Note 18. Contingencies

Financial Treatment of Loss Contingencies

Loss contingencies are existing conditions, situations, or set 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 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. When a loss contingency exists, the likelihood that the future event or events will confirm the loss or the incurrence of a liability 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 not 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]

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.

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

[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.

The government is subject to loss contingencies that include insurance and litigation cases. These 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 insurance and litigation described in the following section, 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, 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).

Insurance Contingencies

At the time an insurance policy 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. The government has insurance contingencies that are reasonably possible in the amount of $185.4 billion as of September 30, 2018, and $253.1 billion as of September 30, 2017. The major programs are identified below:

- PBGC reported $184.8 billion and $252.2 billion as of September 30, 2018, and 2017, respectively, for the estimated aggregate unfunded vested benefits exposure to the PBGC for private-sector single-employer and multiemployer defined benefit pension plans that are classified as a reasonably possible exposure to loss. The decrease in single employer program contingencies is primarily due to the decline in the number of companies with lower than investment grade bond ratings and/or credit scores, while the primary reason for the decrease in multiemployer program contingencies is due to 14 plans that are no longer classified as reasonably possible. Of these 14 plans, 12 were removed due to improvements in the plans' financial conditions, and the 2 remaining plans were reclassified to other categories. Please refer to the PBGC financial statements for further details.
- FDIC reported $0.3 billion and $0.6 billion as of September 30, 2018, and 2017, respectively, for identified additional risk 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.

Deposit Insurance

Deposit insurance covers all types of deposits received at insured financial institutions, including deposits in checking accounts, negotiable order of withdrawal accounts, savings accounts, money market deposit accounts, time deposits such as certificates of deposit, and official items issued by banks, such as cashier's checks or money orders. The insurance covers the balance of depositors' accounts, dollar-for-dollar, including principal and any accrued interest through the date of the insured financial institution's closing, up to the insurance limit. As a result, the government has the following exposure from federally-insured financial institutions:

- FDIC has estimated insured deposits of $7,376.6 billion as of September 30, 2018, and $7,092.0 billion as of September 30, 2017, for the DIF.
- NCUA has estimated insured shares of $1,132.5 billion as of September 30, 2018, and $1,080.9 billion as of September 30, 2017, for the NCUSIF.

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

Legal Contingencies

Legal contingencies as of September 30, 2018, and 2017, are summarized in the table below:

(In billions of dollars)	2018			2017		
		Estimated Range of Loss for Certain Cases [2]			Estimated Range of Loss for Certain Cases [2]	
	Accrued Liabilities [1]	Lower End	Upper End	Accrued Liabilities [1]	Lower End	Upper End
Legal contingencies:						
Probable	11.0	10.5	12.4	7.4	6.8	8.6
Reasonably possible	-	7.0	26.3	-	3.1	12.6

[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.

The government is party in various administrative proceedings, legal actions, and tort claims which may ultimately result in settlements or decisions adverse to the government.

Management and legal counsel have determined that it is "probable" that some of these actions 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 $11.0 billion and $7.4 billion as of September 30, 2018, and 2017, respectively, and are included in "Other Liabilities" on the Balance Sheet. For example, the U.S. Supreme Court decision in *Salazar v. Ramah Navajo Chapter*, dated June 18, 2012, 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.

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 $7.0 billion to $26.3 billion as of September 30, 2018, and from $3.1 billion to $12.6 billion as of September 30, 2017. For example, as of September 30, 2018, EPA has received approximately 403 total claims under the *Federal Tort Claims Act* from individuals and businesses situated on or near waterways affected by acid mine water released by Colorado's Gold King Mine in August of 2015. The claims allege lost wages, loss of business income, agricultural and livestock losses, property damage, diminished property value, and personal injury. In addition, EPA has received claims from individuals under the *Federal Tort Claims Act* for alleged injuries and property damages caused by EPA's alleged negligence related to the water health crisis in Flint, Michigan. The estimated losses related to the Gold King Mine and the water health crisis are $2.1 billion and $2.8 billion, respectively. EPA has determined there is a reasonably possible likelihood of unfavorable outcome for these cases.

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. An example of a specific case is summarized below:

- A number of plaintiffs filed claims in the U.S. Court of Federal Claims requesting that Treasury redeem matured savings bonds not possessed by the applicable states, but which have registered owners with last known addresses in those states. Treasury informed the applicable states it would not redeem these savings bonds since those states are not registered owners of the bonds. On August 20, 2015, the U.S. Court of Federal Claims partially dismissed one claim and denied the U.S. government's motion to dismiss with respect to other claims. On August 8, 2017, the court ruled in favor of two states, and the U.S. government has appealed. At this time, the government is unable to determine the likelihood of an unfavorable outcome or make an estimate of potential loss.

Environmental and Disposal Contingencies

Environmental and disposal contingencies as of September 30, 2018, and 2017, are summarized in the table below:

	2018			2017		
		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
Environmental and disposal contingencies:						
Probable	30.2	29.5	31.4	28.4	27.7	29.5
Reasonably possible............	-	0.6	0.8	-	0.7	1.5

[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.

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.

Management and legal counsel have determined that it is “probable” that some of these actions will result in a loss to the government and the loss amounts are reasonably measurable. The estimated liabilities for these cases are $30.2 billion and $28.4 billion as of September 30, 2018, and 2017, respectively, and are included in “Other Liabilities” on the Balance Sheet.

In accordance with the *Nuclear Waste Policy Act of 1982* (NWPA), DOE entered into more than 68 standard contracts with utilities in which, in return for payment of fees into the Nuclear Waste Fund, DOE agreed to begin disposal of spent nuclear fuel (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. Therefore, DOE is subject to significant SNF litigation claiming damages for partial breach of contract as a result of this delay. Based on settlement estimates, the total liability estimate as of September 30, 2018 is $35.5 billion. After deducting the cumulative amount paid of $7.4 billion as of September 30, 2018 under settlements, and as a result of final judgments, the remaining liability is estimated to be approximately $28.1 billion, compared to approximately $27.2 billion as of September 30, 2017. In addition to its SNF litigation, 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, damages in excess of $1.1 billion are currently being sought in these cases.

Other Contingencies

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

- The Federal Highway Administration (FHWA) preauthorizes states to establish construction budgets without having received appropriations from Congress for such projects. FHWA has authority to approve projects using advance construction under 23 U.S.C. 115(a). 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. When funding becomes available to FHWA, the states can then apply for reimbursement of costs that they have incurred on such projects, at which time FHWA can accept or reject such requests. As of September 30, 2018, and 2017, FHWA has pre-authorized $60.8 billion and $55.2 billion, respectively, under these arrangements. Congress has not provided appropriations for these projects and no liability is accrued in the DOT consolidated financial statements.
- Contingent liabilities have been established as a result of Medicaid audit and program disallowances that are currently being appealed by the states. The Medicaid amounts are $6.3 billion and $12.2 billion for fiscal years ending September 30, 2018, and 2017, respectively. 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.

- As part of an annual process, Treasury assesses the need to estimate and accrue a contingent liability to the GSEs to reflect the forecasted equity deficits of the GSEs. Based on this assessment, it was estimated there were no probable future funding draws as of September 30, 2018, and 2017, and therefore, no contingent liability was accrued. However, as of September 30, 2018, it is reasonably possible that market volatility or non-recurring events—for instance, changes to accounting policies that impact credit loss provisions—could potentially cause the GSEs to generate quarterly losses and, therefore, result in future funding draws against Treasury's funding commitment. Due to challenges quantifying future market volatility or the timing, magnitude, and likelihood of non-recurring events, an estimate of the total amount of this reasonably possible future funding liability could not be made as of September 30, 2018. See Note 8—Investments in Government-Sponsored Enterprises for further information.

Treaties and Other International Agreements

The government is 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. 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, include a required note disclosure to its financial statements, or both, in accordance with guidance in SFFAS No. 5, as amended. A review of potential contingent liabilities arising from litigation related to treaties and other international agreements has been conducted by U.S. government entities. This entity-level review, along with any resulting relevant information, is captured and reported in the annual legal representation letter process and, if applicable, disclosed in the Legal Contingencies section of this note.