

GAO

Report to the President and Chief
Executive Officer, Resolution Trust
Corporation

April 1993

RESOLUTION TRUST
CORPORATION

Timelier Action
Needed to Locate
Missing Asset Files



149024

■



General Government Division

B-252319

April 28, 1993

The Honorable Roger Altman
President and Chief Executive Officer
Resolution Trust Corporation

Dear Mr. Altman:

The Resolution Trust Corporation (RTC) uses standard asset management and disposition agreement (SAMDA) contractors to manage and dispose of nonperforming loans (i.e., loans that are at least 60 days delinquent). SAMDA contractors are awarded 3-year contracts to provide these services. Before contractors can dispose of the loans, they need pertinent documents contained in the asset files for those loans assigned to them. Accordingly, we focused our review on how well RTC managed asset file transfers to SAMDA contractors.¹ In particular, we examined the following three questions:

- Did contractors receive asset files in a timely manner?
- Did RTC withdraw loans with missing asset files in a timely manner?
- Were RTC procedures for controlling asset file transfers followed?

Results in Brief

RTC did not effectively manage asset file transfers to SAMDA contractors on many of the contracts we reviewed. First, contractors are to receive asset files when their contracts with RTC are signed or as soon thereafter as is practicable. However, contractors reported not having received 49 percent of their asset files within 15 days of signing their contracts, which is RTC's goal. Furthermore, contractors reported that they did not receive 13 percent of the files within 90 days, which is the amount of time they have to develop and submit asset management and disposition plans for approval on each asset assigned to them. Without the asset files, contractors could not develop the required plans or manage and dispose of the loans.

Second, in some cases, even after lengthy searches for missing files, RTC waited from 5 months to nearly 2 years to withdraw the loans from contractors' portfolios. Because RTC has not specified a time frame within which the withdrawal of such loans should be considered, payment of management fees for loans with missing files could continue throughout the entire 3-year SAMDA contract period. While waiting to receive delayed

¹Our review focused specifically on nonperforming loans, but the same procedures and practices apply to other asset types given to SAMDA contractors to manage and sell.

and missing files on 18 of the 119 contracts involving nonperforming loans, contractors received at least \$441,000 in management fees for loans that they could neither manage nor dispose of.

And finally, although RTC's general records management procedures require field site managers to notify records managers whenever files are transferred from a thrift to another location (e.g., to an RTC office, a loan servicer, or a SAMDA contractor), this requirement was not consistently met for a variety of reasons. As a result, records managers responsible for coordinating the transfer of asset files could not always readily locate asset files needed by contractors. Records managers in five of the six offices we contacted told us that they were notified of file transfers less than 50 percent of the time. This lack of notification contributed to delays in contractors receiving asset files.

Background

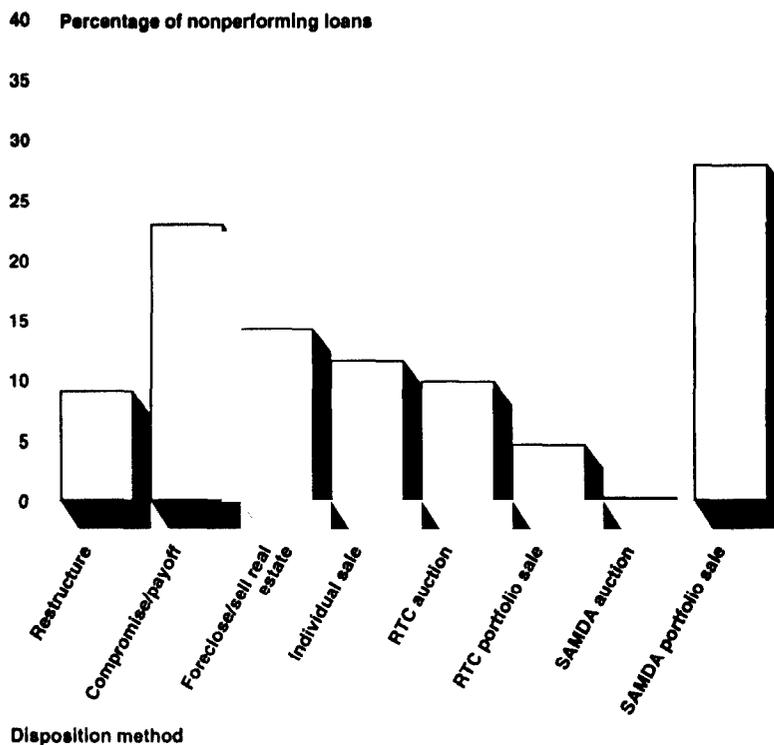
Of the \$118.8 billion in assets held by RTC as of August 1992, about \$22.8 billion (19 percent) were in nonperforming loans. RTC had assigned about \$12 billion of these nonperforming loans to SAMDA contractors for management and disposition. The rest were managed by thrifts in conservatorship or receivership, RTC offices, or other RTC contractors, such as loan servicers.

SAMDA Loan Disposal Methods

Once SAMDA contractors receive asset files, they are to analyze the file contents, draft business plans to dispose of the loans, submit the plans to RTC for review and approval, and implement the plans. Methods of disposing of a nonperforming loan include restructuring it, getting the borrower to pay it off, selling it, and taking foreclosure action to obtain the title to the loan's underlying collateral.

As of August 1992, SAMDA contractors reported they had disposed of more than 11,600 nonperforming loans. Figure 1 shows the disposal methods they used.

Figure 1: Methods Used by SAMDA Contractors to Dispose of Nonperforming Loans



Source: GAO analysis of SAMDA contractor survey responses.

Transferring Files to Contractors Involves Several Players

Various RTC staff are involved in getting asset files to SAMDA contractors. At a thrift, for example, RTC's field site manager is responsible for organizing, into RTC format, files for the loans and some of the other assets held by the thrift.² Before transferring any files to SAMDA contractors, loan servicers, or records departments, field site managers or other RTC officials are to notify an RTC records manager. These records managers, located in each field office, keep track of asset files. They inventory and microfilm asset files and monitor the file management activities at thrifts.

An RTC SAMDA oversight manager coordinates asset file transfers with field site managers, records managers, and SAMDA contractors. The oversight manager is also the focal point for SAMDA contractors and, as such, helps

²When a thrift is in conservatorship, a managing agent performs these duties; when a thrift moves into receivership, they are done by a financial institution specialist. For this report, we use the term "field site manager" to denote both of these other titles.

contractors resolve asset file problems. For example, oversight managers can assist contractors in locating missing asset file information.

Scope and Methodology

We did our work primarily at RTC's California and Denver field offices. We selected these sites because their oversight managers were working with contractors with nonperforming loan portfolios that ranged in size from \$118 million to \$725 million. We also contacted RTC headquarters officials and field office officials in Atlanta; Dallas; Kansas City, MO; and Valley Forge, PA, to discuss file transfer and missing file issues.

We reviewed RTC policies and procedures for managing and transferring asset files to SAMDA contractors, and we interviewed RTC department heads, oversight managers, records managers, and field site managers about the file transfer process.

With RTC's assistance, we judgmentally selected for review five SAMDA contractors that had large nonperforming loan portfolios with late or missing asset files. At these contractors' offices, we reviewed documents related to the amount of time that files were missing and the management fees that RTC paid while files were missing. We discussed with these contractors and with RTC officials the actions taken to locate missing asset files and the reasons files were missing.

We sent a questionnaire to all of RTC's SAMDA contractors. The questionnaire asked, among other things, about the timeliness of asset file delivery and reasons asset files were received late. We sent out a separate questionnaire for each of the 189 contracts held by the 109 SAMDA contractors as of July 1992. (Forty contractors had more than one SAMDA contract with RTC; these contractors received more than one questionnaire.) We received responses for 183 of the 189 contracts, a response rate of 96.8 percent.

Through the questionnaire, we identified 13 contracts that had assets with missing asset files. We contacted these contractors to determine the total amount of management fees they had been paid for the assets with missing asset files. The contractors on these contracts were in addition to the five contractors we judgmentally selected for review.

We estimated the number of nonperforming loans with late or missing asset files on the basis of data reported by the questionnaire respondents. For example, to estimate the number of asset files received more than 90

days after the SAMDA contracts were signed, we multiplied the percentage reported in this category by the reported total number of loans assigned to the contract. We determined the fees paid to contractors for assets with missing asset files by analyzing monthly contract reports showing management and disposition fees earned.

We did our review from March to December 1992 in accordance with generally accepted government auditing standards.

Quick Transfer of Asset Files to SAMDA Contractors Was Not Being Accomplished

Contractors need pertinent loan information contained in asset files to manage and dispose of their nonperforming loans. As specified in the SAMDA contract, RTC is to deliver asset files to the contractor when the contract is signed or as soon as practicable thereafter. According to RTC officials, contractors should receive asset files within 15 days of signing their contracts. However, SAMDA contractor questionnaire results showed that many asset files were not received within this time frame.

Asset File Information Needed by Contractors

To analyze and select the most appropriate method of dealing with these loans, contractors need information that should be in the asset files for each loan. An asset file usually contains

- financial information, such as financial statements, income tax returns, credit reports, and a copy of the original loan application;
- documents such as the promissory note, deed of trust or mortgage, titles, evidence of insurance, and letters of credit;
- records of lien searches identifying creditors who may have a security interest in the collateral underlying a loan; and
- property appraisals and other information on the loan collateral, such as inspection reports.

Contractors Received Files Late

An audit done for the RTC Office of Contractor Oversight and Surveillance in November 1991 noted that on occasion asset file delivery was delayed or never occurred. On the basis of our SAMDA contractor questionnaire results, we estimated that nearly half (48 percent) of nonperforming loan files did not arrive within 15 days of contractors signing their contracts—RTC's goal for delivering asset files to the contractor. Additionally, nearly 13 percent of the files did not arrive within 90 days of the contract signing. SAMDA contractors are required to submit to RTC for approval an asset management and disposition plan for each asset,

including nonperforming loans, within 90 days after they sign their contracts. Contractors clearly cannot comply with this requirement if they have not received asset files within a reasonable time after contract execution.

Table 1 shows the time frame within which contractors reported in our questionnaire that they received the asset files for the loans assigned to them (from the date their contracts were signed through the end of August 1992).

Table 1: Elapsed Time Between SAMDA Contract Signing and Receipt of Asset Files by Contractor

Time frame	Number of loans ^a	Percent ^b
0-15 days	13,924	51.8
16-30 days	4,479	16.0
31-60 days	4,047	15.0
61-90 days	936	3.5
Over 90 days	3,402	12.6
Not received	116	0.4
Total	26,904	100.0

^aCalculated by GAO.

^bReported by contractors in questionnaire. Does not total 100 percent due to rounding.

Source: GAO analysis of RTC and contractor data.

Reasons for Delayed Delivery of Files

Overall, contractors told us in their questionnaire responses that they believed that 53 percent of asset files delayed over 15 days were held by thrifts, RTC records management, other SAMDA contractors, or loan servicers. In addition, contractors believed that 7 percent of these files were either lost or nonexistent or that the loan was already resolved. Table 2 shows responses given by contractors for the reasons asset files were received more than 15 days after contracts were signed.

Table 2: Contractor-Asserted Reasons for Receiving Asset Files More Than 15 Days After Contract Execution

Reason for delay	Number of files ^a	Percent ^b
Not sent from conservatorship or receivership	4,254	34.0
Not released by RTC records management	1,370	11.0
Held by another SAMDA contractor	136	1.1
Held by servicer for conversion	868	6.9
Nonexistent or lost ^c	728	5.8
Already resolved ^c	123	1.0
Other	752	6.0
Do not know	4,271	34.2
Total^d	12,504	100.0

^aCalculated by GAO.

^bReported by contractors in questionnaire.

^cThese files were located or loans were resolved before our survey. They are not included in the "not received" category in table I.

^dTotal number of files listed in this table does not equal the total number of files listed as received after more than 15 days in table I because all survey respondents did not indicate reasons for file delivery delays.

Source: GAO analysis of questionnaire responses.

Loans With Missing Asset Files Were Not Withdrawn in a Timely Manner

Even though asset files were missing for extended periods of time in some cases, RTC had no policy in place to determine when to withdraw loans for which files were missing from contractors' portfolios. Although RTC withdrew some loans, the process was sometimes lengthy. RTC withdrew some loans nearly 2 years after the contracts were signed.

In the meantime, while contractors waited to receive missing asset files, they continued to receive management fees for the loans. The five contractors we reviewed received about \$323,600 in management fees for managing loans before the asset files were received or the loans were withdrawn. In addition, the contractors we contacted on 13 other contracts told us that they received about \$117,300 in management fees for assets for which files were still missing as of the end of August 1992.

The management fees paid to these contractors for assets with missing asset files were not necessarily unearned. When a file is missing or all the needed information is not in the file, SAMDA requires contractors, in

conjunction with RTC staff, to take reasonable steps to locate the information. Reasonable steps, according to RTC and contractor officials, include examining public records and contacting thrift officials and other RTC offices.

Several RTC and contractor officials told us, and we agree, that during the early months of the contract contractors earn their management fees by searching for missing information. However, beyond this initial period, usually up to 6 months depending on the circumstances, it becomes questionable whether the fees paid for assets with missing files or information are being earned.

RTC Lacks a Withdrawal Policy for Loans With Missing Asset Files

RTC has no policy in place for reviewing loans at a specified time after a SAMDA contract is signed to determine whether the loans should be withdrawn from a contract or replaced because files were missing. RTC's national SAMDA Program Management Director told us that oversight managers have the authority to recommend such withdrawals and that they do so in some cases with the contractor's concurrence.

RTC procedures, however, do not specifically identify when oversight managers should review missing file situations to decide whether to withdraw or replace loans for which asset files could not be found. In those few situations we identified in which RTC withdrew assets when asset files could not be located, the withdrawal process was lengthy. For example, one contractor took the initiative to propose that RTC withdraw loans for which files could not be located 4 months after the contract was signed; yet RTC did not withdraw the loans for another 8 months. In other cases, RTC took almost 2 years to withdraw loans. At the time we completed our field work in September 1992, RTC still had not withdrawn some loans with missing asset files that had been missing for an extended period.

RTC Paid Management Fees for Extended Periods While Contractors Awaited Asset Files

Even if they lack the information needed to manage and dispose of loans, SAMDA contractors receive management fees for those loans. Management fees, which are bid by contractors, typically cost RTC about 1 percent of a portfolio's total estimated recovery value per year.

Each of the five contractors we reviewed received management fees for nonperforming loans for which RTC could not provide asset files. RTC paid these five contractors about \$323,600 in management fees between

December 1990 and November 1992 for 42 loans for which the asset files were not received or were received late. These loans had a total book value of about \$32.8 million. For 39 of the 42 loans, no files were ever received, and RTC subsequently withdrew the loans from the contracts but only after extended periods ranging from 10 to 23 months after the contracts were signed. For the three remaining loans, asset files were received 5, 7, and 14 months after the signing of the contract.

One of the five contractors received about \$15,600 in management fees while waiting 14 months for an asset file for a loan with a book value of about \$971,000. Thrift officials had shipped the file to a loan servicer but had not notified the RTC records manager. According to an RTC official, the loan servicer would not cooperate in releasing the file. Without the file, the contractor said she could not foreclose or sell the loan in a timely manner.

Another contractor received about \$7,300 in management fees while waiting 5 months to receive an asset file for a loan with a \$2.1-million book value. Thrift officials sent the file to a loan servicer without notifying the records manager. RTC officials did not know why it took so long to get the file shipped from the loan servicer to the contractor. About the time the contractor received the complete file, RTC withdrew the loan from the contractor and included it in an RTC sales initiative.

This same contractor received about \$231,200 more in management fees for three other loans with a total book value of over \$14.1 million for which no files were ever received. For one of these loans, the contractor received \$140,600 in management fees over a 14-month period. The loan was later determined not to exist; it had simply been a data-entry error. For the other two loans, the contractor received about \$90,600 in management fees over a 21-month period. As late as October 1992, RTC officials were still unable to locate those files.

The third contractor received \$19,600 in management fees over a 10-month period for 17 loans with a \$7.6-million book value for which asset files were never received. The contractor and RTC officials believed that five of the loans had been sold or paid off before they were included in the contractor's portfolio and that three loans had been incorrectly assigned to the contractor. The contractor and RTC officials were unsure about the status of the other nine. According to an RTC official, these assets were withdrawn from the contract.

The fourth contractor received about \$9,800 in management fees over a 7-month period while waiting for the asset file for a loan with a book value of \$1.1 million. The file for this loan was being held by outside legal counsel.

This same contractor received an additional \$27,600 in management fees over a 23-month period for six loans for which asset files were never received. These loans had a total book value of about \$1.7 million. An RTC official believed that one file may have been destroyed before the thrift was placed under RTC control. Another file was with a different SAMDA contractor. A third had been incorrectly classified; it was not a loan. For the remaining three loans, RTC was unable to locate the asset files. RTC ultimately withdrew these loans and wrote them off.

The fifth contractor received about \$12,500 in management fees for 13 loans with a book value of \$5.2 million. RTC could not locate the asset files for any of the loans and eventually withdrew them but not until nearly 12 months after the contract's April 1991 signing. In May and July 1991, the contractor requested that RTC deliver the missing asset files. In August 1991, the contractor proposed that these loans be withdrawn from the contract if the files could not be located within 60 days. From September to December 1991, the RTC oversight manager made three separate attempts to locate the files. On December 4, 1991, the oversight manager formally requested that the loans be withdrawn, stating, "It seems ludicrous to pay a 'management fee' for assets the contractor does not have the ability to manage, let alone dispose of." RTC finally withdrew the loans in March 1992, nearly a year after the contract was signed.

Contractors we contacted reported they had not received another 74 files as of the end of August 1992. Contractors estimated that RTC had paid them about \$117,300 in management fees for these loans, which had a total book value of \$16.2 million.

File Transfer Reporting Requirement Not Being Consistently Followed

According to RTC records management procedures, field site managers or other RTC officials are to notify records managers before shipping any asset files. Field site managers ship asset files to SAMDA contractors, loan servicers, or RTC records management departments to await shipment to SAMDA contractors. Any time asset files are shipped, field site managers or other RTC officials are to provide RTC records managers with a list of the files being shipped before shipment.

Although field site managers are required to notify records managers of asset file transfers before shipping records from a failed thrift, they did not always do so.³ As a result, records managers could not readily locate the files. The lack of such notification by field site managers and the consequent inability of records managers to quickly locate files contributed to delays in contractors receiving files.

An internal review conducted in April 1992 at the RTC California office noted that the records management department was not always informed about file shipments from field sites to the RTC office or to contractors. The report stated that as a result, control over records was lost and future research on the assets was hampered because the location of all records was not known. Records managers in five of six RTC offices also told us that they were notified of file transfers less than 50 percent of the time. In the sixth office (Denver), the records manager said she was notified of file transfers 85 percent of the time.

Some records managers believed that in some cases the field site managers were too busy to notify them; in two cases, an RTC regional office policy was to notify records managers of file transfers only after a thrift's consolidation. To improve the situation, certain records managers have taken or are planning various actions, such as training thrift officials about RTC requirements and placing RTC employees within the thrifts. However, RTC officials have not addressed this issue on a corporationwide basis.

Records managers had different perceptions about why they were not consistently notified of file shipments. For example, a records manager at the Valley Forge office said that staff at the thrifts were so overworked that they did not have the time to properly organize and transfer files. Additionally, he said, receiverships were burdened by staff reductions as the thrifts were closing. According to the records manager at the Denver office, transfer notification improved over the last year because RTC had fewer receiverships to handle and, as a result, had fewer files to organize, inventory, and transfer. According to other records management officials in the Denver and California offices, the quality of file management has varied from thrift to thrift, as has notification of file transfers.

Although RTC procedures require that records managers be notified of all file transfers from thrifts before records are shipped, the records

³Transfer notification could also be provided by other RTC staff in the contracts and programs departments.

managers of the Kansas City and California offices were often notified of file transfers only after the thrifts were consolidated.⁴ According to the records manager at the Kansas City office, shipment records for file transfers were maintained at the thrifts until consolidation occurred, at which point the shipment records were sent to records management. If questions arose about a file at a thrift before consolidation, the records manager referred the questions to the thrift. In the California office, the records manager's involvement with the thrifts' records did not begin until just before consolidation. The report on an April 1992 internal review done in the California office noted that many of the problems associated with missing records occurred because the records management department did not receive inventories of files shipped to contractors and loan servicers before consolidation.

Records managers at three of the six field offices we contacted had taken or were planning to take various actions to improve thrifts' file management and transfer practices. For example, the records manager in Dallas had conducted seminars in six thrifts about RTC file management and transfer policy. Another records manager (in the Valley Forge office) said he planned to train a dedicated records coordinator in each thrift to coordinate all file movement and preparation. At the California office, RTC officials agreed with the Valley Forge official and said, in addition, that records management officials should be involved at the thrift as soon as possible.

Although these seem to be reasonable steps to begin addressing the notification problem in these locations, they will not address the problem on a corporatewide basis. Because RTC has not addressed the problem systemically, the problem could be mitigated in some locations while it could persist in others.

Conclusions

Although asset files are critical to the management and disposition of loans, RTC did not always effectively manage the transfer of asset files to SAMDA contractors. Even though it is RTC's goal to transfer asset files to contractors within 15 days of contract signing, nearly half of all these files were not received within that time frame according to the contractors. In fact, they said, nearly 13 percent of the asset files were not received within 90 days after the contractors' contracts with RTC were signed.

⁴Once a thrift has been resolved it is placed into receivership. At some point, all receiverships, including those being managed out of a closed thrift's site, are consolidated at the responsible field office.

Additionally, RTC had not set a time frame for withdrawing or replacing loans for which no asset files had been located. Although on occasion RTC withdrew such loans from contracts, these withdrawals occurred 10 months to nearly 2 years after the contract began; in the interim, RTC continued to pay the contractors for managing the loans. While waiting to receive asset files, the five contractors we reviewed received hundreds of thousands of dollars in management fees for loans they could not manage or dispose of.

Finally, contrary to RTC policy, records managers frequently were not notified of file transfers. As a result, in some cases, files could not be found and forwarded to contractors in a timely manner. Although records managers in some locations were taking steps to address this situation, the problem was not being addressed on a corporatewide basis.

We recognize that RTC's management has begun to reduce the number of SAMDA contracts and plans to further reduce the use of these contracts in the future. Nevertheless, RTC will continue to use contractors to manage some nonperforming loans under other types of contracts. Therefore, we believe that RTC should correct the weaknesses in its asset file transfer procedures and practices to ensure that (1) contractors get the asset files promptly after signing their contracts and (2) management fees are not paid for extended periods in cases in which asset files have not been provided to the contractor and the files cannot be located.

Recommendations

To stop the extended payment of management fees to SAMDA contractors on current contracts for loans with missing asset files currently assigned, we recommend that the RTC President and Chief Executive Officer determine whether the missing asset files for loan portfolios assets assigned to SAMDA contractors can be located within a reasonable time and, if they cannot, withdraw or replace the loans.

To preclude further problems with asset file transfers, we recommend that the RTC President and Chief Executive Officer reiterate the importance of notifying records managers of all file transfers as required by corporate policy and enforce compliance with the notification requirement. In addressing the problem, the President and Chief Executive Officer should also consider the various field office initiatives under way and, if appropriate, implement one or more of them nationwide.

To preclude the payment of management fees for extended periods on future contracts when asset files cannot be provided to the asset manager or other contractor, we recommend that the RTC President and Chief Executive Officer (1) establish time frames for reviewing whether missing asset files can be located and whether the related assets should be withdrawn from contractors' portfolios and (2) ensure that effective asset file transfer procedures are in place and are followed.

Agency Comments

In written comments (see app. I) on a draft of this report, RTC responded that while the issues and examples described in the draft were of genuine concern to RTC, it should be noted that RTC had a massive job of getting control of billions of dollars of problem assets for which records and information systems and files were often missing or inadequate. RTC also explained how and why the situations discussed in this report occurred and commented on its planned future use of SAMDA contractors.

RTC concurred with all our recommendations. RTC advised us that all of the prior asset withdrawals under existing SAMDA contracts were negotiated with the contractor. Because RTC is uncertain as to whether it has the unilateral right under the existing SAMDA contracts to withdraw assets as a result of missing asset files, it has requested a legal opinion on this issue. If a favorable opinion is received, RTC plans to promulgate guidelines to the field offices regarding withdrawal of assets from existing contracts when files have been missing for an extended period.

RTC also advised us that it has initiated corrective actions to revise and augment its asset file transfer procedures and will improve its field coordination to include field records managers. If a field site manager fails to provide critical information to the records manager, the matter will be referred to senior field office management for resolution.

Finally, RTC advised us that, pending the legal opinion discussed above, it concurs with our recommendation that time frames should be established for reviewing whether asset files can be located and if they cannot be located, whether the related assets should be withdrawn from contractors' portfolios. In addition, RTC stated that the Office of SAMDA Program Management will stress to SAMDA program managers in field offices that particular care and diligence must be taken to ensure that asset files are available and are transferred to the contractor in a timely manner for any assets currently being assigned to contractors.

Because RTC was created as a mixed-ownership government corporation, it is not required by 31 U.S.C. 720 to submit a written statement on actions taken on these recommendations to the Senate Committee on Governmental Affairs, the House Committee on Government Operations, or the House and Senate Committees on Appropriations. However, we would appreciate receiving such a statement within 60 days of the date of this letter to assist in our follow-up actions and to enable us to keep the appropriate congressional committees informed of RTC activities.

We will provide copies of this report to interested congressional members and committees and the Chairman of the Thrift Depositor Protection Oversight Board. We will also provide copies to others upon request.

The major contributors to this report are listed in appendix II. Please contact me on (202) 736-0479 if you have any questions concerning this report.

Sincerely yours,



Gaston L. Gianni, Jr.
Associate Director, Government
Business Operations Issues

Comments From the Resolution Trust Corporation



RESOLUTION TRUST CORPORATION
Resolving The Crisis
Restoring The Confidence

March 3, 1993

Mr. Gaston L. Gianni, Jr.
Associate Director,
Federal Management Issues
U. S. General Accounting Office
Washington, D.C. 20548

RE: Draft GAO Report Entitled "Resolution Trust Corporation:
More Timely Action Needed to Locate Missing Asset Files"

Dear Mr. Gianni:

The subject report examined whether asset management contractors received asset files in a timely manner and whether RTC withdrew loans with missing asset files in a timely manner. The draft report concludes that the RTC did not effectively manage asset file transfers to Standard Asset Management and Disposition Agreement ("SAMDA") contractors on many of the contracts reviewed by the GAO. It further concludes that the RTC may have waited too long to withdraw assets from SAMDA contractors' portfolios when their files could not be located by the RTC.

Also, this draft GAO report outlines a problem with communication between field site managers and field office records managers. Specifically, the report states that the field site manager does not consistently provide lists of transferred assets to the records manager, even though this procedure is required by directive; specifically, Circular 1210.1, Files Management and Records Disposition, Section 4, Management of Asset Files.

While the issues and examples indicated in the draft report are of genuine concern to the RTC, it should be noted that the RTC had a massive job of getting control of billions of dollars of problem assets for which records and information systems and files were often missing or inadequate. This was to be done with new staff put together after the assets were assigned to the RTC. We believe the statutory mandate for the RTC to use private sector resources (*i.e.*, contracting for services) to the maximum extent feasible was appropriate under those circumstances.

The RTC staff put more than \$35 billion in complex, problem assets out to SAMDA contractors as quickly as possible so that the resources of those contractors could do the careful review and

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organizing of those assets that was necessary for effective management. The RTC did not have the staff in-house to do that work. The cost of holding those assets and resultant deterioration in values was a major factor in the decision to have them managed by SAMDA contractors.

As noted in the draft report, the RTC offices tried to deliver relevant asset files to SAMDA contractors as quickly as possible after the assets were assigned to the contractors. However, because of the condition of many of the RTC institutions' information systems and files, it is true that some assets were assigned to SAMDA contractors that did not have files. Notable examples of this situation include the following: the assets themselves did not exist (*i.e.*, the institutions' information systems were inaccurate), or the files were unable to be physically located from the RTC conservatorships or receiverships in a timely manner.

The two versions of the SAMDA do not contain explicit provisions to withdraw assets as a result of missing or unavailable asset files. The SAMDA, however, does allow the RTC to withdraw assets for cause. In the Series 1 SAMDA (under which the great majority of SAMDA contractors are engaged), assets may be withdrawn for cause under the following circumstances:

- 1) The contractor and the RTC cannot agree, within 30 days of RTC rejection of an Asset Management and Disposition Plan ("AMDP") for the asset, upon an approved AMDP for the asset; or
- 2) The asset is subject to a conflict of interest; or
- 3) The asset is a participated asset; or
- 4) The contractor has failed to meet the standard of care as set forth in the SAMDA with respect to the asset or has materially breached its duties with respect to the asset as set forth in the asset's AMDP.

The more recent Series 2 SAMDA contains two additional situations for withdrawing assets for cause, but again, there is no explicit provision allowing the RTC to withdraw assets as a result of missing files.

The RTC does not plan on issuing any additional SAMDA contracts in the future. If the RTC were still issuing SAMDA contracts, the Office of SAMDA Program Management would recommend that new SAMDAs be modified to include a provision allowing the RTC to withdraw assets for cause if such assets' files could not be located or otherwise delivered to the contractor.

The Office of SAMDA Program Management, however, has recently requested that the Legal Division provide a legal opinion as to whether the RTC has the power to withdraw assets for cause under the

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provisions of all the existing SAMDAs. If indeed the RTC does have the right to withdraw such assets for cause, then the RTC would be able to eliminate payment of any further management fees upon withdrawal.

Because of the present uncertainty as to whether the RTC has the unilateral right to withdraw assets for cause because of unavailable asset files, in the past RTC offices have had to negotiate any such withdrawals on a voluntary basis with the contractor. Such withdrawals were often done in conjunction with the RTC placing additional assets with the contractors.

Finally, as described above, the RTC is not entering into any new SAMDA contracts. Any assets that are currently being placed with SAMDA contractors are added to their existing portfolio of assets. For the following two reasons, we believe the problem of assigning assets without asset files to SAMDA contractors is much less prevalent now. First, the volume of assets being placed with SAMDA contractors is significantly less than when the RTC was soliciting for SAMDA services; therefore, RTC field staff are able to be more diligent and careful during the asset assignment process. Second, since the spring of 1992, each field office has a dedicated SAMDA program management staff; in the past there was no dedicated SAMDA program management area and thus activities were performed much less consistently.

The RTC has the following specific comments on recommendations stated in the report:

1. To stop the extended payment of management fees for loans with missing asset files currently assigned to SAMDA contractors, we recommend that the RTC President and Chief Executive Officer determine, for all existing SAMDA loan portfolios assigned to contractors, whether the missing asset files can be located within a reasonable period of time and, if they cannot, withdraw the loans.

Comments:

As described above, the RTC has requested a legal opinion as to whether the RTC has the right under the existing SAMDA contracts to withdraw assets as a result of missing asset files. We concur with the GAO's recommendation that RTC should stop the extended payment of management fees for loans with missing asset files, if such actions are allowed under the terms of the SAMDA contract. Should a favorable opinion be received, then we plan on promulgating guidelines to the field offices regarding this matter.

2. To preclude further problems with asset file transfers, we recommend that the RTC President and Chief Executive Officer

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Corporation

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reiterate the importance of notifying records managers of all file transfers as required by corporate policy and enforce compliance with the notification requirement. In addressing the problem, the President and Chief Executive Officer should also consider the various field office initiatives underway and, if appropriate, implement one or more of them nationwide.

Comments:

The records management staff in both field and headquarters locations have been aware of this problem and have initiated the following corrective actions:

Section 4 of Circular 1210.1 has been revised and the language of the requirement has been clarified and strengthened. The revision will be issued by April 15, 1993.

The Records Management Section in headquarters is developing a new circular that provides for more direct involvement of field records managers in both conservatorships and receiverships. Through their presence on-site, field records management staff will begin the inventory of institution records, including asset files, using the Corporation's automated Records Management Tracking System. This procedural change will insure that critical asset information will be gathered before files are transferred from the institution. The circular will also be issued by April 15.

In addition, the RTC will improve its coordination of the use of asset servicers and SAMDAs to include the field records managers. If a field site manager fails to provide critical information to the records manager, the records manager will refer the matter to senior field office management for resolution.

3. To preclude the payment of management fees for extended periods when asset files cannot be provided to asset management or other contractors, we recommend that the RTC President and Chief Executive Officer (1) establish time frames for reviewing whether asset files can be located and whether the related assets should be withdrawn from contractors' portfolios and (2) ensure that effective asset file transfer procedures are in place and are followed.

Comments:

As indicated in the response to recommendation 1, the RTC concurs with the GAO recommendation that time frames should be

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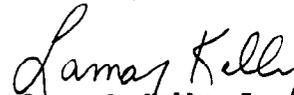
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established (if permissible) for reviewing whether asset files can be located and whether the related assets should be withdrawn from contractors' portfolios. In addition, the Office of SAMDA Program Management will stress to SAMDA program managers in the field offices that particular care and diligence must be taken to ensure that asset files are available and will be transferred to the contractor in a timely manner for any assets currently being assigned to contractors.

Finally, as indicated in the response to recommendation 2, records management staff are making efforts to revise and augment the RTC's asset file transfer procedures.

Thank you for the opportunity to comment on the subject draft report. Should you have any questions, please feel free to contact Robert I. Dodge, Director, Office of SAMDA Program Management, at (202) 416-7475.

Sincerely,



Lamar C. Kelly, Jr.
Senior Vice President
Asset Management and Sales Division

cc: Gary P. Bowen
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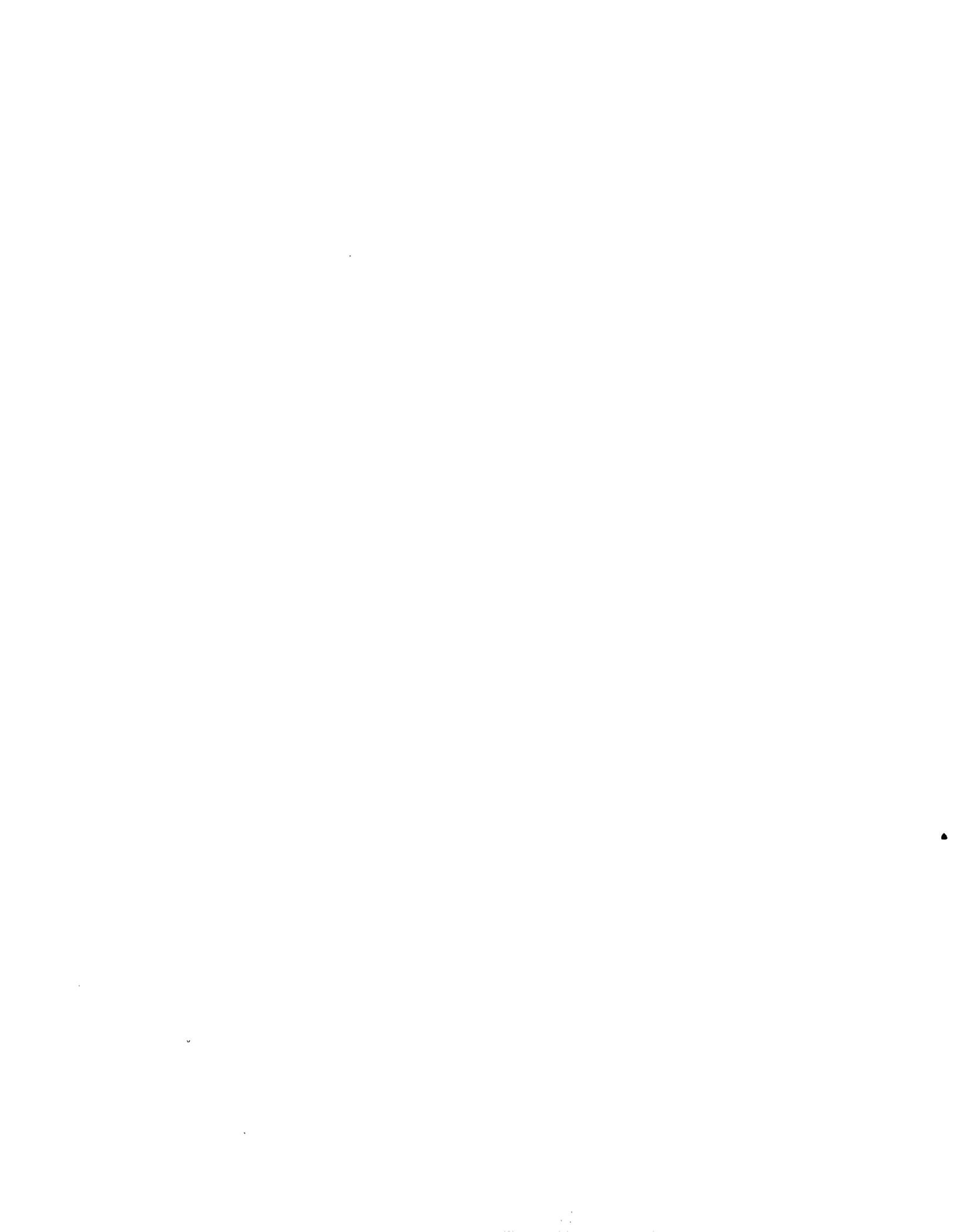
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