

FDIC Adviser

Serving the Banking Industry as a Regular Update on FDIC-Assisted Transaction Activity

DEAL MONITOR

Patterns in Bank Failures: Where are the Hot Spots?

It's no secret that some areas of the country have borne the brunt of bank failure activity during the current cycle of bank failures. Just four states account for more than half of all bank

failures since 2008: Georgia, Florida, Illinois and California.

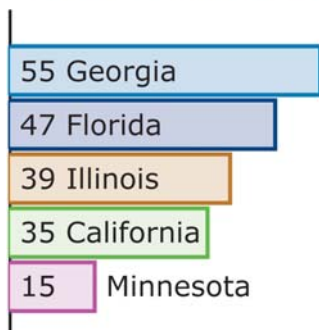
Conversely, some states have seen no bank failures during the current cycle. For example, Connecticut and Tennessee have experienced zero bank failures since 2008. Other large states have experienced very little FDIC receivership activity. The states of Massachusetts, Mississippi, Indiana and Louisiana saw just one bank failure each since 2008.

Publicly available information indicates that the Midwest will continue to be a hot spot in 2011, with approximately three dozen Illinois

institutions attracting industry attention as potential failures. Minnesota, Michigan and Wisconsin are also expected to see multiple FDIC receiverships. Therefore, for healthy eligible bidders interested in assuming failed bank assets in the Midwest, the year ahead may hold a disproportionate number of attractive opportunities.

Outside of the Midwest, Georgia is expected to again lead the nation in bank failures. Florida and California also are expected to continue see significant numbers of failures, along with Washington and Colorado.

Failures Since 2008



WHAT'S NEW

Purchase & Assumption Agreement Version 3.0 Makes Its Debut

Continuing its practice of making frequent enhancements and refinements to the Purchase and Assumption Agreement ("P&A") used to sell failed bank assets to assuming banks, the FDIC recently introduced its latest iteration of the agreement: Version 3.0 Whole Bank with Optional Shared-Loss Agreements.

What makes Version 3.0 noteworthy?

- Version 3.0 is the FDIC's most extensive "clean-up" of the P&A to date. The new document includes dozens of cosmetic changes making the document easier to use and more internally consistent.
- With Version 3.0, the FDIC has eliminated the former "With Loss-Share" and "No Loss-Share" versions of the P&A. A single version is now used for all Whole Bank transactions; Exhibits 4.15A and 4.15B are attached or excluded, based on the final terms of the transaction.

FDIC TERMINOLOGY

"Modified Whole Bank"

These are assisted transactions in which the FDIC offers bidders the opportunity to bid on the whole bank, excluding a set of specifically identified assets. These assets will be listed on Schedule 3.5 "Excluded Assets" and posted to the electronic database by the FDIC's Franchise Marketing team. When the FDIC offers Modified Whole Bank as a bidding option, it is generally in addition to a Whole Bank bidding option.

TIP OF THE MONTH

Why Loss-Share Training Makes Good Sense

Most successful bidders for the assets of a failed bank have a core group of team members with a sophisticated, in-depth understanding of the FDIC's P&A and the rules and guidelines that apply to administration of assumed assets covered by loss-share protection.

A bigger challenge for

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For questions or more information regarding these or any issues regarding FDIC-assisted transactions, call or write Lori Buerger at 312-258-5837 or lbuerger@schiffhardin.com.

TIP OF THE MONTH

Why Loss-Share Training Makes Good Sense (cont.)

most successful bidders, however, is replicating that level of understanding of the P&A and loss-share rules more broadly in the organization.

Why does it matter? As assuming bank veterans know, there's a wide variety of ways for assuming bank team members to inadvertently err in their loss-share administration, yet the penalty is always the same: forfeiting loss-share coverage for the entire asset.

No matter how minor the administration error, the same draconian penalty always applies. Retaining loss-share coverage, to the broadest extent possible, is critical to ensuring the assuming bank gets the full benefit of the failed bank transaction.

Widespread understanding of the loss-share administration "rules of the road" is critical to protect assuming bank teams from inadvertently jeopardizing

loss-share coverage, particularly in operations where assumed loans that remain performing are handled separately from non-performing assumed assets.

Savvy assuming banks retain the value of their FDIC-assisted transactions by conducting loss-share training (both initial and "refresher" reviews when required) for all team members who will participate in administering assumed assets covered by loss-share protection.

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Our long-standing strengths in mergers and acquisitions, securities and financings and bank regulatory counseling support our increasing work with clients on FDIC-assisted trans-

actions. We also have active practices in trust department counseling, corporate governance and fiduciary litigation.

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