Audit Report

OIG-11-096

SAFETY AND SOUNDESS: Material Loss Review of United Western Bank

September 2, 2011

Office of Inspector General

DEPARTMENT OF THE TREASURY

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Abbreviations

FDIC	Federal Deposit Insurance Corporation
MLR	material loss review
MRBA	matter requiring board attention
OCC	Office of Comptroller of the Currency
OIG	Office of Inspector General
OTS	Office of Thrift Supervision
PCA	prompt corrective action
ROE	report of examination
TFR	thrift financial report

OIG

Audit Report

The Department of the Treasury
Office of Inspector General

September 2, 2011

John G. Walsh
Acting Comptroller of the Currency

This report presents the results of our material loss review of the failure of United Western Bank (United Western), of Denver, Colorado, and the Office of Thrift Supervision's (OTS) supervision of the institution. We are providing the results of this review for your information since the Office of the Comptroller of the Currency (OCC) assumed regulatory responsibilities for thrifts pursuant to P.L. 111-203.

OTS closed the thrift and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver on January 21, 2011. Section 38(k) of the Federal Deposit Insurance Act mandated this review because of the magnitude of the thrift's estimated loss to the Deposit Insurance Fund.[1,2] As of July 31, 2011, FDIC estimated that loss at $292.3 million.

The objectives of our review were to determine the causes of the thrift's failure; assess OTS's supervision of the thrift, including implementation of the prompt corrective action (PCA) provisions of section 38; and make recommendations for preventing any such loss in the future. To accomplish these objectives, we reviewed the supervisory files and interviewed key officials involved in the regulatory enforcement matters. We also interviewed personnel at FDIC's Division of Resolutions and Receivership. Appendix 1 contains a more detailed description of our objectives, scope, and methodology. Appendix 2 contains

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[1] Effective July 21, 2010, section 38(k) defines a loss as material if it exceeds $200 million for calendar years 2010 and 2011, $150 million for calendar years 2012 and 2013, and $50 million for calendar years 2014 and thereafter (with a provision that the threshold can be raised temporarily to $75 million if certain conditions are met).
[2] Certain terms that are underlined when first used in this report, are defined in *Safety and Soundness: Material Loss Review Glossary*, OIG-11-065 (April 11, 2011). That document is available on the Treasury Office of Inspector General's (OIG) website at http://www.treasury.gov/about/organizational-structure/ig/Pages/by-date-2011.aspx.

background information on United Western and OTS supervision of the institution.

In brief, our review found that United Western failed primarily because of high-risk concentrations in nonhomogeneous loans[3] made up of construction, land, commercial real estate, and non-mortgage commercial loans; nonagency mortgage backed securities (MBS);[4] and institutional deposits.[5] Regarding supervision, OTS did not (1) adequately address the unsafe and unsound concentrations or (2) require United Western to amend inaccurate thrift financial reports (TFRs) in accordance with the OTS handbook. We referred the thrift's suspected false financial reporting in its TFRs to the Treasury Inspector General's Office of Investigations.

In light of the fact that OTS functions transferred to other federal banking agencies on July 21, 2011, we are not making any new recommendations as a result of our material loss review of United Western. We note that there is currently a lawsuit against OCC brought by United Western, claiming the bank was unlawfully closed. OCC became the defendant once OTS's functions were transferred. The lawsuit is in its preliminary stage. We also note that there is a class action lawsuit against United Western Bancorp (United Western's holding company) brought by the investors that purchased shares of common stock from its 2009 stock offering.

We provided OCC with a draft of this report for its review. In a written response, which is included as appendix 3, OCC did not provide specific comments on the report contents.

[3] Nonhomogeneous assets have underwriting criteria that are less likely to be uniform and classification decisions are based on broader considerations than just the loan's delinquency status. For example, nonhomogeneous loans may include construction, land, and land development loans, commercial mortgage loans, multifamily mortgage loans, and commercial loans.
[4] A nonagency security is a security that is not issued by Fannie Mae, Freddie Mac, or Ginnie Mae. Nonagency MBSs are subject to more credit risk, less liquid than agency securities, and are also known as private label securities.
[5] Institutional deposits are a type of wholesale funding, which is defined as funds provided by professional money managers and are generally more sensitive to credit risk and interest rates than retail funds, causing them to pose a greater liquidity risk to a savings association.

Cause of United Western Bank's Failure

United Western failed because of its high concentrations in nonhomogeneous loans, nonagency MBSs, and institutional deposits. OTS defines concentration as a group of similar types of assets or liabilities that, when aggregated, exceed 25 percent of the association's core capital plus allowances for loan and lease losses (ALLL).

High Concentration in Nonhomogeneous Loans

Prior to 2006, United Western pursued a wholesale banking strategy where it purchased loans in the secondary market from mortgage brokers, rather than originating them itself. In 2006, United Western adopted a more traditional community banking strategy and began opening branches to attract retail deposits and to originate construction, land, commercial real estate, and non-mortgage commercial loans. OTS first noted a concentration in these nonhomogeneous loans in its Report of Examination (ROE) dated October 15, 2007. Nonhomogeneous loans represented 422 percent and 554 percent of core capital plus ALLL as of June 30, 2007, and March 31, 2009, respectively. United Western's nonhomogeneous loan portfolio increased $457.7 million or 69 percent, from June 30, 2007, to March 31, 2009.

As of March 31, 2009, United Western's classified assets totaled $70.3 million or 3.11 percent of total assets, an increase from $25.2 million or 1.24 percent of total assets as of June 30, 2007, primarily due to an increase in problem nonhomogeneous loans. Loan loss provisions increased from $13.5 million in 2008, to $37.8 million in 2009, and $56.8 million in 2010. United Western recorded net losses of $69.4 million in 2009 and $68.8 million through the first three quarters of 2010. As a result of these losses on nonhomogeneous loans, United Western's holding company, United Western Bancorp, Inc., had to infuse capital into the bank so that it could maintain well capitalized ratios. Capital downstreamed to United Western from its holding company totaled $12.0 million in 2008, $87.6 million in 2009, and $3.0 million in the first two quarters of 2010. Total risk based capital (RBC) reported by United Western decreased from

13.11 percent as of December 31, 2007 to 10.07 percent as of December 31, 2009. In an amended TFR filed for the quarter ended September 30, 2010, United Western's RBC dropped to 7.8 percent, and United Western fell into the undercapitalized capital category.

High Concentration in Nonagency MBS

In 2005 and 2006, United Western used prepayments from its residential loan portfolio to purchase highly rated nonagency MBS, which steadily increased the total value of its nonagency MBS portfolio. United Western's nonagency MBS represented 394 percent and 409 percent of core capital plus ALLL as of March 31, 2006, and June 30, 2007, respectively. United Western's nonagency MBS portfolio increased $440 million or 210 percent, from March 31, 2005, to June 30, 2007.

At the end of 2008, United Western's nonagency MBS started experiencing deteriorating collateral performance, price declines, and credit rating downgrades. At that time, the deterioration of the nonagency MBS to below investment grade caused a significant amount of other-than-temporary-impairment (OTTI) losses, which resulted in a rapid decline in earnings. United Western recorded its first OTTI of $4.1 million in the third quarter of 2008, and subsequent OTTI losses of $21.7 million and $27.8 million on December 31, 2009, and September 30, 2010, respectively. As of March 31, 2009, the collateral for the 31 below-investment-grade nonagency MBSs out of 77 nonagency MBSs were concentrated in California and Florida. According to 2009 U.S. Census data, California and Florida had greater percentage decreases in median property values than the national average. At March 31, 2009, the percentage of United Western's nonagency MBSs that were highly rated, i.e., those rated either AAA or AA, had declined to 50 percent of its total MBS portfolio. At the same time, the percentage of United Western's nonagency MBSs that were rated noninvestment grade, i.e., those rated BB and lower, comprised 38 percent of its total nonagency MBS portfolio.

Many of the loans that served as collateral for United Western's nonagency MBS portfolio were originated by two large financial institutions, Washington Mutual Bank (WaMu)[6] and Countrywide Financial Corporation. It should be noted that these institutions originated a significant number of poorly underwritten loans that, like United Western, served as collateral for nonagency MBS holdings by another failed thrift, Guaranty Bank. Guaranty Bank was also the subject of a material loss review by our office.[7]

High Concentration in Institutional Deposits

United Western had a high concentration in institutional deposits, which is considered a type of wholesale funding. For the years ending 2008, 2009, and 2010, United Western's institutional deposits represented 591 percent, 668 percent, and 987 percent, respectively, of core capital plus ALLL. OTS noted in its 2009 ROE that the majority of United Western's deposits were concentrated in six institutional accounts, which represented nearly 78 percent of the bank's total deposits.

The OTS examination handbook lists over-reliance on wholesale funding as a factor that could indicate or precipitate liquidity problems. United Western's high concentration in institutional deposits created a potential liquidity crisis, and this risk was escalated when United Western's capital position declined in early 2010. Many of the institutional depositors' contracts with United Western contained language that allowed the depositors to terminate the contracts and remove their deposits from the bank if United Western's capital status was downgraded. United Western fell to the capital level of adequately capitalized under PCA with the filing of its March 31, 2010, TFR on April 30, 2010, and to the capital level of undercapitalized with the filing of its amended September 30, 2010, TFR on December 8, 2010. When OTS denied United Western's capital restoration plan on January 18, 2011, United Western could no longer assure its depositors it would return to adequate capital levels. Therefore, United Western was at risk that the

[6] Treasury OIG and the FDIC OIG performed a joint review of the causes of WaMu's failure and the federal supervision exercised over the institution. Our April 2010 report describes the high risk lending strategy used by WaMu. Treasury OIG and FDIC OIG, *Evaluation of Federal Regulatory Oversight of Washington Mutual Bank* (EVAL-10-002), April 9, 2010.

[7] *Safety and Soundness: Material Loss Review of Guaranty Bank* (OIG-11-066), April 29, 2011.

depositors would terminate their deposit contracts and withdraw their deposits, causing a liquidity crisis.

Also, in November 2010, the FDIC determined that the institutional deposits were brokered deposits. That determination would have effectively restricted United Western's ability to retain and/or receive additional deposits from institutional depositors had the thrift stayed open.[8] United Western filed an appeal to that determination, but it had not received a decision before it was closed. In addition to the risk that the institutional depositors would withdraw their deposits, United Western was also at risk of a liquidity crisis, had the thrift stayed open, due to these brokered deposit restrictions.

In its supervisory memorandum that recommended FDIC be appointed receiver, OTS stated that United Western's excessive reliance on four major institutional depositors was a factor that placed the thrift in an unsafe and unsound condition to transact business.

OTS's Supervision of United Western Bank

OTS's supervision of United Western did not prevent a material loss to the Deposit Insurance Fund. OTS did not (1) adequately address unsafe and unsound concentrations in nonhomogeneous loans, nonagency MBS, and institutional deposits; nor (2) require United Western to amend inaccurate TFRs.

Table 1 summarizes the results of OTS's full-scope safety and soundness and limited-scope examinations of United Western from 2007 until the thrift's closure.[9] In general, a matter requiring board attention (MRBA), although not an enforcement action, is a stronger supervisory response than a corrective action.

[8] Under 12 USC §1831(f), insured financial institutions may only accept or renew brokered deposits if they are well capitalized. FDIC may, on a case by case basis, grant a waiver from this restriction to adequately capitalized institutions.
[9] OTS conducted its examinations and performed off-site monitoring of United Western in accordance with the timeframes prescribed in the OTS Examination Handbook.

Table 1: Summary of OTS's Examinations and Enforcement Actions for United Western

		Examination Results			
Date started/ completed	Assets (in (billions)	CAMELS rating	Number of MRBAs	Number of corrective actions	Enforcement actions
10/15/2007 1/23/2008 Full-scope examination	$2.0	2/222222	0	2	None
3/30/2009 8/4/2009 Full-scope examination	$2.2	3/332232	6	11	Memo of Understanding (MOU) (12/10/2009)
1/11/2010 4/28/2010 Limited-scope examination	$2.6	4/444443	-	-	Cease and Desist Order (6/25/2010)
6/17/2010 6/17/2010 Limited-scope examination	$2.6	4/444453	-	-	None
9/27/2010 Not Finished Full-scope examination	$2.2	No Report Issued	-	-	None
12/20/2010 12/22/2010 Limited-scope examination	$2.1	5/544553	-	-	None

Source: OTS.

OTS Should Have Acted Sooner to Address Unsafe and Unsound Concentrations

Concentration in Nonhomogeneous Loans

OTS New Directions 6-14, issued November 2006, states that OTS examiners should develop an effective supervisory response for financial institutions that have material exposure to specific risk concentrations and promptly initiate appropriate corrective or supervisory action, when necessary. Examiners may instruct the association to discontinue activities that lead to a specific high-risk concentration when proper oversight and controls are not in place.

United Western's concentration in nonhomogeneous loans, specifically construction and land loans, grew rapidly beginning in 2006 with the implementation of the community banking strategy, through 2009. The concentration in construction loans nearly tripled from 2006 to 2007, increasing from just 26 percent to 73 percent of core capital plus ALLL as of June 30, 2007. By March 31, 2009, the concentration had increased even further to 146 percent of core capital plus ALLL. Similarly, the concentration in land loans tripled from 2006 to 2007, increasing from 10 percent to 38 percent of core capital plus ALLL. As of March 31, 2009, land loans represented 55 percent of core capital plus ALLL.

OTS noted the concentrations in its 2007 ROE but did not require any corrective actions to slow the rapid growth or set limits for these high risk assets. In the 2009 ROE, OTS included an MRBA directing United Western to set limits for the bank's concentration in nonhomogeneous loans, which by that time represented 554 percent of core capital plus ALLL; however, OTS did not take any enforcement actions to reduce the concentration. During the 2009 examination, United Western issued a board of directors' resolution to cease the origination of land and construction loans effective April 30, 2009. However, this resolution did not cease the origination of other nonhomogeneous loans; and at this time, nonhomogeneous loans had been incurring losses and negatively affecting earnings.

Several OTS officials told us that the rapid growth in United Western's nonhomogeneous loan portfolio was acceptable at that time because it was part of the bank's new community banking strategy. Other OTS officials stated that OTS should have required more asset diversification or restrictions on asset growth, and that OTS could have acted sooner to reduce concentrations. We believe that OTS should have acted sooner to address the bank's high concentration in nonhomogeneous loans.

Concentration in Nonagency MBSs

In addition to a high concentration in nonhomogeneous loans, United Western also had a high concentration in nonagency MBSs and OTS failed to apply New Directions 6-14 to address this concentration in assets. United Western's MBS portfolio more than doubled from 2005 to 2006, increasing from 165 percent to 394 percent of core capital plus ALLL. OTS noted concerns with this high concentration in its 2007 examination but did not include a MRBA or corrective action addressing its concerns in the 2007 ROE. During the March 2009 examination, OTS directed United Western through an MRBA to submit a plan to manage and continue to reduce its significant exposure in nonagency MBSs. By this time, the securities had been downgraded by ratings agencies due to the deterioration of the real estate market beginning in 2008.

Until the deterioration of the previously AAA-rated nonagency MBSs began to cause thrifts to experience losses in 2008, OTS guidance had placed considerable weight on ratings assigned by the ratings agencies. After observing the losses thrifts experienced in their MBS investment portfolios, OTS updated its examination handbook in January 2010 to instruct examiners to more carefully review thrift investment decisions and ensure that thrifts do the necessary due diligence when purchasing securities. This new guidance stated that neither associations nor examiners should rely solely on ratings when assessing the credit risk of investment securities.

Concentration in Institutional Deposits

OTS Regulatory Bulletin 34, issued in June 2001, states that examiners should seek corrective action when funding instruments are inconsistent with safe and sound practices. As early as 2004, OTS noted the concentration risk presented by the institutional deposits. As of March 31, 2006, and March 31, 2009, United Western's institutional deposits represented 98.6 percent and 86.9 percent, respectively, of its total deposits. The largest institutional depositor represented approximately 31 percent and 35 percent of total deposits as of March 31, 2005, and March 31, 2006, respectively. After this depositor acquired a subsidiary of United Western's holding company in 2009, its deposits alone represented 46 percent of total deposits. In the several examinations prior to the 2009 examination, OTS did not object to the concentration in the small number of institutional depositors. During the 2009 examination, OTS addressed the funding concentration with an MRBA, which stated that the concentration policy should set limits for the bank's funding sources, including exposures to institutional depositors.

An OTS official told us that United Western's funding structure was never a viable structure and that it was at risk of failing from a liquidity crisis. According to the official, this type of funding structure should not be viewed as a safe and sound banking practice going forward. We agree.

OTS Did Not Require United Western to Amend Inaccurate TFRs

According to the OTS examination handbook, examiners should require a thrift to amend a prior period TFR if the adjustment is significant and specifically if the adjustment results in a change in the thrift's PCA capital category.

OTS's ROE for its 2009 examination noted that United Western's reported RBC position of well-capitalized as of March 31, 2009, was overstated due to the incorrect use of the ratings based approach (RBA)[10] in risk weighting[11] the thrift's MBS holdings that were rated lower than one category below investment grade. MBS that are rated more than one category below investment grade by a Nationally Recognized Statistical Rating Organization (NRSRO) are not eligible for the RBA in determining the bank's RBC requirement. OTS, however, did not require United Western to amend the March 31, 2009, TFR.

In August 2009, an OTS capital markets specialist disagreed with United Western's RBC calculation of 10.17 percent for the

[10] According to the OTS examination handbook, the ratings based approach allows for the possibility of a lower risk-based capital requirement (reflecting less risk) for certain asset- or mortgage-backed securities, recourse obligations, direct credit substitute, or residual interests arising from asset securitization.
[11] Risk weighting, or a risk weighted asset, is an asset calculation used in determining the capital requirement for an insured depository institution. Regulators use the risk weighted total to calculate how much loss absorbing capital an institution needs to sustain it through difficult markets.

June 30, 2009, TFR. The specialist discovered that United Western again had not properly risk weighted some of its nonagency MBSs. She estimated the RBC to be 9.95 percent, or below the 10 percent threshold required for a thrift to be considered well-capitalized under PCA. United Western's CFO agreed with the specialist's estimate, but he made other adjustments to the RBC calculation that resulted in RBC being 10.07 percent for the June 30, 2009 TFR. OTS, however, did not verify the CFO's recalculation, nor require United Western to re-file the June 30, 2009, TFR.

During this timeframe in 2009, United Western's holding company, United Western Bancorp, issued a common stock offering to raise capital. It completed the sale in September 2009 and downstreamed $62 million of the approximately $82 million raised to United Western to improve its capital situation. The March and June 2009 TFRs, which contained inaccurate information concerning United Western's capital category, were available to the public.

When asked why OTS did not require the bank to re-file its March 2009 TFR, an OTS examiner told us that in May 2009, when the TFR was made available, OTS did not review it in its entirety due to time and resource constraints. The examiner also stated that United Western management informed OTS in June 2009 that United Western Bancorp would be infusing capital into the bank and as a result, the bank would be well capitalized by June 30, 2009. When asked why OTS did not require United Western to re-file its June 30, 2009 TFR, the examiner told us that the deadline for the September 30, 2009, TFR was approaching and it would have been "too messy" to re-file the June TFR. The examiner acknowledged that continuing errors and probable overstatement of the RBC percentage occurred in the June 2009 TFR. Based on the guidance provided in the OTS examination handbook, we believe that OTS should have required United Western to re-file its March and June 2009 TFRs to reflect the true capital position of the bank.

OTS's Use of Prompt Corrective Action

The purpose of PCA is to resolve problems of insured depository institutions with the least possible long-term loss to the Deposit Insurance Fund. PCA requires federal banking agencies to take certain actions when an institution's capital drops below certain levels. PCA also gives regulators flexibility to supervise institutions based on criteria other than capital levels.

After United Western reported that its capital level was undercapitalized in an amended TFR for September 30, 2010, OTS notified United Western in writing on December 13, 2010, of its undercapitalized status, relevant PCA restrictions, and requirement to file a Capital Restoration Plan by December 20, 2010.[12] United Western submitted a Capital Restoration Plan, which was later rejected by OTS because OTS deemed unreasonable United Western's assumptions that investors would invest an additional $100 million and OTS would remove and waive provisions set in the cease and desist order that restricted asset growth. Because of United Western's failure to submit a viable Capital Restoration Plan and the unacceptable liquidity risk created by United Western's excessive reliance on four major institutional depositors escalated by its undercapitalized status, OTS placed United Western into receivership. We consider OTS's use of PCA to be timely.

OTS's Internal Failed Bank Review

In accordance with its policy, OTS performed an internal failed bank review to determine the causes of United Western's failure, evaluate the supervision exercised by OTS, and provide recommendations based on the findings of the review. The OTS review, completed in May 2011, determined that United Western's failure resulted from liquidity risk and losses from concentrations in non-agency securities, construction loans, land loans, nonresidential loans and commercial loans.

[12] United Western's TFRs for March 31, 2010, and June 30, 2010, reported capital levels that met the regulatory definition of adequately capitalized. Prior to that, the thrift reported capital levels that met the regulatory definition of well capitalized during the period covered by our review. As discussed previously, OTS had identified problems with United Western's March 31 and June 30, 2009,TFR reporting of RBC but did not require United Western to amend those TFRs.

Although the review found that OTS provided regular oversight of United Western, it also reminded OTS examination and supervisory staff that they should consider higher capital requirements as well as limitations on higher risk lending concentrations. The internal review did not make any new recommendations to OTS. According to the review, procedures to control concentration risk are detailed in previous failed bank reviews, and are appropriately addressed within CEO Letter 311, Risk Management: Asset and Liability Concentrations.[13]

Concluding Remarks

Our material loss review of United Western revealed two deficiencies in OTS supervision. First, OTS should have more effectively addressed an unsafe and unsound concentration in nonhomogeneous loans, nonagency MBS, and institutional deposits. Second, OTS should have required United Western to amend its TFRs in accordance with the OTS handbook.

We have reported on excessive concentrations and a lack of strong supervisory response in a number of our material loss reviews. To address the need for more direction on concentration limits, and as noted in the OTS internal failed bank review of United Western, OTS issued CEO Letter 311, which emphasized important risk management practices and encouraged financial institutions to revisit existing concentration policies. While we believe the guidance was better than what had been available to thrifts previously, it is too soon to tell whether the guidance will be effective at controlling risky concentrations going forward.

Pursuant to P.L. 111-203, the functions of OTS transferred to other federal banking agencies on July 21, 2011. Accordingly, we are not making any new recommendations to OTS as a result of our material loss review of United Western.

[13] This guidance, issued on July 9, 2009, informs thrifts that OTS examiners will scrutinize higher risk concentrations and pursue appropriate corrective or enforcement action when an institution does not maintain appropriate concentration limits or takes excessive risks. The guidance states that OTS will monitor institutions with a concentration exceeding 100 percent of core capital plus ALLL.

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We appreciate the courtesies and cooperation provided to our staff during the audit. If you wish to discuss the report, you may contact me at (202) 927-0384 or Theresa Cameron, Audit Manager, at (202) 927-1011. Major contributors to this report are listed in appendix 4.

/s/
Jeffrey Dye
Audit Director

We conducted a material loss review of United Western Bank (United Western) of Denver, Colorado, in response to our mandate under section 38(k) of the Federal Deposit Insurance Act.[14] This section provides that if the Deposit Insurance Fund incurs a material loss with respect to an insured depository institution, the inspector general for the appropriate federal banking agency is to prepare a report to the agency that

- ascertains why the institution's problems resulted in a material loss to the insurance fund;
- reviews the agency's supervision of the institution, including its implementation of the prompt corrective action (PCA) provisions of section 38; and
- makes recommendations for preventing any such loss in the future.

At the time of United Western's failure on January 21, 2011, section 38(k) defined a loss as material if it exceeded $200 million during calendar years 2010 and 2011. The law also requires the inspector general to complete the report within 6 months after it becomes apparent that a material loss to the Deposit Insurance Fund has been incurred. We initiated this material loss review of United Western based on the loss estimate by the Federal Deposit Insurance Corporation (FDIC), which was $312.8 million at the time of closing. As of July 31, 2011, FDIC estimated that the loss would be $292.3 million.

Our objectives were to determine the causes of United Western's failure; assess the Office of Thrift Supervision's (OTS) supervision of United Western, including implementation of the PCA provisions of section 38; and make recommendations for preventing such a loss in the future. To accomplish our review, we conducted fieldwork at OTS's headquarters in Washington, D.C., and it's Western Regional Office, in Irving, Texas, and Western Regional Satellite Office, in Daly City, California. We also interviewed officials of FDIC's

[14] 12 U.S.C. § 1831o (k).

Division of Resolutions and Receivership and Division of Risk Management Supervision. We conducted our fieldwork from February 2011 through May 2011.

To assess the adequacy of OTS's supervision of United Western, we determined (1) when OTS first identified the thrift's safety and soundness problems, (2) the gravity of the problems, and (3) the supervisory response OTS took to get the thrift to correct the problems. We also assessed whether OTS (1) might have discovered problems earlier; (2) identified and reported all the problems; and (3) issued comprehensive, timely, and effective enforcement actions that dealt with any unsafe or unsound activities. Specifically, we performed the following work:

- We determined that the period covered by our audit would be from October 15, 2007, through the thrift's failure on January 21, 2011. This period included two full-scope safety and soundness examinations and three limited-scope examinations of United Western.

- We reviewed OTS's supervisory files and records for United Western from 2007 through 2011. We analyzed examination reports, supporting workpapers, and related supervisory and enforcement correspondence. We performed these analyses to gain an understanding of the problems identified, the approach and methodology OTS used to assess the thrift's and holding company's condition, and the action used by OTS to compel thrift and holding company management to address deficient conditions. We did not conduct an independent or separate detailed review of the external auditor's work or associated workpapers other than those incidentally available through the supervisory files.

- We interviewed and discussed various aspects of the supervision of the thrift and holding company with OTS officials and examiners to obtain their perspectives on the thrift's and holding company's condition and the scope of the examinations. We also interviewed FDIC officials who were responsible for monitoring United Western for federal deposit insurance purposes.

- We selectively reviewed United Western's documents that had been taken by FDIC and inventoried by FDIC Division of Resolutions and Receivership personnel. From FDIC's inventory list, we identified documents for our review that were most likely to shed light on the reasons for the thrift's failure and OTS's supervision of the institution.

- We assessed OTS's actions based on its internal guidance and the requirements of the Federal Deposit Insurance Act.[15]

- We reviewed OTS's internal failed bank review report of United Western, dated May 17, 2011.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[15] 12 U.S.C. § 1811 et seq.

United Western Bank History

United Western Bank (United Western) was originally named Dona Ana Savings and Loan Association, Inc., and began operations as a state stock savings association in New Mexico in October 1962. It changed its name to Dona Ana Savings and Loan Association, FA, and converted to a federal stock savings association on March 9, 1988. In January 1996, the bank changed its name to Matrix Capital Bank and moved its headquarters from Las Cruces, New Mexico, to Denver, Colorado, in 2002. In September 2006, the bank changed its name to United Western Bank. It was wholly owned by United Western Bancorp, a publicly traded company, headquartered in Denver.

United Western had its headquarters in Denver and eight branches in the surrounding communities. Prior to 2006, the bank pursued a wholesale business strategy, relying heavily on institutional deposits for funding and MBSs as assets. In 2006, the bank adopted a community banking strategy by establishing additional branch locations to attract retail deposits and originate commercial real estate, construction, land and non-mortgage commercial loans, primarily within the Colorado market. As the housing market deteriorated, United Western incurred large losses on its loan and nonagency MBS portfolios, which resulted in capital erosion.

OTS Assessments Paid by United Western

OTS funded its operations in part through semiannual assessments on savings associations. OTS determined each institution’s assessment by adding together three components reflecting the size, condition, and complexity of an institution. OTS computed the size component by multiplying an institution’s total assets as reported on the thrift financial report by the applicable assessment rate. The condition component was imposed on institutions that had a 3, 4, or 5 CAMELS composite rating. OTS imposed a complexity component if (1) a thrift administered more than $1 billion in trust assets; (2) the outstanding balance of assets fully or partially covered by recourse obligations or direct credit substitutes exceeded

$1 billion, or (3) the thrift serviced over $1 billion of loans for others. OTS calculated the complexity component by multiplying set rates times the amounts by which an association exceeds each particular threshold. Table 2 shows the amounts that United Western paid from 2007 through 2010.

Table 2: Assessments Paid by United Western to OTS, 2007—2010

Billing Period	Exam Rating	Amount Paid
1/1/2007–6/30/2007	2	$199,128
7/1/2007–12/31/2007	2	191,551
1/1/2008–6/30/2008	2	193,884
7/1/2008–12/31/2008	2	200,025
1/1/2009–6/30/2009	2	211,700
7/1/2009–12/31/2009	2	214,949
1/1/2010–6/30/2010	3	368,703
7/1/2010–12/31/2010	4	489,874

Source: OTS.

Number of OTS Staff Hours Spent Examining United Western

Table 3 shows the number of OTS staff hours spent examining United Western from 2005 to 2010.

Table 3: Number of OTS Hours Spent Examining United Western, 2007-2010

Examination Start Date	Number of Examination Hours
10/15/2007	1,391
3/30/2009	3,054
1/11/2010	837
6/17/2010	2
9/27/2010	1,912
12/20/2010	26

Source: OTS.

MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

To: Jeffrey Dye, Director, Banking Audits

From: John Walsh, Acting Comptroller of the Currency /s/

Date: September 1, 2011

Subject: Response to Material Loss Review of Office of Thrift Supervision Regulated-United Western Bank

We have received and reviewed your draft report titled "Material Loss Review of United Western Bank (United Western)." This review is mandated by section 38(k) of the Federal Deposit Insurance Act because of the magnitude of the thrift's estimated loss to the Deposit Insurance Fund at the time of its failure. Your objectives were to determine the causes of United Western's failure; assess OTS's supervision of the thrift, including implementation of the prompt corrective action (PCA) provisions of section 38; and make recommendations for preventing such a loss in the future. To accomplish these objectives, you reviewed the supervisory files and interviewed key officials involved in the regulatory enforcement matters and interviewed personnel at FDIC's Division of Resolutions and Receivership.

You concluded that the primary causes of United Western's failure were high concentration in nonhomogeneous loans, high concentration in nonagency MBS and high concentration in institutional deposits.

You also concluded that the OTS should have acted sooner to address unsafe and unsound concentrations and did not require United Western to amend inaccurate TFRs. You considered OTS's use of PCA to be timely.

Thank you for this information and the opportunity to review and comment on your draft report. If you need additional information, please contact Jennifer Kelly, Senior Deputy Comptroller for Midsize and Community Bank Supervision at 202-874-5020.

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Office of Accounting and Internal Control

Office of the Comptroller of the Currency

Acting Comptroller of the Currency
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OIG Budget Examiner

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Committee on Banking, Housing, and Urban Affairs

Chairman and Ranking Member
Committee on Finance

U.S. House of Representatives

Chairman and Ranking Member
Committee on Financial Services

Federal Deposit Insurance Corporation

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