Office of Inspector General

Executive Summary

The FDIC's Shared-Loss Agreements with BankUnited

Report No. AUD-12-008
March 2012

Why We Did The Audit

On May 21, 2009, the former Office of Thrift Supervision (OTS) closed BankUnited, FSB, Coral Gables, Florida, and appointed the FDIC as receiver. The FDIC's Division of Resolutions and Receiverships (DRR) has been delegated primary responsibility for resolving a failed financial institution and managing the resulting receivership. To protect depositors, the FDIC entered into a Purchase and Assumption (P&A) Agreement with BankUnited, Miami Lakes, Florida (BankUnited). The FDIC also entered into Shared-Loss Agreements (SLA) with BankUnited covering $11.7 billion of the acquired assets.

The FDIC's Office of Inspector General (OIG) contracted with BDO USA, LLP (BDO) to conduct a performance audit of the FDIC's SLAs with BankUnited. The objective of this audit was to assess BankUnited's compliance with the terms of its SLAs with the FDIC related to BankUnited, FSB assets.

Background

A common resolution method that the FDIC uses for resolving failed institutions is a P&A transaction, wherein an acquiring institution (AI) purchases some or all of the assets and assumes some or all of the liabilities of a failed institution. An SLA is a means to facilitate P&A transactions. Under the SLA, the FDIC agrees to absorb a portion of the loss on a specified pool of assets in order to maximize asset recoveries and minimize losses. Loss sharing reduces the immediate cash needs of the FDIC, provides greater operational efficiency for failed bank customers, and facilitates moving assets quickly into the private sector. Typically, the FDIC absorbs a significant portion (generally, 80 percent) of losses claimed on the SLA portfolios, and AIs absorb the remaining losses.

BankUnited was formed by a group of private capital investors and was established as a newly chartered Federal Savings Bank in May 2009. On May 21, 2009, the FDIC and BankUnited entered into a P&A transaction covering BankUnited's acquisition of BankUnited, FSB that included two SLAs with BankUnited covering 46,526 commercial and other loan assets (CSLA) and single-family assets (SFSLA), consisting of loans, other real estate owned (OREO), and securities totaling approximately $11.7 billion. In the BankUnited SLAs, the FDIC reimburses 80 percent of losses claimed up to a threshold of a cumulative loss of $4 billion and 95 percent of losses above $4 billion. As of June 30, 2011, BankUnited had claimed slightly over $2 billion in losses on assets covered by the SLAs. The FDIC made payments to BankUnited of $1.6 billion (the FDIC's 80-percent share of the $2 billion in losses claimed).

Audit Results

BDO concluded that, overall, BankUnited was in compliance with the terms of the SLAs. It was apparent to BDO that BankUnited had dedicated substantial resources to ensure compliance with the SLAs. For example, BankUnited had developed policies and procedures to ensure compliance, loan files were well organized, and employees were knowledgeable about the agreements. Nonetheless, BDO observed that for early certificates there was a weakness in the controls over the review process for single-family asset charge-offs. BDO identified one charge-off that was overstated by $501,272 (questioned costs of $401,017, 80 percent of the overstatement). BDO also noted that the SLAs and DRR guidance did not specifically address how accrued interest on negatively amortizing loans should be calculated or reflected in the loss claim and that DRR did not have specific guidance regarding the capitalization of accrued interest to the unpaid principal balance for negatively amortizing loans. As a result, BankUnited may have overstated accrued interest by approximately $812 (questioned costs of $650, 80 percent of the overstatement) and losses claimed by $41,076 (questioned costs of $32,861, 80 percent of the overstatement). The report also includes an observation related to BankUnited's compliance with a loan sale addendum to the SLA and encourages the FDIC to monitor BankUnited's asset liquidation efforts to ensure the bank's goals and investment objectives agree with FDIC SLA program expectations.

In total, BDO identified $434,528 in questioned costs, which the OIG plans to report in the next *Semiannual Report to the Congress*.

Corporation Comments

On February 24, 2012, the Director, DRR, provided a written response to the draft of this report. Management concurred with BDO's findings and recommendations. DRR's planned actions are responsive to BDO's recommendations.

We also provided BankUnited with a copy of the draft report for its review. In a letter to our office responding to the report, BankUnited agreed with the first two recommendations. As for recommendation number 3, regarding negatively amortizing loans, BankUnited considers its methodology to be appropriate and noted that the application of payments on such loans is a complicated matter and entails certain legal implications.

Because this report contains sensitive information, we do not intend to make this report available to the public in its entirety. We will, however, post this Executive Summary on our public Web site.