Note 22. Contingencies

Loss contingencies are existing conditions, situations, or sets of circumstances involving uncertainty as to possible loss to an entity. The uncertainty will ultimately be resolved when one or more future events occur or fail to occur. The government is subject to loss contingencies related to:

- Legal and environmental and disposal;
- Insurance and guarantees; and
- Other Contingencies.

The government is involved in various litigation, including administrative proceedings, legal actions, and tort claims, which may ultimately result in settlements or decisions adverse to the government. In addition, the government is subject to loss contingencies for a variety of environmental cleanup costs for the storage and disposal of hazardous material as well as the operations and closures of facilities at which environmental contamination may be present. Refer to the Legal Contingencies and Environmental and Disposal Contingencies section of this note for additional information.

The government provides insurance and guarantees via a variety of programs. At the time an insurance policy or guarantee is issued, a contingency arises. The contingency is the risk of loss assumed by the insurer, that is, the risk of loss from events that may occur during the term of the policy. For additional information, refer to the Insurance and Guarantees sections of this note.

Other contingencies include those related to the government's establishment of construction budgets without receiving appropriations from Congress for such projects, appeals of Medicaid audit and program disallowances by the states, potential draws by GSEs, and whistleblower awards. The government is also a party to treaties and other international agreements. These treaties and other international agreements address various issues including, but not limited to, trade, commerce, security, and law enforcement that may involve financial obligations or give rise to possible exposure to losses. For additional information on the government's other loss contingencies, refer to the Other Contingencies section of this note.

Financial Treatment of Loss Contingencies

The reporting of loss contingencies depends on the likelihood that a future event or events will confirm the loss or impairment of an asset or the incurrence of a liability and the likelihood of loss can range from probable to remote. SFFAS No. 5, *Accounting for Liabilities of the Federal Government*, identifies the probability classifications used to assess the range for the likelihood of loss as probable, reasonably possible, and remote. Loss contingencies where a past event or exchange transaction has occurred, and where a future outflow or other sacrifice of resources is assessed as probable and measurable, are accrued in the financial statements. Loss contingencies that are assessed to be at least reasonably possible are disclosed in this note, and loss contingencies that are assessed as remote are neither reported in the financial statements, nor disclosed in the notes. The following table provides criteria for how federal entities are to account for loss contingencies, based on the likelihood of the loss and measurability.[3]

[3] In addition, a third condition must be met to be a loss contingency: a past event or an exchange transaction must occur.

Likelihood of future outflow or other sacrifice of resources	Loss amount can be reasonably measured	Loss range can be reasonably measured	Loss amount or range cannot be reasonably measured
Probable Future confirming event(s) are more likely to occur than not.[4]	Accrue the liability. Report on Balance Sheet and Statement of Net Cost.	Accrue liability of best estimate or minimum amount in loss range if there is no best estimate, and disclose nature of contingency and range of estimated liability.	Disclose nature of contingency and include a statement that an estimate cannot be made.
Reasonably possible Possibility of future confirming event(s) occurring is more than remote and less than likely.	Disclose nature of contingency and estimated amount.	Disclose nature of contingency and estimated loss range.	Disclose nature of contingency and include a statement that an estimate cannot be made.
Remote Possibility of future event(s) occurring is slight.	No action is required.	No action is required.	No action is required.

Loss contingencies arise in the normal course of operations and their ultimate disposition is unknown. Based on information currently available, however, it is management's opinion that the expected outcome of these matters, individually or in the aggregate, will not have a material adverse effect on the financial statements, except for the litigation and insurance described in the following sections, which could have a material adverse effect on the financial statements.

Certain significant consolidation entities apply financial accounting and reporting standards issued by FASB, and such entities, as permitted by SFFAS No. 47, *Reporting Entity*, are consolidated into the U.S. government's consolidated financial statements without conversion to financial and reporting standards issued by FASAB.[5] Generally, under FASAB standards, a contingency is considered "probable" if the future event or events are more likely than not to occur. Under FASB standards, a contingency is considered "probable" if the future event or events are likely to occur. "Likely to occur" is considered to be more certain than "more likely than not to occur." Under both accounting frameworks, a contingency is considered "reasonably possible" if occurrence of the future event or events is more likely than remote, but less likely than "probable" ("probable" as defined within each corresponding accounting framework).

[4] For pending or threatened litigation and unasserted claims, the future confirming event or events are considered "probable" if such events are likely to occur.

[5] Significant consolidation entities that apply FASB standards without conversion to FASAB standards are FCSIC, FDIC, NRRIT, PBGC, Smithsonian Institution, TVA, and USPS.

Legal Contingencies and Environmental and Disposal Contingencies

Legal Contingencies and Environmental and Disposal Contingencies as of September 30, 2021, and 2020

	2021			2020		
		Estimated Range of Loss for Certain Cases [2]			Estimated Range of Loss for Certain Cases [2]	
(In billions of dollars)	Accrued Liabilities [1]	Lower End	Upper End	Accrued Liabilities [1]	Lower End	Upper End
Probable	39.7	39.6	42.7	40.1	39.4	41.9
Reasonably possible	N/A	25.9	52.0	N/A	9.7	33.9

[1] Accrued liabilities are recorded and presented in other liabilities on the Balance Sheet.

[2] Does not reflect the total range of loss; many cases assessed as reasonably possible of an unfavorable outcome did not include estimated losses that could be determined.

Note: "N/A" indicates not applicable.

Management and legal counsel have determined that it is "probable" that some legal actions, litigation, tort claims, and environmental and disposal contingencies will result in a loss to the government and the loss amounts are reasonably measurable. The estimated liabilities for "probable" cases against the government are $39.7 billion and $40.1 billion as of September 30, 2021, and 2020, respectively, and are included in "Other Liabilities" on the Balance Sheet. For example, the U.S. Supreme Court 2012 decision in *Salazar v. Ramah Navajo Chapter*, and subsequent cases related to contract support costs have resulted in increased claims against the Indian Health Service, which is a component within HHS. As a result of this decision, many tribes have filed claims. Some claims have been paid and others have been asserted but not yet settled. It is expected that some tribes will file additional claims for prior years. The estimated amount recorded for contract support costs is $5.8 billion in FY 2021 and $5.5 billion in FY 2020.

There are also administrative claims and legal actions pending where adverse decisions are considered by management and legal counsel as "reasonably possible" with an estimate of potential loss or a range of potential loss. The estimated potential losses reported for such claims and actions range from $25.9 billion to $52.0 billion as of September 30, 2021, and from $9.7 billion to $33.9 billion as of September 30, 2020. The estimated lower and upper range of potential loss for reasonably possible claims and actions increased by $16.2 billion and $18.1 billion, respectively, from FY 2020 to FY 2021. The increase is primarily due to new legal cases, along with the net change between legal cases with a change in the likelihood of loss, the amount of potential loss, and legal cases that are no longer pending.

In accordance with the NWPA, DOE entered into more than 69 standard contracts with utilities in which, in return for payment of fees into the Nuclear Waste Fund, DOE agreed to begin disposal of SNF by January 31, 1998. Because DOE has no facility available to receive SNF under the NWPA, it has been unable to begin disposal of the utilities' SNF as required by the contracts. Significant litigation claiming damages for partial breach of contract has ensued as a result of this delay. Based on settlement estimates, the total liability estimate as of September 30, 2021 is $39.9 billion. After deducting the cumulative amount paid of $9.0 billion as of September 30, 2021 under settlements, and as a result of final judgments, the remaining liability is estimated to be approximately $30.9 billion, compared to approximately $30.6 billion as of September 30, 2020.

A number of class action and/or multiple plaintiff tort suits have been filed against current and former DOE contractors in which the plaintiffs seek damages for alleged exposures to radioactive and/or toxic substances as a result of the historic operations of DOE's nuclear facilities. Collectively, in these cases, damages of $1.2 billion are currently sought.

Numerous litigation cases are pending where the outcome is uncertain or it is reasonably possible that a loss has been incurred and where estimates cannot be made. There are other litigation cases where the plaintiffs have not made claims for specific dollar amounts, but the settlement may be significant. The ultimate resolution of these legal actions for which the potential loss could not be determined may materially affect the U.S. government's financial position or operating results.

A number of cases were filed in the U.S. Court of Federal Claims and U.S. District Courts in which the plaintiffs allege, among other things, that the U.S. government took their property, breached contractual rights of preferred and common stockholders, and breached fiduciary duties when the third amendments to the SPSPAs between Treasury and each GSE were executed in August 2012 (please refer to Note 9—Investments in Government-Sponsored Enterprises). One case also alleges that the U.S. government took plaintiffs' property and contractual rights when the GSEs were placed into conservatorship and entered into the SPSPAs with Treasury in September 2008. In the U.S. Court of Federal Claims, the plaintiffs seek just compensation and other damages from the U.S. government. With respect to certain cases pending before the U.S. Court of Federal Claims, the U.S. government's motion to dismiss was granted with respect to certain claims and denied with respect to certain other claims. The parties have appealed, and the appeals are still pending. In the U.S. District Courts, the plaintiffs seek to set aside the third amendments to the SPSPAs as well as damages, and in some cases a declaration that the FHFA's structure violates the separation of powers. A case in the U.S. District Court for the Southern District of Texas was dismissed by that District Court; and the Fifth Circuit Court of Appeals affirmed dismissal of all claims against Treasury but allowed one claim against FHFA to proceed. In June 2021, the Supreme Court dismissed the plaintiffs' claim that FHFA lacked statutory authority to enter into the Third Amendment, held that the FHFA director could be removed at will by the President, and held that the statutory limitation that the FHFA director can only be removed for cause is an unconstitutional violation of separation of powers but does not invalidate the third amendments. The Court also left open the possibility that the plaintiffs may be entitled to retrospective relief if the unconstitutional provision inflicted "compensable harm", and further proceedings are anticipated in the lower court. A case in the U.S. District Court for the District of Minnesota was dismissed, and the Eighth Circuit Court of Appeals affirmed in part and reversed in part. A case in the U.S. District Court for the Western District of Michigan was dismissed, and an appeal is pending. A case in the Eastern District of Pennsylvania remains in litigation, and a motion to dismiss is pending. Treasury is unable to determine the likelihood of an unfavorable outcome or an estimate of potential loss in these cases at this time.

Insurance and Guarantees

As discussed in Note 1.O—Insurance and Guarantee Program Liabilities, certain consolidation entities with significant insurance and guarantee programs apply FASB standards, while other insurance programs are accounted for in the consolidated financial statements pursuant to FASAB standards. Please refer to Note 17—Insurance and Guarantee Program Liabilities for insurance and guarantee liabilities and Note 14—Federal Employee and Veteran Benefits Payable for insurance related to federal employee and veteran benefits.

Entities Reporting under FASB

PBGC, FCSIC, and FDIC are the main contributing consolidation entities with significant insurance or guarantee programs that apply FASB standards. Insurance in-force estimates and a discussion on the PBGC coverage are disclosed to provide an understanding on the magnitude of the programs. Current conditions indicate it is unlikely that losses equal to the maximum risk exposure described below would be incurred.

PBGC insures pension benefits for participants in covered defined benefit pension plans. Under current law, PBGC's liabilities may be paid only from PBGC's assets. Accordingly, PBGC's liabilities are not backed by the full faith of the U.S. government. As of September 30, 2021, PBGC's single-employer and multiemployer pension insurance programs had $150.7 billion and $3.5 billion in total assets, respectively. In FY 2020, PBGC reported pension insurance program total assets for single-employer and multiemployer of $143.5 billion and $3.1 billion, respectively.

PBGC operates two separate pension insurance programs: a single-employer program and a multiemployer program. The single-employer program covered about 22.7 million people (excluding those in plans that PBGC has trusteed) in FY 2021, down from about 23.5 million people in FY 2020, and the maximum guaranteed annual benefit for participants who are in a plan that terminated in FY 2021 and commence benefits at age 65 is $72,409. The maximum guaranteed benefit for single-employer plan participants varies with a number of factors such as the date of the sponsoring employer's bankruptcy and the age at which the participant commences benefits. The number of covered ongoing plans at the end of FY 2021 was about 23,900.

The multiemployer program covers about 10.9 million participants in about 1,360 insured plans and the maximum annual benefit is $12,870 to a participant who worked for 30 years in jobs covered by the plan. The maximum benefit for multiemployer plan participants varies with covered service and would be lower if the participant worked less than 30 years and higher if the participant worked more than 30 years. On March 11, 2021 the President signed into law the ARP. The ARP established a new multiemployer SFA program resulting in a new source of financing from the General Fund. PBGC will receive appropriated SFA funds to disburse to multiemployer plans that meet certain criteria. Unlike traditional financial assistance where PBGC provided assistance to the multiemployer plans in the form of a loan, the new special financial assistance will be provided via a transfer (pass through of funds) with no obligation of repayment. Prior to enactment of the ARP, PBGC's multiemployer program was projected to become insolvent in FY 2026. By providing special financing assistance to the most financially troubled multiemployer plans, ARP significantly extends the solvency of PGBC's multiemployer program. New projections show a median projected insolvency in FY 2055. Please refer to PBGC financial statements for additional information.

FCSIC insures the timely payment of principal and interest on Systemwide Debt Securities. Systemwide Debt Securities are the general unsecured joint and several obligations of the Farm Credit System Banks. Systemwide Debt Securities are not obligations of and are not guaranteed by the U.S. government. As stated in the Farm Credit *Quarterly Information Statement of the Farm Credit System*, outstanding Systemwide Debt Securities reported by the Farm Credit System Banks totaled $329.0 billion and $309.1 billion as of September 30, 2021, and 2020 respectively. The insurance provided by FCSIC is also not an obligation of and is not guaranteed by the U.S. government. Under current law, if FCSIC does not have sufficient funds to pay unpaid principal and interest on insured Systemwide Debt Securities, the Farm Credit System Banks will be required to make payments under joint and several liability. As of September 30, 2021, and 2020, FCSIC reported an Insurance Fund balance of $5.8 billion and $5.4 billion, respectively.

FDIC insures bank and savings association deposits, which exposes FDIC to various risks. FDIC has estimated total insured deposits of $9,577.1 billion and $8,926.6 billion as of September 30, 2021, and 2020 respectively, for the DIF. The increase in insured deposits is due in part to the result of actions taken by monetary and fiscal authorities, and individuals, businesses, and financial market participants in response to the COVID-19 pandemic in FY 2020. Additional rounds of federal stimulus payments, and elevated personal savings contributed to the increase in insured deposits in FY 2021.

The government has guarantee contingencies that are reasonably possible in the amount of $105.9 billion and $185.6 billion as of September 30, 2021, and 2020, respectively.

PBGC reported $105.7 billion and $185.5 billion as of September 30, 2021, and 2020, respectively, for the estimated aggregate unfunded vested benefits exposure to PBGC for private-sector single-employer and multiemployer defined benefit pension plans that are classified with a reasonably possible exposure to loss. As of September 30, 2021, PBGC's estimate of its single-employer reasonably possible exposure decreased to $105.4 billion.[6] The single-employer program contingencies decrease of $70.8 billion is largely due to the positive investment results on plan assets during calendar year 2020 and the decline in the number of companies with lower than investment grade bond ratings and/or credit scores. PBGC's estimate of its multiemployer reasonably possible exposure decreased to $0.3 billion in FY 2021. The $9.0 billion decrease in the multiemployer program contingency exposure is primarily due to the removal of thirteen larger plans that are no longer classified as reasonably possible and the decline in the reasonably possible small plan bulk reserve due to adjustments made to account for the new SFA program.

FDIC reported $0.2 billion and $0.1 billion as of September 30, 2021, and 2020, respectively for additional risk identified in the financial services industry that could result in additional loss to the DIF should potentially vulnerable insured institutions ultimately fail. Actual losses, if any, will largely depend on future economic and market conditions.

Entities Reporting under FASAB

The total amount of coverage provided by an insurer as of the end of the reporting period is referred to as insurance in-force. Insurance in-force represents the total amount of unexpired insurance arrangements for the corresponding program as of a given date. Insurance in-force is presented to provide the reader with a better understanding of the unexpired insurance arrangements that are not considered a liability. It is extremely unlikely that losses equal to the maximum risk exposure would be incurred. The table below shows the estimate of insurance in-force for consolidation entities with significant insurance programs that apply FASAB standards in accordance with SFFAS No. 51, *Insurance Programs*.

[6] The estimate of the reasonably possible exposure to loss for the single-employer plans was measured as of December 31, 2020.

Insurance In-force as of September 30, 2021, and 2020

(In billions of dollars)	2021	2020
Insurance In-force:		
Ginnie Mae - HUD	2,125.6	2,117.7
National Credit Union Share Insurance Fund - NCUA	1,600.0	1,400.0
National Flood Insurance Program - DHS	1,341.3	1,338.9
Federal Crop Insurance - USDA	150.0	127.0

Ginnie Mae insures MBS and commitments, which exposes Ginnie Mae to various risks. Ginnie Mae's MBS program guarantees the timely payment of principal and interest on securities backed by pools of mortgage loans insured by FHA, Public and Indian Housing, Rural Housing Service, and VA. Accordingly, Ginnie Mae's credit risk related to outstanding MBS is greatly mitigated by guarantees discussed in Note 4—Loans Receivable, Net and Loan Guarantee Liabilities.

NCUA operates and manages the NCUSIF, insuring the deposits of over 128.6 million account holders in all federal credit unions and the majority of state-chartered credit unions. The $200.0 billion increase in the NCUSIF as of September 30, 2021 was primarily due to elevated savings rates, declining unemployment, rising wages, federal stimulus payments, and the continuation of various loan forbearance programs. NCUSIF insures the balance of each members' accounts, dollar-for-dollar, up to at least the standard maximum share insurance amount of $250,000.

NFIP, managed by FEMA, is considered an exchange transaction insurance program and pays claims to policy holders who experience flood damage due to flooding within the NFIP rules and regulations. FEMA is authorized to secure reinsurance coverage from private reinsurance and capital markets to maintain the financial ability of the program to pay claims from major flooding events.

FEMA, a component of DHS, is authorized to borrow from Treasury up to $30.4 billion to fund the payment of flood insurance claims and claims-related expenses of the NFIP. This authority is used only as needed to pay existing obligations for claims and expenses. Insurance premiums collected are used to pay insurance claims and to repay borrowings. As of September 30, 2021, and 2020, FEMA had drawn from Treasury $20.5 billion, leaving $9.9 billion available to be borrowed. Premiums collected by FEMA for the NFIP based on subsidized rates are not sufficient to cover the debt repayments. Given the current premium rate structure, FEMA will not be able to generate sufficient resources from premiums to repay its debt.

The Federal Crop Insurance Program, administered by USDA's FCIC, is considered a short-duration exchange transaction insurance program. The crop insurance policies insure against unexpected declines in yield and/or price due to natural causes. There were approximately 1.2 million and 1.1 million crop insurance policies in force for crop years 2021, and 2020, respectively. The insurance policies are structured as a contract between Approved Insurance Providers and producers, with the FCIC providing reinsurance to Approved Insurance Providers. Crop insurance policies automatically renew each year unless producers cancel them by a published annual deadline. The insurance protection in force increased $23.0 billion in crop year 2021 primarily due to higher crop prices, and the widespread drought which had a significant impact to projected losses for crops in the western states and the northern plains.

FCIC may request the Secretary of Agriculture to provide borrowing authority funds of the Commodity Credit Corporation if at any time the amounts in the insurance fund are insufficient to allow FCIC to carry out its duties. Even though the authority exists, FCIC did not request Commodity Credit Corporation funds in the reporting period. USDA has a permanent indefinite appropriation for the crop insurance program used to cover premium subsidy, delivery expenses, losses in excess of premiums, and research and delivery costs. FCIC has no outstanding borrowing as of September 30, 2021.

Please refer to the financial statements of the main contributing entities, HUD, NCUA, DHS, and USDA for additional information.

The *Terrorism Risk Insurance Act* of 2002, as amended, created TRIP, which requires participating insurers to make insurance available for losses resulting from certified acts of terrorism and provides a federal government backstop for the insurers' resulting financial exposure. This statute was enacted following the terrorist attacks on September 11, 2001 to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. Most recently, the *Terrorism Risk Insurance Program Reauthorization Act* of 2019 authorized TRIP until December 31, 2027. The claims process under TRIP commences once the Secretary of the Treasury (in consultation with the Secretary of the DHS and the U.S. Attorney General) certifies an event as an "act of terrorism." In the event of certification of an "act of terrorism" insurers may be eligible to receive reimbursement from the U.S. government for associated insured losses assuming an aggregate insured loss threshold ("Program Trigger") has been reached once a particular insurer has satisfied its designated deductible amount. For calendar years 2021 and 2020, the Program Trigger amount was $200.0 million. The Program Trigger will remain at $200.0 million each year through the expiration of TRIP in 2027. Insured losses above insurer deductibles will be shared between insurance companies and the U.S. government. TRIP includes both mandatory and discretionary authority for Treasury to recoup federal payments made under TRIP through policyholder surcharges under certain circumstances, and contains provisions designed to manage litigation arising from or relating to a certified "act of terrorism." There were no claims under TRIP as of September 30, 2021 or 2020.

Other Contingencies

DOT, HHS, Treasury, and SEC reported the following other contingencies:

FHWA has a reasonably possible contingency due to their authority to approve projects using advance construction under 23 U.S.C. § 115(a) and 23 CFR 630.701-630.709. FHWA does not guarantee the ultimate funding to the states for these "advance construction" projects and, accordingly, does not obligate any funds for these projects. The state may submit a written request to FHWA that a project be converted to a regular federal aid project at any time provided that sufficient federal aid funds and obligation authority are available. As of September 30, 2021, and 2020, FHWA has $68.8 billion and $68.7 billion, respectively, of advanced construction authorizations that could be converted to federal obligations subject to the availability of funds. These authorizations have not been recognized in the DOT consolidated financial statements.

Contingent liabilities have been accrued as a result of Medicaid audit and program disallowances that are currently being appealed by the states. The Medicaid amounts are $3.7 billion for fiscal years ending September 30, 2021, and 2020. The states could return the funds through payments to HHS, or HHS could recoup the funds by reducing future grant awards to the states. Conversely, if the appeals are decided in favor of the states, HHS will be required to pay these amounts. In addition, certain amounts for payment have been deferred under the Medicaid program when there is reasonable doubt as to the legitimacy of expenditures claimed by a state. There are also outstanding reviews of the state expenditures in which a final determination has not been made.

Treasury has a contingency for future draws by the GSEs. There were no probable future draws accrued as of September 30, 2021, and 2020, and the total amount of reasonably possible future draws is not estimable as of September 30, 2021. Refer to Note 9—Investments in Government-Sponsored Enterprises for additional information.

SEC's Division of Enforcement program, Office of the Whistleblower, rewards individuals who provide the entity with tips that lead to successful enforcement actions. SEC has accrued contingent liabilities of $131.9 million and $254.8 million as of September 30, 2021, and 2020 respectively, for whistleblower awards. The Investor Protection Fund provides funding for the payment of whistleblower awards as required by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* of 2010. Please refer to the SEC financial statements for additional information regarding whistleblower awards.

When a contingency originates from the U.S. government's involvement in a treaty or other international agreement, the responsible reporting entity must establish a contingent liability or include a required note disclosure to its financial statements in accordance with guidance in SFFAS No. 5. Refer to Note 21—Commitments for additional information concerning commitments related to treaties and other international agreements.