omitting banks members of the bond security system. Both the number and deposits differ somewhat from those shown in the reports of the Commissioner.

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are used to indicate the degree of concentration of deposits close to the beginning, middle, and end of the period of operation of the deposit guaranty system.

Most of the participating banks were small to medium in size, and there is no evidence of heavy concentration of risk in any one bank. The largest bank in the system held about 3 or 4 percent, and the largest ten banks from 15 to 20 percent, of the deposits of all participating banks.

The major reason for the small number of large banks in the Texas deposit guaranty system was the fact that most of the large banks in the State were the older banks operating under national charters obtained prior to establishment of the State banking system in 1905. The size difference may be seen by comparing the numbers of banks shown in Table 3 with the deposits in Table 4. The average size of the national banks, throughout the period of operation of the deposit guaranty system, was about four times as large as the average size of the State banks.

Failures of participating and nonparticipating banks. During the sixteen years of operation of the guaranty fund, 154 participating banks, with deposits of nearly $40 million, failed. Sixteen of these were liquidated or reorganized without a payment from the guaranty fund.

Failures occurred during each year the system was in operation, except for 1910. During the first ten years 19 participating banks failed. Toward the end of 1920, with deflation and depression, failures became more numerous. In 1921 there were 33 failures of participating banks, and during the remaining period of operation of the fund an annual average of about two-thirds that number.

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Until 1925 the number of banks operating under the bond security system was small, and only one failure among those banks is reported. In 1926 and the early weeks of 1927, up to the repeal of the law, 21 banks operating under the bond security system failed, with deposits of nearly $5 million. All of these except one had been members of the guaranty fund system and had withdrawn subsequent to the change in law in 1925.

Table 7 shows the number and deposits of the failed banks each year, with rates per 100 banks and per $100 of deposits in operating banks. The average annual rate of failures entailing obligations on the guaranty fund was 1.0 for each 100 members of the system; and the deposits of those failures averaged $1.36 per year for each $100 of deposits in participating banks. However, as indicated above, most of the failures occurred in the 1920's. For the first ten years of the system, the average annual rate of failures involving obligations on the guaranty fund was only 0.2 per 100 participating banks, and the deposits of those failures averaged only $0.45 per year for each $100 of deposits in participating banks.

The foregoing figures do not include failures of private banks. Private banks were ineligible for the deposit guaranty system, and few of them, if any, joined the bond security system. No information is available for failures of private banks during the years 1910-1920. From the beginning of 1921 to the repeal of the guaranty law in February 1927, there were failures of 59 private banks with deposits for about half of these estimated at more than $6 million.[1/] These data suggest an annual average failure rate for those years of about 8 per

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1/ Data collected by the Federal Reserve Committee on Branch, Group and Chain Banking.

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Table 7. NUMBER, DISPOSITION, AND DEPOSITS OF FAILED STATE BANKS IN TEXAS DURING PERIOD OF OPERATION OF DEPOSIT GUARANTY PLAN

Year and group 1/	Number of banks 2/			Deposits (in thousands of dollars) 3/			Annual failure rates 4/	
	Total	Involving payments from guaranty fund	With no payment from guaranty fund	Total	Banks with payments from guaranty fund	Banks with no payments from guaranty fund	Number per 100 active banks	Deposits per $100 in active banks
Total	176	138	38	$44,451	$37,627	$6,824	1.2	$1.41
1910-1919	19	16	3	4,822	4,610	212	.3 5/	.47 5/
1920-1927	157	22	35	39,629	33,017	6,612	2.3	1.94
Guaranty fund banks	154	138	16	39,415	37,627	1,788	1.2 6/	1.42 6/
Bond security banks	22	--	22	5,036	--	5,036	1.7	1.34
1911	2	2	--	230	230	--	.3	.38
1912	1	1	--	35	35	--	.1	.06
1913	1	1	--	125	125	--	.1	.13
1914	4	4	--	207	207	--	.5	.22
1915	3	3	--	513	513	--	.4	.70
1916	3	3	--	3,343	3,343	--	.4	3.30
1917	2	--	2	173	--	173	.2	.11
1918	1	1	--	133	133	--	.1	.06
1919	2	1	1	63	24	39	.2	.03
1920	9	9	--	1,255	1,255	--	.9	.37
1921	33	30	3	12,525	12,002	523)	3.3	4.57
1921-B	1	--	1	258	--	258)		
1922	21	19	2	5,921	5,815	106	2.1	2.49
1923	10	10	--	2,889	2,889	--	1.0	1.10
1924	17	15	2	4,349	4,246	103	1.8	1.42
1925	23	21	2	5,105	4,826	279	2.5	1.58
1926	19	16	3	2,348	1,833	515)	3.1	1.36
1926-B	7	--	7	1,303	--	1,303)		
1927 7/	3	2	1	201	151	50)	18.9	13.97
1927-B 7/	14	--	14	3,475	--	3,475)		

1/ No failure in 1910. Lines marked B in 1921, 1926, and 1927 refer to banks operating under the bond security plan; other cases refer to banks operating under the guaranty fund system.

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Table 7. NUMBER, DISPOSITION, AND DEPOSITS OF FAILED STATE BANKS IN TEXAS DURING PERIOD OF OPERATION OF DEPOSIT GUARANTY PLAN - continued

2/ Excludes banks reorganized under new charters, or taken over by another bank, except those mentioned in the reports of the Commissioner of Insurance and Banking as closed for insolvency, or in the Commissioner's records as requiring a withdrawal from the guaranty fund, or appearing on the Federal Reserve list of suspended banks. A list of "Guaranty Fund Liquidations" in the Bank Commissioner's office includes the following number of such excluded cases: 1919, 1; 1920, 1; 1921, 2; 1922, 1; 1923, 4; 1924, 5; 1925, 28; and 1926, 8. Some of these banks were probably in financial difficulty, though able to reorganize without aid from the guaranty fund.

3/ From reports of the Commissioner of Insurance and Banking in cases for which deposits at date of failure are given (1911-1912, 1918-1920, and most of the cases in 1921-1922); from schedules prepared for the Federal Reserve Committee on Branch, Group and Chain Banking for most of the remaining cases for 1921-1927; and from Rand McNally Bankers Directory, for latest available date prior to failure, for cases not elsewhere available.

4/ Relative to banks operating at the beginning of each year.

5/ Rates for the 16 banks involving payments from the guaranty fund are 0.2 for number and $0.45 for deposits.

6/ Rates for the 138 banks involving payments from the guaranty fund are 1.0 for number and $1.36 for deposits.

7/ To February 11.

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100 private banks, with deposits of nearly $12 per $100 of deposits in operating banks. These rates are much higher than for the State banks during the same period.

A size distribution of the failed banks involving payments from the guaranty fund is given in Table 8. While the larger banks show somewhat higher failure rates than the smaller banks, there is not the direct correlation between size of bank and failure rate that occurred in the case of the Oklahoma and North Dakota deposit guaranty systems. The largest bank participating in the Texas deposit guaranty system that failed had deposits of nearly $3 million.

Comparison with failures in other States. Because of the great size of Texas and its diversity of economic characteristics, comparison of bank failure rates with those of contiguous States is probably of less significance than in the case of other States with deposit guaranty systems. Nevertheless, such a comparison is made in Table 9.

For all banks, the failure rate in Texas, while the deposit guaranty system was in operation, in terms of number, was lower than in any of the four contiguous States, and also lower than for the United States as a whole. For State banks, the failure rate in Texas was about the same as that for the entire United States and one of the contiguous States, and lower than that in the other three contiguous States. But as in other States and the entire United States, the rate for State banks was much higher than that for national banks.

In the case of failure rates based on deposits, the rate for State banks in Texas was higher than that for the entire United States and for two of the contiguous States, Arkansas and Louisiana, but lower than for the other two contiguous States, New Mexico and Oklahoma.

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Table 8. SIZE DISTRIBUTION OF FAILED BANKS INVOLVING OBLIGATIONS ON THE TEXAS DEPOSIT GUARANTY SYSTEM COMPARED WITH AVERAGE SIZE DISTRIBUTION OF ACTIVE BANKS, 1910-1926

Size category	Operating banks (average) 1/	Failed banks (17 years)	Percentages of total: Operating banks	Percentages of total: Failed banks	Failure rate per year 2/
Total number of banks	831	138	100.0	100.0	1.0
Number with deposits of --					
$100,000 or less	418	56	50.3	40.6	.8
$100,000 to $250,000	240	49	28.9	35.5	1.2
$250,000 to $500,000	108	14	13.0	10.1	.8
$500,000 to $1,000,000	40	11	4.8	8.0	1.6
$1,000,000 to $2,000,000	17	6	2.0	4.3	2.0
$2,000,000 or more	8	2	1.0	1.4	1.5
Total deposits (in thousands)	$177,742	$37,631	100.0	100.0	$1.24
In banks with deposits of --					
$100,000 or less	20,467	2,864	11.5	7.6	.82
$100,000 to $250,000	38,276	7,808	21.5	20.7	1.19
$250,000 to $500,000	38,213	5,017	21.5	13.3	.77
$500,000 to $1,000,000	28,078	8,399	15.8	22.3	1.75
$1,000,000 to $2,000,000	23,219	8,497	13.1	22.6	2.14
$2,000,000 or more	29,489	5,046	16.6	13.4	1.00

1/ Averages of size distribution data for eight dates: Sept. 1, 1911; Sept. 4, 1912; Sept. 12, 1914; midyear, 1917; year-end, 1918, 1920, 1922, and 1924. Distributions for the first three dates compiled from data for individual State banks published in annual reports of the Commissioner of Insurance and Banking, and for the other five dates as published in Rand McNally Bankers Directory, excluding banks members of the bond security plan.

2/ Average annual number of failures per 100 active banks, and annual average deposits in failed banks per $100 of deposits in active banks. The latter rate for all failures is slightly below the rate given in Table 7, note 6, because the average deposits of operating banks on the eight dates for which the size distribution is available is larger than the annual average computed from data for the beginning of each year.

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Table 9. BANK FAILURE RATES IN TEXAS, 1910-1926, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES

	Failures per 100 operating banks (annual average) 1/			Deposits in failed banks per $100 in operating banks (annual average) 1/		
	State and national banks	State banks	National banks 1/	State and national banks	State banks	National banks 1/
Texas	0.9	1.2	0.4	$0.64	$1.47	$0.31
Four contiguous States	1.7	2.0	1.0	0.93	1.22	.62
New Mexico	4.7	6.0	3.1	3.50	5.84	2.40
Oklahoma	1.8	2.4	.9	1.30	2.86	.68
Arkansas	1.1	1.2	.7	.84	1.05	.42
Louisiana	1.4	1.6	.4	.25	.33	.02
Entire United States	1.0	1.2	.5	.28	.40	.13

1/ Rates for State banks in Texas computed from data in Tables 3, 4, and 7; i.e., on basis of data for active banks at beginning of year. Other rates based on active bank data for midyear dates. The difference may affect the rates slightly.

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Causes of bank failures. The published reports of the Commissioner of Banks in Texas do not provide information regarding causes of bank failures while the guaranty system was in operation, except for the first three failures, which are described as follows:

> It is interesting to note that the failure of all three of these banks was traceable to one common cause, to wit: an irresponsible head dominating a weak and confiding cashier.
>
> (Regarding the first failure) So much of the paper of the bank, which appeared in order until attempts to collect it was begun, was shown to have been placed there for fraudulent purposes, many forgeries of checks on depositors' accounts uncovered, and false entries made that the work of closing up the affairs of the bank has been slow...
>
> (Regarding the second failure) Chief stockholder pled guilty on two indictments and was sentenced to four years. Cashier also pleaded guilty to receiving deposits when bank was insolvent.
>
> (Regarding the third failure) ...due to the act of the president in placing ... worthless paper in the bank. 1/

In various articles and talks the Bank Commissioners and liquidating officials of the Department commented on the causes of bank failures, usually stressing dishonest management. In 1923 the General Liquidating Agent of the Department, speaking on the basis of information obtained in closing the affairs of failed banks, said:

> First in importance, I should say that outright thievery, corrupt, illicit and illegitimate banking practices are to blame. Second, I should say that economic conditions are responsible. Third, I think that reckless, injudicious advances of credit are to blame. 2/

1/ Annual Report of the Commissioner of Insurance and Banking, for the year 1911-12, pertaining to banking, pp. 19, 20, 21, and 23.

2/ W. L. Peterson, General Liquidating Agent, Department of Insurance and Banking, "Liquidating State Banks," The Texas Bankers Record, 12 (June 1923), p. 49.

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The next year the Banking Commissioner also stressed managerial inadequacies. In one article he raised the question how the assessments might be reduced and answered, "When the defaulting and speculative officials are removed and the incompetent banker displaced." In another, mentioning what he had learned in his experience with the Department, he said:

> "...if you can exclude the looter, the defaulter, the speculator, and the incompetent banker, it will not be necessary for another bank to close in five years in Texas, provided, of course, you have good supervision and reasonably rigid examinations." 1/

In the year following the repeal of the guaranty fund law, the Commissioner of Banking, in a review of the effects of the law, commented:

> "Banks fail from one or more of the following causes: (1) incompetence of officers and directors; (2) excessive lines of credit to a few customers; (3) carrying speculative lines; (4) embezzlement by officers or employees. The records of the Department of Banking show that failures are traceable to one or more of these causes almost invariably." 2/

Other commentators on bank failures in Texas while the guaranty system was in operation also stressed dishonesty and incompetence, though also citing such factors as losses and withdrawals which may have been associated therewith or with adverse economic conditions. When Robb's book on the guaranty of deposits was written, there had been fourteen failures of banks participating in the Texas deposit guaranty system. He describes the specific causes of failure in several of these cases, saying they are fairly representative and concluding:

1/ J. L. Chapman, Commissioner of Banking, in The Guaranty Fund Bulletin, May 1924, p. 6, and The Texas Bankers Record, 13 (June 1924), p. 30.

2/ James Shaw, Commissioner of Banking, as reported in the Journal of the American Bankers Association, 21 (July 1928), p. 64.

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"In the majority of cases their direct cause was due to human depravity and incompetence which even the more stringent banking laws of 1909 failed to eliminate." 1/

The Comptroller of the Currency, in a summary in his report for 1921 of the experience of States with deposit guaranty, stated that out of 51 failures in Texas, 13 were due to criminal acts of officers, 34 to losses, of which six were on account of cotton loans and one to drought, and 3 were not accounted for. 2/

The deposit guaranty plan was in operation in Texas during six of the ten years covered by the study of bank suspensions of the Federal Reserve Committee on Branch, Group and Chain Banking. In the questionnaire submitted by the committee a list of causes of failure was given, to be checked as primary or contributing in each case. The causes of failure in Texas as reported on these schedules, which were prepared in the office of the Commissioner of Banking, are given in Table 10. The figures relate to 188 banks which failed during the years, 1921-1930. All but about 30 of these closed prior to repeal of the deposit guaranty law. While the greatest stress was placed on incompetent management and heavy withdrawals as primary causes and on losses due to unforeseen agricultural or industrial disasters as the principal contributing cause, defalcation was given as a primary or contributing cause in nearly a third of the cases. 3/

1/ Thomas Bruce Robb, The Guaranty of Bank Deposits (Houghton Mifflin Company, 1921), pp. 152-154.

2/ Annual Report of the Comptroller of the Currency, 1921, p. 189.

3/ Compiled by the author from the original schedules, which were made available through the courtesy of the Board of Governors of the Federal Reserve System.

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Table 10. CAUSES OF SUSPENSION OF STATE BANKS IN TEXAS, 1921-1930, AS REPORTED ON SCHEDULES PREPARED BY THE COMMISSIONER OF BANKING FOR THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP AND CHAIN BANKING

Cause of failure	Number of cases	
	Primary cause	Contributing cause
Total number of suspensions	188	
Defalcation	33	24
Incompetent management	135	39
Insufficient diversification		26
Losses due to unforeseen agricultural or industrial disasters such as floods, drought, boll weevil, etc.	1	123
Decline in real estate values		16
Heavy withdrawals	135	39
Failure of affiliated institution or correspondent	11	
Other causes	10	70

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Some of the Texas bankers and bank supervisory officials believed that the problem of incompetent and dishonest bank management was accentuated by the existence of deposit guaranty, for two reasons: it encouraged incompetent persons to open new banks; and second, it made conviction of bank officials for illegal actions more difficult. This point of view was forcefully expressed by the Bank Commissioner in 1926:

> "From 1910 down to a very recent date it was quite the popular fashion for men who were out of jobs or who had failed in some other business to organize Guaranty Fund banks and offer the public the same degree of safety afforded by the old, well-established, conservative banker of ample capital and experience. The speaker ventures the assertion that more banks have been organized in our state to furnish salaries for jobless men than to meet any necessity for banking facilities...
>
> ... The existence of the law has in itself invited weak and vicious banking methods. A number of banks have built up their business almost solely through the exploitation of the protection afforded the depositors by the Guaranty Fund. Many bankers have engaged in reckless and unsafe business methods of banking, upon the theory that if their banks should get into trouble the Guaranty Fund would come along and contribute enough fresh capital to absorb their losses. A number of dishonest bankers have systematically stolen from their banks year after year and used the funds for personal transactions and speculative deals, knowing that if their banks failed the Guaranty Fund would pay depositors and there would be no demand upon the part of the depositors that these dishonest officials be punished." 1/

The Secretary of the Texas Bankers Association also emphasized this point of view in an article published shortly after repeal of the law.

> "The plan makes for too many banks and too few bankers. The incompetent, the inefficient, the reckless, the venturesome, and the careless, are attracted to banking; because they know their reckless and unsafe methods will be protected by the guaranty fund, which will at the proper time furnish new capital and absorb the community's loss. The dishonest, the incompetent, the reckless in bank management have leaned heavily on the guaranty fund in Texas....

1/ Charles O. Austin, Commissioner of banking, in "Our State Banking System," The Texas Bankers Record, 15 (June 1926), pp. 36-37.

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> The plan makes it impossible to prosecute bank wreckers and inside crooks. Generally the banker is a prominent citizen. He may even speculate with his deposits. His bank closes and the good and solvent banks of the state pay his depositors. His former customers are his friends and neighbors. They have their money. Why should he go to the penitentiary? Therefore he is not indicted. Scores of such incidents have happened in Texas. Only one will be cited. A bank president and a broker friend looted the bank until its liquidating assets were nil. He and the friend disappeared. In sixty days, as the law provided, the depositors of the closed bank received dollar for dollar from the guaranty fund. Shortly thereafter the ex-banker returned to 'face the music'. What was it? A public reception and a welcoming demonstration! He was a popular man. The state failed after repeated trials to get an indictment against him in his home county where the law prescribed he must be prosecuted." 1/

Procedures in handling closed banks. As in Oklahoma, various procedures were used by the Department of Banking in handling closed banks involving payments from the guaranty fund. However, much less use was made of the procedure of approving an assumption of all the insured deposits by another bank or a successor institution with a payment from the guaranty fund: less than one-fifth of the cases were handled in this way. In more than four-fifths of the cases the failed bank was liquidated by the Department of Banking, with the insured deposits paid by the fund, though in some of these cases a large part of the assets may have been sold to a successor or neighboring bank.

Descriptions of the details of arrangements made with successor or absorbing institutions, when this method was used, are available for only three cases, as follows:

> Farmers and Merchants State Bank of Waco, closed March 17, 1915.
> "The non-interest bearing and unsecured deposits of this bank were paid by the First National Bank of Waco under a contract entered into by the Commissioner of Insurance and Banking and the State

1/ W. A. Philpott, Jr., "The Failure of the Guaranty Fund in Texas," American Bankers Association Journal, March 1927, p. 680.

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Banking Board on the one hand and the First National Bank on the other, providing that the amount so advanced by said bank should be repaid from time to time out of the proceeds of the liquidation of the insolvent bank, and any deficiency ultimately existing would be paid to the First National Bank by the State Banking Board out of the Depositors' Guaranty Fund." 1/

West Texas Bank and Trust Company, San Antonio, closed April 3, 1916

"The bank was reorganized with the assistance of some of the more influential stockholders and finally took over the entire assets of the defunct bank. The state banking board paid the new management $200,000 from the guaranty fund to protect it from loss in the liquidation of the assets of the failed bank. According to the commissioner no part of this sum will ever be returned."2/

First State Bank, Bronte, closed January 11, 1922

"The Commissioner of Insurance and Banking "sold, assigned, and delivered to the Guaranty State Bank of Bronte, Texas, all of the property and assets of said First State Bank of every kind and character, including the liability of the stockholders of said bank and all funds to be realized on account thereof..." 3/

FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. During the early years of the Texas deposit guaranty system, as has been indicated in the description of the administration and custody of the fund, assessments on the participating banks on account of guaranteed deposits of failed banks paid by the fund, and recoveries from the liquidation of assets of the failed banks used in repaying as much as possible of those assessments to the participating banks, were kept separate from the permanent guaranty fund built up from the initial and regular annual assessments. This separation appears in the annual

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1/ Report of Commissioner of Insurance and Banking for the year ending August 31, 1916, Pertaining to Banking, p. 18.

2/ Robb, The Guaranty of Bank Deposits, p. 154, information attributed to letter of bank commissioner. The records of the Department of Banking indicate that a small additional payment was made from the fund. The total payment was less than one-tenth of the deposits of the closed bank.

3/ Houston National Exchange Bank v. Chapman, 263 S.W. 929. The payment from the guaranty fund in this case was $30,000, about one-sixth of the total deposits of the bank.

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statements of the fund published in the reports of the Commissioner of Insurance and Banking for fiscal years up to the end of August 1920. However, in nine of the eighteen bank failures during this period in which withdrawals were made from the guaranty fund, no special assessments were made on the participating banks, and in a few of the cases where assessments were made small amounts of additional withdrawals from the fund were required for which additional assessments were not made. Most of the withdrawals that were unaccompanied by assessments on the participating banks, and recoveries from the failed banks for which such withdrawals were made, were included in the annual statements of the fund, but were not fully identified; the recoveries, for example, being reported among "miscellaneous collections."

During the two fiscal years 1920-21 and 1921-22, special assessments on participating banks were included in the statements of the fund under the heading, "Contributions to Guaranty Fund by member banks to replace money advanced to pay depositors of failed banks," but the amount for each of the fiscal years differs from that shown in another statement listing the banks on account of which they were made, though the difference between the aggregates for the two fiscal years together is relatively small. For subsequent fiscal years, no statements of the fund are available. No annual report was published by the Commissioner of Banking subsequent to establishment in 1923 of a separate Department of Banking; and no statements of the fund have been found in the records that remain in the Department, except those pertaining to its disposition after repeal of the law.

Data for withdrawals to pay depositors of the various failed banks, and for the percentage dividends paid by those banks on creditors' claims,

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including those of the fund, are available in the records of the Department of Banking.[1] Some additional information regarding the affairs of failed banks is available, for the early years of the fund, in the published annual reports of the Commissioner; and for the later years, in schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking. Some information on the annual assessments for the permanent fund and the special assessments or "contributions" and repayments thereon are available from other sources, such as banking journals and correspondence.[2]

The cash balance of the guaranty fund with the State treasurer as of November 1930, other balances with the Bank Commissioner as of July 1931, and detailed information regarding the claims on the fund at that time are available in an audit report prepared in connection with the final settlement of the fund's affairs. Additional information regarding the settlement of the fund's affairs is available in court decisions and records.

From these various sources, and from estimates of the annual assessments paid by the participating banks from 1922 to 1927, derived from the assessment rate and the amount of the banks' deposits, it has been possible to prepare a reasonably complete statement of the receipts and disbursements of the fund throughout the entire period of its existence.

Income, expenses, and refunds. A summary of the aggregate receipts and disbursements of the Texas depositors guaranty fund, covering both the permanent fund and the "contributions" and repayments thereon, and also the

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1/ These records were examined by the writer of this report in January 1956.

2/ A letter from Mr. J. A. Pratt to Mr. Thomas B. Love, former Bank Commissioner, dated August 9, 1933, and made available by Mr. Love, gives some information on assessments not elsewhere available.

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balance returned to the participating banks, is given in Table 11. Assessments for the permanent fund totalled about $5 million, all of which was returned to the banks. The special assessments or "contributions" to meet the claims of depositors in failed banks amounted to $17 million, of which about $6 million was refunded from the proceeds of liquidation of the assets of the failed banks.

Table 12 gives the annual receipts and disbursements of the permanent fund, built up from the various sources of information described above. For the years from 1922 to 1926 the figures given are a reconstruction from data that are not complete, and must be regarded as approximations only, as considerable estimating has been necessary. Transactions subsequent to repeal of the law early in 1927 are not shown in this table. However, the demand deposit portion of the guaranty fund that was attributable to the banks that withdrew prior to September 29, 1926, which was cancelled by order of the State Banking Board in December of that year, is included in the statement for the fiscal year 1926-27. The remaining balance of the permanent fund was returned to the banks that participated in the final settlement of the affairs of the fund.

Table 13 shows, by fiscal years ending August 31, the special assessments or "contributions", and the recoveries from liquidation of failed banks repaid to the participating banks, to the summer of 1927. Another part of the table shows the withdrawals from the fund on account of the banks that failed in each of the fiscal years (which are not identical, of course, with the "special assessments" levied in the same fiscal years), and also the eventual losses and recoveries for such banks.

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Table 11. RECEIPTS AND DISBURSEMENTS OF THE TEXAS DEPOSITORS GUARANTY FUND

	Total	Permanent fund (to mid-1927) 1/	Special assessments (to mid-1927) 2/	Settlement transactions and adjustments (after mid-1927) 3/
Receipts				
Assessments	$23,059,300	$5,394,817	$17,090,883	$573,600
Recoveries from failed banks	5,507,414	320,207	4,184,246	1,002,961
Interest	64,610	13,070	--	51,540
Other receipts	23,477	23,477	--	--
Total receipts	28,654,801	5,751,571	21,275,129	1,628,101
Disbursements				
Payments to depositors	17,153,138	455,269	16,115,184	582,685
Expenses and adjustments	25,573	20,334	--	5,237
Refunds to participating banks	11,476,090	3,734,621	4,184,246	3,557,223
Total disbursements	28,654,801	4,210,226	20,299,430	4,145,145

1/ From Table 12 and notes thereto. The excess of receipts over disbursements, amounting to $1,541,346, was combined with the excess in the special assessment accounts and subsequent recoveries in the process of settlement of the affairs of the fund.

2/ From Table 13 and notes thereto. The excess of receipts over disbursements, amounting to $975,699, includes the following: $825,354 of "excess withdrawals," representing special assessments in excess of amounts paid to depositors in the case of some failed banks; the special assessments in late 1926 and in 1927 which had not been disbursed to depositors of failed banks, amounting to $137,169; and a small amount remaining from other special assessments, largely in the form of uncashed checks.

3/ From Table 14 and notes thereto.

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Table 12. RECEIPTS, DISBURSEMENTS, AND BALANCE OF THE PERMANENT DEPOSITORS' GUARANTY FUND IN TEXAS, BY FISCAL YEARS, 1910-1927 1/

Fiscal year or period ending Aug. 31	Assessment income				Other receipts 6/	Other disbursements 7/	Balance in fund, end of year 8/	Portion of fund balance with State treasurer 9/
	Assessments collected		Assessment refunds 4/	Net income from assessments 5/				
	Annual assessments on participating banks 2/	From newly organized banks 3/						
Total	**$4,760,903**	**$633,913**	**$3,734,619**	**$1,660,197**	**$356,754**	**$475,605**		
1910	431,834	--	--	431,834	--	--	$431,834	
1911	63,852	--	--	63,852	--	--	495,686	$123,952
1912	99,978	58,110	54,450	103,638	28	34	599,318	149,843
1913	127,590	84,390	32,778	179,202	5	--	778,525	194,720
1914	176,797	55,440	34,676	197,561	--	675	975,411	244,061
1915	159,606	--	121,363	38,243	--	--	1,013,654	253,413
1916	147,857	37,374	53,748	131,483	--	26,492	1,118,645	260,226
1917	206,620	32,787	9,516	229,891	44,393	130,354	1,262,575	231,186
1918	327,567	29,190	31,529	325,228	15,989	1,900	1,601,892	327,977
1919	270,448	48,308	21,978	296,778	89,217	123,607	1,864,280	409,349
1920	372,224	178,727	140,624	410,327	156,346	115,315	2,315,638	547,833
1921	43,937	80,498	49,071	75,364	41,022	10,364	2,421,660	594,588
1922	432,569	29,089	193,278	268,380	9,754	17,796	2,681,998	652,145
1923	478,373	--	219,373	259,000	--	48,801	2,892,197	716,895
1924	578,840	--	179,964	398,876	--	267	3,290,806	816,609
1925	633,578	--	--	633,578	--	--	3,924,384	975,003
1926	199,676	--	--	199,676	--	--	4,124,060	1,124,578
1927	9,557	--	2,592,271	-2,582,714	--	--	1,541,346	1,126,967

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Footnotes to Table 12

1/ To Aug. 31, 1922, from annual reports of the Commissioner of Insurance and Banking pertaining to banking, adjusted as indicated below. Subsequent to Aug. 31, 1922, as described in notes to the various columns. Adjustments prior to Aug. 31, 1922, are as follows: to add figure for cash portion of fund as of Aug. 31, 1913, from the Texas Bankers Record, Dec. 1913, p. 18; to add estimated data for 1914-15 for which no statement is available; to insert for 1915-16 and 1916-17 payments to depositors in closed banks not accompanied by assessments on participating banks, and repayments from the assets of such banks, in receipts and disbursements instead of including them in the balance of the fund; and for 1918-19, 1920-21, and 1921-22 to exclude items pertaining to special assessments on the participating banks and repayments thereon from the proceeds of liquidation of failed banks. Estimate for 1914-15 prepared on following assumptions: (1) that there were no "misc. collections" nor "misc. refunds"; (2) that collections from newly organized banks were negligible in view of the fact that number of banks decreased by 22 compared with an increase of 18 in the preceding year; (3) that difference between balance at beginning and end of the year, derived from statements for preceding and subsequent year, is therefore the net income from assessments; and (4) that the cash portion of the fund was one-fourth of the estimated total. Annual assessments on participating banks for 1914-15 estimated from average deposits at call dates for base year and average rate of assessment on such deposits for the preceding and subsequent year; and assessment refunds as the difference between that figure and the net income from assessments.

2/ For 1909-10, initial assessment of 1 percent of average daily deposits; for 1910-11 to 1921-22, inclusive, annual assessment of 1/4 of 1 percent of daily deposits plus adjustments for new banks at end of first year of operation, except that in 1920-21 the annual assessment was omitted (for types of deposits excluded from assessment, see page 7). For 1922-23 to 1925-26, inclusive, estimated by applying to the estimated total deposits in participating banks an extrapolation of the ratio in prior years of assessments collected to such deposits. For 1926-27, from difference between total and special assessments collected, as reported in Lacy v. State Banking Board, 11 S.W. (2d) 496, and a memorandum in the records of the State Banking Department.

3/ 3 percent of capital stock (subject to adjustment at end of first year of operation to 1 percent of deposits). Not available prior to 1911-12 nor subsequent to 1922. For 1909-10 and 1910-11 included, if any, with annual assessment. For 1922-23 and 1923-24, netted against assessment refunds in estimate for that item (see note 4). For subsequent years assumed none.

4/ Mostly to banks voluntarily liquidating, including those becoming national banks, which were refunded what they had paid into the fund less any portion used to pay depositors in closed banks, i.e., not covered by or due on special assessments. Includes also refunds to new banks at end of first year of operation when 1 percent of average daily deposits was less than 3 percent of capital stock. For 1922-23 and 1923-24, estimated from difference between estimated net income from assessments (see note 5) and estimated assessments collected. For 1924-25 and 1925-26 assumed none, because refunds to banks withdrawing after the 1925 amendment to the law were not made until after repeal of the law. For 1926-27, amount of demand deposits cancelled in December 1926, as given in law of May 30, 1931.

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Footnotes to Table 12 - continued

5/ Amount for 1922-23 and 1923-24 estimated from change between call dates nearest August 31 in amount reported in asset and liability statements of all State banks as "Interest in guaranty fund." As of Sept. 15, 1922, the amount shown in such reports was $2,748,000, which compares with the cumulative net income from assessments to Aug. 31, 1922, of $2,751,781. For 1924-25 and 1925-26, taken as same as estimated annual assessment. For 1926-27 assessment refunds (i.e., demand deposits cancelled - see note 4) in excess of the annual assessment.

6/ Reported as miscellaneous collections, with adjustments indicated by note 1. Consists largely of recoveries by the fund from assets of banks in which fund had paid depositors without making an assessment on the participating banks, including interest in a few cases where full repayment was made. The aggregate amount of such recoveries, excluding interest, tabulated from data for the banks for which such recoveries are reported, was $320,207. Interest in the cases where full repayment was made, at 6 percent, is estimated at $13,070. For years subsequent to 1922, assumed negligible (no data available).

7/ Mostly payments to depositors in closed banks in cases where no assessment was made on the participating banks, or payments to depositors exceeded such assessments. Data for 1922-23 and 1923-24 relate to four banks, referred to in a record of withdrawals in the Bank Commissioner's office as "additional liabilities for which the original assessment is insufficient." The aggregate amount of such payments to depositors, tabulated from data for the banks for which such payments are reported to have been made, was $455,269. The excess of this over recoveries on principal (see note 6), or loss, amounting to $135,062, may be compared with $135,311 given in the final audit as an adjustment for such under-assessments (see Table 14).

8/ Figures for years subsequent to 1922 from balance at end of that fiscal year plus net income from assessments and other receipts and minus other disbursements. For Aug. 31, 1923, figure given here is smaller than a figure of $3,250,000 given as the approximate amount in the permanent guaranty fund in a statement by W. L. Peterson, Deputy Bank Commissioner, "Statistics of Guaranty Fund," published in The Guaranty Fund Bulletin, Oct. 1923, p. 12, and also included in Thornton Cooke, "The Collapse of Bank Deposit Guaranty in Oklahoma and Its Position in Other States," Quarterly Journal of Economics, Nov. 1923, pp. 131-34. Figure given here for Aug. 31, 1925, is also smaller than a figure of $4,054,445 for May 1, 1925, given in the Federal Reserve Bulletin, Sept. 1925, p. 633, and supported by statement of the Commissioner of Banking, in a letter published in The Texas Bankers Record, April 1925, p. 9, that the permanent fund exceeds four million dollars. It is probable that the figures in these statements for the two dates, like the published statements for the fiscal years 1920-21 and 1921-22, include some balances from unused special assessments or from liquidation of failed banks and not yet repaid to the participating banks.

9/ For years subsequent to 1922 estimated as follows: 1923-1925, cash with Treasurer of the preceding year plus one-fourth of net income from assessments (estimate for 1925 exceeds by a small amount $968,556 reported as the cash portion of the fund on May 1, 1925, in Federal Reserve Bulletin, Sept. 1925, p. 633); 1926 and 1927, estimated from cash held by Treasurer to credit of guaranty fund on Nov. 1, 1930, given in the audit of 1931, adjusted for amounts that would not have been in the cash portion of the permanent fund on Aug. 31 of 1926 and 1927, respectively. **For 1910 not reported and not estimated.**

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Table 13. SPECIAL ASSESSMENTS, WITHDRAWALS, AND LOSSES OF THE TEXAS DEPOSITORS GUARANTY FUND, FISCAL YEARS, 1910-27

Year ended Aug. 31 1/	Special assessments levied 2/	Recoveries from failed banks repaid to participating banks 3/	Data for banks closed in the respective fiscal years			
			Withdrawals from fund 4/	Losses 5/	Recoveries 6/	Number of banks
Total	$17,090,883	$4,184,246	$17,978,492	$11,645,724	$6,332,768	138
1912	133,314	55,808	133,348	55,428	77,920	3
1913	--	22,112	658	658	--	1
1914	61,234	--	61,234	--	61,234	1
1915	17,710	28,436	79,249	15,158	64,091	4
1916	200,000	17,495	362,961	276,627	86,334	5
1917	61,539	13,206	--	--	--	--
1918	--	601	--	--	--	--
1919	--	27,433	123,607	--	123,607	2
1920	--	30,770	115,316	10,449	104,867	2
1921	3,991,453	52,104	4,025,113	3,161,296	863,817	21
1922	4,179,380	222,777	4,207,247	2,977,998	1,229,249	31
1923	1,244,680	1,184,407	1,948,389	1,197,842	750,547	11
1924	2,416,448	1,265,938	1,743,686	1,219,474	524,212	11
1925	3,772,317	(	3,744,070	1,703,860	2,040,210	26
1926	875,639	(1,263,159	858,157	505,248	352,909	11
1927	137,169 7/	(	575,458	521,688	53,770	9

1/ No failure occurred and consequently no special assessment was made in the fiscal years ending in 1910 and 1911.

2/ Fiscal years 1911-12 to 1921-22, inclusive, from report of Commissioner of Insurance and Banking pertaining to banking for year ended Aug. 31, 1922, pp. 69-72; 1922-23, summary of Bank Commissioner's report for year ending Aug. 31, 1923, The Texas Bankers Record, Oct. 1923, p. 27; 1923-24, assessments for 2-year period of 1922-23 and 1923-24, amounting to $3,661,128 as reported by Commissioner of Banking (The Southwestern Bankers Journal, Jan. 1925, p. 8), less the assessments for 1922-23; 1924-25 and 1925-26, from letter of J.A. Pratt to Thomas B. Love, Aug. 9, 1933, with amount for the latter year adjusted to exclude $135,311 assessed in connection with the final settlement which appears to have been included by Mr. Pratt; 1926-27, from records of Banking Department and statement in Lacy v. State Banking Board, 11 S.W. (2d) 495.

3/ Repayments to the participating banks, or available for such repayments, from the liquidation of the assets of the banks for which the special assessments were levied, or from withdrawals from the fund in excess of amounts actually paid to depositors. Data for 1911-12 to 1921-22, inclusive, from report of Commissioner of Insurance and Banking pertaining to banking for the year ending Aug. 31, 1922, pp. 69-71; 1922-23, dividends to the participating banks, summary of Bank Commissioner's report for year ending Aug. 31, 1923, The Texas Bankers Record, Oct. 1923, p. 27; 1923-24, dividends to the Guaranty Fund for 2-year period of 1922-23 and 1923-24, amounting to $2,450,345, as reported by Commissioner of Banking (The Southwestern Bankers Journal, Jan. 1925, p. 8), less the dividends to participating banks in 1922-23; 1925-27, estimated as difference between total recoveries and those in previous years and available at final settlement of the fund.

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Table 13. SPECIAL ASSESSMENTS, WITHDRAWALS, AND LOSSES OF THE TEXAS DEPOSITORS GUARANTY FUND, FISCAL YEARS, 1910-27 - continued

4/ Tabulated from data for the individual failed banks, from records of the Department of Banking and, for 1926-27, from the 1931 audit of the fund. Includes $455,269 withdrawn from the permanent fund to pay depositors in cases where special assessments were not levied or were insufficient, and $825,354 of withdrawals in various cases in excess of payments to depositors. The payments to depositors of the banks that failed in the fiscal year, 1926-27, amounting to $575,458, and $7,226 to depositors of banks previously closed, were made in the process of settlement of the affairs of the fund. The rest of the withdrawals, amounting to $16,115,185, represents the proceeds of special assessments used, prior to repeal of the law, in paying depositors of failed banks.

5/ Tabulated from data for the individual banks: for 1911-20, from data published in the biennial reports of the Commissioner of Banking or in the records of the Department of Banking; for 1921-26, estimated from claims of the guaranty fund, as shown in records of the Department of Banking, or in schedules prepared for the Federal Reserve Committee on Branch, Group and Chain Banking and percentage dividends paid, as shown in records of the Department of Banking; for 1926-27 from data in the 1931 audit report and the records regarding settlement of the affairs of the fund.

6/ Difference between withdrawals and losses. Includes unused withdrawals assessed on participating banks, estimated at $825,354, and recoveries of $320,207 in failed bank cases for which no special assessments were made. Also includes recoveries of $1,002,961 collected subsequent to June 15, 1927, and held until settlement of the affairs of the fund. The remainder, amounting to $4,184,246, represents the portion of the recoveries repaid to participating banks prior to repeal of the law.

7/ This consisted of two special assessments at the maximum rate of 2 percent levied on the banks remaining in the guaranty system on Sept. 29, 1926: one for $60,709 levied in 1926, the other for $76,461 levied in 1927.

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In the attempt, after repeal of the law, to settle the affairs of the guaranty fund, numerous difficulties arose because of conflicting claims on the balance available. Banks that had withdrawn prior to September 29, 1926, claimed full refund of the portion of their assessments paid to the Treasurer and retained as the cash portion of the fund. If this were done, the depositors of the last nine banks that failed could not be paid in full. In addition, the depositors of the bank that closed on September 29, 1926, claimed preference over the depositors of the eight subsequent failures. Litigation on these points was carried to the State Supreme Court, which decided in December 1928 that provisions of law regarding priority of payments under the normal operation of the fund did not mean preference in the case of insolvency; and since the law contained no provision for that contingency, the balance in the fund was to be treated as a trust fund to be distributed pro rata among all claimants.[1/] In pursuance of this decision, the State Banking Board, in November 1930, made a 30 percent repayment to the depositors of the nine failed banks and the same percentage refund to the banks that had been members of the system on their cash interest in the permanent fund. Early the next year a second 30 percent dividend was ordered, and these payments to depositors of the nine banks were made. Payments to the banks were begun but were halted by further litigation, and numerous difficulties emerged regarding the amounts due the respective banks.

In addition to the balance in the permanent fund at the repeal of the law, there was available for return to the banks a portion of the special

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1/ Lacy et al. v. State Banking Board et al., Dec. 12, 1928, 11 S.W. (2d) 496; Lydick v. State Banking Board, Dec. 12, 1928, 11 S.W. (2d) 505, and Jan. 23, 1929, 12 S.W. (2d) 954.

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assessments, referred to as "excess withdrawals," levied to pay the guaranteed deposits in banks that had failed prior to September 1926, which had not been needed to meet the claims presented. In 1929, the State Banking Board began to refund these "excess withdrawals," but this was halted by an injunction. Also, recoveries by the fund from the liquidation of assets of failed banks that became available subsequent to June 15, 1927, had not been repaid to the participating banks, and were held by the Bank Commissioner. There also remained further recoveries to be expected from the assets of the failed banks. Problems had arisen in the determination of the equity of the respective participant banks in both the "excess withdrawals" and the proceeds of liquidation of the assets of failed banks.

In April 1931 the State Banking Board outlined a plan for paying the remaining guaranteed deposits of the failed banks and for returning all remaining assets of the fund to the banks that had participated in the system, in accordance with a judgment of the District Court of Travis County regarding the procedure to be used in settling the affairs of the fund.[1/] This plan was submitted to the state legislature, which approved it, ordered an audit of the fund, and terminated all other litigation regarding the fund, in an act approved in June 1931. This act provided that the guaranteed deposits of the last nine failures among the participating banks were to be paid in full, and that the balance of the fund, including the proceeds of liquidation of assets of failed banks applicable to the subrogated claims of depositors paid by the fund, was to be returned to the former members of the system in proportion to their respective claims as determined by the audit and recommendations of the State Banking Board. This legislation and the results of the

1/ J. C. McNair et al. v. Farmers State Bank et al., Ninety-eighth District Court of Travis County, cause no. 48965, April 7, 1931, and May 11, 1931.

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audit were implemented by a further judgment of the District Court of Travis County, and payments in accordance therewith were made in September 1931. Small additional liquidating dividends, from additional collections from the assets of failed banks, were made in 1932 and 1933.

A summary of the method of settlement of the affairs of the fund, showing how the depositors in the last nine banks that failed were ultimately paid, and how the permanent fund and the residue of collections from the assets of the failed banks was returned to the former participating banks, is given in Table 14.

Deposits and losses in failed banks, by years. Estimates of the insured deposits in failed banks and the portions paid from the guaranty fund and from proceeds of liquidation of the assets of the banks, and of noninsured deposits and of the portions paid and unpaid, are given for calendar years in Table 15.

The sum of the insured and noninsured deposits, as estimated in this table, is about 3 percent smaller than total deposits of the same banks at time of failure, as given in Table 7. For about three-fourths of the failed banks the amounts of insured and noninsured deposits, respectively, are derived from the claims reported in connection with the liquidation of the banks; and in many of these cases the total of the claims representing the deposits differs from the figure reported as total deposits at date of failure.[1/] Such differences may be due to various reasons: in some cases the figure given for deposits at date of failure may be taken from a call

1/ The claims data are from a claims record book in the Bank Commissioner's office, apparently prepared in connection with payment of final dividends from liquidation of the banks and settlement of the affairs of the guaranty fund, and from schedules prepared in 1930 for the Federal Reserve Committee on Branch, Group, and Chain Banking.

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Table 14. SETTLEMENT OF THE TEXAS DEPOSITORS GUARANTY FUND, AND REFUNDS TO PARTICIPATING BANKS

Balances available 1/		
Permanent fund, balance in 1927 2/		$1,541,346
Special assessments accounts, balance in 1927: 3/		
Representing excess withdrawals		825,354
Special assessments of 1926 and 1927		137,169
Other remaining funds from assessments or collections from assets of failed banks		13,176
Collections subsequent to 1927:		
Recoveries from failed banks 4/		1,002,961
Interest on excess withdrawals and recoveries 5/		51,540
Adjustment for insufficient assessments 6/		573,600
Total		$4,145,146
Settlement payments 1/		
Paid to depositors in 1930 and 1931 7/		$582,685
Expenses of settlement of fund 8/		5,238
Refunds to participating banks--total 1/		3,557,223
In credits toward additional special assessments needed (see above) 9/	573,600	
In cancellation of demand deposits due the guaranty fund 10/	308,382	
In cash, as follows:		
In 1929, portion of excess withdrawals 11/	374,853	
In 1930 and early 1931, prior to audit 11/	283,257	
After settlement act, audit, and supporting court order 12/	1,889,529	
Additional liquidating dividends in 1932 and 1933 13/	127,602	
Total		$4,145,146

1/ Excludes $2,592,271 from the permanent fund, consisting of demand deposits cancelled by order of the State Banking Board. That action was taken seven weeks prior to repeal of the law, on December 24, 1926, but was in reality part of the process of settlement of the affairs of the guaranty fund.

2/ See Table 12.

3/ See note 2 to Table 11.

4/ From audit report of 1931. Includes: dividends from liquidation of failed banks set aside for the guaranty fund, $476,765; amounts immediately payable from liquidation balances, $186,519; and estimated additional amounts available from liquidation balances, $339,677. The audit report also estimated the guaranty fund's share of the appraised value of remaining unliquidated assets of the failed banks to be $21,027: this is disregarded, as there is no evidence that any of this was received by the guaranty fund.

5/ From audit report of 1931. Covers interest received from June 15, 1927 to April 1, 1930, on funds held by the Bank Commissioner, as follows: $31,081 on overassessment funds; $19,450 on dividends to the fund received from the liquidation of failed banks; and $1,010 on a part of the three-fourths demand deposit portion of the permanent fund that had been collected by the Commissioner.

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6/ Includes $135,311 allocated to the participating banks to cover withdrawals from the permanent fund for payment of depositors in cases where no special assessment was made or payments to depositors exceeded such assessments (see note 7 to Table 12); and $438,289 for the excess of payments from the fund to depositors of the last nine failed banks, in fiscal year 1926-27, over the special assessments on the remaining banks participating in the system (for these amounts, see Table 13). As provided in the settlement act and described in the audit report, the latter adjustment involved cancellation of the assessment made in early 1927, amounting to $70,461, and an allocation of $49,170 in lieu thereof to the banks that were participating in the system on September 29, 1926, with the remainder not specifically allocated but in effect distributed among all the banks to which refunds were due.

7/ From audit report of 1931. Includes: (1) payments to depositors of the nine banks that failed on or after September 29, 1926, totalling $575,459, of which $255,643 was paid in Nov. 1930, $202,503 in April 1931 (before the settlement act and audit report), and the balance of $117,313 in September 1931 (after the settlement act, audit report, and supporting court order); and (2) $7,226 to depositors of previously failed banks that had not been paid because of particular circumstances.

8/ Includes settlement expenses of $5,007 shown in the audit report of 1931, and a balancing item of $230 assumed to represent additional expenses.

9/ As indicated in note 5, a part of this was specifically allocated among banks that had withdrawn before September 29, 1926, and those that remained as participants after that date, with the remainder in effect distributed among all the banks to which assessment refunds were due.

10/ Includes: the uncollected demand deposit portion of the special assessment of 1927, amounting to $30,952 (from audit report); the remaining demand deposit portion of the interest in the permanent guaranty fund of participating banks that had withdrawn prior to September 29, 1926, to which refunds were due, or of participants after that date, amounting to $264,364; and an estimated allowance of $13,066 for other remaining demand deposits in the guaranty fund.

11/ From audit report of 1931.

12/ Includes $1,877,731 paid in September under a District Court order of the preceding month, $8,776 paid in accordance with a supplementary order of July 1932, and $3,022 believed to have been paid under another supplementary order. The precise distribution of these sums to the various participant banks is given in the audit report and summarized in the court orders. Attorneys' fees amounting to about $87,000, incurred by the banks in handling their claims, were paid and deducted from the payments to the respective banks.

13/ Paid in three dividends on Sept. 20, 1932, March 1, 1933, and June 1, 1933.

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Table 15. TOTAL DEPOSITS, INSURED DEPOSITS AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS, TEXAS DEPOSITORS GUARANTY FUND, BY YEARS

Year	Insured deposits 1/	Insured deposit obligations paid 2/			Noninsured deposits		
		Paid directly from liquidation of assets 3/	Paid by fund 4/		Total 5/	Paid 6/	Unpaid 7/
			Recovered from liquidation of assets	Not recovered from liquidation of assets (loss to fund)			
Total	$26,390,233	$8,411,745	$6,332,763	$11,645,725	$10,157,753	$7,094,743	$3,063,010
Subtotals							
20 banks reopened	8,548,637	6,688,387	155,422	1,704,828	4,103,504	4,103,504	--
118 other banks	17,841,596	1,723,358	6,177,341	9,940,897	6,054,249	2,991,239	3,063,010
1910	--	--	--	--	--	--	--
1911	152,333	32,683	76,550	43,100	77,458	72,283	5,175
1912	28,091	14,393	1,370	12,328	6,546	6,546	--
1913	97,750	97,092	--	658	27,250	27,250	--
1914	162,089	83,146	74,862	4,081	44,843	40,311	4,532
1915	377,763	289,733	76,953	11,077	135,237	135,237	--
1916	2,195,592	1,859,122	59,843	276,627	1,147,408	1,086,622	60,786
1917	--	--	--	--	--	--	--
1918	104,960	--	104,960	--	28,471	28,471	--
1919	19,374	727	18,647	--	4,515	4,515	--
1920	961,015	106,605	392,574	461,836	396,630	181,877	214,753
1921	8,096,567	1,723,383	1,505,365	4,867,819	3,474,549	1,906,790	1,567,759
1922	4,360,506	2,243,416	653,025	1,464,065	1,424,109	1,303,532	120,577
1923	1,846,132	817,628	417,961	610,543	870,173	688,251	181,922
1924	2,860,016	464,185	833,339	1,562,492	997,843	805,441	192,402
1925	3,422,496	164,200	1,847,587	1,410,707	1,009,130	511,589	497,541
1926	1,561,886	479,804	254,870	827,212	499,350	291,261	208,089
1927	143,665	35,628	14,857	93,180	14,241	4,767	9,474

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Footnotes to Table 15.

1/ For 1921-1927, except for banks taken over or succeeded by other banks with a payment from the guaranty fund: "preferred claims" as reported on schedules prepared for the Federal Reserve Committee on Branch, Group, and Chain Banking, or withdrawal from the guaranty fund, whichever is larger. For 1911-1920 and for the banks in subsequent years taken over or succeeded with a payment from the guaranty fund: estimated from total deposits and the average ratio of preferred claims to total deposits in the cases available for banks of similar size.

2/ All approved claims against the guaranty fund were paid, and it is therefore assumed that no insured deposits were unpaid.

3/ Total insured deposits (i.e., "preferred claims" in most of the 1921-1927 cases) in excess of withdrawal from guaranty fund (assumed none if withdrawal exceeded "preferred claims").

4/ From sources described in note 5 to Table 13.

5/ For 1910-1920: difference between estimated total deposits (see Table 7) and insured deposits. For 1921-1927: for banks going through the liquidation process, claims shown in record book in Bank Commissioner's office, described as claims of every nature other than those recognized against the guaranty fund, and including for these years a total of $706,994 in claims that were preferred, offset, or settled; for banks succeeded or taken over with a payment from the guaranty fund, difference between total deposits and estimated insured deposits.

6/ Difference between estimated total and estimated loss.

7/ For 1910-1920: from information in annual reports of the Commissioner of Insurance and Banking, or estimated (for a few cases) to be similar relative to deposits as the loss to the guaranty fund. For 1921-1927: estimated from the amount of general claims and percentage dividends paid. It is assumed that the claims classified as preferred, offset, or settled were paid in full. In the case of banks reorganized, or taken over by another bank, with a payment from the guaranty fund, it is assumed that other creditors were paid in full (no information is available regarding losses in these cases).

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report prior to failure; some deposits on the books at time of failure are never claimed or are disallowed; some deposit liabilities not on the books at time of failure may be claimed, proved, and allowed; and the records are not clear as to whether government deposits secured by pledge of assets are included in the claims record.[1/] For the failed banks that were taken over by a successor or another bank (with a payment from the guaranty fund), and for some of the other failures during the early years of the system, this information is unavailable, and the reported total deposits have been divided between insured and noninsured on the basis of banks of similar size for which the information is available.

Of the 138 failed banks entailing payments from the guaranty fund, 20 were reorganized or taken over without going through the liquidation process.[2/] These banks were of larger average size than the others, for they

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1/ The claims record book in the Bank Commissioner's office shows the claims of the guaranty fund for the final dividend to be paid from the assets of each failed bank, and "claims of every nature other than those recognized against the guaranty fund", with the latter divided between general claims and those preferred, offset, or settled. Because of the relatively small amounts in the last group, and the absence of mention of secured claims, it appears likely that secured claims are not covered by this record. Secured claims reported on the schedules prepared for the Committee on Branch, Group, and Chain Banking include borrowings, and cannot be taken to indicate the amount of secured deposits. It should be noted also that in many cases the claim of the guaranty fund for final dividend is less than the withdrawal from the guaranty fund to pay depositors, even after adjustment of the latter figure for an excess withdrawal. Neither the withdrawal from the guaranty fund nor the claim of the fund for final dividend represents the amount of the insured deposits. This is because the law provided for payment of as much as possible of the insured deposits from the cash that could be made available immediately from the failed bank, with the remainder to be drawn from the fund and assessed on the participating banks.

2/ There were a few other cases in which a portion of the deposits of a failed bank were assumed by another bank, with the residue and a portion of the assets of the bank going through the liquidation process.

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held about one-third of the deposits of all the failed banks. It has been assumed that in these cases all the deposits of the failed bank were assumed by the successor or absorbing bank, and consequently that there was no loss on the noninsured deposits. The losses of the guaranty fund in the twenty cases, which was the full amount of the payments except in two cases, were about one-fifth of the estimated insured deposits, compared with nearly three-fifths in the banks going through the liquidation process.

Table 16 shows for each year the percentage of the deposits in failed banks estimated to have been insured, and of the insured deposits the percentage recovered by the depositors and the fund from the liquidation of assets and the percentage representing the loss to the fund. For all the failed banks entailing obligations on the guaranty fund, 70 percent of the deposits are estimated to have been insured.[1/] Of the insured deposits, 56 percent were paid from the liquidation of assets of the bank, either directly to the depositors or to the guaranty fund on the claims paid by the fund. This is about the same proportion as in the case of both the Oklahoma and Kansas systems of deposit insurance. As has been indicated, the remaining insured deposits were paid from the guaranty fund, and except for the last nine banks among the failures, were made promptly.

Of the noninsured deposits, the estimates in the preceding table indicate that about 70 percent were paid from the liquidation of the assets of the failed banks, and the other 30 percent lost to the depositors. The

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1/ This percentage and the percentages for each year in Table 16, are computed from the insured deposits shown in this table and the total deposits for the same banks shown in Table 7. If computed from the sum of insured and noninsured deposits in Table 16, the insured deposits of all the failed banks would be 72 percent of total deposits.

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Table 16. PERCENTAGE OF DEPOSITS INSURED, AND PERCENTAGE OF INSURED DEPOSITS PAID BY GUARANTY FUND AND RECOVERED FROM LIQUIDATION OF ASSETS, BANK FAILURES UNDER THE TEXAS DEPOSITORS GUARANTY FUND, BY YEARS

Year of failure	Percentage of total deposits insured 1/	Percentage of insured deposits 2/			
		Total	Paid directly from liquidation of assets	Paid by guaranty fund	
				Recovered from assets	Not recovered; i.e., loss to fund
Total	70.1	100.0	31.9	24.0	44.1
Subtotals					
20 banks reopened	67.6	100.0	78.2	1.8	19.9
118 other banks	71.4	100.0	9.7	34.6	55.7
1910	--	--	--	--	--
1911	66.2	100.0	21.4	50.3	28.3
1912	80.3	100.0	51.2	4.9	43.9
1913	78.2	100.0	99.3	--	.7
1914	78.3	100.0	51.3	46.2	2.5
1915	73.6	100.0	76.7	20.3	2.9
1916	65.7	100.0	84.7	2.7	12.6
1917	--	--	--	--	--
1918	78.9	100.0	--	100.0	--
1919	80.7	100.0	3.8	96.2	--
1920	76.6	100.0	11.1	40.8	48.1
1921	67.5	100.0	21.3	18.6	60.1
1922	75.0	100.0	51.4	15.0	33.6
1923	63.9	100.0	44.3	22.6	33.1
1924	67.4	100.0	16.2	29.1	54.6
1925	70.9	100.0	4.8	54.0	41.2
1926	85.2	100.0	30.7	16.3	53.0
1927	95.1	100.0	24.8	10.3	64.9

1/ Computed from total deposits in Table 7 and insured deposits in Table 15.
2/ Computed from data in Table 15.

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relatively larger recovery from the liquidation of assets on noninsured deposits than on insured deposits is due, of course, to the assumption that there were no losses on noninsured deposits in the case of the twenty banks reopened or taken over without going through the liquidation process.

Comparison of assessment receipts and losses in failed banks. Assessments for deposit guaranty in Texas, because of the features of the Texas law, were substantially in excess of the losses. A tabulation of the cumulative excess or deficiency of assessment receipts relative to losses, such as that given for the Oklahoma and Kansas funds in the preceding chapters, would be irrelevant. Except for delay in making assessments in a few cases, the cumulative receipts from the special assessments were always in excess of the cumulative net deposit liability by the amount of recoveries from assets of failed banks. The assessments for the permanent fund, in addition, were accumulated, though used in part as a revolving fund to meet depositors' claims in advance of the collection of special assessments.

The assessments paid each fiscal year, including both the special assessments and those for the permanent fund, are shown in Table 17, along with the net deposit liability of the fund (i.e., losses of the fund), and also the loss that would have been incurred had the insurance covered all deposits. The rates of each of these per $100 of deposits in the participating banks are also given in the table.

The total assessments collected averaged about four-fifths of 1 percent per year of the deposits of the participating banks. About one-half of the total assessments were for the permanent fund or were recovered from the failed banks, and were refunded to the participating banks. The losses on account of the insured (unsecured non-interest-bearing) deposits averaged

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Table 17. COMPARISON OF ASSESSMENT RECEIPTS AND LIABILITY FOR DEPOSITS IN FAILED BANKS, TEXAS DEPOSITORS GUARANTY FUND

Fiscal year ended Aug. 31	Total assessments 1/	Net deposit liability of guaranty fund 2/	Net liability of fund with full coverage 3/	Per $100 of deposits in participating banks, Jan. 1		
				Total assessments	Net liability of fund	Net liability of fund with full coverage
Total	$23,059,302	$11,645,725	$14,708,734	$0.83 4/	$0.42 4/	$0.53 4/
Subtotals						
1910-1920	3,382,499	358,320	440,556	.25 4/	.03 4/	.03 4/
1921-1926	18,956,477	10,765,718	13,599,440	1.32 4/	.75 4/	.95 4/
1910	431,834	--	--	.91	--	--
1911	63,851	--	--	.12	--	--
1912	291,403	55,428	60,603	.51	.10	.11
1913	211,980	658	658	.24	.001	.001
1914	293,471	--	--	.34	--	--
1915	177,316	15,158	19,690	.28	.02	.03
1916	385,231	276,627	337,413	.41	.30	.36
1917	300,947	--	--	.20	--	--
1918	356,757	--	--	.17	--	--
1919	318,757	--	--	.18	--	--
1920	550,952	10,449	22,192	.17	.003	.01
1921	4,115,888	3,161,298	4,640,471	1.55	1.19	1.75
1922	4,641,038	2,977,996	3,328,133	2.04	1.31	1.46
1923	1,723,053	1,197,842	1,377,276	.68	.48	.55
1924	2,995,288	1,219,474	1,418,960	1.03	.42	.49
1925	4,405,895	1,703,860	2,233,320	1.46	.56	.74
1926	1,075,315	505,248	601,280	1.13	.53	.63
1927	720,326	521,687	668,738	5/	5/	5/

1/ Assessments for permanent fund (Table 12-first two columns), plus special assessments (Table 13) with the subsequent assessment equivalent ($573,600) included with 1927.

2/ Loss to guaranty fund in banks closed in the respective years (Table 13).

3/ Loss to guaranty fund plus estimated loss to other claimants on noninsured deposits and other liabilities.

4/ Rates per year.

5/ Not significant because of small number of banks participating on January 1.

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about two-fifths of 1 percent per year of the deposits of participating banks. Had all deposits been covered by the insurance, the losses would have averaged about one-half of 1 percent per year of the deposits of participating banks. This is a little higher than the corresponding rate for the Kansas deposit guaranty system, but substantially less than that for the Oklahoma system.

As has been indicated, failures and losses were light from the beginning of the system until 1920. For the eleven fiscal years, 1910-20, the loss to the guaranty fund averaged only one-thirtieth of 1 percent per year of the deposits in participating banks; but during the six fiscal years, 1921-26, the losses on insured deposits averaged three-fourths of 1 percent per year, and would have been nearly 1 percent a year had all deposits been insured.

The relation of the assessments and losses in Texas to the capital accounts of the participating banks has not been computed because of the absence of tabulations of the capital accounts of the participating banks. However, if the participating banks had the same ratio of capital to deposits as all State banks, and this is likely because about 95 percent of the State banks participated until the revision of the law in 1925, the losses on insured deposits averaged 1.5 percent per year on total capital accounts, and on all deposits 1.9 percent per year of total capital accounts. For the six fiscal years in which the failures were concentrated, 1921-26, the losses on insured deposits were equivalent to about 3 percent per year, and those on all deposits to nearly 4 percent per year, of the total capital accounts of the participating banks.

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APPRAISAL OF THE TEXAS DEPOSIT GUARANTY SYSTEM

The success of the Texas system. As an insurance system, the Texas deposit guaranty plan was an unqualified success as long as most of the State banks were participants. This success, in contrast to failure of the other seven State plans operating during the period from 1907 to 1930, was due to two features of the guaranty law not included, or retained only a short time, in other systems: (1) the accumulation of a sizable permanent fund used as a revolving fund to provide for immediate payment of depositors; and (2) the levy of special assessments after each failure to recoup the permanent fund, with a maximum rate sufficiently high to cover all obligations on the fund. The difference in the rate for special assessments was particularly important. In Texas this was 2 percent per year on the deposits of participating banks, excluding savings deposits and public funds, which were excluded from the insurance because they were interest-bearing or secured.[1/]

In addition to being more sound actuarially, the Texas system was superior to the Kansas system in another respect. It paid depositors promptly, and did not accumulate large potential obligations in banks that had closed.

1/ The original law in Oklahoma was similar to that of Texas, with at first no limitation on the maximum assessment to restore withdrawals from the permanent fund, and then a maximum of 2 percent per year. But in 1913 the maximum was reduced two-fifths of 1 percent effective at once and one-fifth of 1 percent effective three years later. In Nebraska special assessments were permitted for several years to a maximum of 1 percent of deposits, but in 1923 this was reduced to one-half of 1 percent. No other State had a maximum higher than one-half of 1 percent.

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The burden of assessments. The success of the Texas system, until the time when most of the participating banks had withdrawn under the provisions of the 1925 amendment to the law, raises the question of whether it could have survived the depression of the early 1930's had it continued with most of the banks as participants. The possibility of survival involves two problems. First, were the deposits and losses in suspended banks during the years 1927-1933 so much greater than those of 1921-1926 as to have made the fund inadequate? Second, would the burden on the banks have been so heavy that they could not have supported it? It was the weight of this burden after 1920, of course, that made it possible for the banks to secure the amendment under which they withdrew.

Certainly, the burden on the participating banks after 1920 was such that, had the legislature failed to respond, many of them would have converted to national banks or reorganized under new charters to enable them to shift to the bond security plan. An average of three percent a year of their capital accounts was probably a sizable share of their profits, and a burden that they could not have been expected to continue to accept.[1/] However, had participation in such a system been required of all banks in the State, the burden would have been less, and could have been shifted to a large extent to the banks' customers.

The data in Table 18 throw considerable light on the question of whether the Texas plan of deposit guaranty, covering all State banks, or all State and national banks, might have remained solvent throughout the depression of the 1930's, and how burdensome it would have been. The table shows, for the 1921-1926 period and for the 1927-1933 period, estimates

1/ Information is not available on bank profits in Texas.

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Table 18. RELATION OF DEPOSITS AND LOSSES IN SUSPENDED BANKS IN TEXAS TO DEPOSITS AND CAPITAL ACCOUNTS OF ACTIVE BANKS, 1921-1933 1/

Year or period	Deposits in suspended banks per $100 of deposits in active banks			Losses on deposits in suspended banks per $100 of deposits in active banks			Losses on deposits in suspended banks per $100 of capital accounts in active banks		
	State banks	National banks	Total	State banks	National banks	Total	State banks	National banks	Total
1921-1933	$2.92	$.76	$1.28	$.94	$.24	$.41	$3.86	$1.25	$2.00
1921-1926	2.44	.58	1.10	.99	.17	.39	3.83	.79	1.76
1927-1933	3.38	.88	1.42	.90	.29	.42	3.90	1.61	2.20
1921	5.28	1.22	2.58	2.66	.76	1.39	8.96	2.97	5.17
1922	2.71	.21	.93	.72	.03	.23	2.45	.11	.92
1923	1.31	.36	.63	.36	none	.36	1.28	none	1.28
1924	1.69	1.27	1.40	.68	.30	.41	2.83	1.45	1.90
1925	2.07	.29	.73	.77	.04	.22	3.57	.22	1.16
1926	1.55	.32	.61	.66	.03	.18	2.96	.16	.91
1927	1.88	.17	.55	.11	.03	.05	.50	.16	.25
1928	2.47	.12	.63	.33	.02	.09	1.58	.10	.49
1929	.30	.09	.14	.08	.004	.02	.36	.02	.11
1930	.76	1.14	1.06	.18	.36	.32	.79	2.02	1.70
1931	10.60	2.85	4.60	3.05	.79	1.30	13.31	4.37	6.78
1932	1.94	.63	.89	.61	.75	.72	2.17	3.63	3.27
1933	7.37	1.47	2.54	2.80	.22	.69	10.35	1.18	3.41

1/ Ratios in this table have been computed from data obtained or compiled from various sources. Deposits in suspended banks: banks participating in the deposit guaranty system, Table 7; other State banks and national banks, Banking and Monetary Statistics, pp. 287, 289, and 291. Losses in suspended banks: banks participating in the deposit guaranty system, Table 15; other State banks, statement of Bank Commissioner Charles O. Austin, in The Texas Bankers Record, June 1926, p. 38, letter from J. A. Pratt to Thomas B. Love, Aug. 9, 1933, and the assumption that for banks closed in 1931-1933, losses in those reopened were 10 percent of deposits and for those liquidated 40 percent of deposits; national banks, compiled from information for the individual banks in the annual reports of the Comptroller of the Currency. Deposits and capital accounts of active State and national banks: data for June 30 of each year prepared by the Board of Governors of the Federal Reserve System for a forthcoming publication.

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of the deposits and losses in suspended banks relative to those in active banks, and the losses relative to the capital accounts of active banks, for all State banks, all national banks, and for both groups of banks. These data indicate that for the years 1927-1930, the average burden of the losses would have been no heavier than for 1921-1926. However, for 1931 and for 1933 the failures would have entailed heavier burdens than in 1921, the worst year of the preceding period. This is much more striking when the losses on deposits of failed banks are related to the capital accounts than to the deposits of the participating banks, for in the early 1930's the banks had smaller capital accounts relative to their deposits than in the early 1920's.

The data also indicate that a deposit insurance system covering both State and national banks would have been relatively less costly than a system covering State banks only. For both the 1921-1926 and the 1927-1933 periods, the average annual loss on deposits in suspended banks was less than one-half of 1 percent per year of the deposits of State and national banks taken together, compared with nearly 1 percent for State banks alone. Taken by itself, this might seem to support the contention that deposit insurance had led to reckless banking, and that a system embracing both State and national banks might have been as burdensome as that covering only State banks. Such a conclusion is not warranted, for the difference in failure rates between State and national banks was general throughout most of the United States, and particularly in the agricultural areas where the States with deposit insurance systems were located.[1/]

1/ See Table 9 and similar tables in the chapters dealing with the other State systems.

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It should also be recognized that a deposit insurance system like that of Texas might become insolvent even though the average ultimate loss burden is less than the permissible assessment rate. Depositors in failed banks should be paid promptly, and this involves a combination of a revolving fund large enough and collections from assessments high enough to repay promptly a larger amount of deposits than those represented by losses, though not the entire amount of the deposits of the failed banks, since in most cases some assets of a failed bank can be utilized almost immediately. Here, too, the data suggest that the Texas system could have survived the depression, had it covered all State and national banks, with a corresponding enlargement of the permanent fund. The deposits of the suspended State and national banks during the crucial years of 1931-1933 were somewhat lower, relative to deposits in active banks, than those of State banks during the three years 1921-1923. For a system covering the State banks a larger permanent fund than the maximum specified in the Texas law would have been required.

Defects of the Texas system. The conclusion that the Texas system appears actuarially sound, and if applied to all banks in the State could have survived an extremely serious depression like the early 1930's does not mean that it was without defects. It shared some of the defects of the other State systems.

First, of course, is the fact that the system could not be extended to all banks operating in the State. That is to say, with the dual banking system, the State of Texas, alone, could not have maintained the deposit guaranty system through prolonged adverse circumstances.

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Second, as in other States, the system failed to cope adequately with dishonest management of banks. In part this was due to the judicial system of Texas, under which it was often difficult or impossible for the Banking Department to secure punishment, or even indictment, of bank officials for violations of law. Though losses to the guaranty fund on account of dishonestly operated large banks were of less relative importance in Texas than in Oklahoma and Kansas, more adequate enforcement of banking laws would undoubtedly have substantially reduced the losses.

Third, as in other States, bank supervision was inadequate. The very nature of the banking business, under which income-earning assets are acquired by an expansion of liabilities that perform a unique function in the economy and on which interest need not be paid, provides so strong an incentive to overexpansion and excessive risktaking that carefully drawn banking codes and rigorous inspections are needed if a system of insurance of those liabilities is to be successful.

In addition to defects of the kind common to all the State deposit insurance systems, the insurance coverage afforded by the Texas system was not as comprehensive, because of noncoverage of interest-bearing deposits, as that in the other systems operating during the same period.

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DEPOSIT INSURANCE IN NEBRASKA

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DEPOSIT INSURANCE IN NEBRASKA

The Nebraska law for guaranty of bank deposits was enacted April 25, 1909. At that time the deposit insurance system of Oklahoma was in operation and the Kansas law had been enacted. The effective date of the Nebraska law was postponed for nearly two years pending litigation regarding its constitutionality. An amending act in 1911 provided that assessments were to begin on July 1 of that year. The insurance became effective when the first assessment had been paid.

The guaranty law in Nebraska continued in operation for 19 years. By 1930 the liabilities of the guaranty fund far exceeded the amounts which were available to the fund; and on March 18 of that year applicability of the guaranty to future failures was repealed, with assessments to be continued at a reduced rate for ten years. However, under a decision of the State Supreme Court rendered in 1932 all assessments under this act and those under the old act subsequent to 1928 were declared, because of changed conditions, to have become confiscatory and hence unconstitutional. In the next year the entire deposit insurance law was repealed, and final settlement of the affairs of the fund was completed in 1934.

ORIGIN AND CONSTITUTIONALITY OF THE DEPOSIT GUARANTY LAW

Background of the guaranty legislation.[1/] State banks in Nebraska had been subject to supervision, with regular examinations, for over twenty years prior to the adoption of deposit guaranty. In the 1890's, poor crops and the depressed economic conditions of the nation resulted in numerous

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1/ An account of the origin of deposit guaranty legislation in Nebraska is given by Z. Clark Dickenson, in Bank Deposit Guaranty in Nebraska, Bulletin No. 6, Nebraska Legislative Reference Bureau (1914).

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bank failures and a contraction, within a period of four years, by about one-half in the total deposits of the incorporated banks in the State. In 1893, William Jennings Bryan, representative in the Federal Congress from Nebraska, introduced a bill proposing deposit insurance for national banks; and in 1897 and again in 1899 bills were introduced in the Nebraska legislature to establish a deposit insurance system for State banks. Such bills were also introduced in the legislatures of 1905 and 1907 with the approval of the Banking and Currency Committee, but failed of passage.

In 1908, both the Democratic national convention, which met in July, and the Nebraska Democratic State convention, which met in September, adopted planks favoring deposit guaranty. Early in January 1909, the new Governor recommended deposit guaranty to the legislature; and a bill embodying his suggestions and approved by William Jennings Bryan was introduced in March and enacted in the following month. Enactment of the law, it may be noted, was not the consequence of another wave of bank failures. In fact, during the six years just prior to 1909, there had been only three failures of State banks, one each in 1903, 1904, and 1907.

Constitutionality of the deposit guaranty law. The deposit guaranty law was attacked immediately after its enactment in 1909 with the claim that it was unconstitutional. The basis for claiming that deposit guaranty was unconstitutional was essentially the same as in Oklahoma and in Kansas.[1/]

Decision of the United States Circuit Court. A few days before the Nebraska deposit guaranty law was to go into effect a temporary injunction

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1/ For summaries of the arguments that the deposit guaranty laws of Oklahoma and Kansas were unconstitutional, see the reports Deposit Guaranty in Oklahoma and Deposit Guaranty in Kansas.

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was granted by members of the Circuit Court of the United States for the District of Nebraska restraining the State Banking Board from putting the law into operation. Shortly afterward the court declared the law to be unconstitutional and made the injunction permanent. This decision was based on the contention that the law appropriated the assets of one bank to meet the obligations of another bank, resulting in taking the property of one person without compensation to pay the debts of another, and thus was contrary to the Fourteenth Amendment to the Constitution of the United States and article 1 of the Constitution of Nebraska.[1/]

Decision of the United States Supreme Court. The decision of the Circuit Court made the deposit guaranty law in Nebraska ineffective pending appeal to the United States Supreme Court. In Oklahoma and Kansas, where deposit guaranty laws had also been challenged, the constitutionality of the legislation had been upheld, respectively, by the Supreme Court of Oklahoma and the United States Circuit Court of the District of Kansas; and the laws were therefore placed in operation pending the results of appeal to the United States Supreme Court.

Arguments regarding the constitutionality of the deposit guaranty laws in the three States were heard by the United States Supreme Court at its fall term in 1909. On January 3, 1911, the United States Supreme Court rendered a unanimous decision upholding the constitutionality of the Oklahoma law, and

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1/ First State Bank of Holstein, Neb. v. Shallenberger (1909), 172 F. 999.

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made the same decision applicable to the Kansas and Nebraska laws.[1/]

CHARACTER OF THE GUARANTY LEGISLATION

Admission of banks. Participation in the deposit guaranty plan in Nebraska was made compulsory for all State banks. No special examination was required for admission to the guaranty plan. At the time the law went into effect approximately 650 banks were operating under State law and became participants in the system. In 1919, an amendment provided that new banks could operate for two years before being required to participate. Two years later this provision was removed.

In 1921 provision was made for a separate fund, to be known as the "Co-operative Bank Protective Fund," for co-operative banks. However, no mention is made of such banks nor of the Co-operative Bank Protective Fund in reports of the State banking department or reports of investigations of the depositors' guaranty fund.

Deposits insured. The guaranty protected all deposits (modified in 1925 to deposits not otherwise secured), including claims of holders of exchange. Payment of interest on a deposit, directly or indirectly, at a rate higher than 5 percent per year, reduced in 1926 to 4 percent, was prohibited; and payment of a higher rate was to be taken as evidence that the transaction was a loan and not protected by the guaranty. Under an amendment in 1917 any evidence of indebtedness issued to a stockholder, officer or employee representing money obtained for the benefit of the

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1/ Noble State Bank v. Haskell (1911), 219 U.S. 112; and Shallenberger v. First State Bank of Holstein (1911), 31 S. Ct. 189, 219 U.S. 114, 55 L. Ed. 117. The decision of the United States Supreme Court in the Oklahoma case is described in more detail in the report Deposit Guaranty in Oklahoma.

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bank was to be construed as a loan to the bank and not protected by the guaranty. In the original law no special provision was made regarding public funds, but an amendment of 1911 provided that no security other than the guaranty was necessary for such funds, thus superseding the previous requirement that depository banks furnish bonds covering deposits of public funds. In 1923 an amendment provided that receipt of deposits upon any collateral agreement or condition other than an agreement for rate of interest and length of time to maturity was prohibited, and that any money deposited under such an agreement was excluded from guaranty: this was repealed two years later.

In connection with the payment of deposits of failed banks, numerous cases arose of interpretation of the law regarding insurance coverage. The lines of demarcation resulting from these decisions are indicated by the cases referred to here. Accrued interest on a certificate of deposit to date of payment, or date of maturity if paid subsequently, was protected along with the principal.[1/] Money paid to a bank for purchase of a Federal Government bond, with the bond not delivered or the money diverted to the use of the bank, did not constitute a deposit within the meaning of the guaranty act.[2/] A credit to a checking account or a certificate of deposit issued in exchange for negotiable paper, such as a promissory note or Government bond, was a valid deposit protected by the guaranty, because such negotiable paper

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1/ State v. Nebraska State Bank of Milligan (1923), 196 N.W. 679, 111 Neb. 360; State v. Farmers' State Bank of Culbertson (1925), 204 N.W. 795, 113 Neb. 679.

2/ In re Cronk, State v. Farmers Bank of Page (1923), 194 N.W. 865, 110 Neb. 676; State v. Atlas Bank of Neligh (1926), 209 N.W. 334, 114 Neb. 650.

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was the equivalent of money.[1] But a certificate of deposit issued for paper that had no real value, such as a third mortgage on real estate with prior liens equalling the value of the property, or in circumstances indicating an attempt to defraud the bank, was not protected.[2] A correspondent bank, which in the ordinary course of business had honored drafts of a bank that failed in excess of its balance, was protected on the overdraft by subrogation to the rights of the original holder of exchange.[3]

In various cases, certificates of deposit were found to represent funds procured for the benefit of the bank, or in the interest of the owners or stockholders, and thus to represent loans rather than deposits protected by the guaranty.[4] A certificate of deposit issued at the maximum permissible rate of interest, but with a bonus of 1 percent, or with interest for a longer period than the duration of deposit, was held to be a loan and excluded from guaranty.[5] A cashier's check, payable at a future date, issued in payment of a loan, and including interest in excess of 5 percent, was also held to be excluded on the same ground.[6] However, payment of a bonus to a depositor by an officer of a bank, even though charged to the bank but this fact unknown to the depositor, did not remove the protection of the guaranty.[7] Similarly,

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1/ State v. American State Bank, Lincoln (1924), 199 N.W. 21, 112 Neb. 182; State v. American State Bank of Aurora (1924), 199 N.W. 501, 112 Neb. 272; State v. Newcastle State Bank (1926), 207 N.W. 683, 114 Neb. 389.

2/ State v. Kilgore State Bank (1925), 205 N.W. 297, 113 Neb. 772.

3/ Nebraska National Bank of Hastings v. Bruning (1926), 209 N.W. 510, 114 Neb. 719.

4/ E.g., State v. Farmers State Bank of Winside (1924), 199 N.W. 812, 112 Neb. 380; State v. Gross State Bank of Gross, 202 N.W. 460; 113 Neb. 119; State v. Farmers State Bank of Bayard, 203 N.W. 572, 113 Neb. 348.

5/ Imas v. Farmers' State Bank of Decatur (1917), 165 N.W. 145, 101 Neb. 778; State v. Security State Bank of Eddyville (1927), 216 N.W. 169, 116 Neb. 165.

6/ State v. Banking House of A. Castetter, Blair (1923), 194 N.W. 784, 110 Neb. 564.

7/ State v. Kolling (1924), 199 N.W. 839, 112 Neb. 474; State v. Wayne County Bank of Sholes (1924), 201 N.W. 907, 112 Neb. 792.

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a deposit made with a collateral agreement with a third party, unknown to the depositor, was protected by the guaranty fund, but a deposit with a collateral agreement for the benefit of the depositor was not so protected.[1] Also, clearance of checks at par by a correspondent bank against an account on which it paid interest at the maximum legal rate did not constitute additional interest nor deprive the deposit of protection by the guaranty fund.[2]

Where a county treasurer had deposited funds in excess of the amount permitted in a single bank (50 percent of the paid-up capital of the bank), the court held that the entire deposit was protected by the guaranty fund.[3] In another case the court held that a surety company which had paid its liability on a bond covering deposits of a county treasurer in excess of the limitation, taking an assignment of the rights and remedies of the treasurer, was entitled to payment out of the guaranty fund.[4] Unpaid taxes of a failed bank that were not settled by the receiver were ordered paid from the guaranty fund, inasmuch as the tax lien had priority over depositors' claims.[5]

Assessments. Assessments for meeting the cost of deposit guaranty were levied upon the banks on the basis of total average daily deposits exclusive of public money otherwise secured. Semi-annual reports of such

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1/ State v. Citizens' State Bank of Chadron (1928), 219 N.W. 188, 116 Neb. 852; State v. Farmers' State Bank, Erickson (1929), 226 N.W. 332, 118 Neb. 743.

2/ State v. Nebraska State Bank of Harvard (1929), 225 N.W. 778, 118 Neb. 660.

3/ State v. Peoples State Bank of Anselmo (1924), 198 N.W. 1018, 112 Neb. 126. This was a reversal, upon rehearing, of the original opinion of the court.

4/ State v. State Bank of Gering (1925), 206 N.W. 758, 114 Neb. 213.

5/ State v. American State Bank of Lincoln, 209 N.W. 621, 114 Neb. 740.

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deposits were required on the first of June and the first of December of each year, with assessments levied on July 1 and January 1. The first four semi-annual assessments were at the rate of one-fourth of 1 percent.[1/] The succeeding regular semi-annual assessments were at the rate of one-twentieth of 1 percent. New banks were to pay 4 percent of their capital stock into a credit fund, together with a further assessment to a "just and equitable sum", arranged so that the first two semi-annual assessments, plus the credit fund, would amount to not less than 1 percent of average daily deposits.[2/] The 1911 amendments provided that the regular semi-annual assessments of one-twentieth of 1 percent of the average daily deposits should cease when the fund reached 1 1/2 percent of such deposits, to be renewed when the fund became depleted below 1 percent.

Special assessments were authorized if the fund should be reduced below 1 percent of total average daily deposits (one-half of 1 percent during the first year of operation of the fund). The special assessments were not to exceed 1 percent of average daily deposits in any one year. In 1923 an amendment provided that special assessments subsequent to that year should not exceed one-half of 1 percent of average daily deposits in any one year. No provision was made for the deposit of bonds or other security as a guaranty for the payment of assessments.

1/ Under the amended law of 1911, these were levied in July 1911, January and June 1912, and January 1913.

2/ From April 4, 1919, to February 25, 1921, a different provision was in force. This required a new bank, within two years after it had opened for business, to pay 1 percent of its average daily deposits, as shown by its last two semi-annual statements.

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Administration and custody of the fund. The administration of the guaranty fund was placed in the hands of a State Banking Board, composed of the Governor as chairman, the Auditor of Public Accounts, and the Attorney General. The State Banking Board was also responsible for the examination of banks and other aspects of bank supervision. In 1919 a Department of Trade and Commerce was organized, with a Secretary appointed by the Governor. Administration of the banking laws was placed in that department, and handled as a Bureau of Banking under the Secretary of the department.

Dissatisfaction with the administration of the guaranty fund resulted in the creation in 1923 of a Guarantee Fund Commission, composed of the Secretary of the Department of Trade and Commerce as chairman, and seven other members appointed by the Governor from among panels of three persons each, recommended by representatives of the banks in seven regions of the State. Each person nominated on the panels was required to have been an executive officer of a State bank for five years. Another change in the administration of the fund was made in 1929 when the Guarantee Fund Commission was abolished, administration of the fund reverted to the Department of Trade and Commerce, and the position of Bank Commissioner was created.

No part of the assessments was collected at the time they were levied. The assessments were kept in the banks assessed and credited to the account of the Secretary of the State Banking Board (in 1919, the Department of Trade and Commerce; and in 1923, the Guarantee Fund Commission) in the form of deposits subject to call by draft. The law also provided that funds received by the State Banking Board (or Department of Trade and

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Commerce or Guarantee Fund Commission) from the liquidation of banks which had failed and the deposit liabilities of which had been paid by the guaranty fund should be deposited in solvent banks in proportion to the guaranty fund assessments levied on those banks.

Banks going into voluntary liquidation or changing to a national bank charter were required to pay to the Secretary of the State Banking Board any assessments which had been levied upon them but had not been called for by the Board. These funds were to be deposited in any bank designated by the Secretary of the State Banking Board. In 1919 such funds were ordered held in a special reserve of the guaranty fund which could not be used until the fund itself was depleted but were to be used before a special assessment was levied; and the State Treasurer was authorized to invest the special reserve in certain types of bonds, the interest being added to the special reserve. Two years later an amendment provided that the special reserve should be drawn against along with calls upon the operating banks for payments from their parts of the guaranty fund, with any balance remaining after three years from date of surrender of authority to transact a banking business to be refunded to the stockholders of the bank or their representatives.

Indebtedness of the guaranty fund. The original law contained no provision against the contingency that the regular and special assessments authorized by the law might be inadequate to pay all of the deposits in closed banks. In 1923 an indirect method was devised by which funds could be borrowed. The receiver of a failed bank could borrow money on a "receiver's certificate" at a rate of interest to be fixed by the court supervising the

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receivership. In the case of a failed bank the depositors of which had been paid from the proceeds of a draft on the guaranty fund, the amount of the receiver's certificate could not exceed the estimated market value of the assets remaining in the receivership and the money thus borrowed was paid over to the guaranty fund. In the case of a failed bank the depositors of which had not yet been paid by the guaranty fund, the amount of the receiver's certificate could not exceed the amount needed (in addition to available cash) to pay the depositors. In either case the debt thus incurred was to be paid so far as possible from the proceeds of liquidation of the assets of the bank, and the guaranty fund was responsible for the payment of any such certificates still unpaid upon completion of liquidation of the bank. All receivers' certificates were to be registered by the Secretary of the Department of Trade and Commerce and were required to be paid by the guaranty fund in the order of registration.

Method of paying depositors and of liquidating failed banks. The State Banking Board, or Department of Trade and Commerce, was authorized to take possession of any bank for a sufficient length of time to make a thorough examination of its affairs, and if found insolvent, until a receiver was appointed. The insolvency of a bank was reported by the State Banking Board to the Attorney General, who applied to the district court of the county in which the bank was located for appointment of a receiver or, in the absence of judge or judges thereof, to any judge of the State Supreme Court. The district court held jurisdiction over the receivership.

The depositors in a bank placed in receivership were to be paid

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promptly. The amount necessary to pay the depositors, in addition to available cash from the assets of the bank, was determined by the court having jurisdiction over the receivership, collected from the guaranteed banks by the State Banking Board, or Department of Trade and Commerce, and paid to the receiver of the failed bank for distribution to depositors. An amendment in 1923 provided that holders of certificates of deposit were not to be paid until their maturity.

The law provided that depositors' claims in a failed bank were to have priority over all other claims, except taxes, and that the guaranty fund was to be subrogated to the rights of depositors paid from the fund. After 1923 receivers' certificates representing borrowings by the receiver underwritten by the guaranty fund, had priority over the guaranty fund with respect to payments from the proceeds of liquidation of the assets of the bank.

Stockholders of an insolvent bank had the right, while a bank was in charge of an examiner or of a receiver, to restore the bank's credit, capital, and reserves, to repay any advances made by the guaranty fund, and to reopen the bank with the permission of the Department of Trade and Commerce. In 1923 an amendment to the law provided that the officers, stockholders, or owners of an insolvent bank could furnish to the Department of Trade and Commerce a bond sufficient to assure full settlement of all the liabilities of the bank within a stated time, and then proceed with the liquidation of the bank. This made it possible for the owners to reduce the cost of a receivership and thus to reduce the amount of assessment on account of double liability, in cases where collection of double liability from stock-

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holders provided sufficient funds to pay all of the liabilities of the bank.

The 1923 amendments also provided alternative methods of handling closed banks, designed to permit prompt reopening and to keep as many banks operating as possible. One of these alternatives was sale by the receiver of all the assets of the bank to new stockholders, with the approval of the Guarantee Fund Commission and under the direction of the court, with the receiver authorized to draw on the guaranty fund to meet any deficiency after the sale to meet claims payable from the guaranty fund. This procedure was prohibited in case the majority owners of the capital stock, whose acts did not show criminal liability, objected and showed the court that the bank could be made solvent within one year. In 1925, sale of assets in this manner to new stockholders was permitted without actual payment of the deficiency by the guaranty fund by permitting the reorganized bank to hold receivers' certificates as bills receivable in an amount approved by the Department of Trade and Commerce.

The second method for handling closed banks, adopted in 1923, was a provision that the Department of Trade and Commerce, after taking possession of a bank, could turn it over to the Guarantee Fund Commission to operate as a going concern, with the consent and assignment of the owners of a majority of the capital stock. A "bankers conservation fund," described below, was established to make loans to banks operated by the Commission. A bank operated by the Guarantee Fund Commission could be closed at any time either by the Commission or by the Department of Trade and Commerce.

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The 1923 law placed the liquidation of closed banks which could not be reopened in any of these ways in the hands of the Guarantee Fund Commission. This was done by a provision that the Department of Trade and Commerce should ask the Attorney General to apply to the District Court for an order directing the Department to take charge of the bank and wind up its affairs, and that the bank should then be liquidated by a receiver appointed by the Guarantee Fund Commission. The same act provided that receiverships pending at the time the act became effective should, after four months, be handled in the same way. Supervision of the receivership remained under the District Court.

One more provision of the 1923 amendments designed to provide more efficient liquidation should be noted. At the request of the Department of Trade and Commerce, the court with jurisdiction over the liquidation could order all or part of the assets to be sold, with the Department of Trade and Commerce permitted to bid. In case the Department was the highest bidder, the assets of the bank were turned over to the Guarantee Fund Commission for liquidation, the proceeds thereof being used to reimburse the guaranty fund for the payments it made to the depositors. This procedure made it possible to eliminate the maintenance of liquidating agents for each of the various closed banks until all assets were disposed of, and enabled the Guarantee Fund Commission to consolidate the process of disposition of the assets of the various closed banks.

In 1929, when the Guarantee Fund Commission was abolished, the District Courts were required to appoint the Secretary of the Department

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of Trade and Commerce as receiver for all failed banks, thus concentrating the handling of the affairs of closed banks in that Department.

Bankers conservation fund. The amendments in 1923 provided for a "bankers conservation fund" for use in preventing the closing of banks and conserving the guaranty fund. Assessments for this fund were authorized at not more than one-fourth of 1 percent of average daily deposits in any year with a maximum fund at any time of one-third of 1 percent of average daily deposits. The bankers conservation fund was used by the Guarantee Fund Commission to make "deposit" in banks operated by the Commission. The fund remained the property of the contributing banks, to be carried on their books as an asset until repaid or charged off. When a bank operated by the Commission was placed in receivership a deposit from the bankers conservation fund had the same priority as other deposits.

Expenses of administration. No provision was made in the original deposit guaranty law regarding the expense of administering the law. Such expenses were part of the cost of administering the general banking code by the State Banking Board, and were met by appropriations from the general fund of the State. Operating banks were assessed examination fees designed to meet the cost of bank supervision.

In 1923, when the Guarantee Fund Commission was created, provision was made for an administrative fund not exceeding $15,000 in any one year, to be collected by an assessment on all State banks on the basis of average daily deposits at the time of the last semi-annual statement of the banks. This assessment for the administrative fund was collected through drafts drawn on the banks by the Secretary of the Department of Trade and Commerce, and was then transmitted to the Secretary of the Guarantee Fund Commission.

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Closed banks were assessed by the State Banking Board, or Department of Trade and Commerce, to meet the cost of receivership, with minimum and maximum amounts per day specified by the law.

SUPERVISION AND REGULATION OF GUARANTEED BANKS

State banks in Nebraska had been operating under the supervision of a State Banking Board and a State Bank Examiner for approximately twenty years prior to enactment of the deposit guaranty law. At the time of enactment of the deposit guaranty law the banking code was revised.

Supervisory authority. General supervision and control of banks and banking under the laws of the State was entrusted to the State Banking Board, composed of the Governor as ex officio chairman, the Auditor of Public Accounts, and the Attorney General. The Governor appointed a Secretary of the State Banking Board, who must have had at least three years' practical experience in actual banking. A suitable number of bank examiners, who were also required to have three years' experience in banking, were appointed by the Governor. No member of the examining force was permitted to examine the affairs of a bank in which he had a personal interest, or of which he had been an officer or employee within one year of his appointment as examiner.

In 1919 supervision of banks was transferred to the Department of Trade and Commerce, with a Secretary appointed by the Governor with the advice and consent of the Senate as executive officer of the Department. Examination and supervision of operating banks remained directly in charge of the Secretary of the Department of Trade and Commerce until 1929, when

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the office of Bank Commissioner was created. The Bank Commissioner, under the executive direction of the Secretary of the Department, was placed in charge of administration of the banking laws pertaining to operating banks.

The Guarantee Fund Commission, which was created in 1923 and abolished in 1929, had no duties with respect to examination and supervision of regularly operating banks. The duties of the Guarantee Fund Commission were confined to the handling of suspended banks, including operation of banks taken over by the Commission, disbursements from the guaranty fund, and liquidation of assets of failed banks placed in receivership.

Supervisory powers. The supervisory powers of the State Banking Board, at the time of adoption of deposit guaranty, related chiefly to bank examinations, and to requests for appointment of a receiver. Two examinations each year were required, and additional examinations could be made at any time. Fees for examinations were specified in the law, ranging from $15 to $50 for each examination, but not more than two fees in a year, payable into the general fund of the State. Fees were increased in 1919 and 1921. In the latter year the minimum fee for each examination was $25, and the maximum $125 plus one cent per thousand dollars of resources in excess of five million dollars.

No bank could open without the authorization of the State Banking Board, but the Board was required to issue such authorization if the bank had been organized in the prescribed manner. The State Banking Board was authorized to require any bank to restore impaired capital or reserves; it was not given power to order removal of undesirable or illegal assets, or the removal of officers, employees, or directors.

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Additional powers were conferred on the supervisory authority by later amendments, particularly in 1919 and 1921. All executive officers of banks were required to be licensed by the Department of Trade and Commerce. Such officers were required to be of good moral character, known integrity, business experience and responsibility, and capable of conducting a bank on sound banking principles. Bank officers at the time this provision went into effect were deemed to have a three months' license subject to revocation by the Department. In the same year the Legislature and Governor approved a law making the promotion of public necessity, convenience, and advantage a condition for the granting of a bank charter. However, this provision was suspended by a referendum petition and later defeated by a vote of the people.[1/]

The supervisory powers of the State Banking Board from 1911 to 1919, and of the Department of Trade and Commerce from 1919 to 1929, are summarized in Table 1.

Supervisory experience. The Secretary of the State Banking Board when the deposit guaranty law went into effect, Edward Royse, had already held that office for several years, and remained until his death in 1917. Contemporary commentators regarded his administration of the office highly and considered this to have been an important factor in the small number of failures during that time.[2/] Thornton Cooke, in one of his articles

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1/ Compiled Statutes of Nebraska, 1922, section 7997, and Final Report of the Banking Investigation, p. 7. The Final Report of the Banking Investigation also indicates that the licensing provision was reversed by referendum, but this is not supported by other sources of information.

2/ From 1903 to 1917, inclusive, there were five State banks placed in receivership, one each in 1903, 1904, 1907, 1914, and 1916.

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF DEPARTMENT OF TRADE AND COMMERCE, IN NEBRASKA, 1911-1929

Item	Powers 1/
Organization of banks:	
Opening of new banks	Board (in 1919, Department) to issue certificate and charter upon approval of bank's organization statement and certification of paid-in capital, if satisfied that the applicants are of integrity and responsibility; and in 1921 that public necessity, convenience and advantage will be promoted.
Consolidation of banks	To be approved by Board, or Department.
Examinations and reports of condition:	
Frequency of examinations 2/	Twice a year, and any additional deemed necessary or proper by Board. In 1919, at discretion of Department.
Scope of examinations	A thorough examination.
Reports of condition	Reports of assets and liabilities at least four times a year, in 1919 on form prescribed by Department; and any special reports requested or required.
Bank management:	
Removal of undesirable assets or discontinuance of undesirable practices	No specific provision.
Impairment or deficiency of capital or reserves	Board (in 1919, Department) to require impairment of capital or reserves below legal minimum to be made good within a specified time.
Removal of bank officers, directors, or employees	No specific provision. In 1921, executive officers to be persons of good moral character, known integrity, business experience and responsibility, and capable of conducting affairs of a bank on sound banking principles; and all executive officers to be licensed by the Department of Trade and Commerce, with existing officers to have a 3-months license subject to revocation. Department empowered to revoke license of an executive officer of a bank conducting its business in an unsafe or unauthorized manner or endangering the interests of the stockholders or depositors.

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF DEPARTMENT OF TRADE AND COMMERCE, IN NEBRASKA, 1911-1929 - continued

Item	Powers
Taking possession or closing a bank:	
Take possession for examination	Examiner on direction of Board (in 1919, Department) authorized to take possession of any bank, and if found insolvent, or conducting business in an unsafe or unauthorized manner, or endangering the interests of depositors, to retain possession until appointment of receiver.
Request court to appoint receiver	Whenever from an examination or report it appears that capital is impaired, bank is conducting business in an unsafe or unauthorized manner, or endangering the interests of depositors, or (in 1919) fails to make required reports or statements or to comply with all provisions of the banking law. Also, if affairs placed by bank in hands of Board (or Department).
Take possession and place bank in charge of Guarantee Fund Commission	In 1923 Department to take possession under any of foregoing conditions, or if officers or employees refuse to submit books or affairs to an examiner, or an officer refuses to be examined under oath, or neglects or refuses to observe any order of the Department, or it is considered unsafe and inexpedient for bank to continue business. After taking possession, bank to be placed in charge of Guarantee Fund Commission.
Handling of closed banks: 3/	
Return to owners	Upon investigation and finding by Board (or Department) that bank's credit and funds are in all respects restored, law has been complied with, and any indebtedness to Guaranty Fund repaid with interest.
Liquidation	Unless returned to owners, to be liquidated by receiver appointed by Court; assets to be sold on terms approved by Court. In 1923, Court to direct the Guarantee Fund Commission to name receiver. In 1919, Department of Trade and Commerce may turn bank over to owners for liquidation upon presentation of satisfactory bond by an incorporated surety company, with such liquidation process subject to review by Department and if not satisfactory appointment of receiver.

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Footnotes to Table 1.

1/ As at the beginning of the deposit guaranty system (i.e., as given in the 1909 law or amendment in 1911) with amendments during the period of operation of the system, except those adopted less than a year prior to the termination of deposit guaranty on March 18, 1930. The supervisory authority until 1919, was the State Banking Board, referred to as the Board; from then until 1929, the Department of Trade and Commerce, referred to as the Department, with its Secretary as executive officer.

2/ In 1915, examination by Federal Reserve of State member banks acceptable at discretion of State Banking Board in lieu of State requirements.

3/ Excluding the handling of closed banks by the Guarantee Fund Commission after its creation in 1923.

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on deposit guaranty, commented as follows, quoting first from a resident of Nebraska:

> "In Nebraska," writes Mr. E. R. Gurney of Fremont, a keen observer "...we have had a capable and vigorous administration of our State Banking Department for something like fifteen years past. Our banks, therefore, are sound from the standpoint of assets and also from the influence of supervision."...
>
> What Mr. Gurney says of the Nebraska Banking Department is ... true. The Secretary of the Board, Mr. Royse, has done such excellent work that the changing state administrations of ten years have wisely kept him continuously in office. 1/
>
> It is to be observed ... that under the administration of the Nebraska banking department the promise to pay depositors immediately on failure seems not to have caused reckless banking. 2/

Subsequent to 1917, there was less continuity in the headship of the supervisory office. Five persons held the office during the 13 years, serving from two to four years each.[3/] There was also less continuity in the services of bank examiners. When the State Banking Board was abolished, and the Department of Trade and Commerce established, there was a complete turnover of examiners.[4/]

As in other States with deposit insurance, the examining load was heavy. For a number of years, this was an increasingly serious situation in Nebraska because of a large increase in the number of banks with no expansion of the examining force. In 1911 the Board had nine examiners and this number remained unchanged until 1919, while the number of banks

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1/ Thornton Cooke, "Four More Years of Deposit Guaranty," Quarterly Journal of Economics, XXVIII (Nov. 1913), pp. 99-100.

2/ Ibid., p. 104.

3/ As indicated by the names of persons signing the biennial reports of the department.

4/ None of the names of examiners in the last report of the Secretary of the State Banking Board (for 1918) appears in the first report of the Department of Trade and Commerce (for 1919-1920).

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increased by 40 percent. With two examinations a year of each bank, each examiner was apparently required to make about 150 examinations a year at the beginning of deposit guaranty, and over 200 a year by the end of the decade. In 1919 the requirement of two examinations a year was removed, and during the succeeding years the number of examiners was increased to 14 in 1927, while the number of banks reached a peak in 1920. Consequently, the number of banks per examiner declined from over 100 to about 60.

The salary of the Secretary of the State Banking Board from 1909 to 1919 was $3,000 and that of examiners $2,000. Appropriations for the banking department for this period were about $30,000 per year, or from about $50 to about $30 per bank. With establishment of the Department of Trade and Commerce in 1919, the salary of the Secretary was $5,000. Salaries of examiners, which were fixed by the Governor, are not available. Members of the Guarantee Fund Commission, from 1923 to 1929, were on a per diem basis for time spent on the work of the Commission. Appropriations for the Department of Trade and Commerce increased from about $60,000 in 1921 to about $95,000 in 1928: in addition from 1923 to 1928 appropriations for expenses of the Guarantee Fund Commission were $15,000 per year.

In addition to enlarged appropriations after establishment of the Department of Trade and Commerce, more powerful supervisory tools were available. The requirement, in 1921, for the licensing of executive officers of banks was of great potential importance and helped to strengthen supervision for a time.

> The so-called license law passed by the legislature of 1921, has done much to remedy the situation. Prior to that time the department had no authority to remove a bank official. The only

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> remedy was to close the bank if it could be shown to be insolvent. With this licensing law the department can, and has in many instances, removed an executive officer of a bank who was not properly qualified to perform his duties. 1/

Nevertheless, the quality of bank supervision appears to have continued to decline. The retiring Governor of the State in 1929 stated that two weeks after he assumed office in 1925 the Secretary of Trade and Commerce gave him a list of 123 banks that were hopelessly insolvent and should have been closed long before, and an additional list of 92 banks with the report that nothing short of a miracle could save them. 2/ Shortly after repeal of the applicability of deposit guaranty in 1930, the Bank Commissioner commented as follows:

> A supervision which permits banks to operate as going institutions until their accumulated losses exceed their capital stocks by 400 to 600 percent can not be defended. It must be replaced by something better if Nebraska is to maintain a system of State banks...
>
> The banking department has been charged with suddenly shifting from one extreme policy of slackness in its supervision, to an opposite extreme of rigid severity. This charge is not denied...3/

The Bank Commissioner attributed this change in the rigors of supervision to the revision of the banking laws made in April 1929, but this explanation does not appear to be adequate. The previous powers with respect to capital impairment, illegal actions of bank officials (for which there were criminal penalties, fines, and imprisonment, specified in the banking code), and revocation of licenses of executive officers, were adequate, if properly enforced, to have prevented the deterioration described by the Commissioner.

1/ C. H. Randall, "Facts and Fallacies on the Guaranty Law," address as retiring president before the 1922 convention of the Nebraska Bankers' Association, The Northwestern Banker, Vol. 27 (November 1922), p. 72.

2/ Message of the retiring Governor, Nebraska House Journal, Forty-fifth Session, 1929, p. 47.

3/ Talk by George W. Woods, Bank Commissioner, before Group I of the Nebraska Bankers' Association at Lincoln, May 18, 1930, as reported in the Commercial and Financial Chronicle, May 31, 1930.

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Statutory limitations on bank operations. The principal statutory limitations on banking operations, under the banking law at the time the insurance system went into effect and during its operation up to 1929, are summarized in Table 2. Some of the statutory limitations on bank operations which have been found helpful in other States were not a part of the banking code of Nebraska during this period. While loans to officers and employees were prohibited, until 1925 no provision covered loans to corporations controlled by an officer of a bank. No maximum limit was placed on loans secured by real estate. There was no limitation on the amount of deposits relative to capital, as was the case in some of the other States with systems of deposit insurance. In general, penalties and sanctions other than closing a bank, or prosecution of individual bank officials through the offices of district and state attorneys, were not available to the State Banking Board (or Secretary of the Department of Trade and Commerce). As in other States, the drastic procedure of closing a bank was used sparingly, and prosecution of bank officials under criminal proceedings for irregularities disclosed by bank examinations was not in practice an effective procedure.

CLOSING OF THE GUARANTY FUND

From the beginning of deposit insurance in Nebraska in 1911 to the end of 1919 only two State banks failed. In 1920 there were five failures. With the depression of 1921 and continued adverse conditions in agriculture, failures became more numerous, with 25 placed in receivership in 1921 and 22 in the following year. By the end of 1927 about 155 other insolvent banks had been taken over for operation by the Guaranty Fund Commission or had been placed in receivership. About the middle of the 1920's, after the maximum assessment rate had been reduced in 1923, it became necessary to make use of

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NEBRASKA, 1911-1929

Item	Provision of law 1/
Responsibility of officers, directors, and stockholders:	
Examination of bank	Directors to make at least twice each year a thorough examination of the books, records, funds and securities to be recorded in detail and copy forwarded to Secretary of State Banking Board (in 1919, Department of Trade and Commerce).
Losses resulting from loans made in violation of legal limitations	Officer or employee knowingly violating such limitations liable (in 1919, under his bond) for any resulting loss. In 1923 every director participating in or knowingly assenting to such violation to be liable for damages sustained by the bank, shareholders, or any other person.
Liability of stockholders	Usual double liability.
Bonding of officers and employees	Board of directors may require cashier and other officers handling funds to give bond.
Limitations on loans and investments:	
Loans to bank examiners	In 1925 loan to a person connected with Bureau of Banking or an employee of Guarantee Fund Commission prohibited.
Loans to officers and employees	Prohibited. In 1925, loan to a corporation of which an officer of the bank is a member to be approved by Board of Directors.
Loans to directors	Must be approved by Board of Directors.
Loans to stockholders	Aggregate amount limited to 50 percent of paid-up capital and surplus.
Maximum to single borrowers (not applicable to discount of bills of exchange or of commercial paper owned by negotiator)	Twenty percent of paid-up capital and surplus.
Maximum secured by real estate	No provision.
When reserve is deficient	New loans or discounts prohibited.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NEBRASKA, 1911-1929 - continued

Item	Provision of law
Limitations on loans and investments - continued:	
Maximum total loans and investments	Eight times, amended in 1913 to ten times and in 1919 to fifteen times, capital and surplus.
Secured by own capital stock	Prohibited unless necessary to prevent loss on debt previously contracted.
Limitations on ownership of real estate and stocks:	
Maximum in banking house and equipment	One-third, amended in 1919 to one-half, of paid-up capital.
Other real estate	Prohibited, except acquisition for collection of debt, with maximum of 50 percent of paid-up capital (in 1919, 75 percent).
Corporate stocks	Prohibited, except to prevent loss on debt previously contracted, with maximum of 10 percent of paid-up capital. In 1915 ownership of stock in Federal Reserve bank permitted.
Time limit on ownership of assets acquired by collection of debt	Five years for real estate, six months for corporate stock.
Limitations relating to deposits:	
Maximum amount of deposits	No provision.
Maximum rate of interest on deposits	Five percent; in 1925 (effective April 1, 1926), 4 percent.
Receipt of deposits when insolvent	Prohibited.
Required reserves:	
Total required	15 percent of deposits for banks in places under 25,000 population; 20 percent for banks in cities over 25,000 population. 2/ In 1921, on savings deposits payable on presentation of passbooks, 5 percent.
In cash 3/	For banks with 15 percent total reserve, one-third; for banks with 20 percent total reserve, two-fifths.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NEBRASKA, 1911-1929 - continued

Item	Provision of law
Required reserves - continued:	
Permissible character of remainder	1911, balances due from other solvent banks.
Limitation on borrowing:	
Maximum	Two-thirds of paid-up capital (modified in 1915 to full amount of paid-up capital and surplus) except borrowing for payment of depositors. Additional borrowing permitted after 1923 with written consent of Secretary of Department of Trade and Commerce.
Power of supervising authority to require reduction	No provision.
Maximum value of assets pledgable as security	No provision to 1923, when limited to 1 1/2 times amount of obligation except with consent of Secretary of Department of Trade and Commerce.
Limitations on payment of dividends:	
Earnings to be carried to surplus prior to dividend	One-fifth of earnings until surplus reaches 20 percent of paid-up capital.
When losses exceed or equal undivided profits	Prohibited.
When reserve impaired	Prohibited.
When capital impaired	Prohibited.
Maximum	Net profits on hand less the losses and bad debts.
Minimum capital stock:	
New banks	Graduated by population of village, town or city: 100 or less population - $10,000) 100 to 500 population - 15,000) 500 to 1,000 population - 20,000) in 1921, 1,000 to 2,000 population - 25,000) $25,000 2,000 to 5,000 population - 35,000 4/ 5,000 to 25,000 population - 50,000 25,000 to 100,000 population - 100,000 100,000 to more population - 200,000
Other banks	No reduction below above amounts, and any reduction to be approved by State Banking Board (or Department of Trade and Commerce).

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Footnotes to Table 2.

1/ As of the beginning of the deposit guaranty system, with amendments during the period of operation of the system, except those adopted less than a year prior to termination of deposit guaranty on March 18, 1930. Special provisions for savings banks, or for cooperative banks, are omitted.

2/ Not applicable after 1915 to banks complying with reserve requirements of the Federal Reserve Act.

3/ In 1919, two-fifths of the cash reserve was permitted to be in United States Government bonds, reduced in 1925 to one-fifth.

4/ In 1923, effective until Jan. 1, 1925, in places of less than 1,000 inhabitants, if no other bank was available, $15,000.

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the borrowing procedure established at that time. By 1927 difficulties were encountered in marketing the receivers' certificates, which were guaranteed by the Guarantee Fund Commission, because of the prospective insolvency of the guaranty fund, and their issue was halted.

Under the changed condition of the guaranty fund, the attitude of bankers toward the system rapidly altered, and they attempted to have the law repealed or declared unconstitutional. Late in 1928 a suit was instituted to enjoin collection of the special assessment of December 15 of that year, renewing the contention that the guaranty law was unconstitutional, and asking for a review and reversal of the decision made in 1911. In April 1929 a district court acted favorably and granted an injunction prohibiting collection of the assessment. This made the law temporarily inoperative, pending an appeal to the State Supreme Court. The decision of that Court, rendered in December 1929, dismissed the complaint of the bankers, held the law constitutional, and dissolved the injunction.[1/] The bankers then appealed to the United States Supreme Court which heard the appeal early in 1931.

In the meantime, more banks had failed, the law had been extensively revised and the Guarantee Fund Commission abolished in April 1929, and all the banks it had been operating were placed in receivership except a few that were reorganized and reopened. At the same time another act authorized the Governor to make a thorough investigation and audit of the business transactions and activities since the beginning of 1919 of the Department of Trade and

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1/ Abie State Bank v. Weaver (1929), 227 N.W. 922, 119 Neb. 153.

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Commerce and the Bureau of Banking, the Guarantee Fund Commission, and receivers of State banks. In the next month the Legislature had voted to repeal the deposit guaranty law, but the repeal act failed to receive the Governor's approval.

In the Spring of 1930 a special session of the Legislature was held to deal with the guaranty fund. A preliminary report of the banking investigation was prepared and submitted by the Governor in his message to the special session. On March 18, 1930, the legislature repealed the law so far as it related to future failures. To aid in paying existing claims against the fund, the same act established a Depositors' Final Settlement Fund consisting of the remaining balance of the guaranty fund and of receipts from annual assessments upon the banks for ten years of one-fifth of 1 percent of average daily deposits. An appropriation was made by the Legislature for the reimbursement of deposits lost in the banks which had been operated by the Guarantee Fund Commission, and a constitutional amendment was submitted to the people providing for an appropriation of $8,000,000 to discharge the obligations of the deposit guaranty fund. It was hoped that collection of the assessments for 1928 and 1929 which had been held up by the injunction, the appropriation to be authorized by constitutional amendment, and the assessments to be levied for the Depositors' Final Settlement Fund would be sufficient to pay all claims in full.

In February 1931 the United States Supreme Court rendered its decision on the appeal from the State Supreme Court decision of 1929 upholding the constitutionality of the guaranty fund law. In this decision, the United States Supreme Court upheld its former decision of 1911 and the 1929 decision of the Nebraska Supreme Court that the guaranty law was constitutional.

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However, in the course of the opinion, the United States Supreme Court noted that the law was sustained as a police regulation, and that a police regulation, though valid when made, may become, by reason of later events, arbitrary and confiscatory in operation, and that the decision upholding the constitutionality of the act would not preclude a subsequent suit for the purpose of testing, in the light of later actual experience, the validity of assessments made thereunder, alleged to be unreasonable and confiscatory, and hence repugnant to the due process clause of the Fourteenth Amendment. The Court also took judicial notice of the legislation of March 1930 which had altered the situation by transferring the December 1928 and subsequent assessments under the former guaranty law to the use of a Depositors' Final Settlement Fund, and by limiting future assessments. Considering this reduction in the extent of the obligation for future assessments, the Court declared itself unable to say that the modified statute was confiscatory or other than a reasonable method of liquidating the guaranty plan.[1/]

The legislation of March 1930 for settling the claims on the deposit guaranty fund was not successful. The State Supreme Court held that the appropriation for the reimbursement of deposits lost in banks which had been operated by the Guarantee Fund Commission was unconstitutional.[2/] The proposed constitutional amendment authorizing an appropriation for payment of the general obligations of the fund was rejected at the polls. Further, in the light of the opinion of the United States Supreme Court about the possibility

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1/ Abie State Bank v. Bryan (1931), 51 S. Ct. 252, 282 U.S. 765, 75 L. Ed. 690. The opinion of the Court was delivered by Chief Justice Hughes. However, it is perhaps worthy of note that Willis Van deVanter, who was one of the judges of the United States Circuit Court which declared the original Nebraska law unconstitutional, was a Justice of the United States Supreme Court at the time of this decision, having been appointed after the hearings by that court on the constitutionality of deposit guaranty laws in Oklahoma, Kansas, and Nebraska.

2/ Weaver v. Koehn (1930), 231 N.W. 703, 120 Neb. 114.

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that assessment under a law originally constitutional might become unreasonable and confiscatory under changed conditions, the bankers brought another suit contesting the validity of the assessment provisions of the March 1930 law. This suit, after a favorable decision by a district court, was appealed and heard by the State Supreme Court in 1932. The State Supreme Court, in its decision rendered in November of that year, held that the part of the 1930 law repealing the application of the guaranty to future failures was constitutional, but that the part of the act establishing the Depositors' Final Settlement Fund lacked the public purpose necessary to support it as an exercise of the police power, and that it took the property of one person and gave it to another, thus depriving the one of his property without due process of law. Recognizing that this would make the assessments from December 1928 to March 1930 valid under the original act, the court ruled also on the contention that changed conditions made those assessments confiscatory, noting that the failure of the United States Supreme Court to find them so was because that court had been unable, in view of the new legislation, to determine whether the assessments were confiscatory. The reasoning and opinion of the State Supreme Court on this point is given below.

> The public purpose sufficient to support the constitutionality of the depositors' guaranty fund was the stabilization of commerce and the creation of public confidence in the banks. It had a public purpose. It was within the reasonable exercise of the police power...
>
> ...state banks ... challenge the constitutionality of the assessments levied under the provisions of the Depositors' Guaranty Fund Law beginning with the special assessment of December 15, 1928... for that by reason of changed conditions the regulatory act in its operations has become confiscatory...
>
> If under the facts it is confiscatory it is violative of the Fourteenth Amendment to the Federal Constitution. If it is confiscatory, then it can no longer be sustained as a constitutional legislative enactment under the police power for a public purpose. If confiscatory,

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the public advantage does not justify taking of private property for what, in its purpose, is a private use.

In addition to the changed condition relating to changed statutory enactments, there are facts and circumstances inherent in the conditions of the banking business in this state since December, 1928. These facts are established by the record. It was a fact determined in 1928 that, due to the unprecedented number of failures of state banks, the depositors' guaranty fund was faced with a deficit of millions, and that it was impossible to restore the solvency of the fund. The comparatively small regular assessments had been levied and collected. In addition, the larger and more oppressive special assessments have been levied regularly for years, in the vain hope of restoring the solvency of the fund. The banks were faced with an indefinite continuance of these regular and special assessments, At the same time, the public purpose which this legislation undoubtedly had in the beginning was no longer served. From the condition of the fund itself, instead of a stabilizer of the state banks, it became a menace and a threat, sufficient to cause a great loss of public confidence in the banks with subsequent loss of business and earning power...

From any viewpoint from which we consider these assessments, it is apparent that all public purpose has been abandoned in relation thereto and that it now amounts to taking the property of one class of citizens to pay another class in contravention of the constitutional rights of the plaintiffs. 1/

This decision stated in effect that the deposit guaranty plan was constitutional as long as depositors were protected. It became unconstitutional when it had been clearly demonstrated that this public purpose was not fulfilled. This decision was not specifically confirmed by the United States Supreme Court, but was in effect approved by that Court by declining to review the case. 2/

1/ Hubbell Bank v. Charles W. Bryan, Governor (1932), 245 N.W. 20, 124 Neb. 51.

2/ Bryan v. Hubbell Bank of Hubbell (1933), 53 S. Ct. 785, 289 U.S. 753, 77 L. Ed. 1498.

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The action of the United States Supreme Court, announced in May 1933, made impossible any collection by the guaranty fund of the disputed assessments. In the same month the Legislature of Nebraska repealed all remaining portions of the deposit guaranty law. The Department of Trade and Commerce then proceeded to wind up the affairs of the fund. Final payments to depositors from the small remaining balance in the fund were made in July 1934.

NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number of participating banks. The number of State banks in Nebraska, all of which participated in the deposit guaranty system, and the number of national banks in the State, which did not participate, are given in Table 3 for each year of operation of the deposit guaranty fund.

At the time the guaranty law went into effect, about 73 percent of the banks operating in the State were operating under State law and therefore became participants in the guaranty system. During the next eight years, this proportion steadily increased, due primarily to the conversion of national banks to State banks, and reached 84 percent in 1919. This percentage remained stable for the next eight years. During the remaining two years of the guaranty system, the proportion operating under State law declined, falling to 80 percent of the total number of operating banks at the end of 1929.

Deposits of participating and nonparticipating banks. The proportion of total deposits in all operating banks held by the State banks was much smaller, throughout the period of deposit guaranty, than the percentage of number of banks. The national banks were, on the average, considerably larger banks than the State banks.

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Table 3. NUMBER OF OPERATING BANKS IN NEBRASKA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1912-1930, BY YEARS

Year end 1/	All banks operating in Nebraska	Participating in deposit guaranty 2/	Not participating in deposit guaranty 3/	Percentage Participating
1911	916	669	247	73.0
1912	935	694	241	74.2
1913	965	728	237	75.4
1914	983	765	218	77.8
1915	1,007	803	204	79.7
1916	1,031	839	192	81.4
1917	1,110	920	190	82.9
1918	1,133	942	191	83.1
1919	1,188	999	189	84.1
1920	1,196	1,009	187	84.4
1921	1,170	986	184	84.3
1922	1,137	955	182	84.0
1923	1,118	938	180	83.9
1924	1,101	928	173	84.3
1925	1,072	903	169	84.2
1926	1,043	883	160	84.7
1927	1,012	855	157	84.5
1928	882	726	156	82.3
1929	804	647	157	80.5

1/ Dec. 31, or nearest available date. Call dates for State and national banks are not identical in several years.

2/ All State banks, from annual reports of the Bureau of Banking. For 1919, 1920, and 1921, some of these banks may not have been participants, because of the provision of the 1919 law (removed in 1921) that new banks were not required to participate until they had been operating two years. The only information regarding nonparticipants is for Nov. 13, 1920, when 40 banks did not show the item, "Depositors Guaranty Fund" in their statement as published in the report of the Bureau of Banking. Two years later no bank omitted this item.

3/ National banks, from annual reports of the Comptroller of the Currency.

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At the beginning of deposit guaranty, about 40 percent of the bank deposits in the State were held by State banks. For a number of years this percentage increased, reaching 59 percent in 1921, and remaining between 55 and 59 percent until 1928. During the last two years of deposit guaranty, the deposits in State banks declined relative to those in national banks, so that by the end of 1929 only 47 percent of the deposits in the State were in banks participating in the deposit guaranty system. The deposits of participating banks, all of which were insured, and those of nonparticipating banks are given in Table 4 for each year of operation of the guaranty system.

Concentration of bank deposits. Table 5 shows the amounts of deposits held on October 31, 1914, and June 30, 1927, by the State banks in Nebraska grouped according to their deposits. These years are chosen as representative of the earlier and later parts of the period during which the deposit guaranty system was in operation.

In 1914 the largest State bank in Nebraska held 1.1 percent, and in 1927 the largest bank held 2.3 percent, of the deposits in all State banks. The largest 10 banks held, on these dates, respectively, 7 and 9 percent of the deposits in all State banks. The concentration of deposits in a few of the largest banks was not so great in Nebraska as in Kansas and in Oklahoma during periods of operation of guaranty deposit plans.

Failures of participating banks. During the 19 years of operation of the deposit guaranty system in Nebraska, 360 participating banks closed because of financial difficulties. Only seven of these failures occurred during the first half of the period of operation of the fund. One of the banks which closed was a bank which had previously suspended and had been

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Table 4. DEPOSITS IN OPERATING BANKS IN NEBRASKA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1912-1930, BY YEARS.
(In thousands of dollars)

Year end 1/	All banks operating in Nebraska	Banks participating in deposit guaranty 2/	Banks not participating in deposit guaranty 3/	Percentage of deposits in all banks held by participating banks
1911	193,591	73,890	119,701	38.2
1912	204,925	82,528	122,397	40.3
1913	213,726	92,747	120,979	43.4
1914	216,796	100,812	115,984	46.5
1915	240,870	114,488	126,382	47.5
1916	342,671	165,528	177,143	48.3
1917	419,232	223,499	195,733	53.3
1918	477,761	259,875	217,886	54.4
1919	513,211	278,769	234,442	54.3
1920	432,113	255,067	177,046	59.0
1921	387,641	216,478	171,163	55.8
1922	433,992	238,754	195,238	55.0
1923	430,220	239,985	190,235	55.8
1924	484,897	271,529	213,368	56.0
1925	487,291	281,547	205,744	57.8
1926	470,090	275,552	194,538	58.6
1927	474,300	274,525	199,775	57.9
1928	461,646	252,460	209,186	54.7
1929	406,850	191,658	215,192	47.1

1/ Dec. 31, or nearest available date. Call dates for State and national banks are not identical in several years.

2/ Deposits in all State banks, from annual reports of the Bureau of Banking. Includes dividends unpaid. See note 2 to Table 3 regarding banks that may not have been participants in 1919, 1920, and 1921. The 40 banks omitting the item "Depositors Guaranty Fund" from their statements as of Nov. 13, 1920, had deposits on that date of $3,336,000.

3/ Deposits in national banks, from annual reports of the Comptroller of the Currency.

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Table 5. NUMBER AND DEPOSITS OF STATE BANKS IN NEBRASKA, OCTOBER 31, 1914, AND JUNE 30, 1927

Banks grouped by amount of deposits

	Number of banks	Amount of deposits (thousands of dollars)	Percentage of number of banks	Percentage of aggregate deposits
All State banks, October 31, 1914	760	93,420	100.0	100.0
Banks with deposits of --				
$100,000 or less	387	22,684	50.9	24.3
$100,000 to $250,000	303	45,783	39.9	49.0
$250,000 to $500,000	64	20,451	8.4	21.9
$500,000 to $1,000,000	5	3,479	.7	3.7
$1,000,000 to $2,000,000	1	1,023	.1	1.1
Largest bank		1,023		1.1
Largest 5 banks		3,991		4.3
Largest 10 banks		6,418		6.9
All State banks, June 30,1927	872	275,038	100.0	100.0
Banks with deposits of --				
$100,000 or less	100	7,380	11.5	2.7
$100,000 to $250,000	348	60,511	39.9	22.0
$250,000 to $500,000	300	102,826	34.4	37.4
$500,000 to $1,000,000	102	65,362	11.7	23.7
$1,000,000 to $2,000,000	17	22,301	1.9	8.1
$2,000,000 to $5,000,000	4	10,398	4.5	3.9
Over $5,000,000	1	6,260	.1	2.3
Largest bank		6,260		2.3
Largest 5 banks		16,658		6.1
Largest 10 banks		24,853		9.0

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reopened. Of the closed banks, 317 entailed obligations on the guaranty fund. The other 43 were reopened without obligations on the fund. The deposits in the guaranteed banks closed because of financial difficulties amounted to $85 million, of which $74 million were deposits in the cases entailing obligations on the guaranty fund.

The number and deposits of the banks closed each year, with ratios to the number and deposits of operating banks at the beginning of the year, are given in Tables 6 and 7. The average annual rate of failure, computed at the number of banks which failed per 100 operating at the beginning of each year, was 2.2. However, as has been mentioned, nearly all of the failures occurred during the latter half of the period of operation of the fund. For the 9½ years that the fund was in operation prior to 1921, the average annual rate of failure was 0.1 per 100 operating banks, and the deposits in the closed banks averaged $0.09 per $100 in operating banks. For the remaining 9 years of the system, the average annual rate of failure was 4.2 per 100 banks. The deposits of the closed banks, for this period, averaged $3.57 per year for each $100 of deposits in operating banks. The latter rate, for the entire period of operation of the fund, was $2.25 per year for each $100 in operating banks.

Failures by size of bank. In Table 8 the size distribution of the failed banks which entailed obligations on the guaranty fund is compared with the average size distribution of operating banks. The failures show very little correlation with size of bank, except for a low failure rate among the largest-sized banks. The largest bank among the failures was the Security State Bank,

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Table 6. NUMBER OF STATE BANKS IN NEBRASKA CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, JULY 1, 1911, TO MARCH 18, 1930, BY YEARS

Year or period 1/	Total closed		Number 2/				
	Number	Per 100 active banks	Reopened or affairs closed without obligation on the guaranty fund 3/	Placed directly in receivership 4/	Taken over for operation by Guarantee Fund Commission 5/	Commission operated banks placed in receivership 6/	Total entailing obligations on the guaranty fund 7/
Total	360	2.2 8/	43	135	182	182	317
Subtotals							
July 1, 1911 to Dec. 31, 1920	7	.1	--	7	--	--	7
Jan. 1, 1921 to March 18, 1930	353	4.2	43	128	182	182	310
1914	1	.1	--	1	--	--	1
1916	1	.1	--	1	--	--	1
1920	5	.5	--	5	--	--	5
1921	26	2.6	1	25	--	--	25
1922	23	2.3	1	22	--	--	22
1923	22	2.3	--	12	10	3	15
1924	18	1.9	1	7	10	6	13
1925	39	4.2	--	8	31	12	20
1926	36	4.0	--	7	29	15	22
1927	41	4.6	--	1	40	21	22
1928	58	6.8	4	--	54	46	46
1929	79	10.9	34	37	8	79	116
1930	11	8.1 8/	2	9	--	--	9

1/ No failures occurred in 1911-1913, 1915, or 1917-1919.

2/ Tabulated from information regarding the individual banks in the biennial reports of the Department (Bureau) of Banking, reports of special investigations ordered by the Legislature, schedules prepared for the Federal Reserve Committee on Branch, Group, and Chain Banking, surviving records in the Department of Banking, and receivership records in custody of the library of Nebraska State University.

3/ Reopened, taken over, or liquidated. Includes 10 banks (2 in 1926 and 8 in 1929) which had been taken over by the Guaranty Fund Commission. Of the 43 banks, 33 were reopened subsequent to April 30, 1929, when the Secretary of the Department of Trade and Commerce was authorized to approve a reorganization plan of a failed bank to which owners of 85 percent of the deposits and unsecured liabilities had agreed.

4/ Three of these banks (1 placed in receivership in 1923, 1 in 1924, and 1 in 1926) were later reopened or taken over with a payment from the guaranty fund.

5/ Excluding the 10 banks mentioned in note 3.

6/ In 1925 includes one bank reopened and another taken over with a payment from the guaranty fund.

7/ Banks placed in receivership directly plus Commission operated banks placed in receivership.

8/ Annual rates.

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Table 7. DEPOSITS OF STATE BANKS IN NEBRASKA CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, JULY 1, 1911, TO MARCH 18, 1930, BY YEARS

Year or period	All banks closed		Deposits of -- 1/				
	Amount (at date closed or taken over by Guaranty Fund Commission)	Per $100 of deposits in active banks	Banks reopened or affairs closed without obligation on the guaranty fund 2/	Banks placed directly in receivership	Banks taken over for operation by Guarantee Fund Commission	Commission operated banks placed in receivership	Banks entailing obligations on the guaranty fund (at date placed in receivership)
Total	$84,959,817	$2.25 3/	$10,699,746	$25,556,804	$48,703,267 4/	$35,932,301 4/	$61,489,105
Subtotals							
July 1, 1911 to Dec. 31, 1920	1,258,257	.09	--	1,258,257	--	--	1,258,257
Jan. 1, 1921, to March 18, 1930	83,701,560	3.57	10,699,746	24,298,547	48,703,267	35,932,301	60,230,848
1914	122,418	.13	--	122,418	--	--	122,418
1916	110,244	.10	--	110,244	--	--	110,244
1920	1,025,595	.37	--	1,025,595	--	--	1,025,595
1921	6,090,037	2.39	48,621	6,041,416	--	--	6,041,416
1922	4,957,906	2.29	200,344	4,757,562	--	--	4,757,562
1923	4,134,588	1.73	--	1,574,124	2,560,464	843,425	2,417,549
1924	4,886,130	2.04	197,519	525,919	4,162,692	1,019,893	1,545,812
1925	11,244,134	4.14	--	2,058,026	9,186,108	3,095,825	5,153,851
1926	8,468,402	3.01	--	1,024,406	7,443,996	4,822,674	5,847,080
1927	11,825,928	4.29	--	43,122	11,782,806	5,586,104	5,629,226
1928	13,367,757	4.87	823,472	--	12,544,285	7,724,723	7,724,723
1929	17,075,467	6.76	9,056,824	6,995,727	1,022,916	12,039,057	19,835,304
1930	1,651,211	4.10 3/	372,966	1,278,245	--	--	1,278,245

1/ For number of banks in each group, and sources of data, see Table 6 and notes thereto.
2/ Of the total deposits of these banks, $8,812,583 were in 33 banks reopened after April 30, 1929 (see note 3 to Table 6).
3/ Annual rate.
4/ The difference between these aggregates represents deposits paid in excess of those received while the 182 banks were operated by the Guarantee Fund Commission.

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Table 8. SIZE DISTRIBUTION OF FAILED BANKS IN NEBRASKA ENTAILING OBLIGATIONS ON THE GUARANTY FUND COMPARED WITH AVERAGE SIZE DISTRIBUTION OF OPERATING BANKS

	Number of banks			Deposits		
	Average number of operating banks	Failed banks	Average annual number of failed banks per 100 active banks 1/	Average deposits of operating banks (in thousands)	Failed banks (in thousands) 2/	Average annual amount of deposits in failed banks per $100 deposits in operating banks 1/
Total	852	317	2.0	$206,611	$74,262	$1.92
Banks with deposits of--						
$100,000 or less	200	74	2.0	12,873	4,769	1.98
$100,000 to $250,000	366	142	2.1	61,979	23,462	2.02
$250,000 to $500,000	214	73	1.8	73,280	25,050	1.83
$500,000 to $1,000,000	61	27	2.3	39,435	19,354	2.62
$1,000,000 to $2,000,000	9	1	.6	11,287	1,627	.77
$2,000,000 or more	2	--	--	7,757	--	--

1/ Computed from data in the foregoing columns and the length of time the deposit guaranty system was in operation (18.7 years).

2/ For banks operated as "going concerns", deposits are as of the date taken over by the Guarantee Fund Commission.

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Omaha, with deposits of approximately $1,500,000. No other bank with deposits of more than $1,000,000 failed during the life of the guaranty fund. The Security State Bank was the seventh largest bank operating under State law. Deposits of this bank constituted 2 percent of the deposits of all guaranteed banks which failed prior to repeal of the applicability of the law. Concentration of risk in large banks, and failure of these banks, does not appear to have been an important factor in the insolvency of the Nebraska guaranty fund. However, there is evidence that the majority of the large banks in the fund were not in good condition. Of the six banks larger than the Security State Bank, Omaha, three failed within eighteen months after the repeal of the guaranty provisions of the law, and one was absorbed prior to the close of deposit guaranty under conditions indicating that the bank was about to fail. The other two consolidated and converted to a national bank at about the time the guaranty law was repealed.

Comparison of failures with those in other States. In Table 9 bank failure rates, for both number and deposits, are shown for Nebraska, for banks in contiguous States, and for the entire United States. The table covers the years 1912-1929, which includes the period of operation of the Nebraska deposit guaranty system except for the last half of 1911 and the early part of 1930. The failure rates in Nebraska were substantially higher, both for national banks and State banks, than for the entire United States.

For number of failures, the rate for State banks in Nebraska was higher than in three, lower than in two, and the same as one of the contiguous

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Table 9. ANNUAL BANK FAILURE RATES IN NEBRASKA, 1912-1929, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES 1/

	Failures per year per 100 operating banks			Deposits per year in failed banks per $100 in operating banks		
	State and nat'l banks	State banks	National banks	State and nat'l banks	State banks	National banks
Nebraska	2.0	2.3	0.9	$1.40	$2.25	$0.41
Six contiguous States	1.8	1.9	1.1	.92	1.29	.44
South Dakota	3.9	4.2	2.5	3.49	4.48	1.86
Iowa	2.0	2.1	1.5	1.38	1.63	.92
Missouri	1.1	1.2	.3	.31	.52	.02
Kansas	1.1	1.3	.3	.70	1.13	.15
Colorado	1.8	2.3	.9	.54	.95	.38
Wyoming	3.1	3.7	1.7	1.72	2.27	1.41
Entire United States	1.3	1.6	.6	.30	.43	.15

1/ Tabulated from data from the following sources: reports of bank commissioners in the various States; Willis, Banking Inquiry of 1925; annual reports of the Comptroller of the Currency; Federal Reserve Committee on Branch, Chain and Group Banking, "Changes in the Number and Size of Banks in the United States, 1934-1941;" and Federal Reserve Bulletin, September and November, 1937.

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States; in terms of deposits, the rate for Nebraska was higher than in four, and lower than in two of the contiguous States. Deposit guaranty systems were in operation in two of the contiguous States, Kansas and South Dakota, during most of the period covered by this table. The failure rates in Nebraska were higher than in Kansas, but lower than in South Dakota.

Causes of bank failures. In 1930 the legislature of Nebraska ordered a special investigation and audit of failed banks in the State. The report of this investigation contains a discussion of the causes of failure without making an attempt to estimate the number due to specific causes.[1/] An analysis of the evidence collected by the investigation which was made by Mr. T. Bruce Robb for the Department of Business Research of the University of Nebraska is also without an estimate of the number of failures due to the various causes mentioned.[2/]

Relatively little is said in the report of the Banking Investigation about theft, embezzlement, or defalcation on the part of bank officials. Such overt acts were apparently not regarded as a major cause of failure in many of the banks which failed during the period of operation of the guaranty fund. More attention is given to dishonesty by the study of the Department of Business Research of the University of Nebraska. A number of cases are cited of dishonesty on the part of bank officials, shortages due to the abstractions of cashiers, forged notes, and loans obtained on worthless paper, to which the following statement is added:

1/ A. C. Shallenberger, Final Report of the Banking Investigation, pp. 6-9.

2/ T. Bruce Robb, State Bank Failures in Nebraska (1934), pp. 27-28.

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> If space permitted the recital of such sordid banking transactions, it would unfortunately be greatly extended. The first impression one gets from this record is the complete lack of any feeling of public responsibility for their actions on the part of these bank managers.

Both the banking investigation and the Department of Business Research placed great stress on speculation, loans to interests with which bank officials were associated, and loans in excess of the legal limits. The report of the Banking Investigation described the influence of these elements as follows:

> The World War inflated prices, both of land and other property, to such an extent that a business boom developed which swept many bankers, business men and even farmers into a maelstrom of speculation. Standards of values and normal basis of credit were completely lost sight of and sound business principles were forgotten...Land speculation, a most dangerous economic disease for bankers to contract, became epidemic either through loans on lands or by indirect purchases by bank officers...
>
> Millions of dollars of worthless loans encumbered the note cases of the banks audited by this office. Very often more than half of the notes in failed banks were found worthless because the officers making them were speculators, not bankers.

The same aspect of the situation was described by Mr. Robb, in the report of the Department of Business Research, as follows:

> One of the great weaknesses of a decentralized system of unit banks as developed in this country is the opportunity it affords to men of affairs to enter the banking business and use the community's deposits to lubricate their private ventures. No man can successfully serve two masters, and the spectacle of a banker in the role of a credit man making loans to his own enterprises is grotesque. The period of rapid growth in the number of banks was especially productive of this type of banker. It was a period of rising prices and speculative excesses, and the banking business was disgraced by bankers who were using their institutions to finance their own

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> mercantile operations, or the tenants on their own farms, or as a dumping ground for the paper collected by their automobile agencies or that growing out of their cattle transactions. Almost without exception, the losses following in the train of this kind of banking were appalling.

An excessive number of banks, inadequate earnings, and management by incompetent officials are also emphasized as important joint factors in the widespread collapse of banks in Nebraska. Incompetence may wreck a bank with good earning power. However, incompetent management appears most frequently when new banks are opened freely; and an excessive number of banks in a locality in relation to the volume of business available in the locality is a major factor in inadequate earnings. The report of the Banking Investigation describes the influence of these factors in Nebraska as follows:

> ...hundreds of banks were chartered for which there was no economic use and men permitted to operate them who, for want of ability and honesty, have disgraced the business of banking. Too many banks and too few bankers bred bankruptcy in the banking business.
>
> ...The unsafe and unnecessary expansion in banking during the boom period because of no limiting of charters led to an extraordinary and dangerous increase in loans and credits. Where too many banks make competition ruinous, bad loans become common because there are not enough safe borrowers to absorb the funds that must be loaned to make a show of profit.

Mr. Robb, in reviewing the evidence collected by the banking investigation makes similar statements regarding incompetent management and an excessive number of banks.

> It is not out purpose...in this section to consider cases where, more often than not, bank officers were honest and well meaning, but where either through indolence or stark ignorance of sound banking practice they showed themselves grossly incompetent to operate a bank. It would only be expected that where banks were organized with such feverish haste as occurred between 1910 and 1920, many cases would come to light of men permitted to operate banks who were utterly unfit to receive and loan other people's money.

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Economic circumstances and rapid economic changes, particularly the sharp reversal in prices of agricultural products after the close of the World War and the renewed decline in those prices which set in about 1926, were also important elements in the large number of bank failures in Nebraska. Nevertheless, the report of the banking investigation and the analysis by the Department of Business Research of the University of Nebraska give only a moderate stress to the decline in agricultural prices. This decline is considered to be the occasion for bank failures, but speculation, loans to bank officials and their interest, incompetent management, and an excessive number of banks are emphasized as more fundamental causes.

A similar emphasis is indicated in the causes of failure of banks which closed during the period 1921-1930, as reported in the schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking.[1/] Out of 380 failures for which a primary cause of failure is mentioned, only 34 are attributed to the decline in real estate values or to losses due to unforeseen agricultural or industrial disaster, while 38 are attributed to defalcation and 264 to incompetent management. However, land values and agricultural conditions are stressed as an important contributing factor in a great majority of the failures. A classification of the primary and contributing causes of failure reported on these schedules is given in Table 10.

1/ Schedules prepared in 1931 in the office of the Bureau of Banking of Nebraska, for the Federal Reserve Committee on Branch, Group and Chain Banking.

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Table 10. CAUSES OF BANK FAILURES IN NEBRASKA, 1921-1930, REPORTED ON SCHEDULES PREPARED FOR THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP AND CHAIN BANKING

Item 1/	Number of cases	
	Primary cause	Contributing cause
Dishonesty of officers--total	39	17
Defalcation	38	13
Officer's irregularities or shortages	--	3
Inside bank robbery	1	--
Dishonesty of former management	--	1
Misuse of bank funds, excessive loans, irregularities--total	29	37
Misuse or misapplication of bank funds	27	11
Excess loans, or overloaning	--	21
Excessive and illegal loans	--	1
Loans to stockholders and relatives	--	1
Failure of large debtor	2	--
Violation of State banking laws	--	3
Reversal of prosperous conditions, decline in values--total	85	227
Unforeseen agricultural or industrial disaster, such as flood, drought, etc.	4	36
General deflation, or general depression	28	16
Decline in value of farm products, or deflation of agricultural prices	23	32
Decline in real estate values	30	143
Incompetent or poor management--total	281	56
Incompetent management	264	40
Insufficient diversification	16	14
Long-term loans on real estate	1	--
Excessive operating cost	--	2
Other causes--total	81	86
Heavy withdrawals	40	27
Failure of other banking institutions	11	4
Insufficient operating income	1	11
Lack of business	21	4
Lax enforcement of State banking laws	2	37
Miscellaneous	6	3

1/ Specific items are from schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking, the grouping by the author of this report. The tabulation was made by the author of this report from the schedules, which were made available through the courtesy of the Board of Governors of the Federal Reserve System.

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Procedures in handling failed banks. Until organization of the Guarantee Fund Commission in 1923 almost all the banks closed because of financial difficulties were placed directly in receivership, with the receiver appointed by the district court and the affairs of the bank closed under jurisdiction of the court. In only two cases had banks been reopened without a receivership. In the receivership cases the procedure was for the guaranty fund to pay the receiver an amount which, together with the proceeds of the readily liquidated assets of the bank, enabled him to pay all the deposit claims. However, when failures became numerous in 1921 the amount that was required to be drawn from the guaranty fund was reduced by a device for receivers' borrowings developed by a group of banks participating in the deposit guaranty system. This was later described as follows in a message of the Governor to the Legislature and in court testimony by one of the bankers associated with it.

> "...state bankers...organized the State Agricultural Loan Association and sold stock and association notes to member banks to the amount of two million dollars. The proceeds of the stock and note sales were used in paying off depositors in failed banks. The assets of the failed banks then became the property of the association." 1/

> "...I served with the Agriculture Loan Association... with the consent of the various District Courts we issued receiver certificates which were endorsed and guaranteed by the Agriculture Loan Association then sold to solvent banks and the proceeds used to pay off depositors immediately. In fact, the only difference between what we did and what has been done since by the Guarantee Fund Commission was that it, the latter, was legalized by the law. This was more or less voluntary; no legal provision had been made for it. Stockholders were all voluntary stockholders and the Agriculture Loan Association assumed responsibility of endorsing receivers certificates and the banks who bought them assumed the responsibility of their being paid

1/ Farewell message of Governor Adam McMullen to the Nebraska Legislature, Jan. 3, 1929, Nebraska House Journal, Forty-fifth Session, 1929, p. 50.

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but the depositors got their money and the object was to keep the Guarantee Fund from breaking down. The failures at that time, occurred so rapidly and with such large liabilities that the assessments were not bringing in enough money to pay the depositors." 1/

After establishment of the Guarantee Fund Commission in 1923 banks in difficulty were turned over to that Commission for operation as a "going concern" or appointment of a receiver; and a few months later existing receiverships were transferred to the Commission for appointment of a new receiver to complete the process of liquidation. Members of the Guarantee Fund Commission served as the receivers, with the receivership process supervised, as previously, by the district courts. The Commission organized two departments, one for going banks and one for those in receivership, with the Secretary of the Commission as an executive officer. The Commission inherited 58 receiverships, and handled the affairs of 226 other banks before it went out of existence in 1929. 2/

The hope that banks could be rehabilitated by operation as going concerns proved futile. Of 228 banks closed because of financial difficulties between May 4, 1923, and May 1, 1929--the establishment and termination dates of the Commission--about 200 were treated as "going concerns" for varying lengths of time ranging from a portion of a month to more than three years. Table 11 gives a distribution of 192 banks according to the length of time they were operated by the Commission, and also the number operated as going

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1/ Testimony of George W. Woods in District Court of Lancaster County, in Abie State Bank v. Bryan, from records of the United States Supreme Court, Transcripts of Records and File Copies of Briefs, 1930. Vol. 38, Case No. 63, pp. 240-41.

2/ Final Report of the Banking Investigation. The difference between the figure of 226 and that of 228 in the next paragraph is probably due to banks reopened without being handled by the Commission. The letter figure is derived from information collected regarding the individual closed banks, from the sources used in preparing Table 6.

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Table 11. BANKS CLOSED IN NEBRASKA DURING THE LIFE OF THE GUARANTY FUND COMMISSION

Banks failed May 4, 1923, to May 1, 1929		Number of banks operated as "going concerns" 1/	
Total number 2/	228	1925 - midyear	33
		1925 - year-end	30
Operated as "going concerns" 3/	192	1926 - midyear	36
For less than 6 months	38	1926 - year-end	44
6 to 11 months	24	1927 - midyear	57
12 to 17 months	71	1927 - year-end	62
18 to 23 months	35	1928 - midyear	75
24 to 29 months	15	1928 - year-end	72
30 to 35 months	7	1929 - Feb. 5	67
Over 3 years	2		
Other failed banks 4/	36		

1/ For midyear 1925 and 1927 from reports of the Bureau of Banking for those years; for year-ends 1927 and 1928 from United States Supreme Court records, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, pp. 46 and 60; Feb. 5, 1929, from Report of House Sub-Committee on Guarantee Fund Commission, 1929; for other dates, tabulated from information pertaining to the individual banks.

2/ Tabulated from a list of the banks. The Guarantee Fund Commission took over 227 banks, according to information in "Exhibit A, Statement by Governor Weaver on Bank Situation," submitted with the message of Arthur J. Weaver, Governor, to the Legislature, March 4, 1930, Nebraska Senate and House Journals, Forty-sixth session (extraordinary), 1930, p. 26.

3/ Tabulated from information relating to the individual banks, from the sources used in preparing Tables 6 and 7, and lists of banks operated as "going concerns" at various dates. The total number operated as "going concerns" for various periods was 201, according to Governor Weaver's statement (see note 2).

4/ Includes 31 banks placed in receivership and 5 taken over, with no evidence found in published reports or surviving records that they were operated as "going concerns." However, five of those placed in receivership and four of those taken over must have been operated as "going concerns" for a short period, in view of the figures in Governor Weaver's statement (see notes 2 and 3).

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concerns on several dates. Only ten of these were reopened without being placed in receivership, and those were banks that closed after the guaranty fund was exhausted. Operation of failed banks as "going concerns" resulted in greater, rather than smaller, losses on deposits. "Every bank so operated," according to the report of the special investigation ordered by the Legislature when the Guaranty Fund Commission was abolished, "showed a continual monthly operating loss and few reorganizations and sale of closed banks resulted from this policy." [1] The total operating loss in 167 banks operated as "going concerns", according to the Governor's report to the 1930 special session of the Legislature, was $1,322,728. [2]

Many of the banks taken over by the Commission and later placed in receivership, particularly those taken over during the last two years of the life of the Commission, after it became difficult or impossible to sell receivers' certificates, were in fact in the process of liquidation while they were officially operated as "going concerns". The reason for this procedure was to reduce the amount of interest on deposits to be paid from the guaranty fund. In receivership cases the deposit claims approved by the court became a judgment against the guaranty fund and bore interest at the rate of 7 percent until paid. In the banks operated by the Commission no old deposits were paid and no time certificates renewed, and assets were liquidated as rapidly as possible. When most of the assets were sold, a dividend on the old deposits was paid and the bank placed in receivership. [3]

1/ Final Report of the Banking Investigation, p. 9.
2/ As reported in Commercial West, Vol. 59 (March 22, 1930).
3/ C. M. Skiles, general counsel of the Guarantee Fund Commission, in an article, "How I Would Change Nebraska's Guarantee Law," The Northwestern Banker, Vol. 33 (March 1928), pp. 17-18 and 144-146.

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For about four years after sale of receivers' certificates was authorized in 1923, such certificates were issued as the banks were placed in receivership, and the depositors were paid at once. In 1923 the amount was $1.7 million and the next year $2.4 million.[1/] The receivers' certificates were repaid from the proceeds of liquidation and from receipts of the guaranty fund from the next assessment on participating banks. The receivers' certificates were issued at a rate of interest set by the court, usually for a term of one year, and until 1927 it was possible to pay them before or when due.[2/] By 1928, when there was more than a million dollars of such certificates outstanding, bearing 7 percent interest, it became impossible to sell any more to the banks that had been investing in them.[3/] Thereafter the depositors held the judgments, and received dividends on them from the liquidation of the assets of the bank. With the assessments on participating banks subsequent to 1928 withheld from use by court injunction and eventually declared unconstitutional, additional payments from the guaranty fund were limited to comparatively small amounts. Such payments were made as partial dividends to the depositors of 25 banks from the Depositors' Final Settlement Fund, before its establishment was held unconstitutional by the State Supreme Court, and to those of 3 banks upon final settlement of the affairs of the fund.

1/ Testimony of Payson D. Marshall, United States Supreme Court, Transcripts of Records and File Copy of Briefs, 1930, Vol. 38, Case No. 63.

2/ To 1926, receivers' certificates were issued with maturities of one year or less, bore interest at 6 percent, and had always been paid before maturity, according to statement by Kirk Griggs, Secretary of the Department of Trade and Commerce and Chairman of the Guarantee Fund Commission, in The Northwestern Banker, Vol. 31 (September 1926), p. 15. A report the next year of a talk by the Governor also stated that receivers' certificates had always been paid before maturity, The Northwestern Banker, Vol. 32 (August 1927), p. 81.

3/ C. M. Skiles, in statement as reported in the Wall Street Journal, Feb. 7, 1928.

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Relatively little use appears to have been made of the authority given in 1923 to a receiver of a failed bank to sell all its assets to new stockholders, with the approval of the Guarantee Fund Commission and the court, with the receiver drawing on the guaranty fund to meet any dificiency in the amount needed to meet depositors' claims payable from the guaranty fund. Only five banks placed in receivership during the life of the Guarantee Fund Commission were reported to have been reopened or taken over, with a payment from the guaranty fund, after having been placed in receivership.

More use was made of the power given in 1923 to the Department of Trade and Commerce to request the court with jurisdiction over a receivership to sell its assets and to bid for the assets at such sale. This process was used in 74 cases. However, the amounts were comparatively small, representing remaining assets after the receiver had liquidated most of the assets and repaid as much as possible to the guaranty fund.

When the Guarantee Fund Commission was abolished, existing receiverships were transferred to the Department of Trade and Commerce, and that Department took charge of the banks that were being operated by the Commission. The Department also took charge of other banks closed because of financial difficulties prior to the termination, about ten months later, of the applicability of the guaranty to future failures. No payments were made from the guaranty fund nor from the Depositors' Final Settlement Fund in any of these banks, most of which were placed in receivership, with the Secretary of the Department as receiver and the receivership process supervised

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by the district court.[1] However, some were reorganized, under a provision of the 1929 law, with depositors reducing their claims in a sufficient amount to absorb the losses.

FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. The balance of the depositors' guaranty fund held by the participating banks at each call date, but very little additional information regarding the operation of the depositors' guaranty fund, is given in the periodic reports of the Bureau of Banking. The amount held by the State Treasurer on June 30 of each year is given in the reports of the Auditor of Public Accounts. Considerable information regarding the financial history of the fund is available from special investigations ordered by the Nebraska legislature. Early in 1929 the House of Representatives requested its Banks and Banking Committee to make a thorough investigation of the books and records of the Guarantee Fund Commission. The report of this investigation, which was published as a document of the Legislature, gives a statement of the guaranty fund and of each closed bank as of February 5, 1929.[2] In April of the same year,

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1/ In 1933, the judicialship procedure in handling bank receiverships was terminated, and the Department of Banking became an administrative receiver for future failures. However, former receiverships not yet terminated, including some banks that had failed while the guaranty fund system was in operation, and the records relating to closed receiverships, were retained by Mr. E. H. Luikart, the last Secretary of the Department (and Superintendent of Banks for the next two years) until all of such receiverships were finally closed. The records of these receiverships were removed from the Department of Banking (which had succeeded the Department of Trade and Commerce), and eventually transferred to the custody of the University of Nebraska. The author of this report was provided access to the remaining records in November 1955 through the courtesy of the library of the University.

2/ Legislature of Nebraska, Forty-fifth session, 1929, Report of House Sub-Committee on Guarantee Fund Commission.

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the Legislature ordered an examination and audit of failed banks and of the departments charged with responsibility for the banking laws. This was conducted from May 1929 to July 1930 by A. C. Shallenberger, who was appointed by the Governor as Chief Examiner for this purpose.[1/] The reports of this investigation give a summary of the assessments and disbursements of the fund, and also the disbursements to depositors and recoveries from assets of each of the failed banks, to January 2, 1930. Annual data for assessments, recoveries, and drafts on the guaranty fund were submitted at the State Supreme Court hearings in 1929 on the constitutionality of the December 1928 and subsequent assessments, and are available in the United States Supreme Court record of the case.

In the case of guaranteed banks which failed subsequent to January 1, 1921, payments to depositors by the guaranty fund and repayments to the fund from the liquidation of assets, are given in schedules prepared in 1931 for the Federal Reserve Committee on Branch, Group and Chain Banking; these figures differ only slightly from those given in the reports of the special investigation of the previous year. For most of the banks that failed subsequent to April 1927, when payments from the fund ceased, the percentages and amounts of dividends paid from the liquidation of assets and small amounts in 25 cases from the Depositors' Final Settlement Fund, have been obtained from surviving receivership records, or from

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1/ The results of this investigation are given in three documents, as follows: (1) The Associated Certified Public Accountant of Nebraska, "Report on Depositors' Guaranty Fund," submitted to Mr. Shallenberger, dated August 1, 1930; (2) A.C. Shallenberger, "Report of Bank Investigation," dated March 3, 1930 (preliminary report submitted to the Governor); and (3) A. C. Shallenberger, Chief Examiner, Final Report of the Banking Investigation.

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schedules at the Department of Banking prepared from those records.[1] Very little additional information regarding the financial operation of the Nebraska fund has been found in pamphlets on the history of the Nebraska system or special surveys of deposit guaranty systems in operation in various States.[2]

Income and obligations of the guaranty fund. A summary statement of the income and obligations of the Nebraska depositors' guaranty fund, for the entire period of its existence, is given in Table 12. The figures take into account receipts and disbursements subsequent to the repeal of the applicability of the guaranty to future failures, including final disposition of the fund in 1934. The estimates in this table exclude indirect borrowings of the fund in the form of receivers' certificates. Payments to depositors in failed banks which were made directly by receivers from the cash and immediately available assets of the banks are also excluded.

The total receipts of the guaranty fund, excluding the assessments declared unconstituional by the State Supreme Court, are estimated at $19.0 million, of which $16.5 million was derived from assessments and $2.5 million from the liquidation of the banks in which depositors' claims were paid by the guaranty fund. The total obligations incurred by the guaranty fund, after allowance for depositors' recoveries directly or indirectly from liquidation of the assets of the failed banks, are

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1/ These records were examined by the writer of this report in November and December 1955.

2/ No information about receipts or disbursements of the fund were found at the Department of Banking at the time of the writer's visit in 1955.

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Table 12. RECEIPTS, EXPENDITURES, AND DEFICIT OF THE NEBRASKA DEPOSITORS' GUARANTY FUND

Receipts	
Assessments levied (excluding those revoked by court decision) 1/	$16,832,432
Less: miscellaneous credits ($28,908) and uncollected (estimated at $298,997) 2/	327,905
Assessments collected	$16,504,527
Recoveries from liquidation of assets of failed banks 3/	2,455,589
Total receipts 4/	$18,960,116
Expenditures	
Total payments by fund to receivers for distribution to depositors 5/	19,106,009
Unpaid obligations	
To depositors of failed participating banks 6/	$23,305,772

1/ From Table 13.

2/ Table 14, note 5.

3/ Tabulated from data for the individual banks, including estimated interest of $42,040 in two banks (Table 15, note 4). Of this recovery $2,211,259 was received by April 29, 1929, and deposited in the participating banks, Final Report of the Banking Investigation, p. 33 (see Table 14); this amount, together with the assessments collected, totals $18,715,786, which equals the drafts paid (Table 14). Of the subsequent recoveries estimated at $244,330, $42,077 had been received between April 29, 1929, and January 2, 1930 (Final Report of the Banking Investigation, p. 29). The remainder of approximately $200,000 represents recoveries from some banks subsequent to January 2, 1930, the date to which the Banking Investigation total refers, as indicated by data to June 30, 1930, shown on schedules prepared for the Federal Reserve Committee, in Branch, Group and Chain Banking.

4/ The difference of $145,893 between this figure for receipts and the total expenditures of the fund presumably largely represents errors in the data for individual banks (for which some estimation is involved in some cases), either for payments or recoveries, but may in part represent collections on unpaid assessments subsequent to May 28, 1930, particularly from failed banks, or interest on the remaining balance of the fund between that date and the final settlement of the affairs of the fund in 1934.

5/ Tabulated from data for the individual banks (Table 15), including interest (note 4 to that Table). Of this amount, $18,717,021 was paid prior to January 2, 1930 (Final Report of the Banking Investigation, p. 30). The balance represents payments from the Depositors' Final Settlement Fund between March 18 and June 30, 1930(given as $243,995 in the Final Report of the Banking Investigation, p. 16,)the final distribution of $134,008 from the fund upon settlement of its affairs in 1934 and a small difference between the sum of these amounts and the total tabulated from information for the individual banks.

6/ Tabulated from data for the individual banks (Table 15). The total losses to depositors in banks that failed while the deposit guaranty was legally effective was about $2.6 million larger than this figure (see note 5 to Table 15).

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estimated at $40 million to the date of repeal of the law. The final deficit of the fund, representing the loss to depositors, is estimated at approximately $23 million.

Annual data for assessments levied are given in Table 13. Special assessments were levied in 1916, and each year from 1919 to the termination of the insurance in 1930. The highest rate for the special assessments was eight-tenths of 1 percent in 1921 and in 1922, which was less than the maximum of 1 percent permitted by the law until 1924. As previously indicated, the special assessments in the latter part of 1928 and both the special and regular assessments in 1929 and 1930, amounting to nearly $3 million, were revoked by the decision of the State Supreme Court on the ground that they no longer served a public purpose and had become unconstitutional. Excluding these, the total assessments levied were $16.8 million, of which $16.5 were collected.

Table 14 shows the annual receipts of the guaranty fund from assessments and recoveries from failed banks, and the annual disbursements as measured by the drafts drawn on the balances with the various banks and paid. The table also shows the balance in the fund each year as computed from the receipts and disbursements, and as shown in the call reports of the participating banks. The call report figures exclude balances due from banks that had failed, become national banks, or gone into voluntary liquidation.

Table 15 gives the amount of insured obligations of the banks that failed each year while participating in the insurance system, the recoveries from liquidation of assets, the amounts paid from the guaranty fund and the recoveries of the fund, and the losses to depositors in the banks for which the fund was unable to meet its obligations. The estimated loss to other

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Table 13. RATES AND AMOUNT OF ASSESSMENTS, NEBRASKA DEPOSITORS' GUARANTY FUND

Year	Assessment rate (percent of deposits) Regular	Special	Amount of assessments Total	Regular	Special
Total levied 1/			$19,811,379	$4,943,343	$14,868,036
Total collectible 2/			16,832,432	4,729,161	12,103,271
1911	.25	--	176,863	176,863	--
1912	.50	--	406,858	406,858	--
1913	.30	--	271,807	271,807	--
1914	.10	--	140,647	140,647	--
1915	.10	--	144,684	144,684	--
1916	.10	.10	421,472	196,837	224,635
1917	.10	--	219,904	219,904	--
1918	.10	--	318,029	318,029	--
1919	.10	.20	802,477	290,869	511,608
1920	.10	.20	639,244	292,463	346,781
1921	.10	.80	2,317,808	302,693	2,015,115
1922	.10	.80	1,971,580	228,345	1,743,235
1923	.10	.70	2,046,320	245,341	1,800,979
1924	.10	.30	1,004,860	249,259	755,601
1925	.10	.50	1,616,330	281,973	1,334,357
1926	.10	.50	1,672,339	290,244	1,382,095
1927	.10	.50	1,653,207	285,818	1,367,389
1928	.10	.25	885,413	263,937	621,476
1929	.05	--	122,590	122,590	--
Revoked by court 3/			2,978,947	214,182	2,764,765
1928	--	.25	622,948	--	622,948
1929	.05	.50)	2,355,999	214,182	2,141,817
1930	.05	.50)			

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Footnotes to Table 13.

1/ Total levied from Final Report of the Banking Investigation, p. 17. Total regular and total special, sum of annual data: in the Final Report of the Banking Investigation the former is shown as $4,680,337 and the latter, as $15,131,042. A somewhat larger figure for total assessments levied, $19,926,531, was given in Governor Weaver's message to the Legislature, March 4, 1930, Nebraska Senate and House Journals, Forty-sixth session (extraordinary) 1930, p. 30.

2/ All assessments levied except those deemed unconstitutional by decision of the State Supreme Court (Hubbell Bank v. Bryan, 1932). Data for 1911-1928 from Exhibit No. 44, received in evidence by District Court of Lancester County (submitted by Secretary of the Department of Trade and Commerce) in Abie State Bank v. Weaver, obtained from record at United States Supreme Court, Abie State Bank v. Bryan, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, Case No. 63; for 1929, assessment due Jan. 1, estimated at one-fifth the special assessment of Dec. 15, 1928, on assumption that the assessment base covered the same period.

3/ Assessments declared unconstitutional by State Supreme Court in Hubbell Bank v. Bryan (1932). Rates from evidence in this case, obtained from record at United States Supreme Court in Bryan v. Hubbell Bank of Hubbell, 1932, Case 861. Amount for special assessment in 1928 from transcript described in note 1: total for 1929 and 1930 estimated as residual from total levied, with 1/11 assumed to be the regular assessment, and the balance the special assessment.

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Table 14. RECEIPTS, EXPENDITURES, AND BALANCE, NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS

Year	Assessments 1/	Recoveries 2/	Drafts 2/	Balance at year-end: Computed 3/	Balance at year-end: Reported 4/
Total	$16,832,432	$2,211,259	$18,715,786		
1911	176,863	--	--	$176,863	$176,646
1912	406,858	--	--	583,721	573,275
1913	271,807	--	--	855,528	814,228
1914	140,647	--	54,526	941,649	889,552
1915	144,684	--	--	1,086,333	1,020,104
1916	421,472	--	79,052	1,428,753	1,193,924
1917	219,904	--	--	1,648,657	1,601,375
1918	318,029	23,715	--	1,990,401	1,841,125
1919	802,477	--	--	2,792,878	2,174,257
1920	639,244	--	737,709	2,694,413	2,230,769
1921	2,317,808	35,550	2,697,222	2,350,549	1,990,818
1922	1,971,580	370,927	2,172,766	2,520,290	2,015,587
1923	2,046,320	182,659	2,061,962	2,687,307	2,082,915
1924	1,004,860	193,287	1,010,026	2,875,428	2,529,729
1925	1,616,330	533,700	3,586,093	1,439,365	1,238,402
1926	1,672,339	427,283	2,625,757	913,230	621,954
1927	1,653,207	157,220	2,270,436	453,221	201,814
1928	885,413	257,717	1,256,910	339,441	30,427
1929	122,590	29,201	142,210	349,022	135,851
1930	--	--	21,117	327,905 5/	193,278

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Footnotes to Table 14.

1/ See Table 13.

2/ Totals for 1911-1929 and amount of drafts paid in 1930 from Final Report of the Banking Investigation, p. 17. Annual amounts for 1911-1928 from transcript described in note 2 to Table 13; for 1929, difference between total for those years and that for 1911-1929 (recoveries are described in these sources as refunds). Under the 1919 law, amounts due the depositors' guaranty fund by banks placed in voluntary liquidation (to cease business or become national banks) were paid to the State Treasurer. The biennial reports of the Auditor of Public Accounts show receipts for the depositors' guaranty fund of $32,873 during the years 1920-1929, and disbursements of the same amount. No mention is made of these transactions in the Final Report of the Banking Investigation, and it is assumed that the amount involved is included in "drafts paid."

3/ Assessments plus recoveries minus drafts paid.

4/ In call reports of participating banks (prior to 1921 at last call date in the year). The amount for 1930 is described as Depositors' Final Settlement Fund.

5/ If miscellaneous credits of $28,908 (shown in Final Report of the Banking Investigation, p. 17, are deducted , this balance is reduced to $296,997. That amount, plus the assessments revoked, as estimated in Table 13, totals $3,277,944. This is the amount shown as unpaid assessments ($3,299,061 on Jan. 2, 1930, less $21,117 of drafts paid in May 1930) in the Final Report of the Banking Investigation, p. 7.

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Table 15. TOTAL DEPOSITS, INSURED DEPOSITS AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS, NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS

Year	Insured deposits 1/	Insured deposit obligations paid and unpaid 2/				Unpaid (loss to depositors 5/	Loss on general claims (not deposits) 3/
		Paid directly from liquidation of assets	Paid by Fund				
			Total 4/	Recovered from liquidation of assets and "sale assets"	Not recovered from liquidation of assets (loss to Fund)		
Total	$61,790,168	$19,420,427	$19,063,969	$2,455,589	$16,608,380	$23,305,772	$1,703,577
1914	122,021	67,495	54,526	35,870	18,656	--	--
1916	111,051	32,003	79,048	35,131	43,917	--	--
1920	967,699	230,079	737,620	68,255	642,365	--	--
1921	6,303,409	2,076,241	4,227,168	1,244,204	2,982,964	--	278,087
1922	4,916,188	1,282,953	3,633,235	412,244	3,220,991	--	59,821
1923	2,648,370	404,460	2,243,890	175,838	2,068,052	--	90,945
1924	1,470,497	276,342	1,194,155	72,883	1,121,272	--	134,157
1925	5,004,559	1,881,794	3,122,765	295,127	2,827,638	--	31,383
1926	5,963,027	2,942,289	3,020,738	83,502	2,937,236	--	74,479
1927	5,940,839	1,054,547	579,836	12,535	567,301	4,306,456	47,977
1928	7,873,634	1,482,471	153,964	--	153,964	6,237,199	141,589
1929	19,306,863	7,045,188	17,024	--	17,024	12,244,651	779,976
1930	1,162,011	644,545	--	--	--	517,466	65,163

1/ For 1911-1920, and first failure in 1921, total deposits. For 1921-1930 (except first failure in 1921) preferred claims as reported on schedules prepared for Federal Reserve Committee on Branch, Group and Chain Banking. For 1911-1927 includes banks reopened or taken over if there was a payment from the guaranty fund. The figure for total insured deposits shown here is about one-half of 1 percent larger than that for total deposits in the failed banks shown in Table 7. Differences between total deposits and insured deposits arise from deposit claims allowed that were not on the books or not included in those tabulated as of date of failure, or to deposits on the books for which claims were not filed or which were disallowed on the ground that they were not deposit liabilities. In addition, an unknown amount of interest on deposit claims, mostly accruals from the dates claims had been approved and judgment entered against the guaranty fund to their payment by the fund, may be included in the figure for "preferred claims" on the schedules prepared for the Federal Reserve Committee. However, accumulated interest paid from the guaranty fund to depositors of two banks at time of final settlement of the affairs of the fund (see note 4) is not included.

2/ Tabulated from data for the individual banks from the following sources: (a) Exhibits B,C, and D accompanying the Final Report of the Banking Investigation, which are referred to on pages 29-31 of that report, and furnished to the Federal Deposit Insurance Corporation by Ashton C. Shallenberger, who conducted the investigation (data from these exhibits are as of January 2, 1930); (b) schedules prepared for the Federal Reserve Committee on Branch, Group and Chain Banking, made available by the Board of Governors of the Federal Reserve System; and (c) surviving receivership records at the library of the University of Nebraska and schedules at the Department of Banking prepared from receivership records (data from these records, which pertain chiefly to banks closed in 1927 and subsequent years, are as of the closing of receiverships).

3/ For 1914, 1916, and 1920, negligible because the reported proved claims are identical for most of the banks with the reported deposits at time of failure. For 1921-1930, tabulated from data for the individual banks from the schedules and surviving receivership records mentioned in note 2.

4/ In addition, accumulated interest at 7 percent per year was paid to depositors of two banks in which the remaining deposits were paid in full by the guaranty fund at final settlement of its affairs in 1934. This interest is estimated at $42,040.

5/ In addition to these losses, depositors of 33 banks that failed prior to March 18, 1930, and were reorganized under the law of April 30, 1929, which are not covered by this table (see note 3 to Table 6 and note 2 to Table 7), had losses estimated at about $2.6 million. This is based on an estimate of a 30 percent loss in 22 of the banks (message of Governor Weaver to the Legislature, March 4, 1930, Nebraska Senate and House Journals, Forty-sixth session (extraordinary), 1930, p. 27.

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creditors is also given in the table. Table 16 shows for each year the insured obligations relative to the total deposits of the closed banks as reported for the date placed in receivership, and the percentages of the insured deposits recovered from liquidation of assets, paid by the guaranty fund, or lost by the depositors.

For all the failed banks as a group, the insured obligations were about one-half of 1 percent greater than the deposits of the banks when they were placed in receivership. This is due in part to deposit claims allowed that were not on the books or not included in those tabulated as of date of receivership. However, in part it may be due to interest on claims that went to judgment when the guaranty fund was unable to pay depositors immediately. But this does not include interest on receivers' certificates issued to permit payment of depositors in advance of payments from the guaranty fund: such interest was charged to the receivership as an expense item.

For the entire period, 35 percent of the insured obligations was paid from the liquidation of assets. The remainder was paid from the fund, for banks which were placed in receivership to May 1927, and lost to the depositors for the remaining failures before the repeal of the guaranty as of March 18, 1930. If the deposits paid off by banks operated as going concerns are included, as measured by the net change in their deposits while in the hands of the Guarantee Fund Commission, and the deposits at time of closing, rather than those shown in the receivership records, are used for all failed banks, the amount realized from liquidation of assets is raised to 41 percent.

Comparison of assessments and losses. Table 17 compares the assessments levied, including those revoked by court decision, with the

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Table 16. PERCENTAGE OF DEPOSITS INSURED, AND PERCENTAGE OF INSURED DEPOSITS PAID BY GUARANTY FUND AND RECOVERED FROM LIQUIDATION OF ASSETS, BANK FAILURES UNDER THE NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS

Year of failure	Percentage of total deposits insured	Percentage of insured deposits				
		Total	Paid directly from liquidation of assets	Paid by guaranty fund		Unpaid (loss to depositors
				Recovered from assets and on "sale assets"	Not recovered; i.e., loss to fund	
Total	100.5	100.0	31.4	4.0	26.9	37.7
1914	99.7	100.0	55.3	29.4	15.3	--
1916	100.7	100.0	28.8	31.6	39.5	--
1920	94.3	100.0	23.8	9.1	67.1	--
1921	104.3	100.0	32.9	19.7	47.3	--
1922	103.3	100.0	26.1	8.4	65.5	--
1923	109.5	100.0	15.3	6.6	78.1	--
1924	95.1	100.0	18.8	5.0	76.3	--
1925	97.1	100.0	37.6	5.9	56.5	--
1926	102.0	100.0	49.3	1.4	49.3	--
1927	105.5	100.0	17.8	.2	9.5	72.5
1928	101.9	100.0	18.8	--	2.0	79.2
1929	97.3	100.0	36.5	--	.1	63.4
1930	90.9	100.0	55.5	--	--	44.5

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Table 17. ANNUAL ASSESSMENTS LEVIED, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, NEBRASKA DEPOSITORS' GUARANTY FUND

Year	Assessments levied 1/	Deposit liability of the fund 2/	Cumulative: Assessments levied	Cumulative: Deposit liability of the fund	Cumulative: Excess of assessments levied	Cumulative: Deficiency (excess liability)
Total	$19,811,379	$39,914,152				
1911	176,863	--	176,863	--	176,863	--
1912	406,858	--	583,721	--	583,721	--
1913	271,807	--	855,528	--	855,528	--
1914	140,647	18,656	996,175	18,656	977,519	--
1915	144,684	--	1,140,859	18,656	1,122,203	--
1916	421,472	43,917	1,562,331	62,573	1,499,758	--
1917	219,904	--	1,782,235	62,573	1,719,662	--
1918	318,029	--	2,100,264	62,573	2,037,691	--
1919	802,477	--	2,902,741	62,573	2,840,168	--
1920	639,244	649,365	3,541,985	711,938	2,830,047	--
1921	2,317,808	2,982,964	5,859,793	3,694,902	2,164,891	--
1922	1,971,580	3,220,991	7,831,373	6,915,893	915,480	--
1923	2,046,320	2,068,052	9,877,693	8,983,945	893,748	--
1924	1,004,860	1,121,272	10,882,553	10,105,217	777,336	--
1925	1,616,330	2,827,638	12,498,883	12,932,855	--	433,972
1926	1,672,339	2,937,236	14,171,222	15,870,091	--	1,698,869
1927	1,653,207	4,873,757	15,824,429	20,743,848	--	4,919,419
1928	1,508,361	6,391,163	17,332,790	27,135,011	--	9,802,221
1929	1,375,981	12,261,675	18,708,771	39,396,686	--	20,687,915
1930	1,102,608	517,466	19,811,379	39,914,152	--	20,102,773 3/

1/ From Table 13 with the revoked assessments for 1929 and 1930, estimated in that table as a residual, divided between the two years on the basis of deposits in participating banks at the beginning of the years.

2/ Deposits paid from the fund, adjusted for recoveries by the fund including that on "sale assets", and deposits unpaid (loss to depositors) in the banks placed in receivership. Including the loss to depositors in banks reopened under the law of April 30, 1929, the total deposit liability of the fund is estimated at $42.5 million.

3/ If the loss in reorganized banks is taken into consideration, and the deficiency figure computed from assessments collected (instead of those levied), the final deficiency figure becomes $25.7 million.

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liability of the fund on account of failures. The data are given for each year, and cumulatively, with the cumulative excess or deficiency. This excess or deficiency, it should be noted, is a different concept from the accumulated surplus or deficit of the fund. What the deficiency figures show is the additional assessment that would have been necessary, in addition to those levied, to have paid all the insured deposits, after taking account of recoveries from the liquidation of the assets of the failed banks. It does not include any allowance for interest or other expenses, or for funds needed to pay depositors at once the amounts eventually recovered from liquidation of assets.

By the end of 1919, with only two failures, the assessments levied had accumulated to nearly $3 million, or about 1.0 percent of the deposits of the participating banks. This amount, together with the additional regular and special assessments, provided a cumulative excess of assessments for another five year, or until 1925. During these years the fund was rapidly declining, and though it fell far below 1 percent of deposits, the maximum special assessment was not levied in any year. Had the maximum assessments been levied, an additional $2.2 million would have been collected, extending the net cumulative excess of assessments for another two years.[1/] During the remainder of the period of applicability of the insurance, with the maximum annual assessment reduced to three-fifths of 1 percent of deposits, assessment receipts were far below the losses, and would have been insufficient to meet them had none of the assessments been revoked by court decision.

1/ According to testimony in the District Court in Abie State Bank v. Bryan, levy of the maximum assessment would have yielded the following additional amounts: $503,778 in 1921, $435,809 in 1922, $777,848 in 1923, and $503,734 in 1924, or a total of $2,221,169 (from records of the United States Supreme Court, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, Case No. 63 p. 656.)

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For the entire period, aggregate assessments of $42.5 million would have been necessary to have met the claims of depositors in excess of the recovery from the assets of the failed banks.[1/] The assessments collected provided 39 percent of this amount, but had all the assessments levied been collected, they would have provided 46 percent.

In Table 18 the rate of assessment each year, and the amount levied per $100 of deposits in participating banks, and also per $100 of the banks' total capital accounts, are compared with the rate that would have been necessary to have met the eventual losses from the failures in that year. For the entire period the assessments levied averaged one-half of 1 percent per year of deposits in participating banks, while the losses in failed banks, including those in the banks reorganized under the 1929 law, averaged over 1.1 percent of such deposits. The maximum annual assessment under the original law was 1.1 percent, or just enough to have covered the full net cost of deposit guaranty during the time the insurance was applicable, had it been possible to have levied this maximum each year throughout the period. This was not possible during the first half of the period because failures were few, and only the initial assessment and the very small regular assessment could be levied. It was not possible during the latter part of the period because of the reduction of the maximum to six-tenths of 1 percent which was made in 1923.

The assessments levied on the banks averaged about 3 percent per

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1/ This includes the loss in banks reorganized under the law of April 30, 1929.

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Table 18. COMPARISON OF ANNUAL RATES OF ASSESSMENTS LEVIED WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS, 1911-1930

Year	Assessment rate per $100 of deposits 1/	Per $100 of deposits in participating banks at beginning of year		Per $100 of total capital accounts in participating banks at beginning of year	
		Assessments levied 2/	Losses on deposits in failed banks 3/	Assessments levied 4/	Losses on deposits in failed banks 4/
1911-1930 average	--	$0.50	$1.06 5/	$3.24	$6.85
1911-1920	--	.24	.05	1.33	.28
1921-1930	--	.65	1.67	4.71	12.06
1911	.25	.25	--	1.00	--
1912	.50	.55	--	2.18	--
1913	.30	.33	--	1.35	--
1914	.10	.15	.02	.67	.09
1915	.10	.14	--	.62	--
1916	.20	.37	.04	1.61	.17
1917	.10	.13	--	.77	--
1918	.10	.14	--	.97	--
1919	.30	.31	--	2.27	--
1920	.30	.23	.23	1.51	1.53
1921	.90	.91	1.17	5.00	6.44
1922	.90	.91	1.49	4.64	7.59
1923	.80	.86	.87	5.02	5.08
1924	.40	.42	.47	3.02	3.37
1925	.60	.60	1.04	4.85	8.49
1926	.60	.59	1.04	5.18	9.10
1927	.60	.60	1.77	5.16	15.23
1928	.60	.55	2.33	4.81	20.38
1929	.60	.55	4.86	4.92	43.87
1930	.55	.58	1.29 6/	4.26	9.51 6/

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Footnotes to Table 18.

1/ From Table 13.

2/ From assessments levied (Tables 13 and 17), and deposits in participating banks (Table 14).

3/ From deposit liability of the fund (Table 17), and deposits in participating banks (Table 4).

4/ From assessments levied and deposit liability of the fund (Table 17), and capital accounts of State banks as given in call reports for dates nearest the beginning of the year.

5/ If the losses in reorganized banks are included, this figure becomes $1.13.

6/ Annual rate for failures to March 18.

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year of their capital investment, as measured by their reported total capital accounts. During the 1921-1930 period, this average was nearly 5 percent. Had assessments sufficient to cover losses been levied, they would have averaged over 12 percent of total capital accounts during the 1921-1930 period, and nearly 7 percent for the entire period of the deposit insurance system.

Bankers Conservation Fund. Table 19 shows the amounts reported each year by the participating banks as investments in the Bankers Conservation Fund, authorized by the 1923 amendments to the deposit guaranty law. Assessments for this fund, in the form of drafts by the Secretary of the Department of Trade and Commerce, could be levied up to one-fourth of 1 percent of the average daily deposits in the participating banks, with a maximum fund at any time of one-third of 1 percent of such deposits. The proceeds of these assessments were used as "deposits" or loans to the banks operated by the Guarantee Fund Commission. The remittances by the banks on the drafts were carried on their books as an asset until repaid or charged off.

In the case of liquidation of a bank with a loan or "deposit" from the Bankers Conservation Fund, such deposit was given the same status as other deposits. It appears likely, therefore, that a part of these deposits in the banks closed in 1927, 1928, and 1929, which had been operated by the Guarantee Fund Commission, were lost. Such losses were a cost of the guaranty system to the State banks in Nebraska in addition to the assessments levied for the guaranty fund. However, no information is available regarding the recoveries and losses by the participating banks on their assessments for the Bankers Conservation Fund.

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Table 19. BALANCE, BANKERS CONSERVATION FUND, NEBRASKA, MIDYEAR AND YEAR-END CALL DATES, 1923-1929

Date	Bankers Conservation Fund	Per $100 of deposits on same date
1923-June 30	$78,776	$0.03
1923-Dec. 31	533,393	.22
1924-July 21	548,255	.22
1924-Dec. 31	374,591	.14
1925-June 30	375,613	.13
1925-Dec. 31	628,945	.22
1926-June 30	629,546	.22
1926-Dec. 31	639,473	.23
1927-June 30	634,009	.23
1927-Dec. 31	613,656	.22
1928-June 30	541,046	.21
1928-Dec. 31	442,387	.18
1929-June 30	none	--

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Administrative cost of the depositors' guaranty fund. The administrative cost of the depositors' guaranty fund is also excluded from the figures of the fund given in preceding tables. From the beginning of deposit guaranty to the creation of the Guarantee Fund Commission in 1923, the fund was administered by the State Banking Board, and the cost of its operation was not segregated from other expenses of the Board. The expenses of the State Banking Board were met by legislative appropriations, but the State Treasury received the proceeds of the examination fees levied on State banks.

From the time of establishment of the Guaranty Fund Commission in 1923 to the end of 1929 the Guarantee Fund Commission and its successor, the receivership division of the Department of Trade and Commerce, spent an average of about $100,000 a year. The greater part of this was obtained from assessments on the banks in charge of the Commission or the receivership division, but some of it came from legislative appropriations, and a small part from an assessment on the banks participating in deposit guaranty, interest, and miscellaneous sources. The receipts from these sources during the period, the expenses met therefrom and the unexpended balances at the end of 1929 are shown in Table 20. In addition, an appropriation of $150,000 was made in 1929 to conduct the banking investigation, of which $99,000 had been spent by August 1, 1930, when the investigation was completed.

Settlement of the affairs of the guaranty fund. Under the law of March 18, 1930, which repealed the applicability of the guaranty to future failures, the remaining assets of the guaranty fund, including claims for unpaid assessments and further recoveries from the failed participating banks, were transferred to the Depositors' Final Settlement Fund, administered

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Table 20. RECEIPTS AND EXPENSES FOR ADMINISTRATIVE PURPOSES, NEBRASKA DEPOSITORS' GUARANTY FUND, May 1, 1923 to Dec. 31, 1929

Receipts, expenses, or balance	Total	Guarantee Fund Commission -- May 4, 1923 to April 30, 1929 1/	Department of Trade and Commerce, Receivership Division -- May 1 to Dec. 31, 1929 1/
Legislative appropriations	$190,000	$90,000	$100,000
Assessments on participating banks	4,538	4,538	--
Assessments on banks operated as going concerns	164,213	164,213	--
Assessments on banks in receivership	267,464	212,040	55,424
Interest and miscellaneous	7,701	7,547	154
Total receipts	633,916	478,338	155,578
Transferred 2/	--	- 23,829	/ 23,829
Adjusted receipts	633,916	454,509	179,407
Administrative expense -- total	534,505	454,138	80,367
From appropriated funds	99,618	89,628	9,990
From assessments and miscellaneous receipts	434,887	364,510	70,377
Unexpended funds	99,412	372 3/	99,040 4/

1/ From Final Report of the Banking Investigation. Does not include appropriations for the Bureau of Banking which supervised operating banks, nor for the office of the Secretary of the Department of Trade and Commerce.

2/ From the Commission to the Department.

3/ Returned.

4/ Includes $90,010 unexpended legislature appropriation, and $9,030 unexpended other receipts. Available for expenditures in 1930.

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by the Department of Trade and Commerce. The previous priority of payment of depositors' claims in order of the dates of receivership of the failed banks was eliminated. All unpaid claims certified to the Department, including unpaid deposits of banks reorganized under the law of April 30, 1929, and also including unpaid claims for refund of assessments made to the Bankers Conservation Fund, were given equal status, subject to the qualification that payments should be made first to claimants whose claims had been allowed and certified for at least a year and had been paid the smallest percentage of their respective claims.

Under this act, the Department of Trade and Commerce paid dividends on depositors' claims ranging from 1 percent to 8 percent in 31 banks, in an aggregate amount of approximately $271,000.[1/] When the assessment and settlement provisions of this act were challenged by the bankers and were declared unconstitutional by the District Court, further payments were held in abeyance until the decision of the State Supreme Court and denial of a review, announced in May 1933, by the United States Supreme Court.

The result of the decision, which nullified the settlement provisions of the 1930 act, was to restore the priority of payments to holders of receivers' certificates under the law of 1923 and to prevent collection of the disputed assessments. The only remaining resources from which further payments to depositors could be made were additional collections from liquidation of assets of failed banks whose depositors had been paid from the fund or from

---

1/ Tabulated from data for the individual banks, and included as payments from the guaranty fund in Tables 12 and 15. The Final Report of the Banking Investigation, p. 16, shows $243,995 as paid from the Depositors' Final Settlement Fund to June 30, 1930.

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unpaid assessments on the participating banks other than those revoked by the court decision, and any interest thereon while awaiting the final court decision.[1] In 1934, the funds available from these sources, amounting to $134,000, were used to complete payments to depositors holding receivers' certificates in two banks that had been placed in receivership in 1927, with accumulated interest at 7 percent per year, and to make a partial payment on the remaining deposit claims in another bank.[2]

APPRAISAL OF THE NEBRASKA DEPOSITORS' GUARANTY SYSTEM

The deposit insurance system of Nebraska maintained full payment of all the obligations falling upon it for nearly sixteen years, a longer period than that of any of the other systems of deposit guaranty during the 1908-1930 period, except for Texas. The protection it afforded was greater than that of Texas, covering all deposits in comparison with only noninterest-bearing deposits in Texas, and the aggregate amount of deposits paid from the fund, adjusted for recoveries from liquidation of the assets of failed banks, was roughly 50 percent more than in Texas. Its burden on the banks in terms of the average annual rate of assessments paid, was substantially higher than that in any of the other systems. However, its unpaid obligations were very large, though less than in South Dakota, as a consequence of a high failure rate and a low rate of recovery on the assets of failed banks, relative to the other States with deposit guaranty.

1/ The surviving receivership records of the banks that failed prior to cessation in 1927 of payments to depositors from the guaranty fund show dividends subsequent to mid-1930 of only $3,000. No record has been found of any collection of unpaid assessments subsequent to January 2, 1930, except the small amount in May of that year shown in Table 14.

2/ The American Banker, July 18, 1934, and The Northwestern Banker, Vol. 39 (August 1934), p. 42. The portion of this amount representing unpaid deposits is included as payments from the guaranty fund in Tables 12 and 15, and the interest is shown in note 4 to Table 15.

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The operations of the Nebraska deposit insurance system were also subjected to a more searching investigation of its weaknesses, at about the time it ceased to function, than any of the other systems. The report of this investigation summarized the defects of the system as follows:

> Three sound banking principles were essential to the success of the Guaranty Law, if the insurance plan was to prove sound and safe.
>
> First--Limitation of bank charters to the requirements of business and safe credit of the community served.
>
> Second--Bank earnings of sufficient amount to insure a fair return and the charging out of losses that come in periods of business depression. No bank that can honestly show a fair profit ever fails.
>
> Third--Competent and efficient supervision and examination by the department in charge of the administration of banking laws and requiring from all officers and managers of banks a state license certifying as to their honesty, ability and character. Failure to observe and enforce these essentials undermined and wrecked the Guaranty Fund.
>
> The Guaranty Law brought prosperity and strength to the state banks and saved depositors from losses of millions of dollars. It has been discredited and destroyed by those who should have been its staunchest defenders. Betrayal of their trust by faithless bankers and inefficient supervision nullified the law and destroyed the confidence it had established.
>
> The Department of Banking Administration is required by law to close banks shown insolvent by its examiners. It is a felony for officers of a bank to receive deposits after it is insolvent. If an insolvent bank is permitted to operate, the depositor is grossly deceived and his supposed security becomes a state swindle. In case of failure stockholders are liable for an additional amount equal to their capital investment. Under careful supervision the double liability should insure liquidation with little loss to depositors.
>
> A former Governor stated in a message to the Legislature that early in his administration his Banking Commissioner

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reported to him that there were 125 State banks hopelessly insolvent. A Banking Commissioner of another administration stated to me that a few months after he took office he made a written report that 150 banks were at that date insolvent. Permitting broken banks to run only delayed the deluge. Lax law enforcement did not save the banks. It did cost depositors large losses and piled up a mountain of bank failures when conditions could no longer be concealed. The greatest blot on our State and national governments is failure to enforce laws enacted for the protection of property and the punishment of crime. 1/

Mr. T. Bruce Robb, Chairman, Committee on Business Research, University of Nebraska, has made the following comments on the facts revealed by the banking investigation:

Probably the most bitter complaint made by the auditors in connection with the bank examination was that relating to the enforcement of the banking laws. In practically every bank audited the accountants went out of their way to emphasize how the depositors' money had been put in jeopardy through the lack of enforcement of the banking laws. In preceding sections it was pointed our how banks officers used the bank's funds to finance their own private ventures, how the law in respect to excess loans and excess real estate was flagrantly violated, and how the embezzlement of bank funds by officers was extensive and carried on over long periods of time. Throughout this sordid story surely the reader must have wondered about the matter of law enforcement.

In this section, however, a different aspect of this question will be considered. Banks were examined periodically. It has often been assumed that the weak place in the supervision of State banks was in the matter of bank examinations. The mushroom growth of the State banking system in the decade preceding the banking debacle naturally placed a heavy strain on the machinery for examining banks. Bank examiners were poorly paid, and as soon as a young examiner of promise acquired proficiency he usually left the service and went into banking. But a careful study of the audits of the failed banks indicates that the trouble was not primarily with the examinations. No doubt bank examinations were too infrequent and often made by men with little experience, yet the fact remains that if the information disclosed by bank examinations had been acted upon aggressively much loss to depositors would have been avoided. 2/

1/ Final Report of the Banking Investigation, pp. 8-9.
2/ T. Bruce Robb, State Bank Failures In Nebraska, pp. 42-43.

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An additional comment may be made on one of the problems mentioned in these quotations, because it was much more serious than in most of the other States with deposit guaranty systems. The excessive number of banks operating in Nebraska is indicated by the fact that in 1920 a bank was in operation for each 1,100 of the population. The maximum average clientele, computed by assuming that every family in the State had a bank account, was thus about 275 families. Since a considerable proportion of the banks must have had fewer customers than the average, it is apparent that some of the banks were dependent for their business upon a relatively small number of families in agricultural areas populated by people in the low and medium income groups. The inability of the State Banking Board to check the birthrate of banks was thus a serious deficiency in supervisory powers. The excessive number of banks was also doubtless one of the conditions conducive to the making of illegal or unduly risky loans, and to the low general level of competency among bankers. A thousand good bankers cannot be found as readily as a third of that number.

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DEPOSIT INSURANCE IN EIGHT STATES DURING THE PERIOD, 1908-1930

By Clark Warburton

II Mississippi; South Dakota; Washington; North Dakota; Concluding Chapter; and Bibliography

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MISSISSIPPI

This report, which was typed in 1955 needs more revision than those typed in 1958 or 1959

Failed bank data were revised in preparation of Part Three of the 1956 annual report (see introductory chapter of Deposit Insurance in Eight States, 1988 1930) and also some other data. These revisions have not been made in typed text.

Section on liquidation of failed banks could be improved by adding Litt's description (in Mississippi Law Journal) of the inadequacies of the procedure

Tables 14 (State banks) and 15 (national banks) re the size distribution of failed banks should be added — with years selected (perhaps alternate years as in the Oklahoma and Kansas reports) — taken from table for all years omitted at end of Section of Materials Regarding Deposit Insurance in Mississippi.

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DEPOSIT GUARANTY IN MISSISSIPPI

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Division of Research and Statistics
Federal Deposit Insurance Corporation
October 1955

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DEPOSIT GUARANTY IN MISSISSIPPI

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DEPOSIT GUARANTY IN MISSISSIPPI

The Mississippi law for guaranty of bank deposits was enacted March 9, 1914. At the time of its enactment deposit guaranty plans were in operation in four States -- Kansas, Nebraska, Oklahoma and Texas. The Mississippi law remained in full operation for a period of 16 years. By 1930 the liabilities of the guaranty fund far exceeded the amounts which were or would become available to the fund for many years, and on March 11 of that year the application of the fund to future failures was postponed until existing obligations were cleared. In 1934 the law was repealed.

BACKGROUND OF THE GUARANTY LEGISLATION

Regulation of banking prior to 1914. Prior to 1914 State regulation of banking in Mississippi was limited to the enumeration and limitation of powers embodied in bank charters, and to a few statutory provisions. The statutory provisions required reports of condition four times a year, prohibited establishment of new branches, limited the amount of loans to officers or directors and to single persons or firms, exempted obligations of banks from the statute of limitations, provided penalty for violation of the usury law, regulated the use of the word "bank," and provided a penalty for receiving deposits when insolvent. There was no examination of banks nor supervision of their affairs. Cases of charges against bank officials for infraction of the statutory regulations were infrequent, and those that came into the courts were usually disclosed as a result of bank failures.

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Bank failures. During the forty years prior to the panic and depression of 1907-08, only a few bank failures were reported in Mississippi.[1] From 1907 to 1913, inclusive, there were more.[2] The increase in number of failures appears to have been due largely to adverse conditions in agriculture, particularly because of the spread of the cotton boll weevil across the State, though influenced also by the business depression with which the panic of 1907 was associated.[3]

There had also been many new banks opened, the number of banks other than national having increased in ten years from approximately 150 to about 300. A year after enactment of the new banking code, the previous conditions were described as follows by one of the bank examiners:

> "The mushroomy growth of new banks, and the rather loose management of old banks, resulting in numbers of bank failures and losses to depositors and stockholders, made the necessity of adequate banking laws so imperatively evident that the last Mississippi Legislature passed the law under which we are now operating." [4]

1/ The special inquiry made by the Comptroller of the Currency in 1896 showed 5 failures of nonnational banks during the period from 1863 to 1896; and Bradstreet's reports showed 4 during the next ten years, but these figures may be incomplete. (Annual Reports of the Comptroller of the Currency, 1896-1906: for the special study see the 1896 report, p. 54.)

2/ Estimates vary widely for the number of failures from 1907 to 1914. Bradstreet's reports show 10 from midyear 1907 to midyear 1913, and 11 for the year ended June 30, 1914. (Annual Reports of the Comptroller of the Currency.) Thornton Cooke states: "There is no official list of the failures, but a list privately compiled showed 22 bank failures in 1912 and 1913 and 7 more early in 1914." ("Deposit Guaranty in Mississippi," Quarterly Journal of Economics, XXIV [February 1915], p. 419.) A Mississippi writer states: "From 1907 to 1914 there were no less than one hundred bank failures in Mississippi." (A. B. Butts, "State Regulation of Banking by Guaranty of Deposits," Mississippi Law Journal, II [November 1929], p. 213.) The Auditor's Reports, and the 1915 Report of the Mississippi banking department cited in support of this statement, are not now available.

3/ See Thornton Cooke, op. cit.

4/ J. S. Love, "A Year of State Bank Supervision," Mississippi Banker, May 1915, p. 57.

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CHARACTER OF THE GUARANTY LEGISLATION

The Mississippi banking law of 1914 established a banking department, revised and amplified the regulatory laws relating to banks, and established the deposit guaranty system.

Banking department. Under the 1914 law the banking department, including the deposit guaranty fund, was administered by a board of bank examiners. The law also provided for a board of bank commissioners. The functions of this board were to examine applicants for the board of bank examiners and license them as candidates for that board; to appoint the first members of the board of examiners, and to appoint assistant examiners, if needed, from among persons qualified as applicants for the board of bank examiners. The board of bank commissioners was composed of one successful banker and businessman appointed by the governor of the State, one experienced lawyer appointed by the attorney general, and one experienced accountant by the State auditor.

The first appointments to the board of bank examiners, one from each of the three supreme court districts of the State, to serve until January 1916, were to be made by the board of bank commissioners within a month after enactment of the law. Thereafter, the members of the board of bank examiners were to be elected, as in the case of other State officers, one from each of the supreme court districts, to hold office for four years or until successors should qualify. To be a candidate for bank examiner a person was required to be a practical accountant and to thoroughly understand the theory and practice of banking, could not have been in control of a banking institution or other business enterprise that had failed, and must have been licensed to become a candidate by the board of bank commissioners.

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Though one of the members of the board of bank examiners served as chairman, the examiners were of equal authority and the resulting difficulties of administration led to a change in the law in 1922. By this law, the board of bank commissioners was abolished, and effective in January 1924, the board of bank examiners was replaced by a Superintendent of Banks to be selected by a convention of delegates appointed by the directors of State banks, to serve for a four-year term. The Superintendent was required to be a man with five years' experience as an executive of a respectable solvent bank in the State. He was authorized to appoint bank examiners, not to exceed seven in number, and office assistants.

The salary of bank examiners was at first $3,000 a year, plus traveling expenses. This was raised to $3,600 in 1918, and to $5,000 in 1920. Under the 1922 law, the salary of the Superintendent of Banks was to be fixed by the convention of bankers that appointed him. This was first fixed at $7,500, and increased in 1928 to $12,000. Mr. J. S. Love, who received the highest grade in the first examination for bank examiners, became chairman of the board of examiners. With the 1922 change in the law he was elected Superintendent of Banks for the term beginning in 1924, and reelected in 1928 and 1932. He thus remained the head of the banking department throughout the period of operation of the deposit guaranty system.

Admission of banks to the guaranty system. Participation in the deposit guaranty plan was made voluntary during its first year of operation. Each bank which applied for insurance was to be given a rigid examination. If found to be solvent, properly managed, and conducting its business in strict accordance with the banking law, it

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was eligible for admission; and when it had deposited the initial assessment and the bonds or money required as security for future assessments, it was certified as guaranteed. The law also provided that within two weeks after May 15, 1915, all banks should apply for guaranty of their deposits. This included operating private banks which were required to incorporate.

After a year in office, one of the bank examiners reported that there had been 321 banks operating in the State when the examiners received their commissions.[5/] This figure obviously includes 23 "branch banks" which submitted separate asset and liability statements and were therefore counted in tabulations published by the board of bank examiners and previously by the auditor. Whether it includes private banks is unknown. At midyear, 1914, the number of State-chartered banks included in the tabulations was 282.[6/] It is not known how many of the banks applied for insurance before participation became compulsory. During the first six months about 65 had been admitted to guaranty.[7/]

During their first year of operations, the board of bank examiners endeavored to examine not only the banks which voluntarily applied for guaranty, but also the other banks which were required to participate after May 15, 1915. Under the law, banks which had been examined twice during the twelve months preceding that date, and had been found to be solvent, were to be admitted to guaranty without further procedure. Banks which had not been examined twice during

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5/ Love, "A Year of State Bank Supervision," loc. cit. p. 60. The first biennial report of the board of bank examiners to the Mississippi legislature is not available.

6/ This figure, and other figures throughout this report regarding the number of State banks in Mississippi exclude the "branch banks", and thus differ from those given in the semi-annual publication, "Statements of Condition of ... State Banks and ... National Banks in Mississippi."

7/ Mississippi Banker, November 1914, p. 8.

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that period were required to apply within 15 days for the benefits of insurance and to be examined. Such banks were required to be found solvent, to be properly managed, and to be conducting their business in strict accordance with the banking law.

In May 1915 one of the bank examiners reported that all but a few of the banks had been examined twice; and indicated that this process would soon be completed. Not all of the banks were found qualified for admission. In numerous cases stockholders and directors contributed enough to enable their banks to qualify. Several banks were consolidated or absorbed by other banks. By May 1915, thirty-six banks had been placed in liquidation, half of these at the suggestion of the board of bank examiners; and a few more, according to the examiner, would have to be liquidated because of inability to comply with the conditions of the law. Four State banks had converted to national banks; but four national banks had become State banks.[8/]

One bank, operating under a special legislative charter granted in 1872, objected to examination and to payment of the assessment for support of the banking department on the ground that its charter provisions made it exempt from further legislative regulation, and filed a bill in the county chancery court to restrain the bank examiners and to recover the first assessment paid. The court ruled against the bank, and this decision was affirmed by the Supreme Court of Mississippi in June 1916, and upon appeal to the United States Supreme Court was affirmed by that court in November 1919.[9/] The

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8/ Love, "A Year of State Bank Supervision," loc. cit., p. 61.

9/ Bank of Oxford v. Love et al., 111 Miss. 699, 72 So. 133; Bank of Oxford et al. v. Love et al., Bank Examiners of the State of Mississippi, 250 U. S. 603.

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decisions upheld the applicability of the law on the ground that such regulation was reasonable under the police power. There was no challenge to the constitutionality of the guaranty deposit provisions of the law: this question had been settled by the United States Supreme Court decisions regarding the deposit guaranty laws of Oklahoma, Kansas, and Nebraska.

Deposits covered by guaranty. The guaranty covered all deposits not otherwise secured, excluding deposits bearing more than 4 percent interest. In effect, this amounted to coverage of all unsecured deposits, for the board of bank examiners was required to fix a maximum rate of interest on each type of deposit (to be uniform within each county) and the maximum was promptly placed at 4 percent except for existing contracts at a higher rate.[10/]

The provision in the law regarding coverage was as follows, with the portion in brackets added in 1916:

> "All deposits not otherwise secured [and all cashier's checks, certified checks, or sight exchange issued by banks operating under this law] shall be guaranteed by this act. The guaranty as provided for in this act shall not apply to a bank's obligations as endorser upon bills rediscounted, nor to bills payable, nor to money borrowed from its correspondents or others, nor to deposits bearing a greater rate of interest than 4 percent per annum."

As in other States with deposit guaranty, differences of opinion arose in the application of the deposit guaranty to particular claims against failed banks. Several such cases came before the Supreme Court of Mississippi for determination. In one early case a depositor had drawn a check for sight exchange but the sight exchange payment

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10/ Mississippi Banker, November 1914, p. 9.

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had been refused on account of the insolvency and liquidation proceedings against the bank. The court held that the depositor had a claim for the full amount of his deposit undiminished by the check for sight exchange.[11] It was uncertainty with respect to the status of sight exchange and obligations in the form of cashier's and certified checks that led to the 1916 amendment of the coverage provision. In another case the applicability of the guaranty to a "special deposit", made for a specific purpose, was questioned by a bank examiner in charge of liquidation of a failed bank. The court decided that such deposits were covered by the guaranty.[12]

Several cases arose regarding coverage of public funds. Such funds deposited in a bank that had not qualified as a depository under the statute regarding such depositories were held to be covered by the guaranty.[13] But public funds secured by a bond executed by a surety without authority to become such, were held to be otherwise secured.[14] In another case the question arose whether secured deposits for which the collateral, upon liquidation, proved to be insufficient, were guaranteed: the ruling was in the negative.[15]

Assessments. Assessments for meeting the cost of deposit guaranty were levied upon the banks on the basis of deposits covered by the guaranty. The law provided that each guaranteed bank should

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11/ Anderson et al., Bank Examiners v. Owen et al., 112 Miss. 476, 73 So. 286.

12/ Johnson, State Bank Examiner v. Johnson, 134 Miss. 729, 99 So. 369.

13/ Wardlaw, State Bank Examiner v. Planters Bank of Clarksdale et al., 131 Miss. 93, 95 So. 135; Love, Supt. of Banks v. Murry, State Treasurer, 135 Miss. 749, 100 So. 277.

14/ Love, Superintendent of Banks v. Citizens Bank and Trust Co. of Marks, 140 Miss. 585, 105 So. 484.

15/ Board of Levee Com'rs. v. Love, Superintendent of Banks, 147 Miss. 183, 113 So. 335.

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certify at the date of each call statement the amount of money it had on deposit not eligible to guaranty under the provisions of the act. Such amounts were to be deducted from total deposits in making assessments for the guaranty fund.

The guaranty law provided for an assessment in January of each year of 1/20 of 1 percent of the average guaranteed deposits less capital and surplus, with a minimum assessment of $20.00. The method of computing average deposits was not specified in the law, but it was assumed that the average was to be based on the four statements of assets and liabilities submitted each year. The amounts assessed were to be paid to the State Treasurer and held by the Treasurer subject to the order of the Board of Bank Examiners (after 1922, the Superintendent of Banks).

The annual assessments were to be continued until the depositors' guaranty fund amounted to $500,000 over and above the initial deposit with the State Treasurer. Additional assessments of 1/20 of 1 percent each were authorized if the fund should become depleted, with five assessments at this rate the maximum in any calendar year. Whether additional assessments, which were usually spread throughout a calendar, were based on average deposits at call dates during the preceding calendar year, or the preceding 12-month period is not now known.

Each bank was required to deposit with the State Treasurer, as an evidence of good faith and as a guaranty for the payment of future assessments specified bonds (United States bonds or bonds of the State of Mississippi or specified subdivisions) or cash amounting

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to $500 for every $100,000, or fraction thereof, of deposits eligible to guaranty less capital and surplus (with a minimum deposit of $500).

Administration and custody of the fund. The assessments were paid to the State Treasurer and held by him subject to the order of the board of bank examiners (after 1922, the Superintendent of Banks) which had administrative control over the guaranty fund. The State Treasurer was required to credit the guaranty fund quarterly with its proportionate share of interest on the average daily balance of the guaranty fund at the minimum legal rate. He was authorized to deposit the guaranty fund in depository banks in accordance with the law covering State funds. In 1916, the Treasurer was authorized to invest the fund in excess of $10,000, upon order of the board of bank examiners, in bonds of the United States or of the State of Mississippi or specified subdivisions. Two years later, authorization was given either to sell or hypothecate the invested bonds if funds were needed to pay the deposit claims in failed banks.

The bonds or cash deposited by the banks as surety for the payment of assessments were also held by the State Treasurer. These were carried by the banks, on their own books, as assets deposited with the State Treasurer.

The law provided that in case of voluntary liquidation the bonds or cash deposited as surety for payment of assessments, but not any portion of assessments paid though remaining unused in the depositors' guaranty fund, were to be returned to the bank. In 1924, after the obligations of the fund had become larger than the assessments collected, the question arose as to whether the bonds or cash deposited as surety should be withheld from return to a bank in voluntary

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liquidation as security for future assessments necessary to meet the obligations of the fund at the time the bank went into liquidation. The Supreme Court of the State ruled that the bank, having paid the assessments levied to that date, was entitled to the return of the surety.[16/]

No special provision was made for the expenses of administering the deposit guaranty fund separate from the other expenses of the banking department. Each bank was assessed one fortieth of one percent of total assets per year (after 1916, minimum of $30) to be used for the maintenance of the banking department. In 1926, the minimum was made $60, with banks having deposits over $100,000 paying in addition to the minimum $0.25 for each $1,000 of additional deposits.

Method of paying deposits in failed banks. When a bank examiner found a bank to be insolvent he was required to take charge and proceed to wind up its affairs. Each depositor, upon proof of claim, was given interest bearing certificates for the amount of his deposits. The certificates carried 6 percent interest, reduced in 1926 to 4 percent, except with respect to deposits with a contract rate, in which case the certificate bore interest at that rate. As the assets of the failed bank were liquidated, dividends were paid on these certificates. When all assets of a failed bank had been collected, including liability of stockholders, the officer in charge of the bank certified to the board of bank examiners the amount of balances still due on guaranteed deposits. These balances were then paid by the board of examiners from the guaranty fund, with any claims or rights of action of the depositors reverting to the board of bank examiners

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16/ Mississippi Banking Department et al. v. Adams, 127 Miss. 122, 102 So. 70.

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for the benefit of the guaranty fund. In 1924, the law was amended to provide for certification of balances still due depositors, and payment from the guaranty fund, whenever it should appear to the officer in charge of the liquidation that the amount to be collected from the assets and stockholders' liability was likely to be insufficient to pay depositors.

The law further provided that if the guaranty fund, after levying the maximum number of assessments, was insufficient to pay the depositors in a closed bank, they were to be paid pro rata, with the remaining amount due to be paid from the next assessment upon active banks for the guaranty fund. When the law was amended in 1924, pro rata was changed to "in the order of liquidation".

During the early years of the operation of the system, when the fund made no payments on the certificates until the bank's affairs had been liquidated, other banks purchased the certificates thus giving more prompt recovery to depositors who desired immediate payment.

Liquidation of closed banks. Liquidation of failed banks, or of a bank violating certain provisions of the banking code, was placed in the banking department. Under the 1914 law, as indicated above, a bank examiner finding a bank to be insolvent was required to take charge and wind up its affairs. It was also the duty of the board of bank examiners to liquidate a bank found to be doing business with less than the minimum required capital, or a bank of which holders of two-thirds of the stock had voted to liquidate or dissolve. In 1922 these powers were given to the Superintendent of Banks; and he was also empowered to close and liquidate a bank if in his opinion the bank was unable to

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meet its obligations in the ordinary course of business. If a bank felt itself aggrieved by an examiner taking possession, it could appeal within ten days to the chancery court of the county, or to the chancellor in vacation or other court of like jurisdiction; and the court, after a hearing, could order the bank returned to its owners.

The examiner in charge of a closed bank was authorized to appoint an agent to handle the liquidation process. In 1922, this power was transferred to the Superintendent of Banks; and the Superintendent was also authorized to sell all the assets of a closed bank to a purchaser who would assume all of the liabilities.

In one of the early liquidations under these provisions, the examiner in charge maintained that the provisions of the law relating to the issue of guaranty certificates to depositors gave priority to holders of such certificates over other creditors of the bank. This interpretation was not supported by the State Supreme Court, which held that the general creditors were entitled to participate in the distribution of the assets of an insolvent bank along with the depositors, the depositors being protected by the guaranty provisions of the act.[17/]

SUPERVISION AND REGULATION OF PARTICIPATING BANKS

Previous to 1914, as has been noted at the beginning of this report, Mississippi law provided no supervision of banking institutions, and the statutory regulations of their operations were very limited. The 1914 law contained supervisory and regulatory provisions similar to those in force at that time in many other States;

17/ Anderson, State Bank Examiner v. Baskin & Wilbourn, 114 Miss. 81, 74 So. 682.

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and in later years, especially in 1922, some modifications of these provisions were made.

Powers of banking department. A summary of the supervisory powers given the board of bank examiners, and later, the Superintendent of Banks, is shown in Table 1. Some of the items listed in this table have been mentioned in the previous sections of this report.

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TABLE 1. SUPERVISORY POWERS OF THE BOARD OF BANK EXAMINERS OR SUPERINTENDENT OF BANKS IN MISSISSIPPI

Item	Powers granted
Opening of new banks	In 1914 no discretionary power. Certificate of authorization to begin business to be issued by Board of Examiners if capital stock is paid up and the bank has complied with the legal requirements. In 1924 law was amended to require also a finding by the Superintendent of Banks, the Governor, and the Attorney General, or a majority of these three officers, that the public interest required the organization of such bank.
Amendment of bank charter	Examination of bank, with certificate of condition by examiner.
Examinations	Two examinations a year required. Additional examinations to be made at any time deemed necessary by the Board of Examiners and special examinations when requested by the board of directors of the bank. Amended in 1922 to provide for examination at least twice a year at irregular intervals without prior notice, and with no bank to be examined by the same examiner twice in succession except as ordered by the Superintendent.
Scope of examinations	Examine cash, bills, collaterals and securities, books of account, the condition and affairs of the bank, the mode of conducting and managing the affairs of the bank, the actions of its directors, and the investment of the funds of the bank.
Reports of condition	In 1914 banks required to submit at least three reports of condition a year to the Board of Examiners for the same dates as required by the Comptroller of the Currency for national banks. Form to be prescribed by the bank examiner. Abstract to be published in form prescribed by the board of bank examiners.
Removal of undesirable or illegal assets	No provision except that certain assets should be charged off in evaluating the assets of the bank.
Impairment of capital	Shall require restoration of deficient capital within 30 days, or (as amended in 1922) execution of a bond in favor of the creditors of the bank.

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Removal of officers, employees, or directors	No provision.
Taking possession or closing a bank	Required to liquidate a bank: If insolvent; If attempting to do business with less than required minimum capital or without full capital paid-in; If stockholders by two-thirds vote decide to liquidate. May liquidate a bank: If dividends paid, or charges made to surplus, contrary to law; If capital remains impaired after 30 days' notice; or (after 1922) if impaired capital is not restored or adequate bond furnished; If reserve remains below legal limit for more than 30 days after notice, or is persistently allowed to go below legal limit; After 1922, if Superintendent of Banks, as result of examination, believes continuance of bank will be hazardous to creditors, depositors, or the public; or that bank is unable to meet its obligations in the ordinary course of business. In case of persistent violation of any other provision of law.
Handling of closed banks:	
Return to owners	A bank, within ten days after an examiner has taken possession, may apply to the county court and may be returned to its officers by the court if the bank shows cause to be aggrieved because taken over.
Liquidation	Liquidation of closed banks to be carried out by examiner, or agent appointed by examiner, with assets remaining after payment of depositors' and creditors' claims and expenses of liquidation to be turned over to stockholders.
Sale of assets or capital stock	After 1922, superintendent authorized to sell all assets of a closed bank, with purchaser assuming all liabilities and giving bond to guarantee payment of all creditors, with any excess of purchase price over liabilities to go to stockholders; if bank taken over because of impaired capital, superintendent authorized to sell enough capital stock to restore deficiency, calling in and cancelling pro rata from all stockholders an equivalent amount of stock.

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In addition to the items listed in the above table, mention may also be made here of the principles of evaluation of bank assets, in examinations, embodied in the law. In appraising the assets of banks the following assets were to be given no value--"no bank shall be allowed credit", the law stated--and the bank was required to charge them off its books: Any obligation or security the principal or interest of which shall be more than 12 months past due; any bond or other obligation upon which interest may be in default for 12 months; any of its own stock held more than 12 months; and any unsecured overdrafts that had existed more than three months (amended in 1916 to more than 30 days). In 1916 the provision was added that "only such overdrafts should be considered secured as those advanced against products or actual existing values evidenced by warehouse receipts or bills of lading, or against bills of exchange drawn in good faith against actual existing values." The law also provided that if an examiner found the latest published statement of a bank to be materially wrong or the condition of the bank to be changed materially since the last public statement, he should order the bank to publish a new statement based upon the findings of the examination.

Supervisory experience. The initial results of the inauguration of bank examinations and supervision in Mississippi were to improve banking practices, stimulate bank directors and officials to give more attention to bank management, to bring about the rehabilitation of weakened capital in some banks, and to close a number of banks with seriously impaired capital. The major weaknesses of the supervisory provisions of the original law, as they appeared in practice, were inadequate funds and authority for hiring legal staff and other needed

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assistants and especially the diffusion of administrative responsibility among the members of the board of examiners. Amendments to the law, as indicated in the table above, were made to remove these defects, especially that in 1922 which abolished the board of bank examiners and substituted a Superintendent of Banks, elected by the banks, and provided for an enlarged examining and administrative staff. This supervisory structure, which went into effect at the beginning of 1924, continued throughout the period of the deposit guaranty system with Mr. J. S. Love holding the office of Superintendent of Banks until after the repeal of the guaranty provisions of the law ten years later.

In the first biennial report of the banking department after Mr. Love became Superintendent of Banks the following comments were made on the strengthening of supervision.

> "The supervision is more rigorous and thorough than it has been before, due to the provisions in the 1922 laws, authorizing the employment of a larger force and creating the office of Superintendent of Banks. We are striving to eliminate dangers due to one-man responsibility in banks; to require directors to perform their duties as the law prescribes; to compel the managers to observe the safeguards written into the law; to keep the fidelity bonds of officers and employees in regular form; to encourage efficiency and discourage loose and reckless banking, basing our action upon the principle that banking is a profession and should be so regarded and no one but experienced bankers should be put in charge as active managers of banks."18/

Apart from this statement there is little information in the reports of the banking department regarding the supervisory processes. However, most of the amendments which were made to the banking code during the entire period of the operation of the guaranty system were recommended

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18/ Biennial Report of the Banking Department, 1924-1925, pp. 7-8.

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by the board of examiners, or the Superintendent of Banks, and based on their experience.

Statutory limitations on bank operations. The character of statutory limitations on bank operations imposed by the banking code of 1914 is shown in Table 2. While such limitations differ from State to State, those in Mississippi were similar to those generally in force in most of the States during the same period.

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TABLE 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN MISSISSIPPI

Item	Provisions of law
Responsibility of officers, directors, and stockholders:	
Examination of bank	Board of directors, or executive board or auditing committee, to "examine the loans, paper and securities of the bank and its liabilities and resources of every kind" at least once every three months.
Losses resulting from loans made in violation of legal limitations	1914, no provision. 1916, any director made individually liable for losses resulting from loans to officers, directors or employees which he has approved knowing the same to be excessive or incurring great risk.
Liability of stockholders	Usual double liability.
Bonding of active officers and employees	No provision in 1914. In 1920 fidelity bonds required, amount to be fixed by directors of bank subject to approval by state bank examiners.
Limitations on loans and investments:	
Loans to bank examiners	Prohibited.
Loans to officers and employees	Must be approved by a majority of the Board of Directors, or executive committee thereof.
Loans to directors	Must be approved by a majority of the Board of Directors or executive committee thereof.
Loans to stockholders	Must be approved by a majority of the Board of Directors or executive committee thereof.
Maximum to single borrowers (not applicable to discount of commercial paper owned by a person or firm)	25 percent of capital and surplus (with exceptions for bills of exchange). In 1914, no limit on bills of exchange up to 90 percent of value of goods in warehouse or in transit; in 1920, no more

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	than 1/2 of paid-in and unimpaired capital and surplus for drafts or bills of exchange with not over six months to run accompanied by shipping documents or warehouse receipts or other title documents for readily marketable stables not subject to rapid deterioration, and no more than 1/10 of paid-in and unimpaired capital and surplus unless accompanied by such documents.
Maximum secured by real estate	No provision.
Own capital stock	Taking as collateral, or purchase, prohibited except when necessary to prevent loss on debt previously contracted, and then not to be held over 12 months.
Limitations on ownership of property:	
Maximum value of banking house	30 percent of capital and surplus (50 percent in cities over 6,000 population with consent of bank examiners)
Time limit on real estate acquired by collection of debt	Five years
Ownership of other real estate	Forbidden
Ownership of corporate stocks:	
Of banks	Stock in any other bank, except regional reserve bank, operating in the State prohibited. In 1918 ownership of stock in Federal Reserve banks with membership authorized.
Of other corporations	Presumably illegal because of lack of enumeration in powers granted?
Limitations relating to deposits:	
Maximum amount of deposits	Ten times paid-up capital and surplus for a period longer than six months[1] (savings banks excepted); in 1926, 15 percent for any bank on written permission of Superintendent of Banks.

1/ In 1920, made 12 months for a period of two years.

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Maximum rate of interest on deposits	To be set by Board of Examiners, at a uniform rate within each county.
Receipt of deposits when insolvent	Prohibited.
Required reserve:	
Total amount of required reserves	In places under 50,000 population, 15 percent of demand deposits and 7 percent of time and savings deposits; in cities with more than 50,000 population, 25 percent of demand deposits and 10 percent of time and savings deposits. In 1918, bank becoming member Federal Reserve system to substitute Federal Reserve requirements for such State requirements.
Proportion of reserve required to be held in actual cash	None
Permissible character of proportion of reserve not required to be held in actual cash	Due from solvent banks
Cash items	No provision regarding inclusion of cash items in reserve
Limitation on borrowings:	
Maximum	1914 no provision; 1928, three times capital and surplus with additional amounts permitted with written consent of Superintendent of Banks.
Power of supervising authority to require reduction	No provision.
Maximum value of assets which may be pledged for borrowings	No provision.
Limitation on payment of dividends:	
Percentage of earnings to be carried to surplus prior to dividend payments	1/10 of earnings until surplus reaches 20 percent paid-in capital.

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When losses equal or exceed undivided profits	No specific provision but in effect prohibited by requirements as to charges to surplus account.
When reserve is impaired	No provision.
When bank is in danger of insolvency	No provision.
When capital is impaired	No provision.
Minimum capital stock requirement (for new banks; not applicable to banks operating at effective date of act)	Graduated by population of city, town, or community: 10,000 or more population - $50,000 6,000 to 10,000 " - $35,000 2,500 to 6,000 " - $25,000 1,000 to 2,500 " - $15,000 1,000 or less " - $10,000

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INSUFFICIENCY AND CLOSING OF THE DEPOSIT GUARANTY FUND

Inadequacy of the fund. The care with which banks were examined and the program of requiring the strengthening of weak capital structures, before admission to insurance, obviated in Mississippi many of the initial difficulties which occurred in Oklahoma, where a large proportion of the banks also had not previously been subject to examination and supervision when the deposit guaranty system was established.

The Board of Bank Examiners, in their first biennial report, recognized that the fund being accumulated from the assessment rate provided in the deposit guaranty would be insufficient in event of "a failure or failures of any aggregate proportions," and suggested that the annual rate be raised from one-twentieth to one-fifth of 1 percent of deposits. However, an article in the Mississippi Banker, organ of the State bankers' association, opposed such an increase, citing the experience up to that time of the deposit guaranty fund in Kansas where the regular rate was 1/20 of 1 percent and no emergency assessment had been necessary, and of the fund in Nebraska, where no obligations had yet fallen on the fund. "Similar results," the article stated, "are surely possible in Mississippi--their attainment depending largely upon efficiency of bank supervision, in which respect we think the Mississippi examiners have just cause for pride in past achievements and confidence in the future. A good many bankers will probably feel that the examiners have recommended that they cross a highly expensive bridge which need not and may not be reached."[19] No action to increase the rate was taken by the Legislature.

19/ Mississippi Banker, January 1916, pp. 3-4.

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For several years after 1914, economic conditions were favorable to the banks because of wartime prosperity. However, in 1916 and 1917 five banks failed, with liabilities in excess of amounts realizable upon liquidation large enough so that additional assessments were required. The board of bank examiners made one such additional assessment, at 1/20 of 1 percent, in 1917, two in 1918, and three in 1919.

In the latter part of 1920 more extensive banking difficulties appeared in Mississippi, resulting from agricultural conditions, chiefly the postwar decline in the price of cotton and in farm land values. Though for a few more years the fund was able to meet its obligations when they became due, this was only because of the fact that until 1924 the fund was not liable until a bank had been liquidated for payment of guaranty certificates issued when the bank closed. It was apparent that the obligations incurred in the banks already closed would absorb the entire income of the fund from assessments for several years in the future. The Superintendent of Banks, in the biennial report of the banking department for 1924 and 1925, appraised the situation in a realistic manner. He stated:

> "In the first place it seems quite clear that the contributions to the Guaranty Fund now being made by the banks are sufficient only to take care of the demands put upon it under normal conditions. The fund thus supported will protect the depositors of banks that fail on account of dishonest and criminal conduct on the part of officers and managers and of those banks that fail because of ordinary negligence and mismanagement; meaning to include those that suffer from causes peculiar to themselves and not from sudden occasional disturbances that may not be anticipated, conditions general in

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> their nature, affecting all banks operating under similar conditions. This condition would include seventeen of the thirty failures in the eleven and one-half years. In the second place it is equally clear that the fund is not sufficient to carry the plan successfully thru periods of stress and panic. This has been demonstrated. The conditions that broke the thirteen banks mentioned as having succumbed to the 1920 disaster were such as none but the banks that were above the average in prudence and foresight could survive without serious loss. The Guaranty Fund has been burdened with an extraordinary loss, so much so that it will require years to liquidate under normal conditions."20/

The position of the deposit guaranty fund never improved. In 1926 agricultural conditions were again unfavorable, particularly in the cotton-growing Delta of the Mississippi. Additional failures occurred in 1927, 1928, and 1929 as agricultural conditions in the State remained unfavorable.

Suspension of the guaranty in 1930. The guaranty law remained in full operation until March 11, 1930. At that time its application to further failures was suspended until all existing claims were paid in full, with the provisions for assessments on the banks unchanged. The indebtedness of the fund in 1930, represented by deposit certificates and accumulated interest in excess of the liquidation value of remaining assets of the failed banks in process of liquidation, amounted to $5 million. It was estimated that retirement of these certificates would absorb the proceeds of the assessments for twenty years.

On May 31 of the same year the legislature authorized a State bond issue to provide funds for retirement of the outstanding certificates, the bonds in turn to be retired out of future assessments which

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20/ Biennial Report of the Banking Department, 1924-1925, pp. 6-7.

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were to be continued at the previous rate of 1/20 of 1 percent not more than five times a year. The basis of the assessments, until the bonds were retired, was changed from average guaranteed deposits to average unsecured deposits. The bonds were to be supported by the "full faith and credit of the State of Mississippi", and were to bear interest at the rate of 4 1/2 percent but were not to be issued until the validity and constitutionality of the law suspending application of the guaranty to future failures, with continuance of the assessments on the banks, had been declared valid and constitutional by a superior court or the State Supreme Court. A case involving this question reached the Supreme Court nearly a year later, and resulted in the law being upheld by the court.[21]

In 1931, when the validity of the 1930 law had been established, bonds of the State could not be sold at the 4 1/2 percent rate, and the law prohibited sale below par. In October of that year, a revised law pertaining to the bonds was enacted by a special session of the Legislature, raising the permissible rate of interest to 5 1/2 percent. The bonds were to mature in not more than twenty years and could be issued serially. The date of the issue was December 1, 1931.

Further difficulties were met before the depositors could be paid. These difficulties and the process of retiring the guaranty fund certificates were described as follows by the Superintendent of Banks:

21/ City of Jackson v. Deposit Guaranty Bank & Trust Co., 133 So. 195, 160 Miss. 752 (March 23, 1931).

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"During the period when the legality of the bonds was being questioned the State of Mississippi had encountered serious financial difficulties. The credit rating of the State was so impaired that these bonds could not be marketed even at a rate of 5 1/2% interest and it was illegal for the bonds to be sold at a discount.

"The situation was met by the organization of a finance company which set up a revolving fund of $100,000. The bonds of this company could be sold below par. Its bonds were slowly exchanged for certificates of deposit outstanding. These certificates were then exchanged in payment for the Mississippi State bond issue at par. In case of small deposits one bond was held in trust to cover a number of small claims."22/

In the biennial report of the Banking Department a more brief description was given:

"Depositors in all banks closing prior to March 11, 1930 were taken care of in full by the exchange of deposits for Banking Department Bonds. Most of these bonds sold for an average price of eighty-five to ninety cents on the dollar."23/

It would appear from the foregoing that the holders of the outstanding guaranty fund certificates, who in many cases were probably not the original depositors, lost from 10 to 15 percent of their claims. Though the finance company bonds were described in one of the above quotations as "Banking Department Bonds" it is believed that they were not obligations of the banking department; and it is presumed that the finance company, or the persons who purchased its bonds, eventually made a profit, when the State bonds it obtained were finally paid, from the discount at which its own bonds had been issued in exchange for the guaranty fund certificates.

22/ Interview with Mr. J. S. Love, October 22, 1934.
23/ Biennial Report of the Banking Department of the State of Mississippi, 1931-1933, p. 6.

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more complete

A description of the process of retirement of the guaranty fund certificates has been provided by Mr. E. O. Spencer, president of the Mortgage Bond & Trust Company, Jackson, Mississippi.[22a] A fire insurance company with which Mr. Spencer was associated owned about $50,000 of the guaranty fund certificates, largely taken in for payment of insurance premiums from policyholders who could not pay in cash under the depressed business conditions of 1931. Mr. Spencer had also learned that a few banks and other financial institutions held about a million dollars of the certificates; and after a careful study of the law providing for a bond issue to retire the certificates, inquired of the legal officials of the State whether it would be possible for this group of certificate holders, or the Mortgage Bond & Trust Company acting as their agent, to purchase with cash an amount of the bonds equalling their certificate holdings, with the State Treasurer then using that money to retire those certificates. The bonds would then be distributed to the certificate holders--in effect, exchanged for the certificates. The Department of Banking and the Attorney General agreed that this process might be followed, provided that all holders of the certificates be given the same privilege. The Mortgage Bond & Trust Company then arranged to act as agent for all holders of the certificates. The lowest denomination of the bonds was $500, and to provide for "exchange" of certificates of smaller amounts, bonds of that denomination would be purchased, placed in trust and participating certificates issued to the certificate holders. The participating certificates were negotiable, which made it possible for them to be collected in appropriate amounts and then exchanged for the bonds. The Mortgage Bond & Trust Company, as agent for the certificate holders in the "exchange," charged a handling fee of

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22a/ Interview with Mr. E. O. Spencer, January 16, 1956.

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3 percent (5 percent toward the end of the process) which met most of their costs.

It is impossible to determine how much the original depositors in the failed banks may have lost. Many of the certificates that had been issued before it became clear that the fund was becoming hopelessly insolvent had been taken by operating banks and had remained in their possession. If the holders of the certificates, whether the original depositors or not, retained to maturity the State bonds which they received, or held them until the market price for the bonds was at or above par, they did not lose except for the commission charged for handling the "exchange." But those that sold their bonds or participating certificates at prices prevailing in 1932, or soon thereafter, lost just as they would have done by selling other State bonds in the depressed market.

The biennial report of the Banking Department for 1931-1933 stated that depositors in all banks closing prior to March 11, 1930, were taken care of in full by this exchange of deposits for bonds, adding that the bonds sold for an average price of eighty-five or ninety cents on the dollar.23/

23/ Biennial Report of the Banking Department of the State of Mississippi, 1931-1933, p. 6.

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Depositors' Protection Fund. In 1930, when application of deposit guaranty to future failures was suspended until past obligations were met, a very limited form of deposit insurance was provided for depositors of banks that might fail during that interval. Each bank was to be exempt from taxation on its surplus, up to an amount equal to its capital, and each bank was required to carry half of its net profits to its surplus account until the surplus equalled the capital. At the end of the year 1930, and at the end of each successive year, each bank was to be assessed 3 percent on its surplus exempt from taxation, unless that would produce over $300,000 a year, in which case the assessment rate was to be enough to provide that amount.

The amount collected for the Depositors' Protection Fund at the close of each year was to be applied toward the payment of depositors in banks failing in that year, distributed in proportion to the individual depositor's losses after the liquidation of each of the banks that failed in that year. Should a surplus occur in the Depositors' Protection Fund in any year, it was to be carried forward to the next year, but no deficit would be carried into any succeeding year.

The amounts available under this law, which remained in force for four years, were small; and in view of the number and severity of bank failures in the early 1930's, added very little to the recoveries of depositors of failed banks.

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Repeal of the deposit guaranty law. In 1934 the Legislature enacted a revised banking code replacing the 1914 code with all of its amendments. This revised law, which become effective April 2 of that year, repealed all of the provisions of the law relating to deposit guaranty, in a section that read as follows:

> "That the State bank guaranty law is, in every particular repealed, and the annual assessment of one-fourth of one percent on the bank's average unsecured deposits; the three percent annual assessment on the bank's exempt surplus, and the requirement of depositing bonds with the state treasurer for a full compliance with the guaranty laws, are hereby repealed, and the state treasurer is authorized, empowered and directed to return to the several banking corporations bonds and other collateral heretofore deposited with said state treasurer."24/

The effect of this was to make the bonds that had been issued to retire the deposit guaranty certificates simply a part of the State's bonded indebtedness, with the burden of meeting them as they became due falling upon the taxpayers, except to the extent of recoveries from assets of the failed banks that had not yet been liquidated.

Another feature of the 1934 law was the establishment on January 1, 1935, of a Department of Bank Supervision, to be directed by a State Comptroller appointed by the Governor, with a salary of $7,500 a year, to replace the State Banking Department and the Superintendent of Banks, who had been elected by the bankers and had received an annual salary of $12,000.

The 1934 law also authorized banks in Mississippi to become members of the Federal Deposit Insurance Corporation or any other similar agency created by the laws of the United States to insure or guarantee deposits in banks.

24/ Laws of 1934, chapter 146, section 116.

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NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number and deposits of operating banks. The number and deposits of State banks in Mississippi, which participated in deposit guaranty, are shown for each year in Table 3; and for comparison the number and deposits of national banks, which did not participate in the system. Information is not available regarding the amount of secured deposits, and consequently it is not known by how much the figures given in the table exceed the unsecured deposits to which the guaranty applied.

For the 15-year period, the State banks comprised from 88 to 91 percent of all the banks, and held from 67 to 79 percent of all the deposits. During the first few years the State banks gained slightly in number and deposits relative to national banks; and lost slightly during the latter part of the period.

Ten banks changed from State to national charters during the period; four in 1924, and one in each of the years, 1922, 1923, 1925, 1927, 1929, and early 1930. A smaller number changed from national to State charters: two in 1918, and two at the end of 1919.

Concentration of deposits. Table 4 shows the amounts of deposits held at the end of 1914, 1922, and 1929 by State banks in Mississippi grouped according to their deposits. These dates were, respectively, close to the beginning, the middle, and the end of the period of operation of deposit guaranty. At the beginning and end of the period, the largest bank held over 5 percent of the deposits, and the largest 10 banks about 25 percent. The concentration of deposits was slightly less in the middle of the period.

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Table 3. NUMBER AND DEPOSITS OF STATE AND NATIONAL BANKS IN MISSISSIPPI, 1915-1929, BY YEARS

End of year 1/	Number of banks			Deposits (in thousands)			State banks as percentage of total	
	Total	State 2/	National 3/	Total	State 2/	National 3/	Number	Deposits
1914	308	273	35	62,943	45,493	17,450	88.6	72.3
1915	293	258	35	74,977	55,006	19,971	88.1	73.4
1916	293	258	35	103,124	78,531	24,593	88.1	76.2
1917	297	263	34	140,639	106,601	34,038	88.6	75.8
1918	299	266	33	159,072	119,986	39,086	90.0	75.4
1919	316	284	32	237,097	187,850	49,247	89.9	79.2
1920	337	306	31	160,359	123,164	37,195	90.8	76.8
1921	336	306	30	154,460	116,724	37,736	91.1	75.6
1922	331	300	31	186,583	138,558	48,025	90.6	74.3
1923	338	306	32	199,519	147,990	51,529	90.5	74.2
1924	335	299	36	210,981	145,954	65,027	89.3	69.2
1925	338	301	37	246,036	167,102	78,934	89.1	67.9
1926	325	289	36	226,597	151,365	75,232	88.9	66.8
1927	325	288	37	255,097	171,615	83,482	88.6	67.3
1928	321	285	36	250,132	168,305	81,827	88.8	67.3
1929	306	271	35	239,856	160,849	79,007	88.6	67.1

1/ December 31, except for 1916 which is December 27.

2/ From "Statements showing the condition of State banks and National Banks" (published semiannually by Board of Bank Examiners or Superintendent of Banks). The number of banks is adjusted to exclude branch banks (23 in 1915-1916, and 22 in 1917-1929); and deposits to exclude amounts "due branch banks" and "due banks (overdrawn accounts)".

3/ Annual reports of the Comptroller of the Currency.

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Table 4. NUMBER AND DEPOSITS OF STATE BANKS IN MISSISSIPPI, DECEMBER 31, 1915, 1922, and 1929 1/
Banks grouped by amount of deposits

	Number of banks			Deposits (thousands of dollars)		
	1915	1922	1929	1915	1922	1929
All State banks	258	300	271	54,597	138,321	160,419
Banks with deposits of-						
$100,000 or less	111	35	23	6,248	2,575	1,588
$100,000 to $250,000	82	100	67	12,846	17,465	11,738
$250,000 to $500,000	46	82	78	15,762	28,945	28,676
$500,000 to $1,000,000	11	62	67	7,567	44,111	45,768
$1,000,000 to $2,000,000	6	13	28	6,975	18,913	37,500
$2,000,000 to $5,000,000	2	6	5	5,199	15,197	12,390
More than $5,000,000	--	2	3	--	11,115	22,775
Largest bank	1	1	1	2,886	5,710	8,859
Largest 5 banks	5	5	5	8,960	20,117	28,141
Largest 10 banks	10	10	10	13,865	30,088	38,976
Percentages of total	100.0	100.0	100.0	100.0	100.0	100.0
Banks with deposits of-						
$100,000 or less	43.0	11.7	8.5	11.4	1.9	1.0
$100,000 to $250,000	31.8	33.3	24.7	23.5	12.6	7.3
$250,000 to $500,000	17.8	27.3	28.8	28.9	20.9	17.9
$500,000 to $1,000,000	4.3	20.7	24.7	13.9	31.9	28.5
$1,000,000 to $2,000,000	2.3	4.3	10.3	12.8	13.7	23.4
$2,000,000 to $5,000,000	0.8	2.0	1.9	9.5	11.0	7.7
More than $5,000,000	--	0.7	1.1	--	8.0	14.2
Largest bank	0.4	0.3	0.4	5.3	4.1	5.5
Largest 5 banks	1.9	1.7	1.8	16.4	14.5	17.5
Largest 10 banks	3.9	3.3	3.7	25.4	21.8	24.3

1/ Tabulated from statements for individual banks published by the State Banking Department. The figures for total deposits differ slightly from those given in Table 3, chiefly because of omission of an item for unpaid dividends in the tabulations from individual statements.

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Number and rate of failures. During the period of operation of the Mississippi deposit guaranty fund, from its beginning to March 11, 1930, there were 63 failures of State banks. The deposits of these banks amounted to more than $14 million.

Failures occurred during every year that the fund was in operation except 1915, 1918, and 1919, with a maximum of ten in 1922 and also in 1929. The average annual rate of failure, computed as the number that failed per 100 operating at the beginning of the year, was 1.5. The deposits averaged $0.70 per year for each $100 of deposits in operating banks. The number of banks closed in each year, their deposit liabilities at date of closing, and the failure rates in each year, are given in Table 5.

In Table 6 the size distribution of failed State banks is compared with an average of the size distributions of operating banks. The smallest size group had the highest rate of failure, and there were no failures among the banks in the largest size groups. This direct relationship between size of bank and failure rates is different from that in some of the other States with deposit guaranty plans in operation during the same decades.

Comparison with failures in other States. In Table 7 bank failure rates in Mississippi for 1916-1929 are compared with those in contiguous States and the entire United States. The average annual number of failures of State banks in Mississippi, relative to the number of operating banks, was similar to the rate for the four contiguous States, and somewhat below that for the entire United States. Failure rates in terms of deposits were somewhat higher in Mississippi and in its contiguous States than in the entire United States, with the Mississippi rate higher than three but lower than one, of the contiguous States.

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Table 5. NUMBER AND DEPOSITS OF STATE BANKS IN MISSISSIPPI CLOSED 1/ BECAUSE OF FINANCIAL DIFFICULTIES, JANUARY 1, 1915, TO MARCH 11, 1930

Year or size group	Number of banks	Deposits at time of closing 2/	Number suspended per 100 active banks	Deposits in closed banks per $100 of deposits in active banks
Total or average	63	$14,156,093	1.5 3/	0.69 3/
1916	4	623,398	1.6	1.13
1917	1	64,103	.4	.08
1918	--	--	--	--
1919	--	--	--	--
1920	2	480,585	.7	.26
1921	4	1,468,819	1.3	1.19
1922	10	1,168,957	3.3	1.00
1923	2	170,690	.7	.12
1924	3	571,047	1.0	.39
1925	4	1,202,307	1.3	.82
1926	6	1,454,295	2.0	.87
1927	6	2,294,357	2.1	1.52
1928	5	1,553,652	1.7	.91
1929	10	2,171,976	3.5	1.29
1930 (To March 11)	6	931,907	11.5 3/	3.02 3/

1/ Excludes banks which were closed prior to or upon first examination and did not participate in the deposit guaranty system. There were no failures of participating banks in 1915.

2/ Biennial Report of the Banking Department, State of Mississippi, 1931-1933, Exhibit F, pp. 28-29.

3/ Annual rate.

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Table 6. SIZE DISTRIBUTION OF FAILED BANKS IN MISSISSIPPI COMPARED WITH AVERAGE SIZE DISTRIBUTION OF ACTIVE BANKS: PERIOD OF OPERATION OF DEPOSIT GUARANTY SYSTEM

Size categories	Operating banks (average) 1/	Failed banks (15 years)	Percentages of total: Operating banks	Percentages of total: Failed banks	Failure rate per year 2/
Total number of banks	285	63	100.0	100.0	1.5
Number of banks with deposits of-					
$100,000 or less	43	21	15.1	33.3	3.3
$100,000 to $250,000	86	22	30.2	34.9	1.7
$250,000 to $500,000	77	14	27.0	22.2	1.2
$500,000 to $1,000,000	52	5	18.2	8.0	.6
$1,000,000 to $2,000,000	20	1	7.0	1.6	.3
$2,000,000 to $5,000,000	5	--	1.8	--	--
Over $5,000,000	2	--	.7	--	--
Total deposits (in thousands)	$135,588	$14,156	100.0	100.0	0.70
In banks with deposits of-					
$100,000 or less	2,834	1,258	2.1	8.9	2.96
$100,000 to $250,000	14,744	3,523	10.9	24.9	1.58
$250,000 to $500,000	27,577	4,758	20.3	33.6	1.15
$500,000 to $1,000,000	36,624	3,550	27.0	25.1	.65
$1,000,000 to $2,000,000	26,667	1,067	19.7	7.5	.27
$2,000,000 to $5,000,000	13,954	--	10.3	--	
Over $5,000,000	13,188	--	9.7	--	

1/ Averages of annual data for December 31, 1915 to 1929, inclusive.

2/ Annual average number of failures per 100 active banks, and annual average deposits in failed banks per $100 of deposits in active banks.

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Table 7. BANK FAILURE RATES IN MISSISSIPPI, 1916-1929, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES

	Failures per 100 operating banks (annual average)			Deposits in failed banks per $100 in operating banks (annual average)		
	All commercial banks	State banks 1/	National banks	All commercial banks	State banks 1/	National banks
Mississippi	1.29	1.34	.84	$0.56	$0.75	$0.08
Four contiguous States	1.21	1.39	.47	0.43	0.66	0.09
Louisiana	1.35	1.53	.22	.15	.20	.003
Arkansas	1.59	1.75	.81	.95	1.30	.31
Tennessee	.93	1.13	.14	.43	.80	.03
Alabama	1.02	1.18	.64	.44	.86	.11
Entire United States	1.54	1.85	.72	.33	.47	.15

1/ Data include private banks.

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Causes of failure. The biennial reports of the Superintendent of Banks attribute most of the failures of Mississippi banks during the 1920's to two causes: the agricultural situation particularly with respect to cotton, and dishonesty on the part of bank officials. Regarding the failures during the years 1920-1925, he stated:

> "In 1920 there was a sudden and decided falling off in land values and in the market price of agricultural products. There was a general disturbance of financial conditions but the bank failures in this State that resulted were due mainly to the violent changes in the land and cotton markets. This change affected more adversely the banks in the Delta section where a large percentage of the securities is based upon land and cotton."
>
> "It should be noted that in and subsequent to 1920 ... there have been twenty-five bank failures and it is from these twenty-five that we have selected the thirteen failures in the Delta, directly caused by the sudden change in that year. Of the remaining twelve, eight have been weakened or ruined by irregular acts of officers or managers of varying degrees of criminality and the other four were the victims of inefficiency and negligence." 25/

The increase in guaranty certificates outstanding, that resulted from the 12 failures during 1926-1927, was attributed by the Superintendent of Banks "mainly to the small returns on crops in the year 1926, resulting from low production and low prices." "That year," he said, "was as disastrous as the year 1920." He noted that the failures in both years resulting from agricultural conditions were concentrated in the one-crop section of the Delta region. "The falling off in values of agricultural products and the shortage in crops in 1920 and the extreme low prices in 1926 affected most decidedly the Delta section, which is a single-crop section, and that is the territory where banks have failed in such number as to deplete and create a deficit in the guaranty Fund. That is the territory where the 'stress

25/ Biennial Report of the Banking Department, 1924-1925, p. 5.

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and panic' operated. That territory includes about one-fourth of Mississippi." However, the majority of the failures were of banks weakened by the 1920 situation, or by previous dealings. Seven of the 12 were traceable to transactions or business done prior to 1920. One was due to criminal mismanagement. 26/

The Superintendent's comment about the causes of the fifteen failures during 1928-1929 was brief. "The most of these failures were due to acts of dishonesty which the men in immediate charge kept concealed from our examiners." 27/

Adverse economic conditions and dishonesty on the part of bank officials were also emphasized as causes of bank failures in schedules prepared for the Federal Reserve Committee on Branch, Group, and Chain Banking, regarding Mississippi bank suspensions during 1921-1930. On these schedules, there was also a large number of cases in which "heavy withdrawals" was mentioned as a primary cause, but this was more important with respect to 1930 cases than for the earlier years; and in addition is ambiguous because of lack of explanation of the circumstances leading to heavy withdrawals. A classification of the primary and contributing causes reported on the Federal Reserve Committee schedules is given in Table 8.

26/ Biennial Report of the Banking Department, 1926-1927, pp. 7-8.
27/ Biennial Report of the Banking Department, 1928-1929, p. 4.

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Table 8. CAUSES OF BANK FAILURES IN MISSISSIPPI, 1921-1930, REPORTED BY THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP AND CHAIN BANKING

Item 1/	Number of cases	
	Primary cause	Contributing cause
Adverse economic conditions in area:		
Losses due to unforeseen agricultural or industrial disasters, such as drought, flood boll weevil, etc.	30	46
Decline in real estate values	2	11
Dishonesty of officials: defalcation	13	..
Poor management: insufficient diversification, or incompetent management	8	13
Other causes:		
Heavy withdrawals	50	6
Failure of affiliated institutions or of correspondents	6	..

1/ Specific items from schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking; the grouping, indicated by the underlined phrases, by the author of this report. The tabulation was made by the author of this report from the schedules, which were made available through the courtesy of the Board of Governors of the Federal Reserve System.

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FINANCIAL HISTORY OF THE GUARANTY FUND

Detailed information is available regarding the operations of the depositors' guaranty fund in Mississippi. However, information is not available on total collections from liquidation of assets of the failed banks, nor of the expenses of receivership paid from such collections.

Statements of the depositors' guaranty fund in Mississippi, and of the amounts disbursed in each of the failed banks, were published in the biennial reports of the Banking Department. In the report for 1931-1933, which covered the period when the State bond issue was sold and the proceeds used to retire the outstanding certificates, a statement was given of the annual receipts and disbursements of the fund from its beginning. Statements were also given for each of the failed banks, as of December 1, 1933, showing its deposit liability when closed, the amounts paid on the deposits from liquidation of the bank's assets, from the guaranty fund, and from the proceeds of the bond issue, together with the remaining guaranty certificates outstanding, and the cash on hand and estimated value of realizable assets not yet liquidated.

In 1935, the State Controller, who had succeeded the Superintendent of Banks at the first of the year, had an audit made of the remaining guaranty certificates outstanding; and in the biennial report of the Department of Bank Supervision for 1934-1935 published revised figures of the guaranty certificates paid from the bond issue to December 1, 1933, and outstanding as of that date, together with subsequent payments by the Banking Department from that date to January 1, 1935,

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and payments by the Department of Bank Supervision from the latter date to November 30, 1935.[28] Small amounts of such payments in later years are given in subsequent reports. Transfers to the State Treasurer of funds collected from assets of failed banks subsequent to payment of their guaranty certificates from the proceeds of the bond issue are given in the biennial reports of the Department of Bank Supervision.

Biennial reports of the Auditor of Public Accounts also give summary figures of the annual receipts and disbursements of the guaranty fund, and of receipts and disbursements from the bond issue. Because of differences in the dates to which the data pertain, and because of outstanding warrants at year-ends, the data given in the reports of the Auditor of Public Accounts are not precisely the same as those in the reports of the Department of Banking and the successor Department of Bank Supervision.

Income and obligations of the guaranty fund. A summary statement of the income and obligations of the Mississippi depositors' guaranty fund, for the entire period of its existence, is given in Table 9. The figures in this table take into account receipts and disbursements subsequent to repeal of the law. They exclude payments to depositors in failed banks which were made directly from proceeds of liquidation of the assets of those banks. Adjustments are made for receipts from the liquidation process at dates later than the retirement of the fund's indebtedness from the proceeds of the special State bond issue. A more detailed table of the receipts and disbursements of the fund and bond issue, by years, is given in Table 10.

28/ The revision in the amount paid from the bond issue to December 1, 1933 was only $173.

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The assessments collected by the guaranty fund amounted to a little more than $3,600,000. About one-fifth of this amount was collected during the four years after the termination in 1930 of the fund's liability for current failures, but before the repeal of the law in 1934. The total obligations of the fund for payment of guaranty certificates and interest on them, adjusted for recoveries from failed banks after payment of the certificates, was very close to $8,000,000. In addition, the fund incurred over $300,000 of expenses, including payment of interest for the first year on the special bond issue.

The deficit of the deposit guaranty fund, which ultimately fell on the taxpayers of the State, through provision of funds for retirement of the bond issue, was about $4,700,000. In addition, over $4,700,000 of interest on the bond issue also ultimately fell on the taxpayers. The bonds were issued on December 31, 1931, with $250,000 maturing in five years, an equal amount in ten years, $500,000 in fifteen years, and the remaining $4,000,000 in twenty years.

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Table 9. OBLIGATIONS, INCOME, AND DEFICIT OF THE MISSISSIPPI DEPOSITORS' GUARANTY FUND

Obligations: [1]	
Total guaranty certificates paid from fund receipts and proceeds of bond issue, representing deposits of failed banks in excess of repayments directly from liquidation of assets	$ 7,655,349
Interest paid on guaranty certificates	967,657
Total certificates and interest	8,623,006
Deduct: adjustment for recoveries from assets of failed banks (received by fund or bond retirement account)	642,097
Net obligation of fund for guaranty certificates and interest	7,980,909
Other interest ($9,207 on bills payable during 1920-28, and $228,406 on State bond issue in 1932-33)	237,813
Expenses (chiefly attorney and special agent)	110,598
Total obligations of guaranty fund	$ 8,329,320
Income: [1]	
Assessments on participating banks (adjusted for refunds)	$ 3,604,165
Interest received (including small amount of miscellaneous receipts)	52,334
Total income (excluding receipts from liquidation of assets of failed banks)	$ 3,656,499
Deficit (obligations less income)	$ 4,672,821
Cost to taxpayers:	
Principal of bond issue	$ 5,000,000
Less: unused amount and collections available for transfer to general fund of State [1]	327,179
Balance of bonds sold (equals deficit of fund)	$ 4,672,821
Add: Interest on bonds [2]	4,743,961
Total net from general revenues of State	$ 9,416,782

[1] See Table 13, p. 51.

[2] Interest on bonds while outstanding of $5,018,750 (computed from rate and time outstanding) less $46,383 accrued at time of sale (reports of Auditor of Public Accounts) and less $228,406 paid by guaranty fund.

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Table 10. RECEIPTS, DISBURSEMENTS, AND BALAN
GUARANTY FUND, BY YEARS, 1914-1934, AND OF

Year	Receipts 1/ Total	Assessments 2/	Assets of failed banks	Other 3/	Total
Depositors' Guaranty Fund 7/					
1914	4,598	4,583	--	15	--
1915	14,353	13,997	--	356	--
1916	15,720	15,252	--	468	--
1917	45,655	44,330	--	1,325	--
1918	99,960	97,531	--	2,429	4,323
1919	161,283	153,410	--	7,873	88,160
1920	201,750	117,986	78,206	5,558	347,617
1921	254,507	237,679	13,305	3,023	260,831
1922	264,332	199,190	63,000	2,142	294,407
1923	304,660	228,240	68,714	7,706	97,614
1924	266,181	253,329	7,472	5,380	360,575
1925	294,188	251,007	39,574	3,607	425,982
1926	355,985	289,475	65,306	1,204	390,899
1927	355,269	299,374	55,266	629	359,703
1928	309,857	308,865	--	992	257,602
1929	296,568	295,788	--	780	340,183
1930	295,058	292,260	1,367	1,431	275,515
1931	201,943	201,158	--	785	160,911
1932	179,564	156,355	17,951	5,258	246,982
1933	119,105	118,318	--	787	30,106
1934	37,823	26,037	11,200	586	3,973
Total	$ 4,078,360	$ 3,604,165	$ 421,861	$ 52,334	$ 3,945,383
Successor Funds 9/			10/		
1932-1933	5,024,475	--	91,475	4,933,000	4,940,907
1934	116,252	--	49,252	67,000	24,463
1935	25,190	--	25,190	--	14,337
1936-1953	54,319	--	54,319	--	46,327
Total	$ 5,220,236	--	$ 220,236	$ 5,000,000	$ 5,026,034
Combined Funds					
Total	$ 9,298,596	$ 3,604,165	$ 642,097	$ 5,052,334	$ 8,971,417

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CE OF THE MISSISSIPPI DEPOSITORS'
ITS SUCCESSOR FUNDS, 1932-1953

Disbursements [1]				Balance
Guaranty certificates paid	Interest on guaranty certificates	Other interest [4]	Expenses [5]	(end of year or period) [6]
--	--	--	--	4,598
--	--	--	--	18,951
--	--	--	--	34,671
--	--	--	--	80,326
4,191	132	--	--	175,963
80,222	7,938	--	--	249,086
328,790	16,727	2,100	--	103,219
260,831	--	--	--	96,895
283,577	8,030	2,800	--	66,820
83,850	11,123	2,641	--	273,866
351,155	3,220	1,738	4,462	179,472
409,190	9,750	--	7,042	47,678
249,679	133,027	5	8,188	12,764
277,696	75,070	--	6,937	8,330
203,299	44,650	123	9,530	60,585
269,161	59,022	--	12,000	16,970
239,994	23,521	--	12,000	36,513
101,495	48,316	--	11,100	77,545
21,661	2,717	210,454	12,150	10,127
394	111	17,952	11,650	99,126
--	--	--	3,973	132,976
$ 3,165,185	$ 443,354	$ 237,812	$ 99,031	$ 132,977 [8]
			[10]	
4,419,250	510,091	--	11,566	83,568
21,346	3,117	--	--	175,357
12,542	1,795	--	--	186,210
37,026	9,300	--	1	194,202
$ 4,490,164	$ 524,303	--	$ 11,567	$ 194,202 [11]
$ 7,655,349	$ 967,657	$ 237,812	$ 110,598	$ 327,179

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Notes to Table 10

1/ Adjusted to exclude assessment refunds, principal of bonds purchased and sold and of borrowings and repayments, and interest accrued on bonds purchased.

2/ Assessments were made at 1/20 of 1 percent of deposits, with the following number per year: 1914-1916, one; 1917 and 1920, two; 1918, three; 1919, four; 1921-1933, five; and 1934, one. Figures are adjusted for refunds. Bonds or cash deposited as security for payment of assessments are not included.

3/ Guaranty fund receipts in this column consist of $46,359 interest from State Treasurer on cash balance and from bond investments, and $3,975 described as "Transfer from Bank G. C. Int. Fund". Successor funds receipts are the proceeds of the State bond issue.

4/ Guaranty fund disbursements in this column consist of $9,407 interest on bills payable, $228,405 interest on State of Mississippi bonds.

5/ Mostly attorney fees and salary of special agent. For successor funds' figure see Note 10.

6/ Computed from net receipts and disbursements. Represents cash balance and investments (for some years), adjusted for items mentioned in Note 1.

7/ Data from Biennial Report of the Banking Department, 1931-1933, Exhibits C and D, pp. 20-22; and Biennial Report of the Department of Bank Supervision, 1934-1935, pp. 16-17. Figures may not add precisely to totals given because of rounding.

8/ This balance was transferred to the general fund of the State, $60,000 in 1934, and $72,977 on February 8, 1937.

9/ Includes the following: proceeds of $5,000,000 bond issue (sales at par); cash on hand from liquidation of assets of failed banks, December 1, 1933, not included in the guaranty fund receipts (see Note 10); guaranty bond retirement fund, to which additional proceeds from liquidation of assets received by the Department of Bank Supervision, were credited; bank guaranty certificate fund, and bank guaranty certificate fund-contingent depositors' claim account, both of which were set up from proceeds of the bond issue to cover guaranty certificates outstanding (including some in litigation) at the end of 1934. Figures are adjusted to exclude items refunded or offset by contra entries, or transferred from one of these funds to another. Data for proceeds of sale of bonds from Biennial Reports of Auditor of Public Accounts; for cash on hand December 1, 1933, see Note 9; for guaranty certificates paid in 1932-1933, from Biennial Report of Banking Department, 1931-1933, and for interest paid on those certificates and certificates and interest paid in 1934, from Biennial Report of Department of Bank Supervision for 1934-1935, p. 22, for receipts from liquidation of assets, and guaranty certificates and interest paid in subsequent years, from Biennial Report of Department of Bank Supervision for 1934-1935, pp. 18, 20, and 22, and subsequent biennial reports.

10/ $101,466 cash on hand, December 1, 1933, as given in Biennial Report of Banking Department for 1931-1933, Exhibit F, pp. 28-29, minus amounts for some banks totalling $9,991, that could have and probably did constitute part of the $11,200 taken into the guaranty fund account in 1934. The remaining $91,475 was apparently combined with the proceeds of the bond issue for use in meeting guaranty certificates and interest on them not paid by the guaranty fund. However, the amount so used may have been somewhat smaller. The $11,566 shown in this table as an expense item is a residual derived from the other items shown here as 'successor funds", and may have been absorbed by liquidation expenses of some of the failed banks, or may represent unrecorded costs in connection with the sale of the $5 million issue of State bonds, or in part may reflect revisions of the accounts.

11/ Of this amount, $92,680 was transferred to the general fund of the State on February 8, 1937. The remainder consists of balances in the following funds on December 31, 1953: guaranty bond retirement fund, $35,430; guaranty certificate fund, $17,431; and guaranty certificate contingent claims fund, $48,661 (Biennial Report of Department of Bank Supervision, 1951-1953, p. 10).

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Annual assessments and losses in failed banks. Table 11 gives the deposit liabilities of the banks that failed each year while participating in deposit guaranty, as reported for the date of failure, and as indicated by the deposits eventually paid, together with the amounts eventually met from liquidation of assets and the balance paid from the guaranty fund or the proceeds of the bond issue. The deposits eventually paid were about 1 1/2 percent more than those reported at date of failure. Of the deposits paid, a little over half were met directly or indirectly from the assets of the banks. There was considerable variation in these percentages for the banks failing in the various years.

Table 12 compares, for each year, the amount of the assessments collected with the deposit liability from failures that eventually fell on the guaranty fund and were paid from the fund or the proceeds of the bond issue. The figures are shown for each year, and also cumulatively, with the cumulative excess of receipts or deficiency. Only at the beginning of the fund, 1914 and 1915, and in 1919, was there an excess of receipts. The cumulative deficiency was continuous after 1920, and increased almost every year, reaching nearly $4 million when the application of the guaranty to current failures was suspended in 1930. This deficiency, it should be noted, is quite a different concept from the deficit of the fund. It does not take into account the interest on guaranty certificates during the time they were outstanding, nor the fact that the fund did not become obligated to pay the deposits of a failed bank until the assets of the bank had been wholly or partly liquidated. What this figure shows is the additional assessment that would have been necessary to have paid all depositors the amounts of their claims, without incurring interest costs because of delayed payment.

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Table 11. PAYMENT OF DEPOSIT LIABILITIES OF MISSISSIPPI BANKS THAT FAILED WHILE PARTICIPATING IN DEPOSIT GUARANTY 1/

Year of failure	Deposit liabilities at date of failure 2/	Deposit obligations paid			Percentage of deposits paid at date of failure		
		Total 3/	From assets of failed banks 4/	From fund or bonds net 5/	Total	From assets	From fund or bonds
Total	$14,156,093	$14,360,786	$7,347,534	$7,013,252	101.4%	51.9%	49.5%
1914	--	--	--	--	--	--	--
1915	--	--	--	--	--	--	--
1916	623,398	623,398	390,859	232,539	100.0	62.7	37.3
1917	64,103	64,102	32,238	31,864	100.0	50.3	49.7
1918	--	--	--	--	--	--	--
1919	--	--	--	--	--	--	--
1920	480,585	480,535	177,464	303,071	100.0	36.9	63.1
1921	1,468,819	1,465,397	483,603	981,794	99.8	32.9	66.8
1922	1,168,957	1,149,239	560,181	589,058	98.3	47.9	50.4
1923	170,690	166,472	105,334	61,138	97.5	61.7	35.8
1924	571,047	571,408	382,336	189,072	100.1	67.0	33.1
1925	1,202,307	1,581,760	931,220	650,540	131.6	77.5	54.1
1926	1,454,295	1,333,447	697,504	635,943	91.7	48.0	43.7
1927	2,294,357	2,176,377	678,568	1,497,809	94.9	29.6	65.3
1928	1,553,652	1,614,038	677,206	936,832	103.9	43.6	60.3
1929	2,171,976	2,170,540	1,582,455	588,085	99.9	72.9	27.0
1930	931,907	964,069	648,565	315,504	103.5	69.6	33.9

1/ Does not include banks closed in 1914 that did not qualify for deposit insurance, nor banks that failed subsequent to March 11, 1930, when deposit guaranty became inapplicable to future failures.

2/ Biennial Report of the Banking Department, 1931-1933, Exhibit F, pp. 28-29.

3/ Since all deposit obligations not otherwise secured were subject to guaranty and all guaranteed deposits were payable from the proceeds of a State bond issue, the difference between the amounts in this column and deposits at date of failure represent (a) deposits discovered during the process of liquidation, and (b) deposits eventually unclaimed or disallowed.

4/ Includes $7,095,058 reported as "liquidated by bank's assets"in the Biennial Report of the Banking Department, 1931-1933, Exhibit F, pp. 28-29, an amount which includes $389,623 of recoveries by the guaranty fund prior to 1930; $32,238 additional recoveries included in the guaranty fund accounts; and $220,236 of recoveries subsequent to closing of the guaranty fund accounts.

5/ Total guaranty certificates of $7,655,349 paid by fund or bonds less $642,097 recoveries by the guaranty fund and successor funds. Tabulations of these payments and recoveries by year of failure made from information for each bank in the reports of the Department of Banking and Department of Bank Supervision.

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Table 12. ANNUAL ASSESSMENT RECEIPTS, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, MISSISSIPPI DEPOSITORS' GUARANTY FUND

Year	Assessments collected 1/	Deposits' liability from bank failures 2/	Cumulative			
			Assessment receipts	Deposits' liability of fund	Excess of receipts	Deficiency (excess liability)
1914	$ 4,583	--	$ 4,583	--	$ 4,583	--
1915	13,997	--	18,580	--	18,580	--
1916	15,252	232,539	33,832	232,539	--	198,707
1917	44,330	31,864	78,162	264,403	--	184,241
1918	97,531	--	175,693	264,403	--	88,710
1919	153,410	--	329,103	264,403	64,700	--
1920	117,986	303,071	447,089	567,474	--	90,385
1921	237,679	981,794	684,768	1,549,268	--	864,500
1922	199,190	589,058	883,958	2,138,326	--	1,254,368
1923	228,240	61,138	1,112,198	2,199,464	--	1,087,266
1924	253,329	189,072	1,365,527	2,388,536	--	1,023,009
1925	251,007	650,540	1,616,534	3,039,076	--	1,422,542
1926	289,475	635,943	1,906,009	3,675,019	--	1,769,010
1927	299,374	1,497,809	2,205,383	5,172,828	--	2,967,445
1928	308,865	936,832	2,514,248	6,109,660	--	3,595,412
1929	295,788	588,085	2,810,036	6,697,745	--	3,887,709
1930	292,260	315,504	3,102,296	7,013,249	--	3,910,953
1931	201,158	--	3,303,454	7,013,249	--	3,709,795
1932	156,355	--	3,459,809	7,013,249	--	3,553,440
1933	118,318	--	3,579,127	7,013,249	--	3,434,122
1934	26,037	--	3,605,164	7,013,249	--	3,408,085

1/ See Table 10.

2/ Deposits eventually paid from the guaranty fund or bond issue, adjusted for recoveries (from Table 11).

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In Table 13 the rates of assessment levied, and the collections per $100 of deposits in the participating banks, are compared with the rates that would have been necessary to meet each year the eventual losses from the failures in that year. The assessments collected, computed as a percentage of the total deposits in operating banks at the beginning of the year, were about three-fourths of the rate levied. This difference is due primarily to the facts that secured deposits were not assessed and that capital and surplus were deducted from the unsecured or guaranteed deposits. In addition, there may have been, at least in the first year or two, a small amount of deposits carrying a higher rate of interest than 4 percent because of contracts made prior to 1915. Also, assessments were levied on average deposits. Information is not available regarding the method of calculating average deposits for this purpose.

For the first three years of operation of the guaranty plan, assessments were kept at the minimum rate of 1/20 of 1 percent of deposits. During the next four years the rate ranged from 1/10 to 2/10 of 1 percent of deposits. From 1921 to the repeal of the law in 1934, the maximum rate of 1/4 of 1 percent of deposits--that is, five assessments of 1/20 of 1 percent each were levied each year.

The average annual rate of assessments collected during the years from 1914 to 1930 was about 1/7 of 1 percent of deposits of the operating banks at the beginning of the year, and almost 1 percent of the banks' capital accounts. The average annual rate necessary to have met the eventual losses on deposits--without consideration of interest--was 4/10 of 1 percent of the deposits in participating banks, or about 2 1/4 percent of their capital accounts.

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Table 13. COMPARISON OF ANNUAL RATES OF ASSESSMENT WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, MISSISSIPPI DEPOSITORS' GUARANTY FUND, BY YEARS, 1914-1930

		Per $100 of deposits in participating banks at beginning of year		Per $100 of capital funds in participating banks at beginning of year	
	Assessment levied per $100 of deposits	Assessments collected 1/	Deposits in failed banks paid by fund or from bonds 2/	Assessments collected 3/	Deposits in failed banks paid by fund or from bonds 3/
1914-1930 average	$0.19	$0.15	$0.40	$0.99	$2.23
1914	.05	.01	--	.03	--
1915	.05	.03	--	.09	--
1916	.05	.03	.42	.11	1.66
1917	.10	.06	.04	.30	.22
1918	.15	.09	--	.85	--
1919	.20	.13	--	.94	--
1920	.10	.06	.16	.62	1.58
1921	.25	.19	.80	.96	3.95
1922	.25	.17	.50	.91	2.68
1923	.25	.16	.04	1.07	.29
1924	.25	.17	.13	1.23	.92
1925	.25	.17	.45	1.28	3.32
1926	.25	.17	.38	1.45	3.18
1927	.25	.20	.99	1.50	7.52
1928	.25	.18	.55	1.56	4.73
1929	.25	.18	.35	1.57	3.12
1930	.25	.18	.98 4/	1.59	8.58 4/

1/ Computed from assessment receipts (Table 10) and deposits in participating (i.e., State) banks in Table 3.

2/ Computed from deposits in failed banks paid from fund or bond issue (Table 10) and deposits in participating banks (Table 3).

3/ Capital funds used in computing these ratios are the total of capital, surplus, and undivided profits as given in the consolidated statements of State banks for various dates in the June 30, 1931 issue of Statements Showing the Condition of State and National Banks in Mississippi.

4/ Annual rates (i.e., five times the rate for failures occurring prior to March 11, 1930.

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APPRAISAL OF THE MISSISSIPPI DEPOSIT GUARANTY SYSTEM

Of the eight States which established deposit guaranty systems during the years 1909-1919, Mississippi was the only one located in the eastern half of the United States. The banking system of Mississippi had been well developed for scores of years, and the area was not subject to the pressures resulting from a rapid agricultural or industrial expansion with its spirit of speculation and overoptimism. Nevertheless, the circumstances that led to failure of the deposit guaranty system were in many respects similar to those in other States. As in the Great Plains States from North Dakota to Texas, adverse conditions in agriculture in the 1920's resulted in an abnormally high rate of bank failures, compared with the preceding two decades, or compared with the nation as a whole for the same period. But as in the other States, there were defects in the system in addition to its operation under adverse circumstances.

One of the most conspicuous defects in the Mississippi system, as in several of the other States, was the lack of an initial fund, with a regular rate of assessment too low to permit accumulation of more than a small fund even in a period with no failures. Had the system started with an initial fund equal to 1 percent of deposits, and with regular assessments sufficient to maintain this percentage, but not in excess of 1/4 of 1 percent in any year (the maximum that was permitted), the system would not have become insolvent with the first wave of failures in late 1920 and 1921 following the disastrous decline in cotton prices. However,

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such an initial fund would have been dissipated by the middle 1920's. It would have required a maximum assessment rate of 1/2 of 1 percent a year, with this maximum actually levied in most of the years, to have enabled the fund to have met the depositors' losses throughout the 1920's.

The assessment rate of 1/4 of 1 percent per year, which the Mississippi banks paid continuously from 1921 until the repeal of the law in 1934, proved to be a heavy burden relative to the banks' capital funds. However, from a consideration of the nature of bank operating costs, it would appear that the banks could have adjusted themselves to the heavier rate needed for maintenance of the solvency of the guaranty fund, through reduction of interest paid on deposits and an increase in service charges on the active non-interest bearing accounts, thus throwing the cost of deposit insurance on the depositors. But as in other States, the presence of another class of banks not participating in the insurance system, and the possibility of discarding State charters for national charters, makes it likely that adoption of a sufficiently high assessment rate would not have been feasible.

Another serious defect of the Mississippi deposit guaranty system was its inadequate provisions for handling the liquidation of the assets of closed banks. Only about one-half of the deposits of failed banks was recovered from the banks' assets. It appears that efficient liquidation procedures might have reduced considerably the loss falling on the guaranty fund, or eventually met by the taxpayers of the State.

A further inadequacy of the Mississippi system as originally adopted was the delay in payment of depositors until completion of

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liquidation of the assets of a failed bank. This was relieved in part by the readiness with which banks took over the guaranty certificates issued for deposits in failed banks.[29] It was remedied in 1924, as a matter of law, by the amendment permitting earlier payments from the fund. But the deficiency of the fund then prevented prompt payments. The inability to make payments promptly was a serious defect, not only because deposit insurance does not adequately fulfil its purpose if deposits are kept unavailable to their owners for a long period of time, but also because the interest on them increases the ultimate cost. In Mississippi, the interest cost on the certificates and on the State bond issue used to retire them was ultimately four-fifths as large as the principal of the depositors' losses met from the fund and the bond issue.

It is probable that examination and supervision of the participating banks was not as thorough, and that some of the regulatory restraints on bank operations, such as limitations on loans to particular interests were not as vigorous, as is desirable. Most certainly, supervision suffered, as in many other States, from lack of adequate financial support. However, it does not appear that unduly lax supervision or regulatory restraints was a vital element in the failure of the system.

29/ When the bond issue was authorized, about $2 million of the $5 million outstanding guaranty certificates were held by Mississippi banks. The Mississippi Banker, July 1931, p. 21.

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DEPOSIT GUARANTY

IN

SOUTH DAKOTA

Clark Warburton, Chief
Banking and Business Section
Division of Research and Statistics
August, 1958

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DEPOSIT GUARANTY IN SOUTH DAKOTA

The South Dakota law for insurance of bank deposits was enacted March 5, 1915, with the insurance becoming effective at the beginning of the following year. At the time the law was enacted, five States had deposit insurance plans in operation.

In 1923, the fund became unable to meet its obligations to the depositors of failed banks. The system was discontinued as of July 1, 1927, under a law dated March 4 of that year.

ORIGIN AND CONSTITUTIONALITY OF THE DEPOSIT GUARANTY LAW

Background of the guaranty legislation. A plan for deposit insurance combined with a State guarantee was developed by a group of South Dakota bankers in 1905. This proposal, on which the Legislature did not take action, was described as follows:

> A number of the leading bankers of South Dakota have taken steps for the introduction of a bill in the state legislature providing for the insurance by the state of the deposits in the various banks within the state. Under this proposed law the state government would guarantee the safety of deposits in all solvent banks. Such guaranty would, of course be given only to banks which proved on examination to be solvent and well managed, and the result would be a much more rigid and frequent examination on the part of the state examiners.
>
> The plan is for the banks to pay a considerable tax proportioned to their deposits, which would be held by the state treasurer and the fund so raised would be managed as an insurance fund to pay the losses of depositors in any insured bank which for any reason was compelled to close its doors. Those behind the movement declare that under this plan the state would risk nothing, as the banks themselves would pay these losses. It is believed the solvent banks could well afford to pay the losses of those which fail, for with all deposits secured by the state the deposits of all banks would largely increase. The main idea of the proposed law is to prevent the demoralization which results

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in a community when a bank closes its doors and ties up the funds of the business men and others. 1/

In the election campaign of 1908, both the Democratic and Republican parties favored a deposit guaranty law. The opposition of bankers was sufficient to prevent adoption of a compulsory law similar to that in operation in Oklahoma, or under consideration in Nebraska. A plan for deposit insurance with voluntary participation, as in the Kansas plan also under consideration at that time, was approved. An initial membership fee of $100 to $170, graduated according to capital stock, annual premiums of one-tenth of 1 percent of deposits, and an initial participation of 100 banks, were required. Special assessments, if necessary, of not over four-tenths of 1 percent in any year, could be levied. All deposits were protected, and participating banks could not pay over 5 percent per year on any of its deposits. The plan never went into operation because of an insufficient number of initial participants. 2/

During the next few years the deposit insurance systems of other states were operated successfully, and in South Dakota proposals for deposit insurance were discussed at each session of the Legislature and at the annual meetings of the South Dakota Bankers Association. At the Legislative session which opened in January 1915, several bills, including one developed by representatives of the state bankers association, were introduced; and out of these was developed the law enacted in March. 3/

1/ The Northwestern Banker, Vol. 10 (January 1905), p. 9. Whether the bill was introduced has not been ascertained. The South Dakota Senate Journal and House Journal for 1905 each list one bill for amendment of the banking code, which was referred to committee but not reported, without a description of the nature of the proposed amendment.

2/ Session Laws of South Dakota, 1909, pp. 491-96; Thornton Cooke, "Insurance of Bank Deposits in the West," Quarterly Journal of Economics, XXIV (November, 1909), p.

3/ Journal of the Senate and Journal of the House, South Dakota, 1915; Annual Reports of the South Dakota Bankers Association, 1911-1916, particularly that for 1915, p. 60.

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Purpose and constitutionality of the South Dakota law. The decisions of the United States Supreme Court in the Oklahoma, Kansas, and Nebraska cases had established the constitutionality of deposit insurance legislation as a proper exercise of the police power of the State. The South Dakota law rested on the same foundation and was not challenged for a decade. In 1925, after the fund had been unable for more than two years to meet the claims arising from failed banks, one of the participating banks applied to the State Supreme Court for a writ of prohibition against collection of further assessments for the guaranty fund, on the ground that the fund "is so hopelessly insolvent that it is now of no use or benefit to the solvent banks, affords no protection to depositors therein, and that to levy and collect the assessment under such circumstances" is in violation of the Fourteenth Amendment to the Federal Constitution, and of similar clauses relating to taxation in the Constitution of South Dakota. The Court did not agree, stating its reasons as follows:[1/]

> In this case the objection is not to the amount of the charge, but to the purpose for which it is made. Changed conditions have not changed the purpose. If the purpose of the law was legitimate, and the act therefor constitutional at the time of its enactment, perforce it must remain so, although because of changed conditions its purpose is no longer useful or desirable. Its uselessness may be a cogent reason for its repeal by the lawmakers, but it can have no weight with the court in construing it. If the law was constitutional when enacted, it now is...
>
> Statutes creating a depositors' guaranty fund have been enacted in many states. Some of the earlier statutes required contribution only from banks which should be chartered subsequent to the passage of the act, or banks which should elect to take the benefit of the fund and contribute to its establishment... Later statutes in many states have made it compulsory upon the state banks to contribute according to the amount of their deposits to such fund. These statutes have been unanimously upheld by the state courts, and the United States Supreme Court has declared that such statutes do not violate the federal constitution...

1/ First State Bank of Claremont vs. Smith (1926), 207 N.W. 467, 49 S.D. 518.

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> ...we know of no case, and none has been called to our attention, where a similar statute has been held unconstitutional on any ground. Such provisions have been sanctioned, by eminent authority, as a legitimate exercise of the police power.

The constitutionality of deposit guaranty legislation was again reviewed by the State Supreme Court in 1931, in a case pertaining to the disposition of the remainder in the fund after the insurance system had been terminated by legislation.[1/] The Court retained its view that the South Dakota deposit insurance legislation was constitutional, supported by the same type of reasoning as that of the United States Supreme Court. A portion of the opinion is quoted below because of its detailed description of the nature of banking, the difference between failure of a bank and that of another kind of business, and the purpose of deposit insurance.

> The situation between a bank and its creditors is entirely different [from the relation of debtor and creditor generally]. At the present time, and as a result of the growth and development of banking and the increase in the volume and complexity of commerce and business, the chief function of the commercial bank is the manufacture and issuance of credit, and that bank credit is the circulating medium of exchange by means of which, according to the computations of different economists, from seventy-five to ninety per cent. of the business transactions of this country are conducted and accomplished. Actual money in the sense of legal tender currency has become, as one economist puts it, "merely the small change of the business world." This bank credit is emitted in two forms: First, by note issues which circulate from hand to hand. That form of bank credit is but a small fraction of the total. By far the greater portion of bank credit is issued in the form of a deposit credit which circulates throughout communities in the form of checks, drafts, etc., drawn against the deposits. This deposit credit originates in two different ways: First, a man may deposit his own money in a bank to the credit of his account, whereby the bank becomes his debtor and he acquires an equivalent amount of usable bank credit. Second, a man "borrows money" of the bank by which transaction he becomes the debtor of the bank and the bank his creditor. But, instead of taking the proceeds of his loan in money,

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1/ State v. Smith (1931), 234 N.W. 764, 58 S.D. 22. The finding of the court with respect to disposition of the balance of the fund is described in a later section of this report.

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he takes it in the form of a deposit credit, and in that phase of the dual transaction the bank becomes the debtor and he the creditor. By such a transaction the relation of debtor and creditor arises twice--the bank once creditor and once debtor, and the individual likewise--and the net result is that the individual has exchanged his personal credit for the credit of the bank, which is a usable, circulating medium for the transaction of business.

The primary business of commercial banking is the properly balanced building up and maintaining at all times of a vast number of such relationships of debtor and creditor--of exchanging its own credit either for the money or for the credit of its depositors, and the bank deposit credit created in that fashion is today the exchange medium whereby most business is transacted. It is divided and subdivided into various amounts and passes from hand to hand and from bank to bank through clearing house transactions, and comes into the ownership of a vast number of people who acquire it in the ordinary course of the transaction of business, and who could scarcely stay in business should they refuse to receive it, and who have no knowledge of, or direct dealings with, the bank whence such deposit credit originally issued. If that bank credit thus in general circulation is not stable, and is not kept good in such fashion that the bank redeems it upon demand, the whole community is adversely affected. The credit does not continue to be a purely personal and private affair between the bank which issued the credit and the depositor who originally acquired it, but it has gone forth through the entire community and into a vast number of channels as the medium for conducting the business of the community. There is therefore a vital public interest in the maintenance of that credit and the stabilization thereof. If the grocers of the state do not maintain their credit and pay upon demand, comparatively few persons are affected. If the banks of the state do not maintain their credit and pay upon demand, all the business and economic interest of the state are vitally and tremendously affected thereby. The existence of this public interest is the fundamental and underlying reason which justifies laws regulating, supervising, and controlling the operation of banks, which justifies such enactments as the Bank Guaranty Law, and we know of no court which has ever attempted to justify such statutes upon any other basis. The primary object of guaranty fund legislation is not merely to guarantee the payment of creditors of banks as such, and upon that basis merely such legislation could not be validly enacted. The justification for its enactment lies entirely in the fact that so many persons are interested in the stability of bank credit, and that such credit travels so far beyond the depositors to whom it is originally extended and enters to such an extent into all the affairs and transactions of a whole community that it becomes so "affected with a public interest" that in the exercise of the police power for the public welfare the Legislature may take steps which it deems requisite and adapted to the maintenance and stabilization of such credit, even to the extent of in some degree taking the money of one banker to pay the creditors of another, when there is no connection between said bankers, excepting the fact that they are engaged in the banking business in the same state.

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CHARACTER OF THE GUARANTY LEGISLATION

Admission of banks. All banks engaged in the business of banking under the laws of South Dakota, including private banks, were required to participate in the deposit guaranty plan. However, every bank was examined before the insurance became effective; and the condition of each bank was reviewed by the Depositors' Guaranty Fund Commission, which administered the deposit guaranty system. The law provided that any bank which failed to comply with conditions imposed by the Commission should be liquidated as an insolvent bank.

The Depositors' Guaranty Fund Commission held its first meeting in May 1915. Subsequent meetings to the end of the year were largely concerned with reviewing the reports of examinations. The majority of these were tentatively accepted and approved, but many were approved only on specified conditions such as collection or removal of certain assets, and a few were disapproved. In one case, for example, the following motion was adopted by the Commission.

> ...that the report of this bank for the close of business April 19th, 1915, be not approved and that the Public Examiner is directed to advise the bank accordingly; and that such report has met the disapproval of the Commission for the particular reasons as follows: That it does not appear to the Commission that the interest of the bank as a Corporation and the interest of the creditors are being properly conserved; that the practice of accepting series of notes or companion notes, in the making of large loans with the so-called "split" mortgages where a part of the loan is sold and the mortgage assigned therewith, is objectionable; that the practice of the officers of the said bank in borrowing large amounts on their individual responsibility for the purpose of relieving said bank of the necessity of showing rediscounts or Bills Payable in their statement, incurs a moral responsibility upon the bank which is not shown or reflected by the statement, and such a practice is not approved of; that the excessive loans should be reduced to come within the limit of the law, the practice of borrowing on the individual responsibility of the officers for the benefit of the bank should be discontinued and the line of obligations now in existence as the result of such practice shall be reduced in the order of their maturity.

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In another case the report of the examination was rejected and the bank advised that an assessment of 100 percent on the capital stock must be paid. In other cases the Commission recommended a merger or liquidation. By the end of December when the Commission took final action, about five hundred banks were operating, most of which had met the required conditions. At that time the Commission rejected 19 banks unless specified conditions were corrected. A few weeks later these were approved. No liquidations were necessary.[1/] Of the banks approved and admitted, twelve were private banks, and eight were trust companies which engaged in deposit banking.

Deposits guaranteed. Deposit guaranty in South Dakota covered all deposits not otherwise secured. It did not apply to a bank's obligation as indorser upon bills rediscounted, nor to bills payable, nor to money borrowed from its correspondents or others. In 1917 the protection was extended to holders of exchange in good faith, and in 1919 a rephrasing of the law made the qualification "in good faith" applicable also to deposits. In the original legislation banks complying in full with the deposit guaranty law were not required to post securities or bonds to become depositories of public funds. In 1925 the required posting of security for State funds was reimposed, and all State funds excluded from the protection of the guaranty fund.

Several cases involving the definition of guaranteed deposits were brought before the State Supreme Court, though the number of such cases was fewer than in the States which had enacted legislation in earlier years. The first

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1/ Information derived from Report of the Public Examiner, 1916, p. 39, and Minutes of the Depositors' Guaranty Fund Commission, in the office of the Superintendent of Banks, which were examined by the author of this report in September, 1956. The precise number of banks operating in South Dakota on Jan. 1, 1916, is unavailable; the number was 530 on Nov. 10, 1915, and 499 on March 7, 1916.

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such case involved a certificate of deposit for United States Government bonds, which were to be sent to a Minneapolis bank for safekeeping, repayable in bonds of the same issue and with interest at the same rate as that on the bonds. The bank, which had failed, had converted the bonds to its own use. The State Supreme Court held that the transaction did not constitute a deposit of money or its equivalent by the owner, and was neither a general nor special deposit within the protection of the deposit guaranty law.[1/] Two other cases involved certificates of deposit issued for United States Government bonds sold to a bank at the par value of the bond. In one case, in which the certificate of deposit bore interest at 5 percent, the maximum permissible rate, the Superintendent of Banks argued that the bank was really paying a higher rate of interest, because such bonds were selling elsewhere slightly less than par; but the State Supreme Court disagreed, holding that the prices elsewhere were immaterial and purchase of the bonds at par from a customer was a transaction in good faith. In the other case, however, the bond had been sold to the bank through an intermediary, who received a commission; and the Court held that the recipient of the certificate of deposit had no intention or desire to be a depositor in that bank and did not become a depositor in good faith, and therefore was not protected by the guaranty fund.[2/]

Three cases reaching the South Dakota Supreme Court and the decisions respecting them were similar to cases arising in other States, namely, that deposits bearing a higher rate of interest than the maximum permitted by law or the ruling of the Depositors' Guaranty Fund Commission pursuant to the law, and deposits that represented borrowings by the bank, were not covered

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1/ Spry v. Hirning (1923), 191 N.W. 833, 46 S.D. 237.
2/ Ahearn v. Smith (1926), 211 N.W. 448, 50 S.D. 633; Dockstader v. Smith (1930), 229 N.W. 299, 56 S.D. 433.

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by the guaranty fund.[1] But a claim that the real rate of interest on a certificate of deposit was higher than the stated rate because of complicated transactions prior to the last renewal of the certificate was not upheld: the present certificates, said the Court, were not tainted by the past transactions.[2]

Assessments. Participating banks were assessed annually, on the first of February, one-fourth of 1 percent of average daily deposits, excluding deposits not eligible for guaranty, during the preceding calendar year. Under the law assessments were to cease when the guaranty fund reached 1½ percent of the aggregate average daily deposits, to be resumed if the fund fell below 1 percent of such deposits. No provision was made for additional assessments if found necessary, nor was any requirement made for the posting of bonds or cash as surety for the payment of assessments. However, provision was made for issuance of interest-bearing certificates of indebtedness in the event the guaranty fund became depleted.

A bank organized after January 1, 1916, was required to pay into the fund an amount equal to 4 percent of its capital stock, to be adjusted subsequently on the basis of the bank's first annual statement. The Depositors' Guaranty Fund Commission was required to adjust subsequent assessments so that the initial payment, plus the first two assessments on average deposits would at least equal 1 percent of the bank's average daily deposits shown on its first annual statement. This was modified in 1919 to a just and equitable sum to place the bank on an equal basis with those previously admitted.

If a participating bank desired to liquidate or become a national bank, it was entitled to a refund of such portion of assessments paid which had not been used, provided that it should not be released from its proper proportion of outstanding certificates of indebtedness of the fund issued to depositors of failed banks.

1/ First National Bank v. Hirning (1925), 204 N.W. 901, 48 S.D. 417; Mildenstein v. Hirning (1926), 207 N.W. 979, 49 S.D. 558.

2/ Muckler v. Smith (1929), 224 N.W. 225, 54 S.D. 618.

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Indebtedness of guaranty fund. In case of an insufficiency of the guaranty fund, a certificate of indebtedness was to be issued in favor of the bank. This certificate drew interest at 5 percent per year and was payable on the first day of March next succeeding the day of issue out of the first money accruing to the depositors' guaranty fund. In 1921, the law was modified to state that the certificates were to be negotiable, to bear interest not to exceed 7 percent per year, and to be salable or assignable by the Superintendent of Banks with the proceeds used to pay the insured depositors; or as an alternative, in the discretion of the Guaranty Fund Commission, to be issued payable to the depositors with interest at 5 percent per year.

Administration and custody of the fund. The Depositors' Guaranty Fund Commission, which administered the South Dakota deposit insurance system, was composed of the Superintendent of Banks and three persons appointed by the Governor, no one of whom could be an officer or director of a national bank. The three members other than the Public Examiner were appointed for terms of two years. Until 1919, they were chosen from among twelve persons nominated by an Executive Council of the State Bankers Association, which was composed of a member of the board of directors of each participating banks, selected by that board. The Public Examiner was chairman and executive officer of the Commission and was appointed for a period of four years.

The Commission was empowered to adopt necessary rules and regulations for the management and administration of the fund, and selected one of its members as treasurer. Quarterly meetings of the Commission were to be held in the office of the Public Examiner. Special meetings could be called by the Public Examiner, or by two of the members.

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The fund remained in the custody of the banks, each bank retaining its contribution subject to payment on the demand of the Commission. In case of suspension or insolvency, the amount to the credit of the fund was a first lien on the bank's assets, except for priority of funds belonging to an insolvent institution deposited by the Superintendent.

Expenses of administration. Members of the Commission, other than the Superintendent of Banks, were paid from the general fund of the State at the rate of five dollars per day, increased in 1919 to seven and one-half dollars, plus expenses for the time actually served.

Method of paying depositors and of liquidating failed banks. When any bank doing business under the provisions of the banking and guaranty law of South Dakota suspended or became insolvent the Superintendent of Banks took possession. He proceeded immediately to determine the amount necessary to pay the insured depositors in full. This amount was certified to the Depositors' Guaranty Fund Commission which thereupon drew against the depositors' guaranty fund in the several banks. The treasurer of the Commission transmitted the amount required to the Superintendent of Banks, who in turn applied them to discharge the obligations due depositors in failed banks.

The Superintendent of Banks was in charge of liquidation of all failed banks. He collected all debts and claims, and upon application to and order of the circuit court, sold the real and personal property of the bank and sold or compounded bad or doubtful debts. In 1921, the Superintendent of Banks was authorized, with the advice and consent of the Guaranty Fund Commission, to take over and operate as a going concern, by himself or his deputy or an examiner, a bank that appeared to the Commission to be conducted in an unsafe or unauthorized manner, or unsafe or inexpedient to continue business, or with

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reserve below the legal requirements. The Depositors' Guaranty Fund Commission was authorized to draw not over 15 percent of the amount in the guaranty fund to enable the Superintendent of Banks to make deposits in banks managed by him. The Superintendent could place any such bank in liquidation at any time, or return it to the officers of the bank upon repayment of such deposit and termination of the reasons for assuming its control.

In 1925 the Superintendent of Banks was authorized to approve the reorganization of a failed bank according to a plan adopted by creditors representing 80 percent of the bank's deposits, with the plan binding on other depositors.

SUPERVISION AND REGULATION OF BANKS

Banking code and supervising authority. South Dakota's first banking code, enacted in 1891, two years after adoption of the State constitution, provided for the incorporation of banks and limited the right to engage in banking to associations conforming to the provisions of the code. The law was declared unconstitutional on the ground that the power of the Legislature over banking was limited to the issuing of bills or paper credit designed to circulate as money. A reference was made to this decision in the proceedings of the State Supreme Court in 1931 regarding the constitutionality of the deposit guaranty legislation and disposition of the balance in the depositors' guaranty fund.

> In 1892 the attitude of the Court was that the right of the individual to engage in the business of banking was just as much a common prerogative and an inalienable right as were his right to engage in merchandising, blacksmithing or farming, and that the business of banking was not of such a public character as would justify the state in invoking the police power to regulate the same. This decision...illustrates...how far we have traveled in the past forty years, and how radically we have changed our views with reference to the powers of the state to regulate and control business, which, while of a purely private character, concerns and affects the public welfare. 1/

1/ Brief of Defendents and Intervenor, State v. Smith (1931), pp. 93-94.

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In 1903 the Legislature enacted a banking code which did not limit the right of an individual to engage in banking, and thus avoided the issue on which the earlier law had been declared unconstitutional. The provisions of the code regarding reports, examinations, and handling of insolvent banks, applied both to incorporated and private banks. It established a Department of Banking, headed by a Public Examiner who was ex officio Superintendent of Banks. The code was rewritten in 1909, and again in 1915 at the time the deposit guaranty legislation was enacted. In the latter year, the Banking Department was designated the Department of Banking and Finance. In 1919, the title of Public Examiner was dropped, the head of the Department being entitled Superintendent of Banks.

Under the 1915 law, the Public Examiner was appointed by the Governor for a term of four years, and with the approval of the Governor was authorized to appoint a deputy examiner. Both the Public Examiner and the deputy must have had three years acutal practical experience in the general banking business, or served for a like period in the Banking Department of South Dakota or in another State. These requirements were continued when the title of the head of the Department was changed in 1919. From 1917 to 1921 provision was also made for a second deputy, who should be a person with business ability and experience.

Powers of the Superintendent of Banks. The duties of the Superintendent of Banks were principally the examination of all State banks, the liquidation of failed banks, and the management (with three other commissioners) of the depositors' guaranty fund. In 1921, as has been noted above, the Superintendent of Banks, with the advice and consent of the Guaranty Fund Commission, was authorized to take charge of a failing bank and manage it

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as a going concern, later placing it in liquidation or returning it to its officers if the reasons for assuming control no longer existed and any deposits of money of the guaranty fund were repaid.

The Superintendent of Banks was required to make at least two examinations each year of each operating bank (except national banks) and additional examinations if requested by a bank's board of directors. He was required to make the special examination of each bank prior to admission to the deposit insurance system. In general, the examination fee was one one-hundredth of one percent of the gross assets of the bank for each examination. The minimum charge was ten dollars.

The supervisory powers of the Superintendent of Banks during the period of operation of the deposit insurance system are summarized in Table 1.

Powers of the Depositors' Guaranty Fund Commission. There was no specific requirement in the law that the Commission should examine or review the condition of insured banks. However, the law provided that the Public Examiner could require the advice and opinion of the Commission when conditions in a bank which had been admitted to the guaranty system became such as to cause him to doubt the advisability of permitting it to continue in business. The minutes of the Commission show that as a matter of practice, it reviewed, apparently each year, the examination reports of the Public Examiner or Superintendent of Banks. The Commission also requested the removal of certain assets by specific banks and occasionally ordered stockholders' assessments, restoration of reserves, or other actions by a bank. On one occasion, certain banks were ordered to make weekly reports to the Commission.[1/]

1/ Minutes of the Depositors' Guaranty Fund Commission, Dec. 5 and 6, 1923.

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Table 1. SUPERVISORY POWERS OF THE SUPERINTENDENT OF BANKS IN SOUTH DAKOTA, 1915-1927 1/

Item	Powers 2/
Opening of new banks	Superintendent to issue certificate to commence banking business if examination proves bank lawfully organized, if town warrants a new bank and incorporators are not prompted by malicious, speculative or any other than honorable motives.
Examinations and reports of condition	
Frequency of examinations	At least twice a year; any additional examinations to be at request of Board of Directors of bank or when in judgment of Superintendent necessary or advisable.
Scope of examination	To ascertain whether business conducted in manner prescribed by law and at location designated in Articles of Incorporation.
Reports of condition	At least five times a year, in form prescribed by Superintendent, and any additional reports whenever Superintendent deems it necessary to be fully informed of bank's condition. In 1923, three times a year.
Bank management	
Removal of undesirable assets or discontinuance of undesirable practices	No specific provision.
Impairment or deficiency of capital or reserves	Superintendent to require impairment of capital or reserves to be made good within 30 days.
Removal of bank officers, directors, or employees	Superintendent may require removal of any officer found on examination to be dishonest, reckless, incompetent, or dilatory. In 1927, Depositors' Guaranty Fund Commission authorized to pass on qualifications and fitness of all officers.
Taking possession of a bank	To take possession of a bank: If charter or any law of the state violated; If conducting business in unsafe or unauthorized manner; If capital stock impaired, or bank fails to make impairment good upon order of examiner; If inspection of books, papers, or affairs is refused; If officer refuses to be examined under oath; If payment of obligations is suspended or refused;

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Table 1. SUPERVISORY POWERS OF THE SUPERINTENDENT OF BANKS IN SOUTH DAKOTA, 1915-1927 - continued

Item	Powers
Taking possession of a bank - continued	If from examination or report, Superintendent concludes bank is in unsafe or unsound condition, or that it is unsafe or inexpedient for it to continue business; If bank fails to restore impaired reserves within 30 days after notice by Superintendent; If directors fail for 30 days after demand to make good any loss sustained by knowingly violating, or knowingly permitting any officer, clerk, or employee to violate any provision of the banking code; If bank places affairs in hands of Superintendent.
Handling of closed banks Return to owners	If bank deems itself aggrieved by action of Superintendent may apply to circuit court of county within ten days, and if court so orders, bank to be returned to owners. In 1925, Superintendent authorized to return bank if depositors representing 80 percent of the deposits present in writing an acceptable reorganization plan.
Operation as going concern	In 1921, with the advice and consent of the Guaranty Fund Commission, authorized to take charge and control a bank and operate it as going concern if business is being conducted in an unsafe or unauthorized manner, if unsafe or inexpedient to continue business, or reserve below legal requirements. To be returned to owners when reasons for its possession no longer exist.
Liquidation	Unless returned to owners, closed bank to be liquidated by Superintendent, or person designated by him.
Sale of assets or capital stock	Upon court order, bad or doubtful debts may be sold or compounded, and real and personal property may be sold at competitive bidding.
Consolidation of banks	Bank, with written notice to and after examination by Superintendent, may consolidate with bank in same town in order to liquidate.

1/ Until 1919, the Superintendent of Banks was officially designated as Public Examiner.

2/ As at beginning of deposit guaranty law (i.e., as granted in 1915 law) with amendments until the 1927 law which terminated the deposit insurance system.

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The law prohibited payment of interest on deposits by any bank at a rate higher than 5 percent per annum unless authorized by the Depositors' Guaranty Fund Commission. The Commission could authorize not more than 5½ percent, to be uniform within any county. In 1920, the rate which the Commission could authorize was raised to 6 percent. At the first meeting of the Commission in May, 1915, it ruled that no more than 5 percent per year be permitted to be paid on deposits. In November 1920, after the change in law, the Commission authorized 6 percent interest on time deposits through the following September, which was extended to October 1922, when the maximum rate reverted to 5 percent.[1/]

The Depositors' Guaranty Fund Commission in South Dakota did not have, as in Nebraska, any power to operate or to liquidate banks which had failed. Those powers were held by the Superintendent of Banks.

Supervisory experience. There was more continuity in the headship of the Banking Department in South Dakota than in some of the other States with deposit insurance systems. The Public Examiner (Superintendent of Banks) when the deposit guaranty law went into effect, J. L. Wingfield, resigned two years later. His successor, John Hirning, held the office for eight years; and the next incumbent, F. R. Smith, remained until some time after the closing of the deposit insurance system. There was also a high degree of continuity in the membership of the Depositors' Guaranty Fund Commission, except for a turnover of the entire membership in January 1925. Only one other change in the membership occurred, though the terms of office of the members were only two years.

As in other States with deposit insurance, the examining load was heavy, though not so great as in some of the States. In 1916 the examining staff, in addition to the Public Examiner and his deputy, consisted of eight

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1/ Minutes of the Depositors' Guaranty Fund Commission, and Muckler v. Smith (1929), 224 N.W. 225, 54 S.D. 618.

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persons. In subsequent years, while the deposit insurance system continued, the number, as given in the biennial reports of the department, was nine, with only seven on one occasion and ten at another time.[1/] With two examinations a year of each bank, each examiner was apparently required to make about 125 bank examinations a year during most of the period of operation of the law. Toward the end of the period, the number of banks decreased substantially, and the load per examiner was therefore lighter.

The salary of the Superintendent of Banks was $3,000 to 1921, when it was raised to $4,500. Salary of examiners, estimated from the appropriations provided, was $2,000 after 1920. Annual expenses of the Banking Department ranged from $40,000 to $80,000 per year, equivalent to about $65 to $150 per bank.

No appraisal of the quality of bank supervision in South Dakota during the period of operation of deposit guaranty has been found in the various sources providing information on the operation of the system.

Statutory limitations on bank operations. The principal statutory limitations on banking operations, under the banking law in force at the beginning of deposit insurance and amendments adopted while the law was in operation, are summarized in Table 2.

INSOLVENCY AND CLOSING OF THE GUARANTY FUND

Inadequacy of the fund. In South Dakota, as in other States with deposit insurance systems, the depression of 1921 and the adversities of agriculture in the middle twenties brought numerous bank failures in their wake, with a heavy accumulation of liabilities falling on the fund. However,

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1/ Special examiners in charge of suspended banks are not included in these figures.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN SOUTH DAKOTA, 1916-1926.

Item	Provisions of law 1/
Responsibility of officers, directors, and stockholders	
Examination of bank	Board of directors, or committee of stockholders appointed by the board, to make at least twice a year a thorough examination of bank's books, records, funds, and securities.
Losses resulting from violation of law	Directors, officers, and any other persons participating in violation of law relating to banks or banking liable for all damages.
Liability of stockholders	Double liability.
Bonding of officers and employees	Required in a minimum amount of $5,000 for all officers and employees having access to or care of funds, subject to approval of Superintendent. In 1925, amended to require bond for officers in amount not less than 20 percent of capital stock or $5,000, and for employees, $5,000.
Limitations on loans and investments	
Loans to bank examiners	No provision.
Loans to officers and employees	To be approved by all members of the board of directors and secured with ample collateral or by a responsible endorser, each such loan to be immediately reported to the Superintendent.
Loans to directors	Resident directors, no specific provision; non-resident directors, same as for officers and employees.
Loans to stockholders	Total, including to any firm or corporation in which stockholder is interested, not to exceed 50 percent of paid capital of bank.
Maximum to single borrowers (not to apply to discounts of bills of exchange or commercial paper actually owned by person negotiating the same)	20 percent of paid capital and surplus, with all members of a corporation or firm treated as a single borrower.
Maximum secured by real estate	No provision.
Secured by own capital stock (applicable also to purchase of own stock)	Forbidden, unless acquired to prevent loss on debt previously contracted, to be disposed of within 6 months of acquisition.
When reserve is deficient	Loans and discounts not to be increased except by discounting or purchasing bills of exchange payable at sight or on demand.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN SOUTH DAKOTA, 1916-1926 - continued

Item	Provisions of law
Limitations on loans and investments - continued	
Maximum total loans and investments	No provision.
Limitations on ownership of real estate and stocks	
Maximum in banking house and equipment	40 percent of capital and surplus; with holdings at passage of act in excess of this to be reduced by 5 percent of book value per year.
Other real estate	Prohibited, except for apartments included in banking office which may be rented as a source of income.
Corporate stocks	Forbidden, except Federal Reserve bank stock required for membership.
Time limit on assets acquired by collection of debt	Real estate, five years, with extension at discretion of Superintendent, but to be sold or charged out of bank's assets within one year; other assets, six months.
Limitations relating to deposits	
Maximum aggregate deposits	Fifteen times capital and surplus to be determined by six-month average of deposits.
Maximum rate of interest payable on deposits	5 percent, or 5½ percent (in 1920, 6 percent) if authorized by Guaranty Fund Commission for an entire county.
Receipt of deposit when insolvent	Forbidden.
Required reserves	
Total required	20 percent of total deposits, 25 percent for banks serving as reserve depositories; in 1917, 17½ percent and 20 percent, respectively.
In actual cash in bank	To be determined by Board of Directors.
Permissible character of balance	On deposit in reserve depositories approved by Superintendent. In 1925, up to 60 percent of required reserves may be in U.S. bonds (at market value of bonds).

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN SOUTH DAKOTA, 1916-1926 - continued

Item	Provisions of law
Limitations on borrowing	
Maximum amount	Not specified. Borrowing for temporary purposes in form of bills payable to be reported to Superintendent, who may require repayment if bank appears to be borrowing habitually for reloaning (not applicable to rediscounting commercial paper equal to one-half of capital stock). In 1918, limitation on rediscounting commercial paper removed, with habitual rediscounting for reloaning subject to required repayment at order of Superintendent.
Maximum value of assets pledgeable as security	150 percent of amount borrowed; in 1925 not to exceed 150 percent of paid capital and surplus of bank.
Limitations on payment of dividends	
Earnings to be carried to surplus prior to dividends	10 percent of net profit until surplus equal to 20 percent of capital stock.
When losses equal or exceed undivided profits	Forbidden.
When reserve is impaired	No specific provision.
When insolvent or capital impaired	Forbidden.
Minimum capital stock	
New banks	Graduated by population of town: 1,500 or less population - $15,000 1,500 to 2,500 population - 20,000 2,500 to 5,000 population - 25,000 5,000 or over population - 50,000
Other banks	Capital to be increased to $15,000 and such additional amounts necessary to comply with above requirements whenever average ratio of deposits to capital stock and surplus is 15 to 1 for a six-month period.

1/ As at beginning of the deposit guaranty system (i.e., as in the 1915 revision of the banking laws, with amendments prior to March 1927).

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the failures did not begin as quickly as in some other States, though the income of the people fell more precipitously than in any other State. Only three failures had occurred in South Dakota from the beginning of the insurance system until 1921, and there was only one in that year.[1/] In 1922 there were nine, but in the next three years there were many.

The South Dakota deposit insurance system was less able to withstand a wave of failures than those of Texas, Nebraska, and Oklahoma in which assessments of more than one-fourth of 1 percent per year were possible when needed. In March 1923, when sixteen failures had occurred with deposits paid in full by the fund, the balance was insufficient to meet the claims arising from the next failure. About four months later, when the deposit liabilities of the bank had been established, the Depositors' Guaranty Fund Commission ordered certificates of indebtedness, bearing 5 percent interest per year and payable out of the first money accruing to the fund, to be issued to the respective claimants for unsecured deposits and exchange in good faith. In April 1924, after the assessment for that year had been made, the Commission declared a 50 percent dividend on those certificates. By that time certificates of indebtedness had been issued in numerous other failures, and with additional failures it was apparent that the outstanding obligations of the fund were so large relative to the annual receipts from assessments that several years would be required to catch up--regardless of future failures.

The insolvency of the South Dakota depositors' guaranty fund led to attempts to repeal or alter the law, and also to disputes which reached the

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1/ According to the estimates of Maurice Leven, Income in the Various States (National Bureau of Economic Research, 1925), p. 249, total income from all sources by individuals in South Dakota in 1921 was 58 percent smaller than in the previous year, and 65 percent smaller than in 1919. In only ten other States was such income smaller in 1921 than in 1919, with percentages ranging from 1 to 45.

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State Supreme Court regarding assessments due from participating banks and regarding priority of the claims of the depositors in various failed banks.

Statutory termination of the deposit insurance system. By the middle of January 1925, less than two years after the fund began to issue certificates of indebtedness because of insufficient funds to pay depositors' claims in failed banks, such certificates had been issued to depositors of 133 banks, with the amount outstanding approximately $33 million. This was a hundred times the assessments on participating banks in 1924.

In March 1925 the Legislature passed a bill which would terminate the deposit insurance system as of January 1, 1926, with banks paying the assessment due early in 1926 on their average deposits during 1925. A Depositors' Advisory Commission, as successor to the Depositors' Guaranty Fund Commission, was to distribute the remaining balance in the fund, as soon as the greater part of the assets of the failed banks had been collected, to the unpaid depositors in proportion to the amount of their original claims.[1/] However, the law was made subject to a referendum in November 1926, and was then rejected so that it never became effective. Another law of the same date, which was not subjected to a referendum, outlined a procedure for paying each year, after the assessment on participating banks had been collected, a dividend on the outstanding certificates of indebtedness. The dividends were to be on a pro rata basis, thus removing the priority accorded earlier issues under the original law.[2/]

Two years later, when the next session of the Legislature again considered termination of the insurance system, about 80 more banks had failed,

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1/ Session Laws of South Dakota, 1925, ch. 99.
2/ Ibid., ch. 100.

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and the total outstanding certificates of indebtedness, without allowing for dividends from liquidation of the assets of the failed banks, had increased to about $44 million. The total deposits of the participating banks had declined by about one-third, with reduced receipts of the fund from assessments. However, there was continued popular opposition to an outright repeal of the law. In March 1927, an act was passed and approved which continued the Depositors' Guaranty Fund Commission and the annual assessments on all State banks, but required the Commission to collect the assessments and deposit them in the State Treasury as a "guaranty fund" to the credit of each of the banks individually. This, of course, was in fact simply a very small reserve fund for each bank deposited with the State Treasury, and terminated the deposit insurance system.

State Supreme Court decisions regarding assessments. The insolvency of the guaranty fund and the large issues of certificates of indebtedness led to an attempt by participating banks to offset certificates of indebtedness which they held against their assessments, and to problems of interpretation of the law regarding assessments on banks wishing to nationalize and on new banks.

One of the participating banks brought suit to prevent collection of the annual assessment due in February 1925, claiming the right of offset against certificates of indebtedness of the guaranty fund, due in March 1925, which it held. The State Supreme Court decided that the assessment claim against the bank and the certificate claim against the fund were not of the same quality and character, and one could not be offset against the other.[1/]

1/ Farmers' State Bank of Canton v. Smith (1926), 209 N.W. 358, 50 S.D. 250.

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In 1926, a bank that desired to nationalize offered to pay the regular assessment that would become due the following year, but objected to payment of a pro rata share of outstanding unpaid certificates of indebtedness of the fund which was demanded by the Superintendent of Banks. The State Supreme Court ruled that the liability of the bank was limited to the assessment pertaining to that year.[1/]

In 1931, after the deposit insurance system had been abandoned, a case reached the State Supreme Court regarding the adjustment to a "just and equitable sum" of the assessment on a bank organized in 1926. The bank claimed that inasmuch as the guaranty fund was insolvent at that time, with outstanding certificates of indebtedness far exceeding the amount held by the fund, its "just and equitable sum" was zero and its initial $4,000 at 4 percent of capital stock should all be refunded. The Court sustained the Superintendent of Banks in making the adjustment on the basis of the amount to the credit of the guaranty fund on the books of the participating banks at the end of 1927.[2/]

State Supreme Court decisions regarding priority of payment of certificates of indebtedness. In April 1925, after the assessment for that year had been made, a suit was brought to require the Depositors' Guaranty Fund Commission to pay the remaining 50 percent, and interest, on the certificates of indebtedness on which a dividend of 50 percent had been paid the year before. The lower court had directed such payment, this decision being appealed on the ground that the law of March 1925 required pro rata payments to all certificate holders. The State Supreme Court rejected the appeal, on the ground that the

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1/ Citizens State Bank at Garden City v. Smith (1926), 210 N.W. 990, 50 S.D. 579.

2/ Corn Exchange Savings Bank v. Smith (1931), 239 N.W. 186, 59 S.D. 182, 78 A.L.R. 800.

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law had not become effective until July 1, subsequent to the decision of the lower court. However, the State Supreme Court held that the 50 percent dividend of 1924 had been illegally paid, on the ground that the original law provided that all certificates issued during a given year were payable on the next March 1, with no specification of priority among them for the certificates pertaining to the first case during the year.[1/] This had the same effect as though the appeal had been upheld, inasmuch as no legal dividend could thereafter be paid to the holders of certificates issued in connection with that failure in preference to those of any other failures, and no attempt was made to force repayment by the certificate holders of the 1924 dividend.

In October 1929, more than two years after enactment of the law which terminated the deposit insurance system, but continued the assessments as a "guaranty fund" for each of the banks individually, an attempt was made by a group of certificate holders to have that law declared unconstitutional, to transfer the assessments under it to the old guaranty fund, and to require distribution of the balance in the fund including such assessments to certificate holders in the order of priority specified in the original law. The State Supreme Court, in a lengthy decision in 1931, reviewed the history and constitutionality of the original law as well as of the act of 1927 which terminated the system. The Court reaffirmed its opinion as to the constitutionality of the original law, and held that the law of 1927 was also constitutional. It also held that the remainder of the fund should be distributed promptly, in accordance with the law of 1925, ratably among all the certificate holders.[2/]

1/ State v. Smith (1925), 206 N.W. 233, 49 S.D. 106.
2/ State v. Smith (1931), 234 N.W. 764, 58 S.D. 22.

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NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number and deposits of participating banks. At the time deposit insurance became effective in South Dakota, there were about five hundred banks operating under the State banking code. This figure includes private banks and trust companies, which were required to participate along with the State banks. About one hundred twenty national banks, which could not participate, were operating in the State.

The number of banks participating and not participating in the system early in 1916 and at the end of each year during its operation are given in Table 3. For nearly a decade about four-fifths of the banks were participants, with the proportion dropping to about three-fourths toward the close of the system.

The deposits of participating and nonparticipating banks, for each year, are shown in Table 4. The proportion of all bank deposits in the State which were held by the participating banks rose from 57 percent in early 1916 to 67 percent in 1922, then dropped to 55 percent at the end of 1926.

Table 5 shows a distribution of the participating banks and their deposits, with the banks grouped by deposit size, at midyear 1916 and midyear 1926. In both years the ten largest banks held 13 percent of the deposits. The largest bank in 1916 held 3.6 percent, while the largest bank in 1926 held 2.7 percent, of the deposits in all participating banks.

Failures of participating banks. During the eleven and one-half years of operation of the South Dakota deposit insurance system, 324 banks closed because of financial difficulties. The deposits of these banks totalled more than $80 million. About one-fourth of the banks closed were

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Table 3. NUMBER OF OPERATING BANKS IN SOUTH DAKOTA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1916-1926, BY YEARS

Date	All banks operating in South Dakota	Participating in deposit guaranty 1/	Not participating in deposit guaranty 2/	Percentage participating
March 1916	620	499	121	80.5
End of year				
1916	628	503	125	80.1
1917	639	514	125	80.4
1918	647	521	126	80.5
1919	673	543	130	80.7
1920	702	566	136	80.6
1921	702	566	136	80.6
1922	692	561	131	81.1
1923	662	535	127	80.8
1924	552	438	114	79.3
1925	495	385	110	77.8
1926	422	322	100	76.3

1/ State banks, private banks, and trust companies.
2/ National banks.

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Table 4. DEPOSITS OF OPERATING BANKS IN SOUTH DAKOTA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1916-1926, BY YEARS

(Amounts in thousands)

Date	All banks operating in South Dakota	Banks participating in deposit guaranty 1/	Banks not participating in deposit guaranty 2/	Percentage of deposits in all banks held by participating banks
March 1916	120,534	68,636	51,898	56.9
End of year				
1916	140,676	83,596	57,080	59.4
1917	195,422	122,535	72,887	62.7
1918	238,650	150,706	87,944	63.1
1919	280,973	184,098	96,875	65.5
1920	218,592	145,156	73,436	66.4
1921	202,259	134,721	67,538	66.6
1922	222,324	149,516	72,808	67.3
1923	226,414	151,298	75,116	66.8
1924	199,116	122,297	76,819	61.4
1925	179,017	106,116	72,901	59.3
1926	143,188	78,877	64,311	55.1

1/ State banks, private banks, and trust companies.
2/ National banks.

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Table 5. NUMBER AND DEPOSITS OF BANKS PARTICIPATING IN THE SOUTH DAKOTA DEPOSIT INSURANCE SYSTEM, JUNE 30, 1916, AND JUNE 30, 1926

(Banks grouped by amount of deposits)

	Number of banks	Amount of deposits (thousands of dollars)	Percentage of number of banks	Percentage of aggregate deposits
All participating banks June 30, 1916 1/	498	$71,899	100.0	100.0
Banks with deposits of -				
$100,000 or less	241	14,557	48.4	20.2
$100,000 to $250,000	200	32,295	40.2	44.9
$250,000 to $500,000	46	15,448	9.2	21.5
$500,000 to $1,000,000	9	5,718	1.8	8.0
$1,000,000 to $2,000,000	1	1,260	0.2	1.8
$2,000,000 and over	1	2,621	0.2	3.6
Largest bank	..	2,621	0.2	3.6
Largest 5 banks	..	6,102	1.0	8.5
Largest 10 banks	..	9,040	2.0	12.6
All participating banks June 30, 1926 1/	366	95,883	100.0	100.0
Banks with deposit of -				
$100,000 or less	63	4,153	17.2	4.3
$100,000 to $250,000	160	26,737	43.7	27.9
$250,000 to $500,000	105	35,973	28.7	37.5
$500,000 to $1,000,000	32	20,440	8.7	21.3
$1,000,000 to $2,000,000	5	6,034	1.4	6.3
$2,000,000 and over	1	2,546	0.3	2.7
Largest bank	..	2,546	0.3	2.7
Largest 5 banks	..	7,564	1.4	7.9
Largest 10 banks	..	12,118	2.7	12.6

1/ Tabulated from statements for the individual banks given in the Biennial Report of the Public Examiner, 1916, and the Biennial Report of the Superintendent of Banks, 1926. Totals for deposits differ slightly from those obtained from summary for the same dates, which are $72,068,000 for June 30, 1916, and $96,214,000 for June 30, 1926.

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reopened without any obligation falling on the depositors' guaranty fund. Most of these were banks that closed subsequent to the law of 1925 permitting the reorganization of a bank under a plan approved by owners of 80 percent of the deposits. It is probable that depositors in most of the reorganized banks lost a part of their deposits, but no information is available regarding the amount of such losses.

The number and deposits of the banks closed each year, with rates per 100 operating banks and per $100 of deposits in operating banks, are shown in Table 6. During the first six years that the system operated, only four banks closed because of financial difficulties. In 1922 there were nine failures, and with four more during the first three months of 1923, the depositors' guaranty fund was exhausted, and it was necessary to issue certificates of indebtedness for the deposits of the seventeenth failure. The next year a 50 percent payment was made on these certificates. From April 1923 to midyear 1927, when the insurance of deposits ceased, over three hundred banks failed. This was about 40 percent of all the banks in the system at the beginning of 1923. No payments were made from the fund to depositors of any of these banks until settlement of the fund's affairs after the termination of the system.

A size distribution of the failed banks is given in Table 7. Failure rates were high among all size groups, but lowest among the banks with more than $1 million of deposits, and also lower among those with less than $100,000 of deposits than among those with deposits ranging from $100,000 to $1 million. However, the largest State-chartered bank in South Dakota, and therefore the largest bank in the deposit insurance system, was among the failures. This was the Sioux Falls Trust and Savings Bank, which closed in January 1924 with deposits of nearly $5 million.

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Table 6. NUMBER, DISPOSITION, AND DEPOSITS OF FAILED STATE BANKS IN SOUTH DAKOTA DURING PERIOD OF OPERATION OF DEPOSIT GUARANTY SYSTEM, 1916-1927

Year and group	Number of banks			Deposits (in thousands of dollars)			Annual failure rates	
	Total	Involving payments from guaranty fund	Reorganized with no payment from guaranty fund	Total	Banks with payments from guaranty fund 1/	Banks with no payment from guaranty fund 2/	Number per 100 active banks	Deposits per $100 in active banks
Total 1916-1921	324	242	82	80,160	56,585	23,575	5.6 3/	$5.52 3/
1922-1927	4	4	--	1,016	1,016	--	.1 3/	.14 3/
	320	238	82	79,144	55,569	23,575	12.1 3/	11.25 3/
1916	1	1	--	32	32	--	.2	.05
1919	1	1	--	141	141	--	.2	.09
1920	1	1	--	527	527	--	.2	.29
1921	1	1	--	316	316	--	.2	.22
1922	9	9	--	1,991	1,991	--	1.6	1.48
1923	39	39	--	10,173	10,173	--	7.0	6.80
1924	99	94	5	28,771	27,751	1,020	18.5	19.02
1925	51	38	13	10,764	6,401	4,363	11.6	8.80
1926	103	47	56	24,073	7,889	16,184	26.8	22.69
1927 4/	19	11	8	3,372	1,364	2,008	11.8 5/	8.55 5/

1/ From statements as of date of failure in the Biennial Reports of the Superintendent of Banks.

2/ From schedules prepared for the Federal Reserve Committee on Branch, Group and Chain Banking.

3/ Average annual rate.

4/ To July 1.

5/ Annual rate.

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Table 7. SIZE DISTRIBUTION OF FAILED BANKS IN SOUTH DAKOTA COMPARED WITH AVERAGE SIZE DISTRIBUTION OF OPERATING BANKS: PERIOD OF OPERATION OF DEPOSIT GUARANTY SYSTEM

	Number of banks			Deposits		
	Average number of operating banks 1/	Failed banks	Average annual number of failed banks per 100 active banks	Average deposits of operating banks (in thousands) 1/	Of failed banks (in thousands)	Average annual amount of deposits in failed banks per $100 deposits in operating banks
Total	490	324	5.7	$119,856	$80,159	$5.82
Banks with deposits of -						
$100,000 or less	120	72	5.2	7,835	4,816	5.35
$100,000 to $250,000	202	139	6.0	33,552	22,767	5.90
$250,000 to $500,000	121	83	6.0	42,200	27,971	5.76
$500,000 to $1,000,000	39	28	6.2	25,056	18,700	6.49
$1,000,000 and over	8	2	2.2	11,213	5,905	4.58

1/ Tabulated from individual bank data for June 30 of even numbered years, 1916-1926, published in the Biennial Reports of the Superintendent of Banks.

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In Table 8 the failure rates in South Dakota during the period, 1916-1926, are compared with those for contiguous States and the entire United States. The failure rate in South Dakota, both in terms of number of banks and amount of deposits, was higher than in five of the contiguous States, but lower than in Montana. This was the case not only for State banks, but also for national banks. The failure rates in South Dakota and most of the contiguous States, both for number and deposits, were far higher than for the entire United States. This was also true for both national and State banks.

Causes of bank failures. The biennial reports of the Superintendent of Banks give the immediate cause of suspension of 134 banks that were closed from 1919 to the middle of 1924. This was more than half of the banks for which the guaranty fund made payments or issued certificates of indebtedness to depositors. For nearly a hundred of these banks the immediate cause of failure was given as worthless paper, impaired capital, and depleted reserves, and for about thirty other banks two of these were mentioned. In most of these cases the statement was identical, as follows: "The immediate cause of suspension of this bank was due to the total impairment of capital stock, on account of worthless paper, and also complete depletion of the bank's cash reserve, which made it impossible to continue business." In a few cases mention was also made of assets that were frozen or doubtful, or added that the depleted reserve was the result of heavy withdrawals. In only two cases was mention made of mismanagement and in three cases of embezzlement, shortages, or "irregularities" in the nature of defalcation. In the Sixteenth Biennial Report, for 1922-1924, in which the above information was given for the majority of the banks, the Superintendent also discussed the causes of bank failures in his letter of transmittal to the Governor.

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Table 8. ANNUAL BANK FAILURE RATES IN SOUTH DAKOTA, 1916-1926, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES 1/

	Failures per year per 100 operating banks			Deposits per year in failed banks per $100 in operating banks		
	State and national banks	State banks 2/	National banks	State and national banks	State banks	National banks
South Dakota	5.1	5.6	3.5	$4.36	$5.45	$2.46
Six contiguous States	2.4	2.6	1.8	1.39	1.94	.74
North Dakota	3.8	4.2	2.5	2.43	~~3.13~~ 2.31	1.42
Minnesota	1.9	2.1	1.2	.86	1.47	.41
Iowa	2.1	2.3	1.5	1.50	1.84	.86
Nebraska	1.5	1.6	.9	1.00	1.52	.37
Wyoming	4.4	5.2	2.5	2.47	3.27	2.06
Montana	5.5	5.9	4.7	3.23	4.45	2.06
Entire United States	1.4	1.7	.7	.32	.49	.14

1/ Tabulated from data from the following sources: other tables in this volume; annual reports of the Comptroller of the Currency for 1931, pp. 478-611; Banking and Monetary Statistics, pp. 284-292; Willis, Banking Inquiry of 1925; and Federal Reserve revised tabulations of data for all operating banks by States.

2/ Private banks included.

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> The extraordinary deflation of prices in agricultural products brought about the numerous bank failures above referred to. As a result of the failures, there has been much agitation relative to the revision of the state banking laws. It is my opinion that no law, no matter how stringent, could have prevented the larger portion of these failures, and that this was due largely to the economic conditions...
>
> I would recommend, however, that the law should be amended in respect to borrowing by bank officers from their own banks. Officers, or any corporations or partnerships in which the bank's officers are interested, should be prohibited from borrowing money from their own banks. Further, that banks should be prohibited from selling any paper "without recourse" on the officers' guarantee. This practice aided a great deal toward inflation, and possibly was indirectly the cause of most of our bank troubles, and if banks were prohibited from acting as brokerage agents, which the sale of paper "without recourse" and the officers' guarantee amounts to, it certainly would have a tendency of lessening further inflations. 1/

Reasons for bank failures in South Dakota during the years from 1921 to 1930, covering seven and one-half years prior and two and one-half years subsequent to the effective date of repeal of the deposit guaranty law, were also reported by the Superintendent of Banks on schedules prepared for the Federal Reserve Committee on Branch, Group and Chain Banking. These are summarized in Table 9. Here also the primary emphasis is on heavy withdrawals, adverse conditions in agriculture, and decline in real estate values, with defalcation or managerial incompetence mentioned in about a sixth of the cases.

Procedures used in handling banks in financial difficulties. The Superintendent of Banks was in charge of the affairs of banks closed because of financial difficulties while the South Dakota deposit guaranty law was in operation. Until 1925, very few suspended banks were reorganized. However, the practice was developed of chartering new banks to replace those that were closed in communities where there were no other banks. This practice,

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1/ 16th Biennial Report of the Superintendent of Banks, South Dakota, 1924, pp. 5-6.

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Table 9. CAUSES OF SUSPENSION OF STATE BANKS, 1921-1930, AS REPORTED ON SCHEDULES PREPARED BY SUPERINTENDENT OF BANKS IN SOUTH DAKOTA FOR THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP, AND CHAIN BANKING

Item 1/	Primary cause	Contributing cause
Total number of suspensions, 1921-1930	393	
Dishonesty of officers or employees:		
Defalcation	22	13
Excessive loans to management and collapse of speculative booms	0	0
Regional economic disaster or adverse conditions in specific industries:		
Losses due to unforeseen agricultural or industrial disasters, such as flood, drought, boll weevil, etc.	38	86
Decline in real estate values	71	269
Managerial incompetence, inadequate earnings, and excessive competition:		
Incompetent management	24	9
Insufficient diversification	9	128
Causes not readily classified above:		
Heavy withdrawals	95	166
Failure of affiliated institution or correspondent	35	24
Other causes	97	94

1/ Tabulated by the author from the schedules, which were made available through the courtesy of the Board of Governors of the Federal Reserve System.

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which was prevalent from 1919 to the early part of 1923 and again during most of 1924, was described by the Superintendent of Banks as follows:

> Organization of new and unencumbered state banks to replace those which have suspended has become the definite policy of the state banking department and is being fostered in preference to reorganization of crippled institutions...
>
> The plan, Mr. Hirning declares, is to provide an entirely new foundation in communities left without banking facilities. All sound assets of failed institutions may be turned over to new banks, as also may be claims of creditors in similar proportion.
>
> The portion of a failed bank's assets classed as "frozen" or not readily convertible then will be retained by the state banking department for gradual redemption. By this means, Mr. Hirning says, new banks will be enabled to begin with live assets whereas if old banks were reorganized there would still remain a large element of the hazard which led to their suspension.
>
> "Each new institution," the superintendent asserts, "must answer the unequivocal requirement of $25,000 in capital stock, a list of 100 per cent. responsible stockholders and officers who have been approved by the state banking department." 1/

A description of the method of paying depositors in a bank handled in this way, prior to the insolvency of the deposit guaranty fund, is given in a decision of the State Supreme Court in a case which became involved in litigation.

> The State Bank of Winfred closed on May 27, 1922. All admitted deposit claims against said State Bank of Winfred were presently paid in full by the guaranty fund commission in the following manner: Very shortly after the closing of the State Bank of Winfred, a banking corporation was organized and chartered known as Bank of Winfred. By agreement between the newly organized Bank of Winfred and the guaranty fund commission, the Bank of Winfred advanced upon draft of the guaranty fund commission such moneys as were necessary to pay deposit claims against the failed State Bank of Winfred upon the promise and understanding that, when the amount so necessary to be expended for that purpose was definitely determined and paid, the Bank of Winfred should be reimbursed by taking over guaranteed good assets of the failed State Bank of Winfred to the extent of $300,000, and that as to such amount above $300,000 as it might have advanced to deposit creditors of the failed State Bank of Winfred upon draft of the guaranty fund commission the guaranty fund commission would repay the Bank of Winfred in cash. 2/

1/ Commercial West, July 5, 1924, p. 37.

2/ Ruden v. Ruden (1932), 244 N.W. 775, 60 S.D. 447. This case pertained to the amount due the Bank of Winfred by the guaranty fund commission under this agreement.

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Use was also made to an unknown extent of the law of 1921 which authorized the Superintendent, with the approval of the Guaranty Fund Commission, to operate a closed bank as a going concern and to make deposits from the guaranty fund in such banks. The first authorization to do this was in March 1921 when $20,000 was authorized to be withdrawn so that the Superintendent could take charge of a bank and its affairs. In June of that year the Commission authorized the withdrawal of 10 percent of the guaranty fund for this purpose.[1/] No information is available regarding the number of banks operated by the Superintendent, nor how many of those so operated were restored to solvency and returned to their owners or how many were later placed in liquidation. A statement of the guaranty fund at midyear 1925 shows $115,000 of "10% fund" in open and closed banks, and this was only slightly larger in subsequent statements.

In 1925, after appointment of a new Superintendent of Banks and passage of the law permitting reorganization of a failed bank under a plan approved by creditors representing 80 percent of the bank's deposits and by the Superintendent of Banks, many failed banks were reopened. In such case, assets not acceptable to the reorganized bank were turned over to trustees or to a holding company for liquidation, with a reduction in the deposit liability of the reorganized bank. Of the 173 banks closed because of financial difficulties from the beginning of 1925 to the repeal of the deposit guaranty at midyear 1927, more than one-half were reorganized under provisions of this law. No information is available regarding the amount of deposits not released nor of the eventual recoveries from the assets placed in trust. Undoubtedly, there were substantial losses in some of these banks which are not included in the available data for losses in suspended banks.

1/ Minutes of the Depositors' Guaranty Fund Commission.

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With respect to the procedure of paying depositors of failed banks there were two distinct periods in the operation of the guaranty fund, with one transitional case. The first period was from the beginning of the system on January 1, 1916, to March 16, 1923, during which 16 banks failed, with their depositors paid in full from the guaranty fund. The second period was from the latter date to the termination of the system on June 30, 1927, during which 226 banks failed (excluding those reorganized under the 1925 law) with the depositors receiving certificates of indebtedness from the fund. Of these, one was the transitional case in which a 50 percent dividend on the certificates of indebtedness was paid a year later; in the other cases no payments were made from the guaranty fund until after the termination of the system. The difference between the procedures was described by the Superintendent of Banks, prior to the termination of the system, as follows:

> Subsequent to the enactment and adoption of the Depositors Guaranty Law depositors of closed banks became creditors of the Guaranty Fund, and during the period in which there were funds in the Depositors Guaranty Fund depositors received payment in full of their claims. The Depositors Guaranty Fund in turn became a creditor of the insolvent bank, and was entitled to receive dividends from the insolvent bank, which dividends were paid or to be paid from the proceeds of liquidation of the insolvent bank assets. The amount of the Depositors Guaranty Fund claim against the insolvent bank equals the total amount paid by the Guaranty Fund to the depositors. In the distribution of the proceeds of liquidation of the bank's assets the Guaranty Fund shared pro rata with all other general or common creditors.
>
> When the cash in the Guaranty Fund became depleted by reason of payments to depositors of closed banks, the depositors of banks closing subsequently received from the Guaranty Fund Commission Certificates of Indebtedness in lieu of cash in payment of their claims. Such Certificates of Indebtedness constituted a liability of the Guaranty Fund but did not constitute payment to the depositors. The proceeds of liquidation of the insolvent bank's assets therefore, were distributed directly to the creditors of the insolvent bank, and such payment made to the depositors reduced the liability of the Guaranty

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> Fund. The portion of the depositors' claims which could not or cannot be paid out of the proceeds of liquidation remain a liability of the Guaranty Fund to be met when and if sufficient funds are ever secured by the Depositors Guaranty Fund with which to liquidate its liability. 1/

When the affairs of the fund were settled, holders of the certificates of indebtedness, except those in the transitional case, received two dividends from the fund, one of 3/4 of 1 percent and the other of 23/100 of 1 percent, on the amounts of such certificates less the dividends that had been paid from the liquidation of assets of the respective banks. With the dividends amounting to less than 1 percent of the principal of the certificates, there was, of course, no payment on the interest, which had accumulated at 5 percent per year.

FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. No statement of receipts and expenses of the Depositors' Guaranty Fund was published in the biennial reports of the Superintendent of Banks while the system was in operation. After the repeal of the law, statements of resources, liabilities, and deficits were published in several of the biennial reports, with a final statement after settlement of its affairs. 2/ Similar statements for three dates prior to the repeal of the law are available in the minutes of the Depositors' Guaranty Fund Commission, but no statements have been found prior to 1925.

The minutes of the Depositors' Guaranty Fund Commission provide information regarding the assessments collected each year, and other records in the office of the Bank Commissioner give detailed information regarding the deposits of failed banks, certificates of indebtedness issued, and

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1/ Biennial Report of the Superintendent of Banks, 1926, p. 6.
2/ As of June 30, 1941, in the Biennial Report of the Superintendent of Banks, 1942, p. 8.

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payments and recoveries by the guaranty fund. Information regarding results of liquidation of each of the closed banks, including the percentage and amount of dividends paid, was published in the biennial reports of the Superintendent of Banks.

Income and obligations of the guaranty fund. A summary statement of the income and obligations of the South Dakota Depositors' Guaranty Fund for the entire period of its existence is given in Table 10. The total receipts of the fund were $4.3 million, of which $3.6 million was derived from assessments, $0.7 million from liquidation of the assets of the banks in which depositors' claims were paid by the fund, and a very small amount from interest and other sources. The total obligations incurred by the fund on account of bank failures, after allowance for all recoveries from liquidation of the assets of the failed banks, are estimated at $37 million. The fund paid less than $4 million to depositors: $3.4 million in the first 17 failures, and $0.3 million as dividends on depositors' claims in the remaining 225 banks that failed while the guaranty fund was in legal operation. The fund also incurred losses of $0.5 million on funds deposited in banks that subsequently failed, and $0.1 million in expenses and other advances to closed banks. The final deficit of the fund representing the loss to depositors was nearly $34 million.

Annual data for the amount of insured deposits, payments on such deposits by the fund and from the liquidation of the assets, and losses to depositors or certificate holders, are given in Table 11. The estimated loss to other creditors is also given in the table. Table 12 shows for each year the insured obligations relative to the total deposits of the closed banks as reported for the date of closing and the percentages of

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Table 10. RECEIPTS, EXPENDITURES, AND DEFICIT OF THE SOUTH DAKOTA DEPOSITORS' GUARANTY FUND

Receipts	
Assessments collected 1/	$3,584,541
Recoveries from liquidation of 17 banks 2/	699,886
Interest and miscellaneous income 1/	61,963
Total receipts	$4,346,390
Expenditures	
Payments to depositors:	
In 17 banks 2/	$3,384,307
Dividends on depositors' claims in 225 banks 1/	338,665
Losses incurred in other deposit guaranty activities:	
On funds deposited in banks later closed 1/	528,112
On funds advanced to pay bills payable by closed banks to War Finance Corporation 1/	17,377
Expenses 1/	77,887
Balance paid to State Treasurer after settlement of affairs of fund 1/	42
Total expenditures	$4,346,390
Unpaid obligations	
To depositors of failed participating banks 3/	$33,729,298

1/ Statement of Depositors' Guaranty Fund, June 30, 1941, mimeographed, and Biennial Report of the Superintendent of Banks, 1942, p. 8.

2/ Tabulated from data for individual banks from records in the office of the Superintendent of Banks (see Table 11).

3/ Certificates of indebtedness of the fund to depositors in excess of recoveries from liquidation of assets and dividends from the guaranty fund. The total losses to depositors in banks that failed while deposit guaranty was legally effective were larger.

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Table 11. TOTAL DEPOSITS, INSURED DEPOSITS AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS, SOUTH DAKOTA DEPOSITORS' GUARANTY FUND, BY YEARS

Year	Total deposits 1/	Insured deposits 2/	Insured deposit obligations paid and unpaid					
			Paid directly from liquidation of assets 3/	Paid by Fund			Unpaid (loss to depositors) 5/	Loss on general claims 4/
				Total	Recovered from liquidation of assets 4/	Not recovered from liquidation of assets (loss to fund) 4/		
Total	56,586,156	48,376,038	10,923,883	3,722,855	699,886	3,022,971	33,729,298	2,858,888
Subtotals								
1916-Mar.1923	4,202,625	3,638,913	--	--	699,886	2,684,421	254,606	185,828
Apr. 1923-June 1927	52,383,531	44,737,125	10,923,883	--	--	338,550 6/	33,474,692	2,673,060
1916	32,430	26,458	--	26,458	26,458	--	--	--
1917	--	--	--	--	--	--	--	--
1918	--	--	--	--	--	--	--	--
1919	141,114	128,025	--	128,025	53,130	74,895	--	281
1920	527,292	495,755	--	495,756	123,345	372,410	--	6,034
1921	316,307	210,306	--	210,306	84,877	125,429	--	25,638
1922	1,991,064	1,843,419	--	1,843,419	270,472	1,572,947	--	141,519
1923	10,172,700	8,495,102	932,140	745,967	141,604	604,363	6,816,995	600,344
1924	27,751,213	24,717,637	7,030,989	177,249	--	177,249	17,509,399	114,399
1925	6,400,759	5,409,011	1,168,287	42,164	--	42,164	4,198,560	434,992
1926	7,888,823	5,859,208	1,454,842	44,970	--	44,970	4,359,396	419,171
1927	1,364,454	1,191,117	337,625	8,544	--	8,544	844,948	89,510

1/ Deposits at date of closing, from statements for the individual banks published in the biennial reports of the Superintendent of Banks (mostly from the 1934 report, pp. 105-359, but some from earlier reports).

2/ Amount of deposits paid by guaranty fund in 16 banks paid in full; certificates of indebtedness issued in remaining cases. Tabulated from data for the individual banks in records in the office of the Superintendent of Banks (except certificates of indebtedness for one case, which are from a decision of the State Supreme Court).

3/ Tabulated from data for the individual banks in records in the office of the Superintendent of Banks or published in Biennial Reports of the Superintendent.

4/ Tabulated from data for the individual banks in the office of the Superintendent of Banks.

5/ Insured deposits (certificates of indebtedness issued) in excess of payments by fund and from proceeds of liquidation.

6/ Dividend of June 10, 1932 (3/4 of 1 percent), and final dividend of Mar. 4, 1939(23/100 of 1 percent), to holders of certificates of indebtedness of the fund. Tabulated from data for the individual banks. The final statement of the depositors' guaranty fund gives $338,665 as the total of these dividends (see Table 9).

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Table 12. PERCENTAGE OF DEPOSITS INSURED, AND PERCENTAGE OF INSURED DEPOSITS PAID BY GUARANTY FUND AND RECOVERED FROM LIQUIDATION OF ASSETS, BANK FAILURES UNDER THE SOUTH DAKOTA DEPOSITORS' GUARANTY FUND, BY YEAR

Year of failure	Percentage of total deposits insured	Total	Percentage of insured deposits			
			Paid directly from liquidation of assets	Paid by guaranty fund		Unpaid (loss to depositors)
				Recovered from assets	Not recovered; i.e., loss to fund	
Total	85.5	100.0	22.6	1.4	6.2	69.7
1916	81.6	100.0	--	100.0	--	--
1919	90.7	100.0	--	41.5	58.5	--
1920	94.0	100.0	--	24.9	75.1	--
1921	66.5	100.0	--	40.4	59.6	--
1922	92.6	100.0	--	14.7	85.3	--
1923	83.5	100.0	11.0	1.7	7.1	80.2
1924	89.1	100.0	28.4	--	.7	70.8
1925	84.5	100.0	21.6	--	.8	77.6
1926	74.3	100.0	24.8	--	.8	74.4
1927	87.3	100.0	28.3	--	.7	70.9

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the insured deposits recovered from liquidation of assets, paid by the guaranty fund, or lost to the depositors. For all the failed banks as a group, the insured obligations were about 85 percent of the deposits of the banks when they were placed in receivership. The difference is due to secured deposits, public funds after 1925, deposits that bore interest at a rate higher than the maximum set by the Guaranty Fund Commission, deposits representing rediscounts or money borrowed, and deposits on the banks' books for which claims were not filed. Of the insured deposits, 24 percent were recovered directly or indirectly from liquidation of the assets of the banks, 6 percent were paid from the guaranty fund, and 70 percent remained unpaid and were lost to the certificate holders.

Table 13 compares the annual assessment receipts with the liability of the fund for deposits of failed banks. Data are given for each year and cumulatively, with the cumulative excess or deficiency. This cumulative deficiency or excess, it should be noted, is a different concept from the accumulated surplus or deficit of the fund. What the deficiency figures show is the additional assessments that would have been necessary in addition to those levied to have paid all the insured deposits after taking account of recoveries from the liquidation of the assets of the failed banks. It does not include any allowance for interest or other expenses, nor for funds needed to pay depositors at once the amount eventually recovered from the liquidation of assets. Because of the large amount of interest accumulated on the certificates of indebtedness of the fund, the actual final deficit of the fund was more than the deficiency as shown in this table.

By the end of 1921, after six years of operation, the guaranty fund showed a cumulative excess of receipts of over a million dollars. The failures

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Table 13. ANNUAL ASSESSMENT RECEIPTS, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, SOUTH DAKOTA DEPOSITORS' GUARANTY FUND

Year	Assessments collected 1/	Deposit liability of the fund 2/	Cumulative			
			Assessment receipts	Deposit liability of the fund	Excess of receipts	Deficiency (excess liability)
Total	$3,584,541	$36,752,269				
1916	139,112	--	$139,112	--	$139,112	--
1917	185,916	--	325,028	--	325,028	--
1918	255,010	--	580,038	--	580,038	--
1919	330,064	74,895	910,102	$74,895	835,207	--
1920	426,856	372,410	1,336,958	447,305	889,653	--
1921	442,028	125,429	1,778,986	572,734	1,206,252	--
1922	335,187	1,572,947	2,114,173	2,145,681	--	$31,508
1923	349,696	7,421,358	2,463,869	9,567,039	--	7,103,170
1924	329,868	17,686,648	2,793,737	27,253,687	--	24,459,950
1925	273,578	4,240,724	3,067,315	31,494,411	--	28,427,096
1926	263,852	4,404,366	3,331,167	35,898,777	--	32,567,610
1927	253,374	853,492	3,584,541	36,752,269	--	33,167,728

1/ Total from Biennial Report of Superintendent of Banks, 1934, p. 8. Annual data: 1916-1926 from minutes of the Guaranty Fund Commission (amounts received less later refunds); 1927, excess of total over sum for 1916-1926 (minutes of Commission show $184,106 for 1927, and it is assumed that the remainder was collected subsequent to the entry in the minutes).

2/ Insured deposits less amounts paid directly from liquidation of assets or recovered by the fund from liquidation of assets (from Table 11).

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of 1922 absorbed this excess of receipts together with the assessments for that year. The assessment of 1923 collected early in the year enabled the fund to pay the depositors of three banks which failed early in that year, but from that time on the fund was continuously inadequate, with a cumulative deficiency of $7 million at the end of 1923, rising to $33 million when the deposit guaranty became legally inoperative.

In Table 14, the annual rate of assessments of one-fourth of 1 percent of deposits is compared with the rate necessary to have met the losses from failed banks. The latter rate was over two and one-half percent, or ten times the rate levied. The assessments levied and collected averaged 1.6 percent per year of the total capital accounts of the banks. Assessments sufficient to have covered the losses from failed banks would have been more than 16 percent per year of the total capital accounts of the banks. In 1924, which was the year with the largest number of bank failures and the largest amount of deposits covered by the guaranty, the losses amounted to 12 percent of the deposits in active banks and nearly 80 percent of their capital accounts.

Administrative expenses of the Depositors' Guaranty Fund. The expenses of the Guaranty Fund Commission were given in the biennial report of the Superintendent of Banks. For the eighteen years from 1916 to 1934, the total figure was $54,000 or an average of $3,000 per year. These expenses, which consisted of per diem for the Commissioners, traveling expenses, and clerical and miscellaneous expenses, were met from the appropriation for the Banking Department. The final statement of the Depositors' Guaranty Fund shows an additional figure for expenses of $78,000. These were the cost of handling the guaranty fund, including distribution of dividends to certificate holders.

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Table 14. COMPARISON OF ANNUAL RATE OF ASSESSMENT LEVIED WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, SOUTH DAKOTA DEPOSITORS' GUARANTY FUND, 1916-1927

Year	Assessment rate per $100 of deposits 1/	Per $100 of deposits in participating banks at beginning of year 2/		Per $100 of total capital accounts in participating banks at beginning of year 3/	
		Assessments collected	Losses on deposits in failed banks	Assessments collected	Losses on deposits in failed banks
1916-1927 average	0.25	0.25	2.52	1.60	16.42
1916	.25	.20	--	1.22	--
1917	.25	.22	--	1.31	--
1918	.25	.22	--	1.60	--
1919	.25	.21	.05	1.85	.42
1920	.25	.22	.20	1.88	1.64
1921	.25	.23	.09	1.58	.45
1922	.25	.30	1.17	1.42	6.67
1923	.25	.25	4.96	1.30	27.52
1924	.25	.23	11.69	1.47	78.57
1925	.25	.22	3.47	1.45	22.44
1926	.25	.25	4.15	1.70	28.42
1927	.25	.32	1.08	1.98	6.69

1/ Rate levied on average deposits of preceding year.

2/ From assessments collected (Table 13), deposit liability of the fund (Table 13), and deposits in participating banks (Table 4).

3/ From assessments collected (Table 13), deposit liability of the fund (Table 13), and capital accounts of participating banks for the same dates as the deposits (from summary statements published in the biennial reports of the Superintendent of Banks).

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Settlement of the affairs of the guaranty fund. Upon termination of the applicability of deposit guaranty at midyear 1927, settlement of the affairs of the fund was delayed because of various matters in litigation. After the State Supreme Court decision of 1931, the Guaranty Fund Commission proceeded to distribute the remainder of the fund, in accordance with that decision, pro rata among all holders of the certificates of indebtedness of the fund.

In June 1932, a dividend of three-fourths of 1 percent was paid to the certificate holders, pro-rated according to the unpaid balance due on the face of the certificate less dividends paid from the proceeds of liquidation of failed banks. Nearly seven years later, in March 1939, a final dividend of 23/100 of 1 percent was paid on the same basis.

APPRAISAL OF THE SOUTH DAKOTA DEPOSITORS' GUARANTY SYSTEM

The South Dakota deposit insurance system was one of the least successful--perhaps one should say, one of the worst failures--of the State deposit insurance systems. Though all depositors of failed banks for a period of six years were protected, the wave of failures in the middle twenties was so overwhelming that the protection thereafter given to depositors was negligible--they received nothing from the guaranty fund until the affairs of the fund were settled several years later, and then less than 1 percent of their deposits.

The severity of this debacle, in comparison with the deposit insurance systems of States to the south of South Dakota, may be attributed to two basic factors. First, the South Dakota deposit guaranty plan was not equipped with as adequate financial resources; it had neither the power to levy assessment rates higher than one-fourth of 1 percent per year, as in Texas and Nebraska and in Oklahoma for several years, nor an initial

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contribution as security for payment of future assessments, as in Oklahoma and Kansas. Second, the impact of the agricultural depression of the twenties was more sever, and the economy of the State more completely dependent on agriculture, than in the States to the south. Deficiencies of the banking code and of bank supervision undoubtedly played a part in the failure of the South Dakota system, but evidence is lacking that such deficiencies were accountable for the higher bank failure rate and smaller proportion of deposits in failed insured banks met by the guaranty fund.

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DEPOSIT GUARANTY IN WASHINGTON

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November 1958

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DEPOSIT GUARANTY IN WASHINGTON

The Washington law providing for the guaranty of bank deposits was enacted on March 10, 1917. The system began to operate at the middle of that year.[1] At the time of enactment, deposit guaranty plans were in operation in six States.

The Washington law remained in operation for four and one-half years. Participation in the plan was voluntary, and toward the end of 1921, after the failure of the Scandinavian-American Bank on June 30 of that year, all members of the fund withdrew. The law was repealed on February 8, 1929, after being inoperative for more than seven years.

BACKGROUND OF THE GUARANTY LEGISLATION

A proposal to establish a system of deposit guaranty in Washington was introduced in both houses of the Legislature in 1909, but received no action. Another proposal was made in the House in 1915. The committee on banking recommended indefinite postponement of action, but the House voted by a small margin against postponement and then tabled a motion to pass the bill.[2] During the last two weeks of January 1917, four bank failures occurred in Seattle, arousing indignation and creating a demand for remedial action. In the middle of February bills for deposit insurance were introduced in both houses of the Legislature. The House bill, modeled after the laws of other States, was rewritten by the committee on banking, to make the system voluntary

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1/ The first meeting of the Guaranty Fund Board was held on June 29, 1917, and by the end of the year 46 banks had been admitted to membership (Annual reports of the State Bank Examiner, 1917, p. 6, and 1918, p. 8). The date of the first admissions is unknown.

2/ Session Laws of Washington, 1909 and 1915.

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instead of compulsory. With this issue resolved, the bill was quickly enacted.

CHARACTER OF THE GUARANTY LEGISLATION

Admission of banks. Participation in the deposit insurance plan was made voluntary for commercial banks including trust companies. The plan did not cover mutual savings banks. The law also provided that any national bank could participate in the guaranty system. However, the ruling of the Attorney General of the United States prohibited national bank participation in State deposit guaranty systems.

Each bank which applied for insurance was to be given a complete and rigid examination. The application was to be approved by the Guaranty Fund Board if the bank was found to be in sound financial condition, properly managed, and to have an unimpaired surplus equal to 10 percent of its capital. An applicant bank must have been in business at least a year or located in a city or town in which all the banks had failed to become participants within six months after enactment of the law.

The law provided that a bank could withdraw if it were solvent by giving notice in writing to the Secretary of the Guaranty Fund Board and by displaying for six months a card in the bank announcing its intention to withdraw from the guaranty plan. An amendment in 1921 provided that a bank announcing its intention to withdraw would be liable for any assessments made within a year thereafter, and requiring it to deposit with the Secretary of the Guaranty Fund Board an amount equal to ½of 1 percent of deposits as a guaranty of payment of such assessments. A bank's membership in the fund was required to be cancelled, with forfeiture of its cash or bonds deposited as surety for payment of assessments, if the bank violated the act and failed to comply within

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30 days after notice. In March 1921 the Guaranty Fund Board was authorized to cancel the membership of a bank that violated any law relating to banking or any rule or regulation of the Guaranty Fund Board.

Deposits guaranteed. The guaranty covered all money deposit in a bank subject to check or other form of withdrawal and not specifically secured. The law provided that the guaranty should not apply to a bank's obligations as an endorser on bills rediscounted, to bills payable, to money borrowed from correspondents or others, nor to deposits of public funds in excess of capital and surplus.

Assessments. Banks admitted to the guaranty plan were required to pay an initial assessment of one-half of 1 percent of average annual deposits eligible for guaranty. They were also require to deposit, as collateral to insure payment for future assessments, securities having a face value of 1 percent or major fraction thereof of the eligible deposits. Annual assessments were to be made, on or before the first of February, in amounts sufficient to maintain or restore the fund to one-half of 1 percent, and the securities deposited to 1 percent, of average daily deposits of the preceding year. If the fund was reduced by more than 25 percent of the amount provided, the Guaranty Fund Board was authorized to levy a special assessment amounting to not more than one-half of 1 percent of the average guaranteed daily deposits for the preceding year.

In the March 1921 revision of the law the provision regarding the deposit of securities was dropped and the assessments for the fund changed. Two funds were established, known respectively as the guaranty fund and the contingent fund. The guaranty fund was set at one percent of total annual daily deposits, eligible for guaranty, to be adjusted each year. In case of

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impairment of the fund special assessments could be made amounting to not more than one-half of 1 percent of average deposits in any one year. The contingent fund was to consist of an annual assessment of 1/10 of 1 percent of average deposits until the total reached 3 percent of those deposits.

Administration and custody of the fund. The administration of the guaranty fund was placed in a Guaranty Fund Board to be composed of the Governor as chairman, the State Bank Examiner as secretary and executive officer, and three members appointed by the Governor. The appointed members were to serve for three years and except for the first members appointed, two of them were required to be officers or directors of participating banks. None could be an officer or director of a national bank.

The Board was required to deposit the securities paid by the banks with the State Treasurer, and also was authorized to designate any guaranteed bank as a depository for the cash in the fund. The Board permitted each bank to hold its assessment as a deposit to the credit of the Board.[1/] When the contingent fund was established in 1921 the Board was given power to deposit that fund in designated guaranteed banks or to invest it in securities eligible for postal savings funds.

Expenses of administration. The expenses of administering the guaranty fund were to be paid out of the receipts of the fund. After the establishment of the contingent fund they were to be paid from that fund.

Method of paying depositors. The deposit guaranty plan in Washington contemplated that depositors would be paid at once in cash.

1/ Spokane & Eastern Trust Co. v. Hart (1923), 221 Pac. 615, 127 Wash. 541.

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Warrents payable out of the fund were to be issued by the State Bank Examiner (Bank Commissioner) to each holder of deposits under proof of claim. If the guaranty fund was insufficient to pay them, interest at the rate of 5 percent per year was to be paid until they were called.

The law provided that whenever warrants upon the guaranty fund were issued in payment of depositors' claims, those claims and all rights of action and remedies of the depositors were transferred to the guaranty fund. Consequently, the receivers' dividends on guaranteed deposits in a failed bank were paid to the guaranty fund, and all payments to the depositors on such deposits made by the guaranty fund. The March 1921 law provided that in paying depositors, the contingent fund was to be used first, with the guaranty fund to be drawn on if the contingent fund was insufficient.

In the report of the Supervisor of Banking for the year 1920 an amendment was suggested to authorize the Guaranty Fund Board to employ the funds under its control in such a manner that any bank needing temporary assistance might receive it in the form of deposits. The following argument was presented in favor of granting this power:

> In as much as the Fund was created for the purpose of protecting depositors in member banks, it seems to the writer that it would be equally proper to use these funds for the purpose of preventing the closing of a bank, as it would to pay off its depositors after its doors had been closed. Deposits made by the Board in this manner would of necessity be subject to the direction of the Board and a bank receiving the benefit would be required to operate its affairs in accordance with the directions of the Board until such time as the special deposits were withdrawn. 1/

This recommendation was not enacted into law.

1/ Annual Report of the Bank Commissioner, 1920, p. 17.

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SUPERVISION AND REGULATION OF GUARANTEED BANKS

Chartering and supervisory authority. State banks in Washington had been subject to supervision for about ten years prior to the adoption of deposit guaranty. However, according to a later statement of the Supervisor of Banking, the law did not provide "real powers of supervision and correction of improper banking methods, and the best the head of the department and his assistants could do for the protection of the depositor was to bluff things through."[1/]

An entire new law relating to the regulation and supervision of banks was adopted a few days prior to the enactment of the deposit guaranty law. The banks were placed under the supervision of a State bank examiner appointed by the Governor with the consent of the Senate. The examiner was required to have had four years experience in banking.

In 1919 the title of the State bank examiner was changed to bank commissioner and appointment of a deputy bank commissioner, with the same qualifications as for commissioner, was authorized. Two years later administration of the banking code was placed in a new department of taxation and examination headed by a director of taxation and examination. The director appointed a supervisor of banking to be in charge of the division of banking with power to appoint and employ deputies, examiners, and other assistants necessary to carry on the work of the division. The supervisor of banking was required to have had practical experience in banking, trust company, or building and loan company business, and could not be interested in any bank, trust company, or building and loan association as a director, officer, or stockholder.

1/ Fifteenth Annual Report of the Supervisor of Banking, Washington, 1921, p. 5.

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Powers of the State bank examiner. The supervisory powers of the State bank examiner, bank commissioner, or supervisor of banking during the period of operation of the deposit guaranty system are shown in Table 1. He was required to make at least one examination of each bank a year, and also to make a special examination of applicants for admission to the deposit insurance system. His powers with respect to bank management appear to have been stronger than those in most of the States with deposit guaranty systems. He could require a bank to correct any violation of law or any method of conducting the bank's business in an unsafe manner, or to remove from office an officer of employee known to be dishonest, reckless, or incompetent. Failed banks were liquidated by the examiner, commissioner, or supervisor, or a special assistant appointed for that purpose.

Supervisory powers of the Guaranty Fund Board. Very limited supervisory powers were given to the Guaranty Fund Board. The Board was required to approve the condition of a bank, after examination by the State bank examiner, before admission to the deposit guaranty system. It was authorized to adopt, publish, and enforce reasonable rules and regulations prescribing the duties of participating banks, not inconsistent with the provisions of the banking code or the deposit insurance law; and also, to prescribe the maximum rate of interest that could be paid on deposits by participating banks in each county. No information has been found regarding Board actions on such rules, regulations, or interest rates.

Supervisory experience. During the short period that the deposit guaranty law was in operation, there were four different persons in charge of bank supervision. The State bank examiner at the time of enactment of the law, continued in office only for the remainder of the year 1917. His successor served for two years, and the next bank commissioner for only one year. The

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Table 1. SUPERVISORY POWERS OF BANK COMMISSIONER IN WASHINGTON 1/

Item	Powers 2/
Opening of new banks	Commissioner to issue certificate of authority to transact business if examination reveals compliance with banking laws and general fitness and responsibility of incorporators. In case of refusal, appeal may be made, within 10 days of decision, to superior court of county.
Examinations and reports of condition	
Frequency of examinations	At least once a year, without previous notice, by Commissioner or deputy, and oftener if necessary. 3/
Scope of examinations	A full investigation.
Reports of condition	Three each year on form prescribed and dates designated by Commissioner (in 1919, amended to dates coinciding with those for national banks), and any special reports called for.
Bank management	
Removal of undesirable assets or discontinuance of undesirable practices	Commissioner may give notice to correct any offense or delinquency (violation of law, conduct of business in an unsafe manner, failure to comply with authorized order of examiner or submit affairs to lawful examination) within thirty days, or such additional time as he may allow.
Impairment or deficiency of capital	Commissioner may require impairment of capital to be made good by an assessment on stock or in such manner and with such time as he may specify.
Removal of bank officers, directors, or employees	Commissioner shall notify in writing board of directors of any officer or employee found to be dishonest, reckless, incompetent, or failing to perform any duty of his office; board of directors to meet within twenty days and to remove such persons if the objections are well-founded.
Taking possession or closing a bank	May take possession and close a bank: If insolvent; If bank fails to comply with Commissioner's order to correct any offense or delinquency, or to correct capital impairment; If bank places affairs under control of Commissioner.

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Item	Powers
Handling of closed bank	
Return to owners	May be returned to owners if Commissioner within 90 days after taking possession determines all impairment and delinquencies made good, and that it is safe and expedient for bank to resume business. If bank deems itself aggrieved by Commissioner's possession may within 10 days thereafter appeal to superior court of county which may order bank returned if it finds possession taken without cause.
Liquidation	Unless returned to owners, closed bank to be liquidated by Commissioner and any assistants appointed by him. In case of imminent necessity court may appoint temporary receiver; however, Commissioner to be immediately advised by court of such action and receiver to surrender possession on demand of Commissioner.
Sale of assets or capital stock	Bad or doubtful debts may be sold, compounded, or compromised by Commissioner, and real estate and personal property sold on terms approved by court.
Consolidation of banks	Commissioner may upon terms and on conditions prescribed by him authorize in writing transfer of assets to another bank for purposes of consolidation or voluntary liquidation if such action is approved by 2/3 vote of stockholders.

1/ Until March 1919, designated State Bank Examiner, and after February 1921 Supervisor of Banking.

2/ As at beginning of the deposit guaranty system (ie, as granted in 1917 law) with amendments until deposit guaranty became inoperative.

3/ In 1919, at discretion of Commissioner, examination made by Federal Reserve of State member banks acceptable in lieu of State examination.

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supervisor of banking when the system became inoperative at the end of 1921 had been in office only since the Spring of that year.

There was somewhat more continuity in the membership of the guaranty fund board. Two of the three appointees in 1917 served until the end, or near the end, of the system. The other one, the president of the Scandinavian-American Bank of Seattle, served for less than three years, resigning in January of 1920.

The number of persons on the bank examining staff excluding special deputies in one year ranged from four at the end of 1917 to seven at the end of 1920. The examining load apparently ranged from about 75 examinations per examiner per year in 1917 to about 45 in 1920.

The salary of the State bank examiner in 1917 was placed at $3600, and of the bank commissioner in 1919 at $5000. In the 1921 law the salary of the supervisor of banking was not specified but probably remained at the same figure. The maximum salary of examiners was $3000; their average salary in 1918 and 1919, estimated from appropriations, was $2400. Total annual expenses of the banking department ranged from $25,000 to about $50,000, equivalent to about $85 to $160 per bank per year.[1/]

At the end of 1921, after the failure of the Scandinavian-American Bank had exhausted the fund and all the participating banks had withdrawn, the supervisor of banking commented as follows on the inadequacy of supervision during the period of operation of the fund.

> In some quarters there has been an attempt to attach blame to my precedessors in office and the banking department for the recent bank failures. These criticisms generally come from those unfamiliar with financial conditions and other matters entering into the failures of the institutions in question, but others have joined in the criticisms who are credited with intelligence and are in position to seek for themselves the causes which have contributed to the regrettable failures.

1/ Expenses in 1917, 1918, and 1919 are given in the annual reports of the State bank examiner, those for 1920 and 1921 are estimated from appropriations provided.

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> If they would take the time to refer to statistics of last year they would learn that hardly a state in the Union escaped bank failures and the experience of this state compares very favorably with some of its neighbors. ...Under a system of extravagant economy fostered and urged by the people, some of whom are now paying for their lack of foresight, an appropriation intended to provide for supervision of the 300 banks in the state was limited to a sum which would ordinarily run a fair-sized country bank. Inadequate compensation was paid the chief and his assistants; their work was continually handicapped by lack of funds, and as soon as deputies had gained experience and shown ability better positions were offered them. To illustrate the extent of this embarrassment to the organization, I will point out that at the time the administration of this office was taken over by me last April only one deputy or examiner had served the department more than one year. Examinations were limited both in frequency and efficiency by the constant harping of economy. It is plain that no organization, however able and conscientious the personnel might be, with these handicaps, could be expected to obtain the best results. At the last session of the legislature some of these difficulties were remedied but the effects of former parsimony will be felt for some time. 1/

The conclusion of Professor Howard H. Preston of the University of Washington, who studied the operation of the system, was similar. In commenting on the reckless banking which wrecked The Scandinavian-American Bank, he stated that its bad administration began years before its admission to the guaranty fund. 2/ It appears that the Guaranty Fund Board, of which the president of that bank was a member, did not scrutinize with sufficient care the condition of the banks admitted. Professor Preston also stated:

> Lax supervision due to inadequate appropriations for the support of the banking department and also to politics in connection therewith, which extends back for years, account for the failure of the supervisorial authorities to root out the evil [of bad banking]. 3/

1/ Report of the Bank Commission for 1921, pp. 4-5.

2/ Howard H. Preston, "A Crisis in Deposit Guaranty in the State of Washington," Quarterly Journal of Economics, XXXVI (Feb. 1922), p. 355.

3/ Howard H. Preston, "Deposit Guaranty in Washington," Journal of the American Bankers Association, 15 (April 1923), p. 668.

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Statutory limitations on bank operations. The character of statutory limitations on bank operations imposed by the banking code in operation in Washington at the time of adoption of deposit guaranty is shown in Table 2.

NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number and deposits of participating and nonparticipating banks. By November 20, 1917, about six months after the Guaranty Fund Board began to receive applications from banks, 46 of the 285 eligible banks had been admitted to participation in the deposit guaranty plan. About the same number were admitted the following year and a few more during the next two years. At the maximum in November 1920, there were 116 member banks; this was 38 percent of those eligible, and 29 percent of all banks operating in the State. In 1921, after the failure of the largest participating bank, all the remaining members withdrew, so that the system became inoperative by the end of the year.

In 1920, at the time of maximum participation in the system, the participating banks held 41 percent of the deposits of all banks eligible for participation, or 18 percent of the deposits of all banks operating in the State. Table 3 shows for each year from 1917 to 1920 the number and deposits of the participating banks, the eligible nonparticipating banks, and the ineligible banks which included national and mutual savings banks.

Concentration of deposits. Most of the participating banks during the four years of operation of the guaranty system were medium to small in size, holding from $100,000 to $1,000,000 of deposits. However, deposits were concentrated primarily in two banks, which in 1917 held 66 percent, and in 1920 held 36 percent of all deposits in participating banks. In November 1920,

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN WASHINGTON

Item	Provisions of law 1/
Responsibility of officers, directors, and stockholders	
Examination of bank	No specific requirement.
Losses resulting from violation of law	Officers and directors liable for losses on loans made to directors, officers, or employees in excessive amounts or in violation of law.
Liability of stockholders	Par value of shares (i.e., usual double liability).
Bonding of active officers and employees	Board of Directors to require bond in amount determined by them (subject to approval of Commissioner), of active officers, and employees and such officers as they shall designate.
Limitations on loans and investments	
Loans to bank examiners	Prohibited.
Loans to directors, officers and employees	To be approved by majority of directors. Loans from trust funds prohibited.
Loans to stockholders	No provision.
Maximum to single borrowers (excluding discount of bills of exchange and of commercial or business paper owned by negotiator).	20 percent of paid in and unimpaired capital and surplus, a firm or several members thereof considered to be a single borrower (excluding loans collateralled by security of ascertained market value of at least 115 percent of amount borrowed).
Maximum secured by real estate	No provision (except for funds held in trust by trust companies).
Secured by own capital stock (applicable also to purchase of own stock)	Forbidden unless acquired to prevent loss on debt previously contracted and to be disposed of within ninety days.
When reserves impaired	No provision until 1919, when prohibited.
Limitations on ownership of real estate and stocks	
Maximum in banking house and equipment	Not in excess of 30 percent of capital, surplus and undivided profits, unless approval granted by Commissioner.

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Item	Provisions of law
Time limit on real estate acquired by collection of debt	Five years; extension may be granted by Commissioner.
Other real estate	Forbidden, except apartments included in banking office which may be rented as a source of income.
Bank stocks	Forbidden, except for stock in Federal Reserve Bank and not in excess of amount required for membership.
Other corporate stocks	Forbidden, except trust funds.
Limitations relating to deposits	
Maximum aggregate deposits	For guaranteed banks, 20 times capital and surplus; if this amount exceeded for 90 days, capital to be increased accordingly. For banks located outside central business district (such district to be determined by the Commissioner), in a city of 25,000 or more population and capital of $50,000, limited to 10 times paid in and unimpaired capital and surplus. No provision for other banks.
Maximum rate of interest payable on deposits	For banks in guaranty fund, as approved by the Guaranty Fund Board, from time to time (to be uniform within each county). No provision for other banks.
Receipt of deposit when insolvent	Forbidden.
Required reserves	15 percent of total deposits and 100 percent of uninvested trust funds, which may be balances with banks approved by Commissioner, cash in bank, or checks on solvent banks in same city.
Limitations on borrowing	
Maximum amount	Not to exceed paid in capital and surplus, for temporary purposes only; any habitual borrowing for reloaning to be paid off at request of Commissioner.
Maximum value of assets pledgeable as security	150 percent of amount borrowed.
Limitations on payment of dividends	
Earnings to be carried to surplus prior to dividends	10 percent until surplus equal to 20 percent of capital stock.
When losses equal or exceed undivided profits	Prohibited by limitation of dividends to net profits after providing for expenses, interest and taxes, accrued or due.

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Item	Provisions of law
When reserve impaired	No provision.
When insolvent or capital impaired	No provision.
Minimum capital stock	
New banks 2/	Graduated by population of city, village, or community: Less than 1,000 population - $15,000 1,000 to 5,000 population - 25,000 5,000 to 25,000 population - 50,000 25,000 to 100,000 population - 100,000 3/ 100,000 or more population - 150,000 3/
New trust companies	Graduated by population of city, village, or community: Less than 25,000 population - $50,000 25,000 to 100,000 population - 100,000 100,000 or more population - 200,000
Other banks	Banks in operation prior to 1917 may continue in business and meet above capital requirements at times and amounts prescribed by Commissioner.

1/ Provisions of law relating to banks of deposit and trust, except mutual savings banks, excluding provisions relating to trust business.

2/ In addition to these requirements, an amount equal to 10 percent of required capital be carried in undivided profit account to defray organization and operating expenses of company with any unused portion to be transferred to surplus fund before payment of dividends.

3/ In locations outside of central business district, $50,000 with limitation on deposits.

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Table 3. NUMBER AND DEPOSITS OF OPERATING BANKS IN WASHINGTON PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY PLAN, 1917-1920, BY YEARS

Year end	Total operating banks	Eligible to participate			Not eligible to participate 3/	Percentage of number of or deposits in participating banks	
		Total 1/	Participating 2/	Not participating 2/		Operating banks	Eligible banks
Number							
1917	364	285	46	239	79	12.6	16.1
1918	364	282	85	197	82	23.4	30.1
1919	381	295	104	191	86	27.3	35.3
1920	401	306	116	190	95	28.9	37.9
Deposits (in thousands of dollars)							
1917	322,232	148,756	39,823	108,933	173,476	12.4	26.8
1918	363,597	168,211	55,663	112,548	195,386	15.3	33.1
1919	451,176	203,099	79,815	123,284	248,077	17.7	39.3
1920	395,913	182,003	74,882	107,121	213,910	18.9	41.1

1/ State banks and trust companies, from annual reports of the State Bank Commissioner.

2/ Number of banks as of Dec.31; deposits as of call dates in November.

3/ Includes national banks (data from annual reports of Comptroller of the Currency), and 1 mutual savings bank with deposits in each year as follows, in thousands: 1917 - $6,562; 1918 - $7,856; 1919 - $10,862; 1920 - $12,468 (data from annual reports of the State Bank Commissioner).

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the deposits of the two banks were $16 million and $11 million, respectively.

The amount of deposits held by the participating banks in each of the four years, 1917-1920, with the banks grouped according to their deposits, are shown in Table 4.

Failures of participating and nonparticipating banks. No failure among participating banks occurred until June 30, 1921, when the largest bank in the system, The Scandinavian-American Bank of Seattle, suspended. A few months previously, the deposits of this bank had been $16 million, or approximately one-fifth of the deposits of all the participating banks. At the date of failure, after heavy withdrawals, it had deposits of $10,442,888. Of this amount, $8,452,103 was subject to the fund's guaranty.[1/]

The causes of failure of the Scandinavian-American Bank of Seattle were reported by Professor Howard H. Preston, of the University of Washington, as overexpansion of loans, depreciation of assets due to shrinkage of property values, failure of another bank previously affiliated with it, and the generally adverse financial conditions prevailing at the time. For several years prior to 1920, the bank's president, J. E. Chilberg, was interested in an Alaskan mining project. Under his management the bank became over-expanded and involved in heavy loans to the shipbuilding enterprises which collapsed with termination of the war. The unsafisfactory condition of the bank was recognized by the Federal Reserve Bank of San Francisco and the State banking department, and under their direction a new administration was placed in control of the bank

1/ Deposits at date of failure are from the annual report of the Supervisor of Banking for 1921, p. 4; those subject to guaranty from the final statement of guaranteed claims approved.

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Table 4. NUMBER AND DEPOSITS OF GUARANTEED BANKS IN WASHINGTON, 1917-1920

	Number of banks 1/				Deposits (in thousands) 1/			
	1917	1918	1919	1920	1917	1918	1919	1920
All participating banks	46	85	104	116	$39,822	$50,596	$79,812	$74,875
Banks with deposits of -								
100,000 or less	8	11	7	9	650	852	500	679
100,000 to 250,000	16	33	31	37	2,616	5,630	5,527	6,629
250,000 to 500,000	12	21	32	39	4,032	7,750	11,321	14,046
500,000 to 1,000,000	7	16	23	20	5,121	10,751	15,744	13,787
1,000,000 to 2,000,000	1	2	7	9	1,193	2,277	9,264	12,500
2,000,000 to 5,000,000	--	--	2	--	--	--	4,255	--
5,000,000 and over	2	2	2	2	26,210	23,336	33,201	27,234
Percentage of total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Banks with deposits of -								
100,000 or less	17.4	12.9	6.7	7.8	1.6	1.7	.6	.9
100,000 to 250,000	34.8	38.8	29.8	31.9	6.6	11.1	6.9	8.9
250,000 to 500,000	26.1	24.7	30.8	33.6	10.1	15.3	14.2	18.7
500,000 to 1,000,000	15.2	18.8	22.1	17.2	12.9	21.3	19.7	18.4
1,000,000 to 2,000,000	2.2	2.4	6.8	7.8	3.0	4.5	11.6	16.7
2,000,000 to 5,000,000	--	--	1.9	--	--	--	5.4	--
5,000,000 and over	4.3	2.4	1.9	1.7	65.8	46.1	41.6	36.4

1/ Tabulated from statements for the individual banks in the annual reports of the State Bank Commissioner. Totals for deposits differ, particularly for 1918, from those in the consolidated statement for the same date used in Table 3. The figures for the individual banks for 1918 apparently exclude, but for other years include, the item "due to banks".

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early in 1920 and a 100 percent stock assessment levied on the stockholders. In January 1921, the Scandinavian-American Bank of Tacoma, which had formerly been closely affiliated with the Seattle bank, but was never a member of the guaranty system, failed. This resulted in immediate heavy withdrawal of deposits from the Seattle bank , as many depositors assumed the two banks were still affiliated. The Seattle bank, despite the efforts of its new administration, was unable to withstand the drain. "Fundamentally both failures were caused by bad banking."[1/]

During the period of operation of the deposit guaranty system there were 12 failures among the commercial State banks which did not participate. However, the deposits of these twelve banks were considerably less than those of the one failure among the participating banks.

The number and deposits of the failed participating and nonparticipating State banks are shown by year, together with failure rates, in Table 5. For number of banks, the average annual failure rate for the nonparticipating commercial banks was about five times that for the guaranteed banks. However, in terms of deposits the average annual failure rate for the participating banks was about three times that for the nonparticipating banks.

FINANCIAL HISTORY OF THE GUARANTY FUND

The annual reports of the Bank Commissioner give the amount credited

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1/ Howard H. Preston, "A Crisis in Deposit Guaranty in the State of Washington," loc. cit., pp. 350-56, and "Deposit Guaranty in Washington," loc. cit., pp. 665-68.

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Table 5. NUMBER AND DEPOSITS OF STATE BANKS IN WASHINGTON CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, 1918-1921

Group and year 1/	Number	Deposits (thousands of dollars) 2/	Annual failure rates 3/	
			Number per 100 active banks	Deposits per $100 in active banks
Total, 1918-1921	13	$16,609	1.11 4/	$2.37 4/
Participating in deposit guaranty	1	10,443	.28 4/	4.17 4/
Not participating in deposit guaranty	12	6,166	1.47 4/	1.36 4/
1918	1	44	.35	0.03
1919	1	91	.35	0.04
1921 5/	11	16,474	3.59	9.05

1/ There were no failures in 1917 subsequent to enactment of the deposit guaranty law, and none in 1920.

2/ For failures in 1918 and 1919, as of last call date prior to failure; for 1921, as of date of failure (data from annual reports of Bank Commissioner).

3/ Based on active bank data for call dates nearest January 1, which were in November of the preceding year.

4/ Average annual rate for the 4 year period.

5/ One participating in deposit guaranty, and ten not participating.

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by the participating banks to the guaranty fund, as shown by the books of the banks at each call date; and also, for the first three years, the size of the fund at the end of the calendar year. A statement of receipts and disbursements of the fund from its beginning to the end of 1921 is given in the report for 1921. A final statement of the fund has been provided by the department of banking.

Income and obligations of the guaranty fund. A summary statement of the income and obligations of the Washington Depositors' Guaranty Fund for the entire period of its existence, together with the assessments each year, is given in Table 6. The total receipts of the fund were approximately $7 million of which a little less than $1 million represented the assessments received and more than $6 million the recovery from the liquidation of the assets of the Scandinavian-American Bank. Of the guaranteed deposits of over $8 million, over $6 million was paid from the proceeds of the liquidation of assets of the bank and less than $1 million from the assessment receipts of the guaranty fund. Over $1 million of guaranteed deposits were never paid. The proceeds of liquidation of the bank were sufficient to repay 75 percent of the guaranteed deposits, and the assessment receipts of the fund, after allowance for expenses, provided 10 percent, leaving 15 percent unpaid.

Settlement of the affairs of the guaranty fund. The affairs of the Washington deposit guaranty system were not finally closed until the end of 1927 when the final dividend had been paid from liquidation of the assets of the Scandinavian-American Bank and could be used by the guaranty fund to make a final payment to depositors. In connection with the liquidation of the affairs of the Scandinavian-American Bank and of the deposit guaranty fund, two cases affecting the fund reached the State Supreme Court. One of these pertained

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Table 6. RECEIPTS, EXPENDITURES, AND DEFICIT OF THE WASHINGTON DEPOSITORS' GUARANTY FUND

Receipts	
Initial assessment on banks admitted in 1917, at rate of $0.50 per $100 of deposits 1/	$139,043
Assessments on account of subsequent admissions and increase in deposits: 2/	
In 1918 3/	73,685
In 1919 4/	39,426
In 1920 5/	85,702
Assessment in Spring of 1921 to increase guaranty fund to $1.00 per $100 deposits (i.e., at rate of $0.50 per $100 of deposits) 6/	323,705
Assessment for contingent fund in June 1921 at rate of $0.10 per $100 of deposits 7/	70,857
Special assessment in December 1921 to meet loss in failed bank, at rate of $0.50 per $100 of deposits 7/	280,255
Total assessments	1,012,673
Interest 8/	16,170
Liquidation of failed bank 8/	6,360,958
Total receipts	$7,389,801
Expenditures	
Expenses and equipment 9/	$59,531
Assessment receipts lost or uncollected:	
On deposits in failed bank 8/	25,873
Uncollected under court decision 10/	91,983
Payments to depositors of failed bank 11/	7,212,414
Total expenditures	$7,389,801
Unpaid obligations	
To depositors of failed bank 12/	$1,239,689

1/ Amount to credit of guaranty fund at end of year (Report of State Bank Examiner, 1917, p. 6).

2/ At same rate as initial assessment.

3/ Estimated as amount to credit of guaranty fund on Nov. 1, 1918 (shown as $209,343 in Report of State Bank Examiner, 1918, p. 18) in excess of amount for preceding year, plus $3385 shown in final statement as "assessment No. 1" (assumed not included in Nov. 1 balance).

4/ Estimated as amount to credit of guaranty fund on Nov. 17, 1919 (shown as $248,769 in Report of Bank Commissioner for 1919, p. 12) in excess of amount for preceding year.

5/ Estimated as amount to credit of guaranty fund on Nov. 15, 1920 (shown as

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Table 6. Notes - continued.

$322,082 in Report of Bank Commissioner for 1920, p. 19) in excess of amount for preceding year, plus $12,389 shown in final statement as "assessment No. 2" (assumed not included in Nov. 15 balance).

6/ Estimated as amount in guaranty fund in early 1922 (shown as $645,787 in Report of the Supervisor of Banking for 1921, p. 15) in excess of amount for Nov. 15, 1920).

7/ Report of the Supervisor of Banking for 1921, p. 15.

8/ Final statement of the guaranty fund.

9/ Final statement of the guaranty fund. Distribution by years not available except for $4900 in 1919 (Report of Bank Commissioner for 1919, p. 7), and total of $24,506 to early 1922 (Report of Supervisor of Banking for 1921, p. 15).

10/ Estimated as difference between total assessments to end of 1921 (as shown in this table and in Report of Supervisor of Banking for 1921, p. 15), and "Total paid by member banks" (shown as $920,690 in final statement of fund). The amount thus estimated is less than a figure (portion of assessments) shown as "claims pending court decisions" in Report of Supervisor of Banking for 1921, p. 15), but more than the $56,061 which the Supreme Court of Washington ruled could not be collected from one bank that filed notice of withdrawal immediately after the revision of the guaranty fund law in March 1921 (Spokane and Eastern Trust Co. v Hart (1923), 221 Pac. 615, 127 Wash. 541).

11/ Final statement of the guaranty fund.

12/ Total guaranty fund warrants representing guaranteed deposits, amounting to $8,452,103, less payments of $7,212,414 (final statement of the guaranty fund).

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to a contention that the deposit guaranty fund had a prior lien on all the assets of a bank. The Court held that the fund was subrogated only to the same rights as were held by the owners of the guaranteed deposits, so that guaranteed and nonguaranteed deposits and other general claims were entitled to the same percentage payments from liquidation of the proceeds of the assets of the bank.[1/] The other court case arose in connection with the assessments due the fund from a bank, the largest in the system except the failed Scandinavian-American Bank, which filed notice of withdrawal immediately after passage of the amendments of 1921. That act was somewhat ambiguous as to the applicability of its provisions to a previously participating bank that declined to accede to the terms of the new law. This bank refused to pay its assessment, claiming that was not bound by any of the provisions of the original act, and was sustained by the lower court. The final decision by the Supreme Court appears somewhat curious. It held the bank liable for the additional assessment levied for the particular purpose of meeting the loss in the Scandinavian-American Bank, since that failure had occurred prior to the effective date of its withdrawal, but held that it was not liable for the previous initial assessment of one-half of 1 percent of its deposits to the credit of the guaranty fund, on the ground that the 1921 amendments had changed the terms of the section of the law relating thereto so drastically that neither the revised law nor the original law could be held applicable to the bank in question.[2/]

1/ State v. Duke (1922), 206 Pac. 918, 120 Wash. 13.
2/ Spokane and Eastern Trust Co. v. Hart (1923), 221 Pac. 615, 127 Wash. 541.

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WEAKNESSES OF THE WASHINGTON DEPOSIT GUARANTY SYSTEM

An appraisal of the Washington guaranty system by Professor Preston of the University of Washington summarizes very well the weaknesses of that system.

> The first lesson to be learned from the Washington experience is undoubtedly that deposit guaranty is no panacea against bad banking. The second is that it is no substitute for good banking laws rigidly and adequately enforced without fear or favor. In the third place it shows the danger of unscientific distribution of risk through allowing such a large percentage of the guaranteed deposits to be concentrated in a single institution. The Scandinavian-American failure was the largest ever experienced in Washington. The reserve accumulated was hopelessly inadequate to meet such a loss and its total loss would have been an almost intolerable burden for 120 small banks to bear. The guaranty principle is insurance and as such demands scientific distribution of risk. If it be thought worth while to devise such a system in other states the number of member banks must be large and a feasible plan of underwriting exceptionally large risks must be worked out. 1/

1/ Howard H. Preston, "Deposit Guaranty in Washington," loc. cit., p. 668.

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DEPOSIT GUARANTY IN NORTH DAKOTA

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DEPOSIT GUARANTY IN NORTH DAKOTA

The North Dakota law providing for the guaranty of bank deposits was enacted on March 10, 1917, the same day as the Washington law. At that time deposit insurance systems were in operation in the five States directly south of North Dakota and also in Mississippi. The North Dakota law went into force on July 1, 1917, and assessments for the system began later in that year. However, because of the time required to examine banks for admission, the insurance provided by the system did not become effective until July 1, 1918.[1/]

The North Dakota law remained in operation for twelve years. It was revised and rewritten at the 1923 session of the Legislature. Under an act passed by the Legislature in March 1929 and then submitted to a referendum and approved June 30, 1930, the law was repealed as of July 1, 1929.

BACKGROUND OF THE GUARANTY LEGISLATION

Bills for deposit guaranty were introduced into the North Dakota House of Representatives, but not acted upon favorably, in 1907 and 1909, and again in 1915.[2/] At the 1907 Annual Convention of the North Dakota Bankers' Association, the president of the association recommended guaranty of bank deposits on a national scale; and a member of the United States House of Representatives from North Dakota, who had introduced a bill for deposit

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1/ Commercial West, June 15, 1918, p. 34, and July 6, 1918, p. 34; The Northwestern Banker, August 1918, p. 66.

2/ 1907, House Bill no. 258; 1909, House Bill no. 47; 1915, House Bill no. 224.

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guaranty in the Federal Congress, spoke in its favor.[1] At the next convention the association appointed a standing committee of three persons on insurance of bank deposits to report the next year. In 1909 the association adopted a resolution opposing deposit insurance and congratulating the Legislature for declining to pass any bills introduced for that purpose.[2] In the convention of 1915, the legislative committee of the association reported that "as usual, the Legislature had a tussle with the bank guaranty bill", and that the association's committee had worked against it. The next year, however, the president in his address at the convention referred to the South Dakota law, saying: "It looks to me that now is the time for the bankers of the State to investigate this matter and see if it would not be advisable to have a bill presented to the Legislature".[3] The bankers participated in the drafting of the legislation of 1917, which was largely an adaptation of the South Dakota law.

CHARACTER OF THE GUARANTY LEGISLATION

Administration of the deposit guaranty system. Administration of the deposit guaranty system was placed in a Depositors' Guaranty Fund Commission to be composed of the Governor as chairman, the State Examiner as secretary, and three members appointed by the Governor from a list of nine nominations submitted by the North Dakota Bankers' Association. The appointed members were required to have had at least five years' experience in bank

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1/ Proceedings of the Fifth Annual Convention of the North Dakota Bankers' Association, 1907, p. 18. Representative Gronna's bill was introduced in March 1906, and again in December 1907 (Annual Report of the Federal Deposit Insurance Corporation for 1950, pp. 82 and 84).

2/ Proceedings of the Sixth Annual Convention of the North Dakota Bankers' Association; and of the Seventh Annual Convention, pp. 80-81.

3/ North Dakota Banker, July 1915, p. 8; and July 1916, p. 2.

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management in North Dakota. An amendment in 1919 provided that an appointed member must also be an official of some bank directly affected by the guaranty law, and omitted the requirement regarding nominations by the North Dakota Bankers' Association. Two years later, the requirement that an appointed member must be a bank official was dropped, and appointments were required to be made from a list of nine nominees submitted by the participating banks. In 1923 the State Examiner was replaced as a member of the Commission by the Manager of the Bank of North Dakota, with the Commission to appoint its secretary and authorized to select the State Examiner for that position.

The Commission was authorized in 1923 to appoint two inspectors, with the same qualifications as deputy State examiners, and if necessary two assistant inspectors, as a means of augmenting the examining staff of the State Examiner.

Admission of banks to the guaranty system. Participation in the deposit guaranty plan was made compulsory for every corporation, except national banks, engaged in the business of taking deposits or buying or selling exchange. This included trust companies doing a general banking business, and building and loan associations receiving savings deposits. The four trust companies operating in the State appear to have been engaged in deposit banking and to have become participants in the system.[1/] None of the building and loan associations qualified as participants in the system.

The law provided for the examination of all banks within six months after passage of the deposit guaranty act. The examinations were to be made

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1/ Statements are not given for trust companies, nor for the trust companies taken together, but they are included in the consolidated statements for State banks. Individual statements for the building and loan associations, which are given in the annual reports of the State Examiner, do not show any category of savings deposits.

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by the State Examiner and his deputies or by examiners appointed by the Depositors' Guaranty Fund Commission. The Depositors' Guaranty Fund Commission was then to pass upon the qualifications of each bank. The decision reached by the Commission was to be final, both as to immediate admission and with respect to requirements necessary for later admission. If a bank failed to comply with those requirements within three months, or within an additional six months at the discretion of the Commission, the bank was to be closed.

The first meeting of the Depositors' Guaranty Fund Commission was held on July 13, 1917. The Commission at that meeting adopted a resolution noting that banks would not be under its supervision until they had been examined and admitted, and forbidding the banks to so advertise until admitted. In October the Commission requested the State Examiner's office to make a list of weak banks and have them examined at once, with the reports of examination to be reviewed by the Commission and the banks to be informed of requirements for admission under the Guaranty Act. At a meeting on December 27, the examiner's reports showed that some banks could not be admitted, and the Commission adopted a resolution giving all banks an additional ninety days to clean up irregularities.[1/] Most of the banks appear to have been approved at the close of that period. However, as late as June 28, 1918, the Commission adopted a motion that ninety banks be notified that they were disapproved.[2/] Apparently all but a few of these banks met the necessary conditions. In October five banks were reported as having failed to qualify and as closed or still under

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1/ Minutes of the Depositors' Guaranty Fund Commission of North Dakota. These minutes were examined by the author of this report in September 1956.

2/ Ibid.

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investigation.[1] The records of the Commission show that four banks were closed in the third quarter of 1918, without having been admitted to the deposit guaranty system.

Deposits covered by guaranty. Deposit guaranty in North Dakota applied to all deposits not otherwise secured and included public funds. The act provided that the guaranty should not apply to a bank's obligation as endorser upon bills rediscounted, bills payable, or money borrowed from its correspondents or others. The provision regarding public funds stated that such funds should thereafter be secured in the same manner as private funds and repealed previous requirements regarding the posting of security for the purpose of becoming a depository for public funds. In 1919, upon establishment of the Bank of North Dakota, all public funds were required to be deposited in that bank.[2] This provision was modified by an initiative act adopted by the voters in November 1920, permitting municipal subdivisions of the State to deposit their public funds in depositories of their own choice.[3] This initiative act was replaced in the Spring of 1921 by a legislative act designating all State and national banks as well as the Bank of North Dakota as legal depositories of public funds of municipal subdivisions and prescribing procedures required for furnishing of bond.

In 1923 the revised law provided that deposits upon which compensation in excess of the prescribed rate of interest was paid in any manner

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1/ Commercial West, October 19, 1918, p. 34. The annual report of the State Examiner for 1917-18 states that two banks were closed by the department with receivers to be appointed.

2/ The Bank of North Dakota is owned, controlled, and operated by the State, and its deposits are guaranteed by the State. It was not required nor authorized to participate in the deposit guaranty system.

3/ Sargent County v. State (1921), 182 N.W. 270, 47 N.D. 561.

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whatsoever were to be excluded from guaranty. A decision of the State Supreme Court applied the same principle to a deposit in a bank that failed prior to enactment of that law, though the excessive interest was in the form of a bonus.[1/]

Fewer cases of controversy regarding deposits eligible for coverage by the guaranty fund were carried to the courts in North Dakota than in the States which had previously established deposit insurance systems. This resulted from the provision in the 1923 law stating that the decision of the Commission should be final with respect to any deposit guaranteed by the fund, with the owner of any claim rejected by the Commission entitled to appeal within ninety days. The Commission was authorized to make rules and regulations prescribing the manner by which claims should be allowed and to provide for hearing upon rejected claims either before the Commission or any member thereof or a referee appointed by the Commission. After such a hearing the Commission was required to review the rejected claims and make a final determination. Under a decision of the State Supreme Court in 1924 the procedures of the 1923 law for determining and paying depositors' claims were applicable not only to banks that failed subsequent to the 1923 law, but also to those that had failed prior to that time and were in process of liquidation.[2/] The finality of the Commission's review of rejected claims was upheld in later decisions of the Supreme Court.[3/]

Assessments. Assessments for meeting the cost of deposit guaranty were levied upon banks on the basis of total average daily deposits. The law provided for an initial assessment in 1917, and annual assessments thereafter

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1/ McQuerry v. State (1923), 195 N.W. 432, 50 N.D. 229.
2/ Wirtz v. Nestor (1924), 200 N.W. 524, 51 N.D. 603.
3/ Standard Oil Co. of Indiana v. Engel (1927), 212 N.W. 822, 55 N.D. 163; Bishop v. Depositors' Guaranty Fund Commission (1927), 212 N.W. 828, 55 N.D. 178; and State v. Sorlie (1927), 212 N.W. 829, 55 N.D. 182.

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of 1/20 of 1 percent of such deposits until the fund should reach a maximum of 1 percent of average daily deposits. Additional assessments of 1/20 of 1 percent each, with not more than four in any one year, were authorized if the fund fell below 3/4 of 1 percent of the total average deposits of the banks. The 1923 revision provided that assessments should continue at the regular rate until the fund reached 2 percent of the total average daily deposits, and then were to be omitted until the fund was depleted below 1½ percent.

New banks admitted to the system were to pay an amount equal to 2 percent (increased to 3 percent in 1923) of their capital stock. The annual assessments on such banks were to be so adjusted that the first two assessments, together with the initial payment, would equal at least one-half of 1 percent of the average daily deposits as shown by the first annual statement.

A bank entering voluntary liquidation or changing to a national bank was to be refunded the portion of assessments it had paid which had not been used. However, the bank was not to be relieved of paying the current assessment due to the fund, nor of any liability to become due on account of losses in banks closed at that time. Under a decision of the State Supreme Court the latter requirement did not authorize or permit the levy of assessments on a bank which had converted to a national bank.[1/]

Custody of fund and expenses of administration. Individual participating banks were given custody of the fund. Each bank was notified as to the amount of its assessment and this amount was credited by the bank to the Depositors' Guaranty Fund and made payable to the Depositors' Guaranty Fund Commission upon demand. No bonds or cash were required to be deposited as surety for payment of assessments. Failure to credit the assessed amount

1/ State v. First National Bank of Whitman (1929), 224 N.W. 161, 57 N.D. 574.

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made a bank liable to a daily fine of ten dollars for the first twenty days, and after thirty days the State bank examiner was empowered to deem the bank insolvent and liquidate it.

The Commission was authorized to deposit money collected or received from time to time in one or more banks or trust companies operating under the provisions of the Act.

The expenses of administering the guaranty fund were to be paid by the State from its general funds. The 1923 law appropriated $20,000 a year from the guaranty fund to meet the salaries of inspectors appointed by the Commission and other expenses, with any unused amounts to be returned to the fund. Under that law inspectors appointed by the Commission were to receive the salary of deputy examiners from the State Examiner's funds, with the Commission authorized to pay an additional salary from the guaranty fund if necessary to procure competent services. Salaries of assistant inspectors were to be paid from the guaranty fund.

Method of paying depositors of failed banks. When a bank became insolvent the State Examiner was to certify to the Depositors' Guaranty Fund Commission the net amounts due unsecured depositors. The Treasurer of the Commission was then to draw on the fund in the various banks, prorated among them in accordance with the amounts held by such banks, and transmit the required amounts to the depositors. If the Depositors' Guaranty Fund was insufficient the Commission was to issue a negotiable certificate of indebtedness, with interest at 5 percent per year in favor of the insolvent banks. These certificates were to be due and payable out of the first money accruing to the Depositors' Guaranty Fund, on March 1 following the date of issue. The Commission was subrogated to all rights of depositors paid from the guaranty fund.

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The amendments of 1923 substantially altered the procedure used in paying the claims of depositors covered by the guaranty. Under the new procedure, the Commission was to have each deposit in a closed bank examined and audited and to determine the amount qualified for guaranty under the act, certifying the acceptance or rejection of each deposit to the Secretary of the Commission who then gave notice to persons whose deposits had been rejected. The Secretary of the Commission issued a certificate of indebtedness upon the Treasurer of the Commission to each owner of a deposit accepted as guaranteed. If there were insufficient funds available in the fund to pay the certificates, the Treasurer was required to endorse the same as "presented for payment", and the certificate was thereafter payable out of the guaranty fund upon order of the Commission for a pro rata payment on all outstanding certificates of indebtedness.

Liquidation of closed banks. Under the law in force when the deposit guaranty law was enacted, insolvent banks were liquidated by a receiver appointed by the State Examiner with the approval of the State Banking Board. In 1921 the Depositors' Guaranty Fund Commission was given the power to supervise the liquidation of insolvent banks and authorized to appoint a supervisor of receivers with expenses to be paid from the guaranty fund.

In 1923, the Legislative Assembly transferred jurisdiction over the affairs of insolvent banks to the State Supreme Court. At first this was for a three-year period, but this time limitation was later removed. The State Supreme Court was to appoint a reciver, or two joint receivers, for all insolvent banks to supplant or supersede any receiver previously appointed, and to appoint the same receiver or receivers for any other bank which became insolvent. The receiver, or receivers, was to act under the guidance of a Court Commissioner appointed by the Supreme Court.

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The Depositors' Guaranty Fund Commission was given power in 1923 to permit a bank which had suspended to reopen, provided the bank complied with conditions, prescribed by the Commission, deemed necessary to make the bank solvent. The Depositors' Guaranty Fund Commission was also authorized to prescribe the conditons under which a bank in receivership could be reorganized and readmitted to the guaranty system. With the approval of the Court, such a reorganization could be made at any time prior to final disposition of liquidation proceedings.

In 1927 an amendment provided for reorganization of a failed bank and readmission to the guaranty system, without placing it in receivership, according to a plan agreed to by 80 percent of the depositors, and approved by the State Examiner and the Guaranty Fund Commission. A bank in receivership could be reorganized by the same procedure, with the additional approval of the Court.

Special deposits and extension of time for reorganization. The 1923 amendment to the deposit guaranty law also authorized the Commission or an inspector to require a bank when under examination to set aside all deposits received thereafter and to be held intact as "special deposits". Such special deposits were to be kept separate and apart from the general fund of the bank, to be held in cash or placed in another bank as a special trust fund, and were not to be devoted to any purpose other than return on demand to the depositor. Such an order when first issued was to apply to deposits received during a bank examination, but if the Commissioner or inspector found the bank to be insolvent he could extend the order for such further period, not to exceed thirty days, as was necessary to enable the Commission to meet and take action regarding the bank. The Commission could institute proceedings to have the bank closed or, in its discretion, could give the bank a prescribed time to

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comply with conditions the Commissioner deemed necessary to make it a solvent institution, with the bank consenting by resoltuion of its Board of Directors to the limitation on receipt of deposits and continued supervision of its affairs by the Commission.

Deposits in and control of banks in difficulty. Under the 1923 act the Depositors' Guaranty Fund Commission was authorized, for the next four years, to deposit funds in participating banks, "temporarily in aid of open banks, in such amounts, and under such terms and conditions, and upon such security as it may determine and designate." A bank receiving such aid was required to conduct its affairs in accordance with and under the direction of the Commission until the temporary aid was withdrawn.

SUPERVISION AND REGULATION OF GUARANTEED BANKS

Banking code and supervising authority. State banks in North Dakota had been subject to supervision for about 25 years prior to passage of the deposit insurance legislation. The banking code had been revised in 1913 and was not significantly changed at the time of enactment of the deposit guaranty law in 1917. Examination and supervision of the banks was in the hands of a Department of Banking under the management and control of a State Banking Board with a State Examiner as chief officer. The State Banking Board consisted of the Governor, Secretary of State, Attorney General (ex officio), and the president and secretary of the North Dakota Bankers' Association. The Governor was chairman and the State Examiner secretary of the State Banking Board. These provisions remained unchanged throughout the duration of the deposit guaranty system, though some changes were made in the supervisory powers of the State Banking Board and the State Examiner.

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The duties of the State Examiner were not confined to bank supervision. He was also responsible for examining the books and accounts of the various State offices, and those of counties, and cities, and school boards, and also for examining the affairs of financial corporations other than banks operating under State law.

Bank supervisory powers of the State Examiner. The duties of the State Examiner pertaining to banks were principally examination of all State banks, closing of insolvent banks, and supervision over their reorganization or initiation of the process of liquidation. He was required to make at least two examinations each year of each State bank . Also, he was required to make the special examination of each bank applying for admission to the deposit insurance system. In 1923, when the Depositors' Guaranty Fund Commission was authorized to appoint inspectors, the State Examiner was given authority to accept an examination by such inspectors in lieu of an examination by one of his own deputies.

The supervisory powers of the State Examiner during the period of operation of the deposit guaranty system are summarized in Table 1.

Supervisory powers of the Depositors' Guaranty Fund Commission. Some of the bank supervisory powers of the State Examiner were shared with the Depositors' Guaranty Fund Commission. The Commission could refuse admission of a bank to the guaranty system, in which case the bank was required to be liquidated as an insolvent bank. Under the 1923 act, the Commission was required to take necessary steps to become and keep informed as to the financial condition and management of all participating banks. To enable the Commission to do this, it was given full access to all the records and files

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF STATE EXAMINER, IN NORTH DAKOTA

Item	Powers 1/
Opening of new banks	Until 1927, State Banking Board to transmit from Secretary of State to State Examiner certificate of authority; such certificate to be held by him until examination reveals strict compliance with all conditions of banking law. After 1927, State Banking Board to hold open hearings and to diligently inquire whether community needs additional banking facilities and, if so, whether proposed bank fills this need; and whether incorporators are of such character, integrity, reputation and financial standing that bank will not be detrimental to welfare of the community. If State Banking Board in unanimous agreement as to establishment of bank to request Secretary of State to issue certificate of authority which is forwarded to State Examiner and held by him until examination reveals strict compliance with banking laws.
Examinations and reports of condition	
Frequency of examinations	At least twice a year by State Examiner or deputies, under direction of State Banking Board. In 1923, duty of Guaranty Fund Commission to investigate a bank if its information indicates the bank is being irregularly, inefficiently, or dishonestly conducted or is insolvent, with results to be accepted by State Examiner, at his discretion, in lieu of a required examination.
Scope of examinations	To ascertain that bank is operated in accordance with law and sound banking practices; specifically, the character and value of assets, the method of operating and conducting the bank, and the systems of accounting.
Reports of condition	At least five a year (amended in 1925 to three or more), and any additional reports deemed necessary by State Banking Board to obtain full and complete knowledge of condition of the bank; form of reports to conform as nearly as possible to that used by national banks (amended in 1927 to include dates similar to those for national banks).

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF STATE EXAMINER, IN NORTH DAKOTA (continued)

Item	Powers
Bank management	
Removal of undesirable assets or discontinuance of undesirable practices	State Banking Board to institute action deemed necessary to cause bank to dispose of bad debts or to convert same into good assets.
Impairment or deficiency of capital	State Banking Board to order any impairment of capital to be made good.
Impairment of reserve	State Banking Board to order restoration of impaired reserve within thirty days.
Removal of bank officers, directors, or employees	No provision other than instituting legal proceedings for infractions of law.
Taking possession or closing a bank	State Banking Board to close and take possession of a bank found to be insolvent, with following conditions determining insolvency: When actual cash market value of assets insufficient to pay liabilities; When unable to meet demands of creditors in usual and customary manner; When fails to make good reserve as required by law; When fails to comply with any lawful order of State Banking Board within time specified by law or the Board. If Guaranty Fund Commission does not approve a bank for admission and corrections requested not made within three months of notice (may be extended by Commission an additional six months), to be closed for liquidation as an insolvent bank. In 1923, Guaranty Fund Commission authorized to request appointment of receiver for a bank found insolvent upon investigation.
Handling of closed banks	
Return to owners	Until 1923, may be returned to owners to be operated under conditions specified by State Examiner if on examination bank is found able to pay in full from assets all creditors except stockholders. In 1923, Guaranty Fund Commission given authority to return to owners and establish conditions of operation, prescribing (in 1927) conditions as to assets, payment of liabilities, and character and competency of managing officers. In 1927, owners may appeal for return upon presentation by 25 depositors of plan of operation endorsed by deposit creditors having 80 % of deposits and acceptable to the State Examiner and Commission.

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Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF STATE EXAMINER, IN NORTH DAKOTA (continued)

Item	Powers
Liquidation	Unless returned to owners, closed bank to be liquidated as follows: (1) By State Banking Board, after allowing reasonable time for examination, through appointment of temporary receiver pending court action; (2) By State Examiner through appointment of receiver subject to approval of State Banking Board; (3) By District Court through appointment of receiver who may enter liquidation proceedings at any time and assume all responsibility for same. In 1921, liquidation proceedings to be supervised by Guaranty Fund Commission through appointment, if deemed necessary, of a supervisor of receivers. In 1923, Supreme Court of North Dakota given and required to exercise original jurisdiction of liquidation proceedings, with authority to appoint a receiver or two joint receivers for all closed banks, such appointees subject to instruction from a Court Commissioner empowered to act on behalf of the Court, and superceding any receiver appointed by District Court, State Examiner, or State Banking Board.
Sale of assets or capital stock	Until 1921, receiver may dispose of corporate property on terms set by State Examiner. Thereafter, authority to dispose of assets in general provisions applying to liquidation responsibilities of Guaranty Fund Commission and the Courts.
Consolidation of banks	In 1923, merger or consolidation permitted by 2/3 vote of stockholders after thorough examination by and approval of State Examiner with view to determining whether conditions such that proposed action would result in a sound and efficient banking association adapted to the needs of the community; final appeal resting with the State Banking Board. Amended in 1927 by emergency action to permit merger if agreed to by majority of Board of Directors and 2/3 of stockholders, with requirement that merging bank remain a body corporate for at least three years after merger and not dissolve without approval of State Examiner.

1/ As at beginning of deposit guaranty system (i.e., as granted in the 1913 banking law, or as amended in 1915 and 1917) with amendments until the repeal of the deposit guaranty law as of July 1, 1929 (approved by referendum on June 25, 1930). Provisions applying only to trust companies are omitted.

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of the Banking Department, and full power and authority to take charge of the assets, papers, documents and records of any bank, and to examine any officer, stockholder, employee, creditor, or debtor of the bank. If any member of the Commission had information leading him to believe that an immediate examination of a bank should be made, he had authority to order an inspector or an assistant inspector to make such an examination, and if necessary to call upon the State Examiner to furnish a deputy to work with the inspector, with the two officers required to co-operate so far as practicable in the examination of the bank. The Commission also had substantial powers, which have been described above, with respect to the handling of banks found upon examination to be insolvent.

The Commission was authorized to prescribe a maximum rate of interest, to be uniform in any county and not to exceed 6 percent per year, that could be paid by participating banks on their deposits. Without such permission the banks were limited by law to a maximum of 5 percent, which was reduced to 4 percent in 1923. At the first meeting of the Commission, the maximum rate was set at 6 percent, which was maintained until 1925. The rate was then reduced to 5 percent, and to 4 percent in 1927.[1/]

Supervisory experience. The State Examiner at the time the deposit guaranty law was enacted remained in office for about two years thereafter. His successor also held office for about two years. In 1921, Gilbert Semingson, who had been a bank examiner for several years, was appointed State Examiner and remained in this office throughout the remaining period of operation of

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1/ Minutes of the Depositors' Guaranty Fund Commission.

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the deposit guaranty system. There was also a considerable continuity in the membership of the Depositors' Guaranty Fund Commission, though two of the original members served only until 1921.

The number of bank examiners, as shown in the annual reports of the State Examiner, ranged from nine during the early years of the deposit guaranty system to five at the end. However, this examining force was supplemented in 1923 by an inspector appointed by the Depositors' Guaranty Fund Commission. With two examinations a year of each bank, each examiner was apparently required to make about a hundred and fifty bank examinations a year during the early years of the system. Toward the end of the period, the number of banks decreased at about one-half the number at the beginning, substantially reducing the load per examiner.

The salary of the State Examiner was $3,000 per year. In 1923, when the State Examiner was replaced on the Commission by the Manager of the Bank of North Dakota, the State Examiner was appointed secretary of the Commission, and paid $2,000 a year for this service. In 1927, an amendment to the law placed the salary of the State Examiner for all services rendered in any capacity at $5,000 per year. The salary of bank examiners was $2,000 per year until 1927, when a range of $1,500 to $3,000 was provided. Early in 1923, when a special deputy examiner was appointed by the State Banking Board, on recommendation of the Depositors' Guaranty Fund Commission, to work under the direction of the Commission, his salary was placed at $4,000 per year, of which one-half was paid from the funds of the State Examiner and one-half from the Depositors' Guaranty Fund.[1/] Later in the year, after enactment of the revised deposit

1/ Minutes of the Depositors' Guaranty Fund Commission, Jan. 20, 1923.

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guaranty law, this position was replaced by an inspector appointed by the Commission, with his salary paid in full from the guaranty fund.[1/] The total appropriations for the State Examiner's office ranged from $48,000 to $128,000 per year during the period of operation of the deposit guaranty system. Comparison of the number of bank examiners with the number of examiners concerned with other duties suggests that about two-fifths of the appropriations for the State Examiner's office were for bank examination and supervision. Appropriations for the Depositors' Guaranty Fund Commission ranged from small amounts in the early years to a maximum of $25,000. The total appropriations for bank examination and supervision and administration of the guaranty fund are estimated at about $30,000 a year to 1921, and about $55,000 to $65,000 thereafter. This is about $40 per bank in the earlier years, and $80 to $150 per bank in the later years of the period of operation of the deposit guaranty system.

The State Examiner at the time the deposit guaranty law was enacted discussed in his report for 1917 the load of work falling upon his office.

> The work of this department has more than doubled in the last five years, and only two additional examiners have been provided to take care of the increased volume of business, and for examining the large number of banks which have opened and are now doing business...
>
> In addition to the above, the Guaranty Law has been added to this department.
>
> It does not appear that comments are necessary, as it goes without saying that it is a physical impossibility for this office with its present force, to carry on the work as should be done.
>
> I therefore recommend that this office be divided into two departments, one in charge of the bank work exclusively, and the balance to be under the supervision of an Executive Accountant.

1/ Audit reports of the guaranty fund.

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> In conclusion, it appears fitting and proper that this report be carefully considered by the members of the next Legislative body and if possible that ways and means be provided whereby the present congestion of work be eliminated. 1/

Three years later the State Examiner again referred to the need for more examiners.

> Owing to the increase in size and number of the banks of the State and extra work entailed by the Industrial Program, it will be necessary to have several additional examiners, in order that the work may be kept up according to law. 2/

Commentators on the causes of bank failures while the guaranty system was in operation attributed those failures in part to inadequate supervision. The report of 1922 of a special committee of the North Dakota Bankers Association, which had been appointed the previous year, included the following:

> We believe that the real underlying reason why such conditions should develop is inadequate laws and lax supervision on the part of the state banking department. True, there were many contributing causes--questionable practices, dishonesty, inexperience, zeal to make money, too many banks in many places, banks owned by those who only looked to dividends, and political banks, but were there strict and intelligent supervision, backed up by proper laws, the dishonest, inexperienced, greedy or partisan ownership would not find the field available nor profitable. 3/

Thornton Cooke, writing in the Quarterly Journal of Economics two years later, commented that lax supervision by the State Banking Department in times past is blamed for many of the recent failures. 4/

Statutory limitations on bank operations. Statutory limitations on bank operations under the banking code in operation in North Dakota at the time of adoption of deposit guaranty are shown in Table 2.

1/ Report of the State Examiner, 1917, pp. 5-7.
2/ Report of the State Examiner, 1920, p. 5.
3/ Commercial West, Vol. 42 (July 1, 1922), p. 19.
4/ "The Collapse of Bank Deposit Guaranty in Oklahoma and its Position in Other States", Quarterly Journal of Economics, XXXVIII (Nov. 1923), p. 128.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NORTH DAKOTA

Item	Provisions of law 1/
Responsibility of officers, directors, and stockholders	
Examination of bank	Directors to make a careful and thorough examination of bank each January and July, furnishing report to State Banking Board on form prescribed by Board. Officers and employees not to falsify any records or information on bank's condition.
Losses resulting from violations of law	Officers and employees personally liable for any overdraft honored; directors, for losses on loans made to any officers, directors, or employees in excess of law, in dishonest manner or in manner incurring great risk or loss to bank. Any officer guaranteeing collection or payment of loans secured by real estate which are sold or disposed of personally liable for guaranty.
Liability to stockholders	Par value of shares (i.e., usual double liability).
Bonding of active officers and employees	Officers and employees to furnish good and sufficient bond in such sum and upon such conditions as may be required by board of directors, subject to approval of State Banking Board.
Limitations on loans and investments	
Maximum amount	No provision for commercial banks.
Loans to bank examiners	To be approved by a majority of the board of directors, or by a committee of the board.
Loans to officers and employees	To be approved by a majority of the board of directors, or by a committee of the board.
Loans to directors	No provision.
Loans to stockholders	No provision.
Maximum to single borrowers (not to apply to discount of bills of exchange drawn against actual existing values nor to loans collateralled by agricultural produce in transit or storage)	15 percent of capital and surplus. Amended in 1927 to 15 percent of capital and surplus when surplus does not exceed 20 percent of capital; 12 1/2 percent when surplus over 20 percent of capital but under 50 percent; 10 percent when surplus over 50 percent of capital.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NORTH DAKOTA - continued

Item	Provisions of law
Maximum secured by real estate	25 percent of total loans and discounts, on first mortgages, and amount of loan not in excess of 40 percent of actual cash value of property.
Secured by own capital stock	Prohibited, unless acquired to prevent loss on debt previously contracted and to be disposed of within six months.
Limitations on ownership of real estate and stocks	
Maximum in banking house, equipment and land	30 to 40 percent of capital and unimpaired surplus, according to capital stock.
Time limit on real estate acquired by collection of debt	Five years.
Other real estate	Prohibited.
Bank stocks	Prohibited, except that necessary to become member of Federal Reserve bank in district.
Other corporate stocks	Prohibited.
Limitations relating to deposits	
Maximum aggregate deposits	No provision.
Maximum rate of interest payable on deposits	5 percent (amended in 1923 to 4 percent), or 6 percent if authorized by Guaranty Fund Commission, to be uniform throughout county.
Receipt of deposit when insolvent or in failing circumstances	Prohibited.
Required reserves	
Total required	20 percent of demand deposits and 10 percent of time deposits; reduced in 1919 to 10 and 7 percent respectively; increased in 1925 to 15 and 10 percent effective Jan. 1, 1926, and to 20 and 10 percent effective Jan. 1, 1927.
In actual cash in bank	40 percent of above specified percentages.
Character of balance	On deposit in good solvent State or national banks or trust companies qualified to act as depositories approved by the StateBanking Board, or, in 1919, in Bank of North Dakota. 2/

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NORTH DAKOTA - continued

Item	Provisions of law
Limitations on borrowing	
Maximum amount	No provision prior to 1925; thereafter, 20 percent of deposits, and any amount in excess thereof with approval of State Examiner, subject to regulations of State Banking Board, for specific purposes 3/; and in addition 10 percent of deposits on endorsement of notes and bills rediscounted, or any amount with approval of State Examiner under regulations of State Banking Board (excludes discount of bills of exchange drawn against agricultural and other commodities in transit or storage).
Maximum value of assets pledgeable as security	No provision until 1925, thereafter 150 percent of amount borrowed without approval of State Examiner, and amount fixed by State Examiner on borrowings authorized by him.
Limitations on payment of dividends	
Earnings to be carried to surplus prior to dividends	10 percent until surplus equal to 20 percent of capital stock; amended in 1927 to 50 percent until surplus equal to 100 percent of capital stock, and sufficient to restore surplus to highest point previously attained.
When losses equal or exceed undivided profits	Prohibited.
When reserve is impaired	Prohibited.
When insolvent or capital impaired	Prohibited.
Maximum	Net profits on hand after deducting losses and bad debts.
Minimum capital stock	
New banks	Graduated by population of town or city: $15,000 where population under 1,000; $20,000 where population over 1,000 but under 2,000; $30,000 where population over 2,000 but under 3,000; $35,000 where population over 3,000 but under 4,000; $40,000 where population over 4,000 but under 5,000; $50,000 where population over 5,000.
Other banks	Corporate existence to be renewed only with capital increase sufficient to meet requirement for new banks.

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Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NORTH DAKOTA - notes

1/ Provisions relating to all commercial and savings banks and trust companies accepting deposits or buying or selling exchange (excluding National banks). Provisions applicable to trust companies or savings banks only are omitted.

2/ In 1925, with permission of State Banking Board, 25 percent of required reserve could be in United States certificates of indebtedness, U. S. bonds, North Dakota land series bonds, Bank of North Dakota bonds, and North Dakota mill and elevator bonds.

3/ To restore depleted reserve or in anticipation of such depletion within 30 days; to protect assets of bank; to avert any actual or pending emergency which in judgment of State Examiner would be dangerous to interests of bank, depositors, and other creditors.

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INSOLVENCY AND CLOSING OF THE GUARANTY FUND

Inadequacy of the fund. During the first two years after insurance of deposits became effective in North Dakota, there were two failures. The deposits of these banks were paid promptly from the guaranty fund.

Beginning in the middle of November 1920, bank failures in North Dakota became numerous. Between that date and the end of 1921, more than fifty banks closed because of financial difficulties. A few of these were reopened, part of which closed again. At a meeting of the Depositors' Guaranty Fund Commission in January 1921, it was noted that the fund was inadequate to meet the depositors' claims, and the maximum number of assessments which could be levied during the year was ordered to be paid as of the 15th of February, March, April, and May, respectively. In April, the secretary of the Commission was instructed to pay depositors of the closed banks out of funds collected from assessments, in the order of their failure. In July the Commission authorized payment in full of the depositors in the Tolley State Bank, the first of the failures in 1920, upon completion and audit of the claims. That action was rescinded in November, and the funds assembled for payment of depositors in that bank were ordered redistributed among the State banks.[1/] This was due to the absence of any provision in the 1917 law regarding priority of payments of depositors in closed banks. The law merely provided that if the funds were insufficient the Commission was to issue certificates of indebtedness to the receivers of the various banks due the following March 1, which were to be paid from the forthcoming receipts of the fund; that is to say, it was not specified whether those becoming due

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1/ Minutes of the Depositors' Guaranty Fund Commission.

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on March 1 of any year were to be paid in the order of the failure of the banks concerned or whether a prc-rata payment might be made at that time. It is probable that law suits were being developed regarding this point.

As a consequence of the confused situation regarding the priority of payments to depositors, the Depositors' Guaranty Fund Commission took no further action to make such payments until after the 1923 revision of the law. That revision specified pro rata payment on all claims approved by the Commission, without regard to the priority of the closing of the bank. Further delay in making payments occurred pending the consideration by the State Supreme Court of a claim that the 1923 law did not apply to the banks that had failed prior to its enactment. The Supreme Court, in September 1924, ruled that the new law applied to all failed banks whose depositors had not been paid.[1/]

In October 1924 the Commission adopted a resolution noting that its audit of all banks closed prior to July 1, 1923 had been completed and it was therefore practicable to begin paying depositors in those banks. The Commission further resolved that certificates of indebtedness be issued as promptly as possible to all depositors of banks closed prior to July 1, 1923, and that a dividend of 10 percent be paid on admitted guaranteed claims in such banks. From time to time thereafter the Commission authorized payments of 10 percent of the deposits approved in banks closed at various later dates.

Failures continued in large numbers through the middle twenties and it was soon apparent that the guaranty fund was hopelessly insolvent. In 1928 an attempt was made to obtain approval of a Constitutional amendment under which

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1/ Wertz v. Nestos, 200 N.W. 524, 51 N.D. 603.

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the system would be terminated and a State bond issue not exceeding $25 million would be sold and the proceeds used to pay the claims of depositors in banks closed to May 15, 1928. This proposal was defeated at the referendum on November 6 of that year. In March 1929 an act was approved which provided for the discontinuance of further assessments for the guaranty fund after July 1, 1929, and for the disbursement of the remaining balance of the fund by the Commission on or before the first day of December 1930, with the dissolution of the Commission as of that date. A referendum petition was filed in regard to this bill, requesting that it be submitted to the electors on June 25, 1930. It was approved by the electorate at that time.

When the repeal became effective, the Commission had paid a 10 percent dividend to depositors of all participating banks that had failed prior to April 30, 1925, and in so doing had nearly exhausted the funds collected on assessments to the termination date of July 1, 1929. In August of 1930 the Commission resolved that no further dividends be declared and the funds available for payment of such dividends be held intact to await the further direction of the Legislature. It was stated that there remained $9 million in claims in banks in which no dividend had been declared and the available funds would provide a dividend of only 3/100 of 1 percent. The cost of paying such a dividend would be out of proportion to the dividend and in addition many holders had not perfected their claims and with no limitation on time for presentation, it would be impossible for the Commission to complete payment of such dividends before the end of the year.

The final law regarding disposition of the remainder of the guaranty fund was enacted in March 1931. This act provided that all claims must be presented within six months, and authorized the State Examiner to pass upon

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all claims and to pay such dividends as he could to remaining claimants. Under this law a final dividend of 1 percent was paid to the depositors who had previously received no dividend from the fund.

NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number and deposits of operating banks. The number of banks participating each year in the deposit guaranty plan in North Dakota is given in Table 3, together with the number of banks operating in the State which were not eligible for participation. The latter group includes only national banks and the Bank of North Dakota. There was a slight increase in the number of State banks during the first two years of the guaranty system. However, after 1919, and particularly after 1922, the number declined. Because of a relatively small decline in the number of national banks, the percentage of all banks in the State participating in the insurance system was reduced from 81 percent in 1917 to 71 percent in 1928.

The deposits of the banks participating and not participating in the system, for each year, are given in Table 4. In 1917 the deposits of the participating banks were 61 percent, but in 1928 only 34 percent, of the deposits of all banks in the State.

Concentration of bank deposits. Table 5 shows the deposits in the participating banks at the end of 1918, 1923, and 1928, grouped by amount of deposits, for the purpose of showing how large a proportion of the risk underwritten by the guaranty fund was concentrated in a few institutions. Deposits of the participating banks were not heavily concentrated in a few banks. During the entire period that the fund was in operation the largest bank held less than

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Table 3. NUMBER OF OPERATING BANKS IN NORTH DAKOTA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1918-1928, BY YEARS

End of year	All banks operating in North Dakota	Participating in deposit guaranty 1/	Not participating in deposit guaranty 2/	Percentage participating
1918	877	709	168	80.8%
1919	899	723	176	80.4
1920	875	694	181	79.3
1921	844	661	183	78.3
1922	850	665	185	78.2
1923	744	569	175	76.5
1924	679	513	166	75.6
1925	643	482	161	75.0
1926	556	409	147	73.6
1927	513	371	142	72.3
1928	471	337	134	71.5

1/ State banks and trust companies.
2/ National banks and the Bank of North Dakota after its establishment in 1919.

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Table 4. DEPOSITS OF OPERATING BANKS IN NORTH DAKOTA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1918-1928, BY YEARS

(Amounts in thousands)

End of year	All banks operating in North Dakota	Banks participating in deposit guaranty 1/	Banks not participating in deposit guaranty		Percentage of deposits in all banks held by participating banks
			National banks 2/	Bank of North Dakota 3/	
1918	$210,361	$122,882	$87,479	--	58.4%
1919	229,712	130,837	83,421	$15,454	57.0
1920	186,769	103,955	69,703	13,111	55.7
1921	158,999	85,489	66,895	6,615	53.8
1922	180,123	95,499	77,503	7,121	53.0
1923	162,868	80,006	75,741	7,121	49.1
1924	196,818	88,078	96,058	12,682	44.8
1925	197,749	86,351	95,154	16,244	43.7
1926	175,182	69,613	83,853	21,716	39.7
1927	175,896	65,159	84,051	26,686	37.0
1928	174,184	59,773	83,886	30,525	34.3

1/ State banks and trust companies from Annual Reports of the State Examiner.
2/ Annual Reports of Comptroller of the Currency.
3/ Bankers directories.

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Table 5. NUMBER AND DEPOSITS OF STATE BANKS AND TRUST COMPANIES IN NORTH DAKOTA DECEMBER 31, 1918, 1923, AND 1928

Banks grouped by amount of deposits

	Number of banks 1/			Deposits (thousands of dollars) 1/		
	1918	1923	1928	1918	1923	1928
All State banks and trust companies	704	566	334	123,154	85,601	64,646
Banks with deposits of:						
$100,000 or less	202	212	89	14,113	15,068	6,449
$100,000 to $250,000	390	279	172	64,601	43,552	27,534
$250,000 to $500,000	99	67	54	33,407	21,870	18,424
$500,000 to $1,000,000	10	8	19	6,401	5,111	12,239
$1,000,000 to $2,000,000	2	--	--	2,430	--	--
$2,000,000 to $5,000,000	1	--	--	2,202	--	--
Largest bank	1	1	1	2,202	942	982
Largest 5 banks	5	5	5	6,285	3,573	4,039
Largest 10 banks	10	10	10	9,385	6,105	7,228
Percentages of total	100.0	100.0	100.0	100.0	100.0	100.0
Banks with deposits of:						
$100,000 or less	28.7	37.5	26.6	11.4	17.6	10.0
$100,000 to $250,000	55.4	49.3	51.5	52.5	50.9	42.6
$250,000 to $500,000	14.1	11.8	16.2	27.1	25.5	28.5
$500,000 to $1,000,000	1.4	1.4	5.7	5.2	6.0	18.9
$1,000,000 to $2,000,000	.3	--	--	2.0	--	--
$2,000,000 to $5,000,000	.1	--	--	1.8	--	--
Largest bank	.1	.2	.3	1.8	1.1	1.5
Largest 5 banks	.7	.9	1.5	5.1	4.2	6.2
Largest 10 banks	1.4	1.8	3.0	7.6	7.1	11.2

1/ Tabulated from data for individual banks in bankers directories. Totals differ slightly from those in the annual reports of the State Examiner. Those reports do not contain data for individual banks.

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2 percent of deposits of all participating banks. The largest ten banks held between 7 and 8 percent at the beginning and middle of the period and a little over 11 percent at the end of the period.

Failures of participating banks. During the eleven years of the North Dakota deposit insurance system, 372 banks were closed because of financial difficulties. This was more than one-half of the largest number of banks participating in the system at any time. Of the closed banks, 32 were reopened with no obligations on the fund. The deposits of 340 which entailed obligations of the fund amounted to nearly $40 million.

The number and deposits of the banks closed each year, with rates per 100 operating banks and per $100 of deposits in operating banks, are shown in Table 6. The highest failure rate occurred in 1923, when the 12 percent of the banks holding 10 percent of the deposits of all participating banks, were closed. The average annual failure rate was over 5 banks per 100 with deposits of $4 per $100 of deposits in operating banks.

A size distribution of the failed banks is given in Table 7. The failure rates were substantially higher among the small banks than among the larger banks. However, the largest bank among the failures, with nearly $700,000 in deposits, was the third largest bank in the system.

In Table 8, the failure rates in North Dakota during the period 1918-1928 are compared with those in contiguous States and in the entire United States. Failure rates in North Dakota, both in terms of number of banks and amount of deposits, were higher than in Minnesota, but lower than in South Dakota and Montana. Failure rates in North Dakota and in all of the contiguous States were far higher than for the entire United States. This was true for both national and State banks.

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Table 6. NUMBER AND DEPOSITS OF STATE BANKS IN NORTH DAKOTA CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, JULY 1, 1918, TO JULY 1, 1929

Year	Number of banks			Deposits			Annual failure rates	
	Total	Involving payments from the guaranty fund 1/	Reopened with no obligation on the fund 1/	Total	Banks with payments from the guaranty fund 1/	Banks with no payment from the guaranty fund	Number per 100 active banks	Deposits per $100 in active banks
Total	371	340	31	$43,114,623	$38,998,941	$4,115,682	5.5 2/	$3.95 2/
1919	1	1	--	105,006	105,006	--	.1	.09
1920	18	18	--	3,478,251	3,478,251	--	2.5	2.66
1921	35	27	8	4,921,568	4,062,017	859,551	3.9	3.91
1922	9	7	2	1,278,223	1,071,203	207,020	1.1	1.25
1923	85	77	8	10,266,813	9,135,514	1,131,299	11.6	9.57
1924	65	61 3/	4	6,985,184	6,744,868	240,316	10.7	8.43
1925	25	25	--	2,394,923	2,394,923	--	4.9	2.72
1926	48	43	5	5,167,268	4,383,171	784,097	8.9	5.08
1927	33	33	--	3,691,402	3,691,402	--	8.1	5.30
1928	33	30	3	2,794,583	2,160,270	634,313	8.1	3.32
1929 4/	19	18	1	2,031,402	1,772,316	259,086	10.7 2/	5.93 2/

1/ Tabulated from data in the records of the Depositors' Guaranty Fund Commission. There was no failure among participating banks prior to 1919. Four banks which did not become participants in the guaranty system, and were placed in receivership during the third quarter of 1918, are omitted from this table. Deposits of those banks, as shown in bank directories for the last date prior to closing, totalled $791 thousand.

2/ Annual rates.

3/ Includes 1 bank with deposits at closing of $4,859 for which no guaranteed claims were allowed.

4/ To July 1, 1929.

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Table 7. SIZE DISTRIBUTION OF FAILED BANKS ENTAILING OBLIGATIONS ON THE NORTH DAKOTA DEPOSITORS' GUARANTY FUND

	Number of banks			Deposits		
	Average number of operating banks 1/	Failed banks	Average annual number of failed banks per 100 active banks	Average deposits of operating banks (in thousands) 1/	Failed banks (in thousands)	Average annual amount of deposits in failed banks per $100 deposits in operating banks
Participating banks-total 2/	556	340	6.1	$95,663	$38,998	$4.08
Banks with deposits of -						
$100,000 or less	169	179	10.6	11,963	10,262	8.58
$100,000 to $250,000	294	135	4.6	47,419	19,600	4.13
$250,000 to $500,000	79	23	2.9	26,696	7,182	2.69
$500,000 to $1,000,000	13	3	2.3	8,341	1,954	2.34
$1,000,000 or more	1	--	--	1,244	--	--

1/ Tabulated from data for the individual banks for December 31, 1918 to 1928, as shown in bankers directories. Data for individual banks were not published in the annual reports of the State Examiner.

2/ Failure rates for the entire period differ slightly from those in Table 6 because of the difference in source of data for operating banks.

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Table 8. ANNUAL BANK FAILURE RATES IN NORTH DAKOTA, 1919-1928, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES 1/

	Failures per year per 100 operating banks			Deposits per year in failed banks per $100 in operating banks		
	State and national banks	State banks	National banks	State and national banks	State banks	National banks
North Dakota	5.6	6.3	3.4	$3.17	$4.01	$2.03
Three contiguous States	4.4	4.8	3.1	2.04	3.28	.97
Montana	6.7	7.4	5.4	3.52	5.05	2.17
South Dakota	6.7	7.2	4.4	5.11	6.44	2.81
Minnesota	2.9	3.3	1.8	1.12	1.91	.54
Entire United States	1.9	2.3	.9	.37	.53	.18

1/ Tabulated from data from the following sources: other tables in this volume; Banking and Monetary Statistics, pp. 286-292; Willis, Banking Inquiry of 1925; annual report of the Comptroller of the Currency for 1931; and Federal Reserve revised tabulations of data for all operating banks by States.

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The annual reports of the State Examiner contain no information or discussion of the causes of bank failures. However, for bank suspensions during the years 1921 to 1930, the State Examiner listed such causes on schedules submitted in 1931 to the Federal Reserve Committee on Branch, Group, and Chain Banking. These are summarized in Table 9. It will be noted that emphasis is placed on incompetent management, and none on adverse economic conditions.

It should also be noted that the State Examiner assigned no specific cause for many of the failures; and it seems clear that there were important elements in the situation that he did not stress. An observer of banking conditions in North Dakota, in an address at the North Dakota State Banking Association in 1926, placed much emphasis upon deflation of agricultural values and excessive competition in his discussion of the causes of bank failure.

> ...I do not think that corrupt conduct or dishonesty played any material part in bringing about the catastrophe. It is true that the failure of some of the banks was hastened and, perhaps, actually caused, by embezzlements and dishonesty, but such instances are rare; though there were many laws subsequently violated in perhaps mistaken attempts to protect the depositors by keeping the banks from closing.
>
> ...Beyond controversy, the chief cause was the deflation in values which began during the summer of 1920 and which within the next three years reduced such values at least 50%, bringing financial distress to the agricultural interests and to all activities and business dependent thereon.
>
> ...At high water mark, in December 1920, there were 723 banks and trust companies to a population of 646,000, or an average of one bank for each 600 people, men, women and children, in the State.
>
> Assuming the normal average of one bread winner to each five inhabitants, there was one bank for every 160 bread winners; in other words, each group of 160, men or women of earning capacity, was required to support one bank, if the banking business was to prosper; obviously, this was impossible. 1/

1/ George A. Bangs, address at the North Dakota State Bankers Association, June 22, 1926.

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Table 9. CAUSES OF SUSPENSIONS OF STATE BANKS IN NORTH DAKOTA, 1921-1930, AS REPORTED ON SCHEDULES PREPARED BY THE STATE EXAMINER IN NORTH DAKOTA FOR THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP, AND CHAIN BANKING

	Primary cause	Contributing cause
Total number of suspensions, 1921-1930	416	
Dishonesty of officers or employees:		
Defalcation	9	8
Excessive loans to management and collapse of speculative booms	-0-	-0-
Regional economic disaster or adverse conditions in specific industries:		
Losses due to unforeseen agricultural or industrial disasters, such as floods, drought, boll weevil, etc.	-0-	-0-
Decline in real estate values	3	33
Managerial incompetence, inadequate earnings, and excessive competition:		
Incompetent management	209	27
Insufficient diversification	-0-	-0-
Causes not readily classified above:		
Heavy withdrawals	59	79
Failure of affiliated institution or correspondent	1	2
Other causes	121	25

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Procedures used in handling banks in financial difficulties. The State Examiner, the Depositors' Guaranty Fund Commission, and the State Supreme Court all participated in the handling of banks in financial difficulties while the North Dakota deposit guaranty law was in effect. In the case of banks placed in receivership, prior to the 1923 revision of the law, the receivers were appointed by the State Examiner. In 1921, under the act of that year, the Depositors' Guaranty Fund Commission appointed one of its members, B. J. Schoregge, as supervisor of receivers with his salary paid in part from the guaranty fund and in part from the legislative appropriation for expenses of the Commission. Under the 1923 law, the Supreme Court appointed L. R. Baird as receiver for all failed banks; and he remained in charge of the receiverships of all banks closed while the deposit guaranty law was in operation, until their liquidation was completed.1/

Efforts to prevent the closing of banks found to be in financial difficulties, or to reorganize banks closed without placing them in receivership, remained with the State Examiner and the Depositors' Guaranty Fund Commission throughout the entire period of the deposit guaranty system. The Depositors' Guaranty Fund Commission made considerable use of the "special deposits" feature of the 1923 law, the purpose and operation of which were described as follows:

> One of the unique features of the law, which was placed on the statute books during the 1923 legislature...provided that where a bank was temporarily embarrassed, and probably could make recovery, it might be placed on "special deposit"--permitted to remain open, handle existing business and receive new deposits which, however, should be placed in a special trust fund and exempted from the receiver's assets should the bank again be forced to close. The method was invoked to make possible reorganization and strengthening

1/ Mr. Baird was in charge of liquidation of all closed banks until 1933, when appointment of receivers for future bank failures was vested in the State Banking Board. He remained in charge of those which had failed prior to that time until completion of liquidation.

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> of banks in financial straits, with the view of avoiding receivership which, experience had shown, usually proved costly to depositors in the dissipation of assets. 1/

Early in 1924 the Commission announced that banks would not be closed when business was first suspended, but would be placed under control of the Commission, permitted to do business only in liquidating their obligations, without paying money to old depositors, but accepting new deposits and placing them in a trust fund.[2] The records of the Commission show that this procedure had already been used for several months, that in November the Commission had adopted a set of rules for operation of banks that had been placed under the special deposit order, and that in January it had ordered such banks to make weekly reports to the Commission.[3] By the Spring of 1925, at least 60 banks had been placed under this order.[4] Though the Commission, in its Minutes, referred to these banks as "so-called suspended banks" they do not appear to have been included, unless they were subsequently placed in receivership, in tabulations of suspended banks prepared at a later time from the records of the State Examiner.[5]

The Commission also made some use of the provision of the 1923 law which permitted it to make a deposit of its own funds in banks in difficulty. A resolution of the Commission in July 1923 provided that banks in which special deposits had been made "for the purpose of aiding such banks" should pay interest at the rate of four percent per year. It does not appear, however, that the

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1/ Commercial West, March 28, 1925, p. 24.
2/ The Northwestern Banker, Feb. 1924, p. 81.
3/ Minutes of the Depositors' Guaranty Fund Commission.
4/ In March 1925, it was reported that Commission auditors had examined 60 special deposit banks, and that 26 of these had been reopened for regular operation. Commercial West, op. cit.
5/ The annual reports of the State Examiner from 1923 to the time of repeal of the deposit guaranty law do not give any information regarding the number of banks that failed, suspended, or were placed in receivership. Statistics of bank suspensions for this period were collected from his office in 1931 by the Federal Reserve Committee on Branch, Group, and Chain Banking.

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number of banks in which deposits were made was large nor that the amounts deposited were large. An audit of the fund as of October 31, 1924, shows that special deposits aggregating $193,000 had been made in 21 banks, the amounts for the individual banks ranging from $1,000 to $25,000. Only a part of these deposits were made in open banks. In several of the cases, the deposits were made to aid in the liquidation of particular types of assets and were collateraled by such assets. 1/

As has been noted in describing the character of the guaranty legislation the process of determining the deposits subject to guaranty and payment of them from the fund was separated from the receivership process. The process was described by Mr. L. R. Baird, receiver under the Supreme Court, as follows:

> A receiver was appointed for the banks. He accepted claims, and after the same were duly checked over, they were either allowed or disallowed. Of course, any claim as shown by the books of the bank as a liability was ordinarily allowed and a receiver's certificate issued therefor. When the receiver's certificates were issued, then these were used as the basis of a claim against the Depositors Guaranty Fund, and the Commission made it a general rule not to consider any claim until the same had been passed upon by the receiver. The receiver, however, did not undertake to pass upon the question of whether or not such claims were bona fide deposits coming under the provision of the Guaranty Fund law. He simply accepted them as liabilities against the bank. The Depositors Guaranty Fund Commission, through its auditors, then went through the books of the bank and determined whether or not each claim was a bona fide deposit or whether it was in the nature of an exchange of credit, secured deposit, bills payable, or some other liability. 2/

Rejections of depositors' claims by the Depositors' Guaranty Fund Commission were numerous. Under the law and the procedures of the Commission, no claim was considered for payment from the guaranty fund until it had been allowed by the receiver of the bank or established by final judgment of a competent court. The Commission, in prescribing a form for proof of claim

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1/ Audit report of the Depositors' Guaranty Fund, October 31, 1924.
2/ Letter from Mr. L. R. Baird, dated January 29, 1935.

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required an affidavit that no offset or counter claims existed, that there was no agreement of any kind for interest in excess of that fixed by the Commission, that the depositor had received no security in any manner, and that no part of the claim was for an obligation to the bank as endorser on bills payable or bills discounted or incurred by the bank for notes or evidence of debt. In addition to excluding claims without such affidavits, the Commission rejected many other claims. At a meeting of the Commission in March 1925, it was noted that about a thousand rejected claims would be subject to hearings by the Commission. A referee was appointed to hear those claims, a set of rules adopted for the hearings and re-hearings, and counsel appointed to represent the fund at such hearings.[1/] The record of the hearings shows that several thousand rejected claims were appealed, most of which were still rejected after hearings. Three principal reasons for rejection of claims appear in the records of the hearings: that the deposits represented transfers of funds; that they represented an exchange of credit; and that they bore a rate of interest in excess of that authorized by the Commission.[2/] An example of a claim rejected as being a transfer of funds and not a bona fide deposit was that of a large oil company whose agents placed receipts in local banks and obtained certificates of deposit which were then sent to the head office of the oil company elsewhere for deposit. One case of a claim rejected as an exchange of credit was that of a life insurance company which had placed in the bank notes taken from applicants for insurance in payment of premiums and had received certificates of deposit therefor. Another case was that of an individual who sold notes to the bank and discounted them, receiving a certificate

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1/ Minutes of the Depositors' Guaranty Fund Commission.

2/ As indicated by a sampling, by the author of this report, of the cases in the records of the hearings.

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of deposit. These were rejected on the gound that they were not a deposit of cash or its equivalent. Cases rejected because of an excessive rate of interest included not only those where a rate higher than that prescribed by the Commission was stated on the certificate but also where such a higher rate was given through a separate credit to the depositor's account or in some other manner. Another type of case noted in the records was that of county funds which had not been deposited in accordance with the law.

Mr. L. R. Baird, who was receiver of most of the failed banks, stated that a large part of the claims rejected by the Depositors' Guaranty Fund Commission were those deemed to be an exchange of credit.

> ...a large portion of the rejected claims are accounted for by a practice which seemed to have grown up in this country. Where insurance companies, or other concerns who had something to sell in the community, would take its customer's notes, and then take them to the bank and turn them over to the bank and receive in lieu thereof the bank's certificates of deposits. Such transactions the Depositors Guaranty Fund listed as an "exchange of credit." Personally it is my opinion that if a claimant could have shown that the bank had its legal reserve, there was absolutely no reason why the bank could not have purchased such notes, or other obligations, and either paid up the same in cash or issued certificates of deposit, thus making the claim a bona fide deposit. 1/

Another controversial set of claims were those of the Bank of North Dakota. In January 1922, the Depositors' Guaranty Fund Commission resolved that deposits of the Bank of North Dakota in the closed banks "be not included under the Guaranty Deposit Law." Controversy regarding these claims continued for several years; and after hearings by the referee of the Commission they were reviewed by the Commission in November 1927. The claims were against about 75 closed banks, ranging in amounts up to $231,000 and totaling nearly $1.5 million. The reason for the confusion and the basis of the Commission's decision are described in the minutes of the Commission as follows:

1/ Letter from Mr. Baird dated January 29, 1935.

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> IT IS ORDERED AND DETERMINED, That the money on deposit in the several banks standing to the credit of the State of North Dakota and its various political subdivisions at the time of the organization of the Bank of North Dakota and subsequently transferred upon the books of such banks to the credit of the Bank of North Dakota are deemed to be bona fide deposits, except where such deposits have been converted into loans by taking of direct collateral security therefor. ...The moneys otherwise placed in the several banks by the Bank of North Dakota appear to have been so placed at the solicitation of the several banks and are deemed to be loans and not deposits...
>
> The moneys representing deposits and those representing loans having been carried in one account, the withdrawals made by the Bank of North Dakota from such account have been pro-rated in accordance with the ratio existing between the amounts of such deposits and loans at the time of such withdrawals and the amounts set forth in the attached schedule represent the balances remaining in the several banks...
>
> The amounts of the several deposits specified in the second column of the attached schedule...are therefore allowed as "guaranteed" claims, subject to a re-check of interest and the application by the Receiver of paper offsets. The remainder of the claim of the Bank of North Dakota against the several banks...are rejected. 1/

Under this decision about $811,000 was assumed to have represented genuine deposits and to have been guaranteed by the fund except for a small amount which was collateraled, and about $665,000 to represent advances and therefore not guaranteed.

One further item of procedure in handling the affairs of closed banks may be mentioned here. The 1923 law gave the Commission power, until July 1, 1927, to pay from the guaranty fund the claims of bills payable holders in closed banks "whenever in its judgment and sound discretion the security behind such Bills Payable is sufficient to pay the same in full, and leave a substantial amount of security of the kind and character that could reasonably be expected to be collected upon and liquidated within one year from the expiration of the time limit of this section." Under this provision, the Commission paid bills

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1/ Minutes of Depositors' Guaranty Fund Commission, Nov. 21, 1927.

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payable in a number of closed banks, taking title to the collateral therefor, in order to expedite the handling of the affairs of the banks.

FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. No information regarding the receipts and expenses of the depositors guaranty fund, nor regarding the results of liquidation of closed banks, was published in the annual reports of the State Examiner. However, detailed information regarding the operations of the fund is available in the records of the Commission which remain at the office of the State Examiner. These records include: the minutes of the Guaranty Fund Commission in two large volumes totaling about 1900 pages; a smaller volume with some statements of the fund and miscellaneous material; reports of four audits of the fund covering respectively, the period from the beginning of the fund to mid-year 1924, 1924-1926, 1926-1928, and 1928-1930; several volumes which record the Commission's review of decisions on depositors' claims that had been rejected by the examiners of the Commission; and a record book showing the 10 percent dividend paid to depositors of many closed banks, and the 1 percent dividend paid later to those banks not participating in the 10 percent dividend. Information regarding the liquidation of closed banks is available in a summary report by L. R. Baird, Receiver, dated January 8, 1937, in the files of the North Dakota Supreme Court; and in Mr. Baird's receivership files for the individual banks which remain in the office of the State Examiner.[1/]

1/ Both the Commission and the receivership records were examined by the author of this report in September 1956. Copies of the audit reports of the fund were borrowed from the State Examiner, and used in the preparation of this report.

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Income and obligations of the guaranty fund. A summary statement of the income and obligations of the North Dakota Depositors' Guaranty Fund for the entire period of its existence is given in Table 10. The total receipts of the fund were $2.1 million, of which $2.0 million was derived from assessments. The remainder was divided between receipts from liquidation of assets of failed banks, interest, and fees. The total amount of obligations incurred by the fund on account of bank failures, after allowance for all recoveries from liquidation of the assets of the failed banks, is estimated at $20 million. The fund paid less than $2 million to depositors: $0.2 million to the depositors of the two banks paid in full, $1.6 million to the depositors of 201 banks who were paid a 10 percent dividend on insured deposits, and $0.1 million to the depositors of 137 banks who were paid a 1 percent dividend on insured deposits. The final deficit of the fund, representing the loss to depositors on insured deposits, was over $18 million.

Annual data for assessments and other receipts of the guaranty fund are given in Table 11. Until 1921 only the annual assessment of one-twentieth of 1 percent of deposits was levied. In that year and each of the succeeding years to the termination of the system as of June 30, 1929, four additional assessments, the maximum number, were levied. The additional assessments were levied for years ending on June 30, and because of a change in the dates on which they were payable, five became due in each of the calendar years 1924 and 1925. The total assessment rate was therefore three-tenths of 1 percent in those years, and one-fourth of 1 percent from 1921 to 1923 and from 1926 to 1928, inclusive.

Annual data for disbursements and the balance of the fund and for administrative expenses paid from legislative appropriations are given in Table 12. Because of delay in making payments to depositors, after the first

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Table 10. RECEIPTS, EXPENDITURES, AND DEFICIT OF THE NORTH DAKOTA DEPOSITORS' GUARANTY FUND

Receipts 1/	
Assessments on banks	$2,002,031
Assets of failed banks	26,041
Interest received	32,978
Fees received	19,483
Total receipts	$2,080,533
Expenditures 2/	
Paid to depositors of failed banks:	
In two banks paid in full	$187,192
10 percent dividend in 201 banks	1,577,795
1 percent dividend in 137 banks	73,359
Total to depositors	$1,838,346
Administrative expenses	183,376
Uncollectable accounts charged off	58,811
Total disbursements	$2,080,533
Unpaid obligations 3/	
To depositors of failed participating banks	$18,281,634

1/ From Table 11.
2/ From Table 12.
3/ On claims approved for payment from the guaranty fund (see Table 13). The total losses to depositors in the failed banks was much larger.

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Table 11. ASSESSMENTS AND OTHER RECEIPTS OF THE NORTH DAKOTA DEPOSITORS' GUARANTY FUND, BY YEARS, 1918-1929 1/

Calendar year	Assessment income			Net income from assessments	Other receipts			Total receipts
	Assessments levied		Credits, refunds, and adjustments 4/		Assets of failed banks 5/	Interest 6/	Fees 7/	
	Regular 2/	Additional 3/						
Total	$513,285	$1,414,699	$74,047	$2,002,031	$26,041	$32,978	$19,483	$2,080,533
1918	90,491 8/	--	12,692	103,183	--	--	--	103,183
1919	58,953	--	15,939	74,892	--	--	--	74,892
1920	63,269	--	-1,260	62,009	5,565	531	--	68,105
1921	50,764	240,149	-6,147	284,766	6,000	4,954	--	295,720
1922	42,939	205,347	1,029	249,315	--	39	--	249,354
1923	40,121	165,921	-1,496	204,546	6,471	64	1,124	212,205
1924	34,283	184,715	3,316	222,314	--	10,239	8,174	240,727
1925	36,981	173,597	44,919	255,497	97	5,560	4,153	265,307
1926	36,201	143,634	5,666	185,501	--	2,940	1,131	189,572
1927	31,259	131,321	5,327	167,907	--	2,490	1,936	172,333
1928	28,024	115,258	4,417	147,699	--	1,464	825	149,988
1929	--	54,757	-10,355	44,402	--	1,927	1,316	47,645
1930	--	--	--	--	7,908	2,770	824	11,502

1/ Compiled from audit reports of the guaranty fund, trial balances and statements of condition of the fund in the minutes of the Depositors' Guaranty Fund Commission, and other records of the fund in the office of the State Examiner.

2/ At 1/20 of 1 percent of deposits in participating banks.

3/ Four assessments per year of 1/20 of 1 percent each (five in 1924 and 1925 because of change in timing of date due).

4/ Includes assessments on capital stock of new banks, later adjustments in such assessments, additional assessments levied on banks after closing, refunds of overpayments, refunds and cancellations to nationalizing banks, and other adjustments.

5/ Amounts for 1920-1925 are the recoveries from two banks, the deposits of which were paid in full by the fund. The receipts for 1930 are described in an audit report of the fund as follows: "In making payment of the 10 percent general dividend the Commission made payment of all deposits under twelve dollars in full. As the receiver of closed banks subsequently paid his dividend on these claims the amount applying to deposits paid in full was turned into the Guaranty Fund."

6/ Chiefly interest on assessment receipts which had been withdrawn from participating banks and deposited in the Bank of North Dakota for use in making payments to depositors in failed banks, but in 1924 includes $5,915 interest on special deposits in banks in difficulty.

7/ Examination fees and other charges which the Commission was authorized to levy under the amended act of 1923.

8/ Includes $42,973 for 1917, and $47,518 for 1918, both of which were collected in 1918, as indicated by the audit report of the fund to October 31, 1924.

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Table 12. EXPENDITURES AND BALANCE OF THE NORTH DAKOTA DEPOSITORS' GUARANTY FUND AND APPROPRIATED ADMINISTRATIVE EXPENSES, BY YEARS, 1918-1932 1/

Year	Disbursements and balance of the guaranty fund				Administrative expenses paid from general fund of the State 4/	Total administrative expenses 5/
	Total	Disbursements		Balance at end of year		
		Payments on deposits of failed banks 2/	Administrative and other expenses 3/			
Total	$2,080,533	$1,838,346	$242,187	$42,973	$147,756	$331,132
1918	--	--	--	103,184		
1919	--	--	--	178,075	5,029 6/	
1920	170,507	170,507	--	75,673		
1921	11,580	10,829	751	359,813	2,313 6/	
1922	8,209	1,693	6,516	600,959		88,171
1923	17,149	4,163	12,986	796,015	15,680 6/	
1924	28,874	--	28,874	1,007,867	16,022 7/	
1925	583,463	560,538	22,925	689,711	28,563	51,489
1926	270,281	252,899	17,382	609,002	17,792	35,174
1927	471,339	451,268	20,071	309,995	17,519	37,590
1928	229,910	210,998	18,912	230,073	12,596	31,508
1929	81,612	62,639	18,973	196,105	14,525	33,499
1930	103,482	29,485	73,997	104,127	6,516	21,701
1931-1932	104,127	83,327	20,800	--	11,200 8/	32,000 8/

1/ Compiled from audit reports of the guaranty fund, trial balances and statements of condition in the minutes of the Depositors' Guaranty Fund Commission, and other records of the fund in the office of the State Examiner.

2/ Payments during 1920-1923, totaling $187,192, were to depositors of two banks the deposits of which were paid in full from the fund. Payments in the years 1925-1930 and a portion of the amount for 1931-1932, totaling $577,795, were the 10 percent dividend on guaranteed claims paid depositors of banks that failed prior to April 30, 1925; $73,359 of the payments in 1931-1932 are the 1 percent dividend upon final closing of fund paid to depositors of banks that failed from May 1, 1925 to June 30, 1929.

3/ Administrative expenses, and $58,811 of uncollectable accounts charged off in 1930.

4/ Paid from appropriations by the Legislature for the Depositors' Guaranty Fund Commission.

5/ From the fund and from legislative appropriations. Does not include the uncollectable accounts charged off in 1930.

6/ Fiscal biennium ended June 30.

7/ From July 1, 1923, to Dec. 31, 1924.

8/ The records in the State Examiner's office show approximately $32,000 of expenses subsequent to the dissolution of the Depositors' Guaranty Fund Commission on Dec. 31, 1930. The portion attributed in this table to expenses of the guaranty fund is a balancing amount for that fund, with the remainder assumed to have been met from appropriations from the general fund. A very small unused balance from those appropriations remained on the books of the fund when those books were examined by the author of this report in September 1956.

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two failures, the balance of the fund continued to increase each year until 1925. The 10 percent dividend on approved claims was then paid to the depositors of the banks closed prior to July 1, 1923. Later in 1925 the Commission authorized a similar dividend to depositors of banks closed to November 15, 1923; in 1926, to depositors of banks closed to December 31, 1923; in 1927, to depositors of banks closed from January 1 to September 30, 1924; and in 1928, to depositors of banks closed from October 1, 1924, to April 30, 1925. By the last of these dates 201 banks had closed, in addition to the first two failures. However, in five cases the receivers had paid depositors in full and in one case no claims were approved for guaranty so the 10 percent dividend was paid to the depositors of 195 banks. These payments nearly exhausted the total assessment receipts of the fund, and in August 1930 the Depositors' Guaranty Fund Commission resolved that no further dividends be declared because most of the remaining balance would be needed to pay approved claims entitled to the 10 percent dividend that had not yet been presented. The final law of 1931, under which the State Examiner settled the affairs of the fund, provided that such claims must be filed within six months, with the reserve to pay those claims to be cancelled at the end of that time. With the additional remaining balance of the fund, it was possible to pay, in 1932, a 1 percent dividend to depositors of banks that had closed from April 30, 1925, to June 30, 1929. There were 137 of these banks, with five cases in which the receivers had paid depositors in full and two in which other settlements had been made, so the 1 percent dividend was paid to the depositors of 130 banks.

The total administrative expenses of the North Dakota depositors' guaranty system amounted to $331,000, of which about $183,000 was paid from the guaranty fund. The remainder was met from annual appropriations of the Legislature to

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meet the expenses of the Commission. Administrative expenses were greatly increased in 1923 in comparison with the preceding years, because of the provisions of the law of that year authorizing the Commission to hire inspectors and to participate in the process of examining banks, and appropriating money from the fund to pay the salaries of inspectors or to increase the salaries of banks examiners in the office of the State Examiner.

Table 13 gives the amount of insured obligations of the banks that failed each year while participating in the insurance system, recoveries from liquidation of assets, the amounts paid from the guaranty fund, and the losses to depositors in the banks for which the fund was unable to meet its obligations. The estimated loss on other deposits and common claims is also given in the table.

Table 14 shows for each year the insured obligations relative to the total deposits of the closed banks, and percentages of the insured deposits recovered from liquidation of assets, paid by the fund, or lost by depositors. For all the failed banks as a group, the insured obligations were only a little over three-fifths of the total deposits. This is due to the exclusion of many claims as described in an earlier part of this report. For the entire period 17 percent of the insured deposits were paid from the liquidation of assets, less than 8 percent were paid from the fund, and 75 percent were lost to the depositors. The losses on noninsured deposits, including other common claims, were about $14 million for the period of operation of the deposit guaranty system. The amount of this loss, which was about three-fourths of the total loss on insured deposits, reflects the large proportion of deposits excluded from protection of the guaranty fund under the rulings of the Depositors' Guaranty Fund Commission.

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Table 13. INSURED DEPOSITS AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS, NORTH DAKOTA DEPOSITORS' GUARANTY FUND, BY YEARS 1/

Banks failed in-	Insured deposits	Insured deposit obligations paid and unpaid				Loss on noninsured deposits and other common claims
		Paid directly from liquidation of assets	Paid by guaranty fund		Unpaid (loss to depositors)	
			Recovered from liquidation of assets	Not recovered from liquidation of assets (loss to fund)		
Total	$24,273,647	$4,153,667	$26,041	$1,812,305	$18,281,634	$13,732,043
1919	86,561	--	6,568	79,993	--	9,971
1920	2,098,456	220,551	11,565	284,624	1,581,726	1,269,306
1921	2,618,868	366,659	--	244,112	2,008,097	1,116,662
1922	590,650	20,422	--	57,557	512,671	985,646
1923	5,668,423	588,789	--	549,730	4,529,904	3,636,422
1924	4,721,078	1,165,312	--	438,248	3,117,518	1,747,025
1925	1,618,636	278,941	--	99,013	1,240,682	696,249
1920-1925 2/			7,908	-7,908		
1926	2,276,128	416,119	--	22,152	1,837,857	1,725,453
1927	2,326,464	566,078	--	22,981	1,737,405	1,156,892
1928	1,333,692	251,536	--	12,456	1,069,700	743,433
1929	934,681	279,260	--	9,347	646,074	644,984

1/ Tabulated from data for the individual failed banks from the records of the Depositors' Guaranty Fund Commission and of L. R. Baird, Receiver, in the office of the State Examiner, and schedules prepared for the Federal Reserve Committee on Branch, Group, and Chain Banking.

2/ Not allocable by years.

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Table 14. PERCENTAGE OF DEPOSITS INSURED AND PERCENTAGE OF INSURED DEPOSITS PAID BY THE GUARANTY FUND AND RECOVERED FROM LIQUIDATION OF ASSETS, BANK FAILURES UNDER THE NORTH DAKOTA DEPOSITORS' GUARANTY FUND, BY YEARS 1/

Year of failure	Percentage of total deposits insured	Total	Percentage of insured deposits 2/			
			Paid directly from liquidation of assets	Paid by guaranty fund		Unpaid (loss to depositors) 3/
				Recovered from assets	Not recovered; i.e., loss to fund 3/	
Total	62.2	100.0	17.1	.1	7.5	75.3
1918	--	--	--	--	--	--
1919	82.4	100.0	--	7.6	92.4	--
1920	60.3	100.0	10.5	.6	13.6	75.4
1921	64.5	100.0	14.0	--	9.3	76.7
1922	55.1	100.0	3.5	--	9.7	86.8
1923	62.0	100.0	10.4	--	9.7	79.9
1924	70.0	100.0	24.7	--	9.3	66.0
1925	67.6	100.0	17.2	--	6.1	76.6
1926	51.9	100.0	18.3	--	1.0	80.7
1927	63.0	100.0	24.3	--	1.0	74.7
1928	61.7	100.0	18.9	--	1.0	80.2
1929	62.7	100.0	29.9	--	1.0	69.1

1/ From total deposits in Table 6 and insured deposits in Table 13.
2/ From data in Table 13.
3/ Percentages for the various years are computed without consideration of the recovery not allocable by years, shown in Table 13. The percentages are not much affected by this omission.

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Comparison of assessments and losses. Table 15 compares the assessments levied with the liability of the fund on account of failure. The data are given for each year, and cumulatively, with the cumulative excess or deficiency. This cumulative excess or deficiency, it should be noted, is a different concept from the accumulated surplus or deficit of the fund. What the deficiency figures show is the additional assessments that would have been necessary, in addition to those levied, to have paid all insured deposits after taking account of recoveries from the liquidation of the assets of failed banks. It does not include any allowance for other receipts or expenses of the fund. The guaranty fund had an excess of receipts only for its first two years. With the failures of 1920, the deposit liability of the fund exceeded assessment receipts, and the deficiency mounted each year until the repeal of the law.

In Table 16 the annual rate of assessment, which for most of the years was one-fourth of 1 percent of the deposits of participating banks, is compared with the rate of assessments that would have been necessary to have met the eventual losses on insured deposits from failures in that year. The latter rate averaged 1.8 percent per year or ten times the average rate of assessment collected. Because of the large proportion of deposits in failed banks that were excluded from coverage, the table also shows the rate which would have been necessary to pay all deposits in the failed banks. This was over $3 per $100 of deposits in participating banks, or seventeen times the average annual rate actually levied. Assessments sufficient to have covered the losses on insured deposits would have had to average 12 percent per year on the total capital accounts of the banks; or 20 percent to have covered losses on all deposits.

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Table 15. ANNUAL ASSESSMENT RECEIPTS, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, NORTH DAKOTA DEPOSITORS' GUARANTY FUND

Year	Assessments collected 1/	Deposit liability of the fund 2/	Cumulative				Deposit liability of fund plus loss on noninsured common claims
			Assessment receipts	Deposit liability of the fund 3/	Excess of receipts	Deficiency (excess liability)	
Total	$2,002,031	$20,093,939					$33,825,982
1918	103,183	--	103,183	--	103,183	--	--
1919	74,892	79,993	178,075	79,993	98,082	--	89,964
1920	62,009	1,866,350	240,084	1,946,343	--	1,706,259	3,135,656
1921	284,766	2,252,209	524,850	4,198,552	--	3,673,702	3,368,871
1922	249,315	570,228	774,165	4,768,780	--	3,994,615	1,555,874
1923	204,546	5,079,634	978,711	9,848,414	--	8,869,703	8,716,056
1924	222,314	3,555,766	1,201,025	13,404,180	--	12,203,155	5,302,791
1925	255,497	1,339,595	1,456,522	14,735,967	--	13,279,445	2,035,944
1926	185,501	1,860,009	1,642,023	16,595,976	--	14,953,953	3,585,462
1927	167,907	1,760,386	1,809,930	18,356,362	--	16,546,432	2,917,278
1928	147,699	1,082,156	1,957,629	19,438,518	--	17,480,689	1,825,589
1929	44,402	655,421	2,002,031	20,093,939	--	18,091,908	1,300,405

1/ Net income from assessments (Table 11).

2/ Insured deposits less amounts paid directly from liquidation of assets or recovered by the fund from liquidation of assets (from Table 13). The total, but not the figures for individual years, make allowance for the recoveries not allocable by years.

3/ Figures shown for 1920-1924 are before, and those for 1925-1929 after, allowance for recoveries not allocable by years, which are not taken into account in the figures in this column for 1920-1924.

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Table 16. COMPARISON OF ANNUAL RATE OF ASSESSMENT LEVIED WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, NORTH DAKOTA DEPOSITORS' GUARANTY FUND, 1918-1929

Year	Assessment rate per $100 of deposits 1/	Per $100 of deposits in participating banks at beginning of year 2/			Per $100 of total capital accounts in participating banks at beginning of year 3/			
		Assessments collected	Losses on deposits in failed banks		Assessments collected	Losses on deposits in failed banks		Capital accounts
			On all deposits	On insured deposits		On all deposits	On insured deposits	
1918-1929 average	.20	.18	3.10	1.84	1.18	20.00	11.88	169,096
1918	.10	.10	--	--	.65	--	--	15,894
1919	.05	.06	.07	.07	.43	.52	.46	17,304
1920	.05	.05	2.40	1.43	.33	16.60	9.88	18,892
1921	.25	.27	3.24	2.17	1.67	19.74	13.20	17,066
1922	.25	.29	1.82	.67	1.56	9.71	3.56	16,017
1923	.25	.21	9.13	5.32	1.33	56.50	32.93	15,426
1924	.30	.28	6.63	4.44	1.54	39.11	26.23	13,557
1925	.30	.29	2.31	1.52	2.02	16.11	10.60	12,639
1926	.25	.21	4.15	2.15	1.53	29.66	15.39	12,087
1927	.25	.24	4.19	2.53	1.55	26.95	16.27	10,823
1928	.25	.23	2.80	1.66	1.48	18.35	10.88	9,947
1929	.10	.07	2.18	1.10	.47	13.77	6.94	9,444

1/ Rate levied on average deposits of participating banks, computed for years ending June 30. Includes the regular annual assessment of 1/20 of 1 percent (with the figure for 1918 including the 1917 assessment), and for years subsequent to 1920 four special assessments (the maximum number) at the same rate, also computed for years ending June 30. Because of a change in the dates on which the special assessments were collected, five were paid in the calendar years 1924 and 1925.

2/ From assessment receipts, deposit liability of the fund, and that liability plus loss on noninsured common claims (all shown in Table 15), and deposits in participating banks (from Table 6).

3/ From data in Table 15, as indicated in note 2 above, and capital accounts of participating banks for the same dates as the deposits (from summary statements published in the annual reports of the State Examiner).

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APPRAISAL OF THE NORTH DAKOTA DEPOSITORS' GUARANTY FUND

The experience and debacle of the deposit guaranty system in North Dakota was similar to that in South Dakota. Starting at a later date than the one in South Dakota, the North Dakota system paid all depositors of failed banks for only two years after it became operative. As in South Dakota, the wave of failures in the middle twenties was so overwhelming that the protection thereafter given to depositors was very small. They received nothing from the guaranty fund until several years after the failures occurred, and then received from the fund only 10 percent, or 1 percent, of their insured deposits. In addition, the insured deposits were less than two-thirds of their total deposits.

The severity of the debacle in North Dakota may be attributed to the same basic factors as in South Dakota. The plan did not provide adequate financial resources, and the impact of the agricultural depresssion of the twenties was much more severe and the economy of the State more completely dependent on agriculture than in the States farther south than the Dakotas.

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PROBLEMS OF DEPOSIT INSURANCE

The deposit insurance systems of eight States which operated during part or all of the period from 1908 to 1930 were beset with many problems. Some of these were associated with features of the laws of the respective States. For the most part, however, they were problems resulting from the adverse circumstances under which the systems operated. In this chapter we review briefly the basic character of these circumstances and the lessons which may be gleaned from the experience of the eight States under such circumstances.

Deposit insurance under adverse circumstances. The eight State systems went into operation at various times from 1908 to 1918. Up to the beginning of the severe business depression of 1920-21, all of them were considered successful, though the Oklahoma system had been in serious difficulty during its early years. Some of the systems became insolvent as a consequence of failures in 1920 and 1921, and the others were weakened by the failures of those years and did not survive the continuing depression in the agricultural areas where the systems operated. By the end of 1927, the laws had been repealed in four of the States, and in the other four the systems had become unable to meet depositors' claims in failed banks. How adverse the economic circumstances were, compared with the Nation as a whole, is indicated by Table 1, which gives estimates of the percentage change in income of the people of these States and of the Nation from 1919 to 1921, and from 1919 to 1924. For comparative purposes data are given for States contiguous with those with deposit insurance systems, and for the rest of the continental United States.

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Table 1. CHANGE IN INCOME OF THE PEOPLE FROM 1919 TO 1921, AND FROM 1919 TO 1924, IN STATES WITH DEPOSIT INSURANCE SYSTEMS, CONTIGUOUS STATES, AND OTHER STATES

	Percent change	
	1919 to 1921 1/	1919 to 1924 2/
Continental United States	- 7	5
States (8) with deposit guaranty	-21	- 9
North Dakota	-37	13
South Dakota	-50	-29
Nebraska	-29	-10
Kansas	-21	- 8
Oklahoma	-26	- 9
Texas	-12	- 2
Mississippi	-37	-35
Washington	- 2	- 5
Contiguous States (13)	-16	- 8
Other States (27) and D. C.	- 4	10

1/ From total current income, as estimated by Maurice Leven in Income in the Various States (1925), pp. 260-61 and 264-65.

2/ From realized private production income, as estimated by the National Industrial Conference Board in Conference Board Studies in Enterprise and Social Progress (1939), p. 119.

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The impact of the adverse economic circumstances of the 1920's on bank suspensions in the areas in which deposit insurance systems were operating is indicated by the data in Table 2, which gives bank suspension rates for the period, 1921-1927, in the States with deposit insurance systems, States contiguous with them, and other States. For this period the suspension rates were much higher in States with deposit insurance systems, and in contiguous States, than in the rest of the Nation.

Another background condition which doubtless had an effect upon the bank suspension rate under adverse economic circumstances was the extraordinarily large number of banks relative to population in several of the States with deposit insurance systems. This is indicated by the data in Table 3, which shows the population per bank in the States with deposit insurance systems, in contiguous States, and for the rest of the continental United States. The small population per bank in most of the States with deposit insurance was not a consequence of deposit insurance. Several adjacent States had a similar situation, and the great increase in the number of banks which reduced population per bank to a small figure occurred prior to the introduction of deposit insurance.

Another circumstance inimicable to the success of deposit insurance was the fact that in each of the States the system covered only a part of the banking system. In all of the States, national banks were operating. At first, the existence of deposit insurance seemed to give the State banks some competitive advantage over national banks. However, whenever a State system ran into difficulties, this became a competitive disadvantage because of the tendency for the larger and best managed banks to withdraw from the State systems and take out national charters, or to threaten to do so.

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Table 2. BANK SUSPENSIONS AND SUSPENSION RATES, 1921-1927, IN STATES WITH DEPOSIT INSURANCE SYSTEMS, CONTIGUOUS STATES, AND OTHER STATES

	Suspended commercial banks 1/		Suspension rates for 7-year period 2/	
	Number	Deposits (in thousands)	Number per 100 operating banks	Deposits per $100 of deposits in operating banks
Continental United States	4,555	$1,250,384	15	3
States (8) with deposit guaranty	1,646	383,177	22	11
North Dakota	352	48,192	39	22
South Dakota	376	99,577	55	38
Nebraska	162	42,217	13	8
Kansas	182	37,442	13	8
Oklahoma	238	56,318	25	11
Texas	252	63,447	15	7
Mississippi	38	8,785	11	5
Washington	46	27,199	12	7
Contiguous States (13)	1,713	475,117	21	9
Other States (27) and D. C.	1,196	392,090	8	1

1/ From data by States in Banking and Monetary Statistics, pp. 284-85.
2/ Based on data for operating banks on June 30, 1920, from the revised Federal Reserve all-bank series.

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Table 3. POPULATION PER BANK, STATES WITH DEPOSIT INSURANCE SYSTEMS, CONTIGUOUS STATES, AND OTHER STATES

	Population per bank 1/			
	1900	1910	1920	1930
Continental United States	5,822	3,657	3,420	5,058
States (8) with deposit guaranty	4,269	2,055	1,887	3,180
North Dakota	2,086	860	720	1,855
South Dakota	1,959	975	937	1,853
Nebraska	2,066	1,322	1,058	1,731
Kansas	3,019	1,592	1,312	1,790
Oklahoma	5,067	1,807	2,113	3,993
Texas	7,436	3,068	2,774	4,299
Mississippi	13,728	5,397	5,393	6,859
Washington	4,842	3,282	3,452	4,752
Contiguous States (13)	4,824	2,840	2,356	3,621
Other States (27) and D. C.	6,661	4,822	4,779	6,443

1/ Computed from population data in Statistical Abstract of the United States, 1954, pp. 17-18, and number of banks in Federal Reserve revised all-bank series.

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Such withdrawals or threats to withdraw from the State system made it impossible to provide or retain assessment rates high enough to cover the losses in failed banks.

Lessons from the experience of the eight States. It must not be assumed that all of the troubles of the eight State systems of deposit insurance were the consequence of the adverse economic circumstances under which they operated. There were other circumstances which also were relevant factors in their downfall. Perhaps the most important of these was mismanagement of relatively large banks. In four of the systems, the largest bank in the system was among the failures, and in three of these the cause of failure was clearly the mismanagement of banks themselves. Many of the smaller banks that failed were also found to have been mismanaged, but the consequences of such mismanagement were of less significance with respect to the insolvency and failure of the systems.

Associated with the extent of mismanagement in some of the States was an inadequate system of supervision. In the course of study of these systems, no evidence has turned up that deposit insurance, per se, tends to foster mismanagement, though it appears evident that badly managed banks may survive longer and for a time have more of a mushroom expansion under a system of deposit insurance than without it. However that may be, it is clear that one of the great lessons of the experience of the eight States is that any deposit insurance system may be gravely threatened by the mismanagement of one, or a very small number, of the largest banks in the system. Thoroughgoing periodic examination of such banks in order to detect mismanagement tendencies before they have carried a bank into insolvency is essential to the success of any deposit insurance system.

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The experience of the eight States also highlights the necessity for a substantial reserve fund. A deposit insurance system must not only have an assessment rate adequate to cover the eventual losses but must also have sufficient resources to provide a revolving fund of substantial size for use while banks are in process of liquidation. Only one system of the eight, that of Texas, had both a revolving fund and a premium rate sufficient to meet the needs, but even in this case the fund became insolvent when most of the banks had withdrawn and only a few were left in the system.

The experience of the eight States also supports the conclusion reached from the study of the six systems of bank obligation insurance prior to 1865 that for success, deposit insurance must operate in an institutional framework providing wise and effective monetary policy. The causation of the depression of 1920-21 is not a part of this study, but there is no doubt that this and other severe depressions have been associated with deflation, in the sense of contraction of the Nation's circulating medium, or money supply. In an expanding economy, where there is growth in population, and technical improvements result in increased productivity, a reasonable growth in the circulating medium seems to be an essential factor in the continuance of prosperous conditions. Such growth can be achieved only with an appropriate monetary policy.

State systems and Federal deposit insurance. The Federal deposit insurance law, as enacted in 1933, was a direct successor of previous proposals in the Congress of the United States for a nationwide system of insurance of bank deposits. Some of the proposals in the Congress were undoubtedly influenced by the character and experience of the State systems. In addition, it was the extremely large number of bank failures in the 1920's

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and early 1930's, culminating in the banking holiday of 1933, which provided the impetus for the enactment of Federal deposit insurance. Thus, the series of events which forced the last of the eight State plans to cease operation was the principal factor in the enactment of a Federal deposit insurance law at that time. The structure of the Federal deposit insurance system is such as to avoid some of the problems of the State systems. But there is nothing, either in its structure or its quarter of a century of experience, to indicate that it would survive under circumstances as adverse as those to which the State systems of the 1908-30 period were subjected.

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