

**COMPLETE CBA SURVEY RESULTS ON PARTICIPATION LOANS
WITH FAILED BANKS**

- 1. Has your bank had a participation in a loan purchased from a bank that has since failed? (Answer yes or no):**

If no, there is no need to complete the remaining questions.

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| Yes: 11 | No: 25 Banks |
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Comments:

- A. Yes. We are one of four banks that bought into a participation sold by another bank. Haven Trust Bank was one of the four and, of course, since it failed and FDIC has taken over its portfolio, there is a need for us to work with FDIC as a “partner.”
- D. We sold a \$5,000,000 participation to Integrity Bank, now FDIC.
- F. Alpha Bank and Trust – 3 loans total.
- I. Yes, The Community Bank.

- 2. Are you still holding that participation loan? (Answer yes or no):**

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|---------------|-------------|
| Yes: 11 Banks | No: 0 Banks |
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Comments:

- D. The loan is \$13,250,000 with Integrity having \$5,000,000, we have \$5,000,000 and another community bank has \$3,250,000.
- F. Yes we are still holding our share of all three.

- 3. Is FDIC still holding the portion of the loan it obtained in the failed bank situation? (Answer yes or no):**

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|---------------|-------------|
| Yes: 11 Banks | No: 0 Banks |
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Comments:

- A. As far as we know, yes.
- D. The FDIC (or their liquidator-MMC Group) is holding this. At times it is difficult to know with whom we are dealing as it seems that Regions Bank is involved. We seldom receive correspondence but when we do, it does come from the FDIC.
- F. Yes the FDIC is still holding their portion.

- 4. Have your dealings with the FDIC liquidators in regard to this loan been satisfactory? (Answer yes or no):**

If no, please comment and explain, with as much specifics as possible, the reasons for your response.

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| Yes: 2 | No: 7 | No Comment: 2 |
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Comments:

- A. No. We have been negotiating a forbearance agreement with the debtor, to which all participants and the seller must agree. FDIC has not even responded except to say that some group in Dallas, TX must review and approve the document. Under separate

cover, I am forwarding to you an e-mail we just received from the seller about FDIC's lack of response.

- B.** Not entirely. (1) Explanation of their processes is only oral. There seems to be no ability to give the participating bank a written description of the processes. (2) There is no clarity of time frames for their "processes." For example, if the asset on the FDIC books is > \$1,000,000, then recommendations are made by the on-site team, but decisions must come from Dallas, Texas FDIC office. There is no time frame for those decisions. Additionally, at some undefined higher level, the recommendation moves on from Dallas (in an undefined time frame) to Washington, D.C. for a decision, with another unknown time frame for responses. (3) In talking with other banks and with the customers involved in our loan participations, there are substantially conflicting stories being given to the different parties. (4) They refuse to fully discuss with the participation purchased bank their conversations with the mutual customers and with the outcome of deposit balances that are frozen due to loans in default. (4) There is nothing in the process to recognize that the participating bank may not have sufficient legal lending limit to take on the entire transaction. If you don't, they see no harm in the failed bank portion of the loan being sold out to a "vulture fund" purchaser along with the lead bank role. (5) The liquidators say they will not give the participating bank the lead bank role without the participating bank buying the failed bank portion of the loan, or at least buying some portion of it. (5) The liquidators refuse to understand that a loan that is not in default by its contract, but is forced into default in the failed bank liquidation process, cannot be handled as a loan in default by the participating bank if it acquires sole ownership without substantial risk of legal action by the customer (i.e. The participating bank does not enjoy the sovereign immunity they seem to believe they have acting on behalf of the federal government)
- C.** Yes, our dealings with the FDIC have been satisfactory. Delays in the FDIC receiving appraisals have slowed some of the processes. However, the FDIC has been as good of a participant as Alpha Bank & Trust was during their last year.
- D.** No. It is hard to obtain an answer and they are slow to respond. The customer was willing to buy their \$5,000,000 note for \$3,000,000. This was a complex transaction and was not the borrower's or guarantors' money. The note is past due and will be placed on non accrual on February 1, 2009. First we were told that only the borrower could buy the note and then they said only we as the lead bank could buy the note. Although things may be different than when I was an independent contractor for the RTC, back then the asset would be put into a pool at a deep discount. Since this asset is now on non accrual and is a minority interest in a loan it is my opinion that the FDIC will receive much less than 60% and not any time soon since I am not aware that it has gone to a pool yet. Obviously all of this means no resolution for the two other banks. The FDIC (or their liquidator-MMC Group) is holding this. At times it is difficult to know with whom we are dealing as it seems that Regions Bank is

involved. We seldom receive correspondence but when we do it does come from the FDIC.

- E.** No. Our experience has been awful. We have three participations with the former Alpha Bank. When Alpha was closed, we were in the process of foreclosing on a non performing apartment complex. We had been in preliminary conversations with a potential buyer of the property assuming we foreclosed. The purchase price of the property would have been at the loan balance in an all cash deal. The loan has been advertised for 4 consecutive weeks for foreclosure; however, when the FDIC seized Alpha they ceased all litigation including foreclosures. As a result, Alpha would not allow us to assume lead and continue with the foreclosure. The borrower believed that Alpha/FDIC was foreclosing and called the following day to confirm that the property was now owned by the bank/FDIC. The borrower was informed that the foreclosure did not take place. We spent the next month negotiating with the FDIC for our bank to become the lead bank and had to ultimately reduce the FDIC's portion of the debt by \$500,000 by increasing our portion. Our bank then advertised for foreclosure in December; however, the borrower filed bankruptcy at the last minute as he believed he could buy the FDIC portion at a discount and keep the property. Now the prospective buyers are gone and we are dealing with the bankruptcy. Had the FDIC allowed the foreclosure to take place, this property would have been sold and off everyone's books prior to year end. Now any other potential buyers have gone away and the value of the property deteriorates daily while we fight in bankruptcy. FDIC has not reimbursed any legal bills associated with this to this point saying it has not been approved yet. We are bearing the full expense.

In participation with Alpha that was foreclosed prior to Alpha closing, the FDIC liquidator - David Ballard - has been extremely difficult to deal with. I met with him the week he arrived on site and asked if there was any consideration given to the fact that the participation was with a operating, FDIC insured bank. Mr. Ballard looked at me and said "No, we don't care about you. If this loan causes you to fail, we'll move to your bank next." I wouldn't have believed it had my Senior Lender not been in the meeting as well. We have not been informed on anything with the property. Every point of contact has been at my instigation and prompting. I find out this week that 3 offers have been obtained and one will be accepted without any consultation or input from a 33% participant. Mr. Ballard has been rude, unresponsive and horrible to deal with. It's bad enough to have to deal with problem assets, but then to add these factors on top of it makes a bad situation worse.

- F.** Tough question and I would say yes and no – the guys have been cordial and we have been kept abreast of all activities. My frustration has been with the unwillingness to accept discounts that would get the loans off our books. Like everyone we are not in the business of losing money; however, if our loans are sold into a pool for liquidation, our losses will be well in excess of the ones that we are currently being offered.
- G.** No. When the bank first failed it was difficult to get any response on the status of the loan. They have improved their responsiveness, but information has been requested and not received. As the participating bank we feel that any information pertaining to our loan should be forwarded to us. We would like to be copied on all

correspondence regarding the loan. We understand that the FDIC has certain steps it has to follow, but those steps should be clearly laid out to the participating banks. We have spoken to several people with FDIC at the failed institution and each one has had a different opinion on what would take place with the loan.

- H.** No. Our bank has purchased and sold participations with the former The Community Bank (TCB) in Loganville. We have corresponded via email, spoken over the telephone, and met in person with the representative of the FDIC. In general, the liquidator is ill prepared and not conversant about the loans. For example, at our meeting in early December for one particular credit that we have sold to TCB, he had not read the file, and in particular had not read the appraisal for a credit that had matured. We had sent this loan to TCB seeking approval for a renewal in mid November. The liquidator's comments were that this was a dead loss, and that they would liquidate the loan. I was somewhat taken aback by this response in light of him not having read the file. After further discussion he stated that he did not know where Athens is (location of the project), did not know that UGA is located there, and considers the Athens market to be like Loganville. (He gestured at all of the "for sale" signs on commercial real estate property along Hwy 78 in Loganville, and commented that Athens was the same.) I offered to take him to Athens, to see the project, and to tour the surrounding area. I even later followed up on the initial offer, which he has yet to accept.

In another sold participation, the liquidator was unprepared to discuss it at our December meeting, and has not inquired about it since. With a third participation, this one purchased by us, he was very conversant and well versed. In a fourth loan, this one also purchased by us, the FDIC has only \$10 outstanding in a \$2MM+ loan. Our bank has outstanding \$1.3MM. This loan is to a customer that has multiple corporate entities, large debt exposure to many banks, and someone that our bank officers know personally. Our bank has been attempting to purchase the lead position from the FDIC for going on two weeks now so that we can move forward in our collection effort, but we are unable to do so per our legal counsel until the FDIC acts. The response of the liquidator is that he needs approval of "Legal and the FDIC manager." Promised deadlines are not met, and we have to follow-up even in cases where he has said that he would.

- I.** For the most part our representative, Babacar Ba has been very responsive in all phone and email communications.
- J.** We are not the lead bank in this situation. The lead bank is dealing directly with the FDIC and I am sure they can give you a more detailed explanation of the situation as well or how negotiations have transpired. From our viewpoint, response from the FDIC has been slow and is having a negative impact on our collection efforts related to this credit. I have copied them on this email.
- K.** No. Did not respond to questions, after an initial contact.

5. Do you believe the FDIC is acting in the best interest of all the participating banks in these situations? (Answer yes or no):

If no, please comment and explain, with as much specifics as possible, the reasons for your response. If you believe FDIC's handling of the loan has increased your

bank's loss or its potential for loss, please so indicate and provide the amount of increased loss or an estimate of the potential increased loss.

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| Yes: 1 | No: 7 | No Comment: 3 |
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Comments:

- A.** No. It now appears that a second lien-holder is filing a suit against the guarantors of the loan and they may obtain lien rights that will potentially put them ahead of the selling bank and all participants, perhaps forcing the guarantors into bankruptcy and spoiling our attempt at reconciliation with the guarantors. Part of the agreement calls for an immediate payment of approximately \$200,000 in principal, plus a schedule of following payments.
- B.** Absolutely not. I believe that the way in which it is being handled is forcing increased risk on the participating banks. While there is conversational assurance that there is no intent to transfer failed institution risk to the participating banks, the actions are focused on leveraging the process to collect the maximum amount possible regardless of any increased risk it may create. The approach of the FDIC is that the failed bank portion of the loan must be liquidated in some manner, regardless of what it takes. If it is a nonperforming asset, or a pre-foreclosure asset, involves a substantially impaired asset value with virtually no identifiable buyers, the bank still can only seem to gain control over the disposition of the entire asset by buying the failed bank portion of this impaired asset. With such limited buyers they are forcing substantial increases in real estate being forced into liquidation at current prices further worsening real estate markets and values. Additionally, the safety and soundness side of the FDIC wants liquidation at whatever values are available. The combined affect on real estate values is huge. They also do not demonstrate a clear willingness to shift the lead bank role to the participating bank if the participating bank does not buy their portion of the asset, which increases the need to buy the asset in order to be in control of your own NPA's versus being at the mercy of a vulture fund buyer from the on-line auction process. Until we resolve what the FDIC will accept to transfer the asset versus liquidation values of the real estate, I could not quantify the increased loss.
- C.** Yes, as far as we can tell.
- D.** No-see #4.
- E.** No. The FDIC's actions have cost us additional expenses, increased our losses and forced us to increase our non performing assets in exchange for becoming lead bank in participation.
- F.** No – I think they are being extremely stubborn in moving assets and taking discounts, which in the long run will cause these properties to be sold at even deeper discounts.
- G.** No. It appears to us that FDIC is more concerned with protecting the failed institution than the participating banks. We understand that FDIC has a responsibility to minimize the losses of the failed institution, but shouldn't they also have a responsibility to protect the industry as a whole? This may mean taking larger losses now, but prevent greater losses in the future with additional failed institutions!

- H. No. The best response that we can give to this question is what the liquidator said, which is, "My job is to protect the assets of the FDIC as best I can."

From the descriptions given to question 4 above it is debatable as to whether or not either the assets of the FDIC, the assets of the customers, or the assets of our bank are being protected in the best fashion. Lack of reading files and appraisals, lack of providing responses in a timely fashion and when promised, and a lack of learning the market (an upscale Athens residential subdivision in a planned community is not comparable to commercial land in Loganville) are not in anyone's best interest but perhaps vulture funds.

For now it is difficult, if not impossible, to quantify any potential loss due to the FDIC liquidators' performance. Frankly, until the residential market thaws, most all builders and developers are not going to be able to repay their loans. This is nothing new. What is new is the role of what appears to be commercial real estate investors/brokers from out of market trying to liquidate bank loans for the northeast Georgia residential market. Actually, there are builders/developers and bankers who have been in these markets for 30+ years who have experienced similar slow downs in residential real estate sales that are not able to function properly and efficiently because of the ill equipped FDIC liquidators. It only stands to reason, however, that given enough time and magnitude, an already difficult situation is going to be compounded into a disaster, for not only the customer and the banks, but the FDIC and the taxpayer.

- I. I am not sure how to answer that, but we had to perform our own appraisal of the loan and now have been asked to send in a bid. Babacar Ba has now asked for a copy of our appraisal and I felt that as the lead bank that would be their expense.
- J. I will withhold comment as I am not dealing with them directly.
- K. No opinion or comment on the other questions.

6. Would you be willing to send an e-mail or letter directly to the Supervision Division of FDIC in Atlanta regarding your loan participation situation and any concerns you have had in managing through this situation with FDIC? (Answer yes or no):

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| Yes: 8 | No: 1 | No Comment: 2 |
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Comments:

- B. I don't think so. I think this is a situation where an organization such as CBA needs to compile information and serve as the voice of these banks. We still have to deal with the on-site personnel, with safety and soundness exams, with targeted CRE exams, with FDIC support of or non-support of TARP applications, etc. And I don't think the banks are in a position to risk the exposure.
- J. I will withhold comment as I am not dealing with them directly.

7. Would you be willing to participate in a Focus Group Meeting with representatives of the Supervision Division of FDIC, Atlanta, to discuss the situation with loan participations with a failed bank and your concerns? (Answer yes or no):

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| <i>Yes: 8</i> | <i>No: 1</i> | <i>No Comment: 2</i> |
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Comments:

B. Same answer as 6.

J. I will withhold comment as I am not dealing with them directly.

8. Additional comments you may like to add:

A. There has always been a clear need for us to move expediently and our effort appears to have been stalled by FDIC's failure to respond.

G. FDIC needs to look at each situation. In our case, (and I am sure in many other cases), we are still involved with the loan because of the problems of the failed institution. We lived up to our 2 year commitment but because of liquidity issues of the failed institution, they could not pay us off at renewal. The loan was still performing at that time; now the loan is in trouble and we are having to deal with it and reserve for it. **As I have stated before if the failed institution had not had liquidity issues we would have been paid off well before the problems began!** With all the talk of TARP money and other things to help the financial industry, it would seem to me that FDIC would try, in these cases; centralize the losses to the failed institution. This would prevent further damage to other institutions and the market as a whole.

H. I have one other comment. A customer of our bank (previously described in question 4), where we are involved in a large planned community consisting of both residential and commercial real estate has a law firm as his primary business. He also is involved in other commercial real estate projects. He has many banks, both in our particular project, but also with his other deals that are not related to the one that we are financing. Two of the banks involved are now in FDIC receivership. In the case of one bank, the FDIC sent him a form letter asking him to move the loan. It is a \$3MM loan. No phone call, no email, no letter tailored to his situation. Just a form letter. The other loan handled by the FDIC now is a loan that our bank sold to The Community Bank. The FDIC has yet to communicate to the customer or us about action to be taken on this loan that matured last year. Would it not be wise for the FDIC to have a single, qualified liquidator where it has multiple loans to the same borrower? Would it not be wise to use someone who knows the difference between Sugarloaf Parkway in Lawrenceville, Hwy 78 in Loganville, and upscale developments in environmentally sensitive Athens/Clarke County?

I. The FDIC is the lead bank, I don't think it is fair for us to have absorbed the cost and ordered an appraisal, and now share it with you for bidding purposes. Based on the losses we will incur and inherent carrying costs, we can only bid one dollar (\$1.00) due to the losses anticipated.

J. I will withhold comment as I am not dealing with them directly.

**** The following response by banker that did not answer survey:** To follow up on our discussion on FDIC liquidations, I wanted to pass on my concern on the FDIC policies on

selling loan participations from failed banks. I feel that the other FDIC insured banks in participation should have priority in purchasing the participation interest of the failed institution. By selling these assets in large blocks, the FDIC is eliminating most community banks as bidders because of the size of the asset package sold and the reluctance to add more non performing assets to their balance sheet to acquire the participation interest. Many times the participation agreement allows the other participants the right to buy out other participants. By putting the bank in with an investor who purchased the loan for 20 or 30 cents on the dollar, the investor can force an immediate liquidation which will result in a much larger loss for the bank than with a more orderly liquidation. Thanks for representing our interests with the regulators.

**** From bank consultant/attorney survey:**

- 1. Do you have bank clients who have had a participation in a loan purchased from or sold to a bank that has since failed? (Answer yes or no):**

Yes, several

- 2. Have the dealings of your client(s) with the FDIC liquidators in regard to this loan been satisfactory? (Answer yes or no):**

No

If no, please comment and explain, with as much specifics as possible, the reasons for your response. Comments: Our clients tell us of various cases where pending actions on their participation NPAs / OREO have been suspended or stalled by regulatory intervention when a failed originating bank goes under receivership. We have clients that had solutions in sight that could have minimized losses. Regulatory managers of the failed banks are understandably doing their jobs – to get in, work the failed bank as quickly as possible, and get out with minimized damage to the FDIC insurance fund. But our participating banks certainly need cooperation and coordination to minimize unintended consequences to the network of participants. Losses minimized at today's failed banks are only being pushed out to the participants to be dealt with later when the resulting shock waves take down more of our banks. If our regulators could all take the broader perspective about the repercussions, more of our banks could make it through. Our Atlanta MSA banks can't sustain accelerated participation losses from regulatory actions at failed banks. We can't find reasonable external investor capital anywhere. These hits start a downward spiral and a series of consequences for participating banks that they simply can't pull out of or control.

- 3. Has your firm been involved in discussions and/or negotiations with the FDIC liquidators regarding your clients' loan participation(s)? (Answer yes or no):** No, not directly. Our firm deals internally with bank management on the strategic planning and capital and liquidity contingency aspects of the problems caused by more loan losses from the results of regulatory actions on these participations.

4. **Do you believe the FDIC is acting in the best interest of all the participating banks in these situations? (Answer yes or no):** No – their perspective seems to be the job at hand with the failed bank, not the repercussions to the participants.

Does your client believe that their loss on the loan was increased by FDIC's handling of the loan? (Answer yes or no): Yes

If Yes, by how much \$ It varies case by case and many are yet to be determined.

If no, please comment and explain, with as much specifics as possible, the reasons for your response. Comments: I regret that I can't reveal specific cases of our clients. I applaud CBA's efforts to encourage open dialogue to get these issues on the table.

5. **Would you be willing to participate in a Focus Group Meeting with representatives of the Supervision Division of FDIC, Atlanta, to discuss the situation with loan participations with a failed bank and your concerns? (Answer yes or no):** If I could do so by conference call. I am probably not the best source on the loan workout aspects of this. I could only discuss internal planning repercussions.

**** Comments from a bank consultant's bank clients/Consultant did not respond to respond to the survey questions:**

1. Dealing with the FDIC as receiver of a closed bank in the state of Georgia has been a nightmare. The bureaucracy within the FDIC has shown to be a very disappointing one. This is astonishing to me because my bank pays the fees to support these bureaucrats and I stand by and watch them make decisions that will cost my bank money due to their inability to logically deal with loans that they are handling, especially in the loan participation area. My bank has loan participations purchased and sold to a bank that is in receivership. Some of the problems that I am having are as follows:
2. One person does not know what the other person is doing or the loans they are handling: At the outset my staff and I went and met with the independent contractor in charge. At that time, the independent contractor made a decision to assign all of our loan participations to one person so we would know who the contact person was and not have to work through numerous independent contractors. As of this date, loans have been re-assigned to at least four other loan officers. That is not a problem, other than we have been waiting for over a month for our contact to complete their write up and present it for approval, only to find out that they were taken off the case over a month ago. Now, we have to start all over with another contact.
3. FDIC personal financial statement is very difficult. I have reviewed the personal financial statement given to customers to complete and return to the FDIC. We have been told that this is the only PFS that is acceptable to the FDIC. In reviewing it, the spaces are limited whereby the information requested will not fit in the blocks provided. A simple excel spreadsheet for listing Assets and Liabilities is sufficient to determine if a loan should be

approved or denied. I gave one to two CPAs to complete that were guarantors on a loan. They were astonished at the format and the difficulty in filling it out. This form is very frustrating.

4. We were told that loan participations that our bank had never funded money on, that were draw type loans, were not going to be funded by the FDIC. We respectfully asked for permission to have our bank legal counsel send the FDIC a letter canceling our bank's commitment, citing that the participation agreement has a clause giving the purchasing bank the right to do so in the event of the bank being taken over by a Receiver. The independent contractor gave his approval and the letter was sent, only to be notified over a month later by the FDIC that the FDIC was going to fund some of these loans and the independent contractor was demanding that our bank continue with the participation agreement. Said they had a right to do so and the FDIC had a TRUMP CARD requiring that we do so. (THREAT?????) Unfortunately, in an attempt to lend money and continue to stimulate the economy, our bank had committed these funds to other loans. Due to a potential liquidity problem, our bank is not in a position to fund these participations. Because our bank has refused to fund these loans, the independent contractor is not in any hurry to work through the remaining loan participations purchased.....
5. We have a 100% loan participation purchased from a failed bank. Our bank has offered to purchase the entire loan at par and prepare the purchase and sale documents and the independent contractor agreed to do so. Transfer documents were approved and sent for approval. We have been told that the FDIC legal counsel has approved the documents, but the approval to sell and transfer the loan has to go to Dallas, Texas for approval. We have been waiting for nearly a month. Doesn't seem logical that if our bank is willing to write a check and purchase a loan at par that the FDIC would not do back flips to get the money.
6. We had another loan that our bank had purchased participation on, but it was not 100% participation, say we had 60% and the FDIC had 40%. We agreed to purchase their 40%, at par and pay the FDIC off. We like to have never got the transaction done. We ended up preparing the documents, sending them to the FDIC legal division and then basically had to continue to call to get them to agree to do it and complete the transaction. Again, a case where our bank was willing to purchase the loan at par and the independent contractor was in no hurry to complete the transaction.
7. We have numerous loan participation agreements that have our bank as either LIFO or FIFO. We are concerned that when the FDIC sells the master loan that they will try to change the participation agreements from LIFO & FIFO to a pro rata scenario.