

Cash Loan Sales



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Abbreviations and Acronyms

4C	Communication, Capability, Challenge, and Control
ARM	Asset Resolution Manual
BIS	Business Information Systems
CDIS	Consolidated Document Information System
DRR	Division of Resolutions and Receiverships
FAMB	Franchise and Asset Marketing Branch
FAVR	FDIC Asset Valuation Reference
FDL	FDIC Digital Library
FICO	Fair Isaac Corporation
FOB	Field Operations Branch
FOIA	Freedom of Information Act
JDCs	judgments, deficiencies, and charge-offs
LSA	Loan Sale Agreement
LSBO	loan serviced by others
OFAC	Office of Foreign Assets Control
OIG	Office of the Inspector General
OM	oversight manager
ORE	owned real estate
PEC	Purchaser Eligibility Certification
PII	personally identifiable information
RBOA	Receivership Basic Ordering Agreement
RMS	Division of Risk Management Supervision
RSC	Resolution Strategy Committee
SAVE	Standard Asset Value Estimation
UCC	Uniform Commercial Code

Chapter 1 Introduction

Marketing and selling loans and loan-related assets in cash (or whole loan) sales is one disposition strategy employed by the Division of Resolutions and Receiverships (DRR). Other sales-related strategies include structured transactions and securitizations.

This manual provides the reader with DRR policies, guiding principles, and procedures that are aligned with regulation and policy related to loans sold in cash sales. Any updates and changes to policy statements and guiding principles require approval of the Franchise and Asset Marketing Branch (FAMB) Deputy Director.

Policy Statement

In accordance with the FDIC Improvement Act of 1991, it is DRR's policy to:

- **Maximize the net present value return from the sale or disposition of assets**
- **Minimize the amount of loss in the resolution of any cases**
- **Ensure adequate competition, and fair and consistent treatment of offerors**
- **Prohibit discrimination in the solicitation and consideration of offers**

Cash sales may take place while loans are interim serviced onsite at a receivership or they may occur after the loans have been converted to an FDIC-contracted loan servicer. Regardless of when the sale occurs, the same policies and guidelines apply. All sales or marketing efforts must be conducted in a commercially reasonable manner, while not compromising the FDIC's interest.

LOAN SALES ORGANIZATIONS

DRR's loan sales organizations are listed below:

- Asset Marketing in the Field Operations Branch (FOB), Dallas, TX
- Capital Markets and Strategic Programs at Headquarters, Washington, DC

ORGANIZATIONAL RESPONSIBILITIES

Capital Markets is responsible for securitizations, which typically include performing 1-to-4 unit residential loans and commercial mortgage loans that are serviced by, or qualify for transfer to, one of the FDIC's contracted loan servicers. Asset Marketing and Strategic Programs share responsibility for loans sold in structured transactions that primarily consist of real-estate-secured loans, and may be either performing or non-performing. Asset Marketing in Dallas, TX is responsible for loans sold in cash sales.

THIRD-PARTY CONTRACTORS

Asset Marketing generally uses a third-party contractor (a loan sale advisor) to conduct either a sealed bid sale or an open-outcry auction of loans. Loan sale advisory services may include Internet marketing, due diligence, imaging and indexing, valuation, pooling, online bidding platform, and closing of sales.

In addition to a loan sale advisor, other third-party contractors may be employed to provide FICO (Fair Isaac Corporation) scores, credit bureau reports, or other services as needed. Specific contracting guidelines apply whenever a third-party contractor is engaged. Refer to Chapter 9, Asset Marketing Contracts, in this manual for descriptions of services used by Asset Marketing.

4C SYSTEM

The Communication, Capability, Challenge, and Control (4C) system is an asset management inventory system that houses historical and current asset data for failed institutions, including subsidiary assets, beginning with pre-closing activities through asset disposition. It is an integrated, web-based application that provides functionality to support resolution activities. 4C is widely used to ascertain whether a loan has been sold and, if so, to determine purchaser information. Direction on its use is available in [DRR Directive Circulars 7210.2: Use of 4C](#) and [7210.3: 4C Overview, Business Area Overviews and Job Aids](#). Refer also to Chapter 35, DRR Information Management Systems in the Asset Resolution Manual (ARM).

Chapter 2 Marketable and Non-marketable Assets

MARKETABLE ASSETS

DRR's business model is to market and sell assets, so essentially, all loans owned by the FDIC are marketable, with limited exceptions that are described in the Non-marketable Assets section of this manual. The sales strategy and target market may vary, depending on the loan type.

The marketing specialist's first task is to determine which assets to sell. Refer to Chapter 2, General Resolution Strategies, and Chapter 3, Resolution Strategy Committee (RSC), in the ARM for DRR's core disposition programs.

In general, the main focus of Asset Marketing is to sell (within specified marketing timeframes) all marketable assets designated for inclusion in cash sales. In addition to such asset types as commercial/industrial and consumer, marketable assets can include loans with unique characteristics, such as government-guaranteed loans, loans secured by securities, credit cards, and leases, each of which is reviewed below.

Government-guaranteed Loans

DRR personnel may not make any representations regarding the validity and enforceability of various government agencies' guarantees following the sale of the underlying loan. Each agency has unique requirements that must be fulfilled to qualify a purchaser as an approved lender, and it is the prospective purchaser's responsibility to obtain that designation before purchasing any loan. To assist prospective purchasers in obtaining the pre-approved status, each marketing specialist should be familiar with the requirements.

For further guidelines on managing and selling government-guaranteed loans, and for links to the interagency agreements between the FDIC and other government agencies, refer to Chapter 11, Government-guaranteed Loans, of the ARM. Each interagency agreement may specify certain notice provisions or other requirements distinct to selling and marketing that agency's assets. To ensure that all requirements are met, each marketing specialist should review the interagency agreement prior to completing a sale of government-guaranteed loans.

Loans Secured by Securities

Guiding Principle

Loans secured by securities, including stock, limited partnership interests, or limited liability company interests, may be sold by Asset Marketing; however, these sales should be reviewed under applicable securities laws and marketed accordingly. Before commencing marketing activities in connection with sales of loans secured by securities, the Legal Division must be contacted. In the case of loans secured by securities issued by banks or other financial institutions, the Legal Division will determine whether such transactions are

subject to the requirements of the Change in Bank Control Act or other similar legal requirements.

Credit Cards

Asset Marketing may also sell credit card portfolios, but because of the unique features associated with credit cards, the sale is tailored to meet the product's requirements. Prospective purchasers, or a partner, must be a member of a credit card association (e.g., Visa, MasterCard) to purchase credit card assets. The loan sale documents for a credit card sale are prepared by the Legal Division to incorporate terms used in the industry, and any other unique requirements. For example, an interim servicing agreement and a post-closing final settlement date or "true-up date" may need to be incorporated into the Loan Sale Agreement (LSA). Refer to [DRR Directive Circular 7100.6: DRR Legal Documents Committee](#) for a description of the loan sale document approval process. In addition, prior to formulating a marketing strategy, an analysis may be performed to determine whether to sell the credit card operation as a business or solely as a credit card portfolio.

Leases

Though leases are sold under the same terms and conditions as loans, they usually have a unique set of prospective purchasers. Purchasers of leases acquire an ownership in the leased equipment rather than a security interest. Prospective purchasers should be familiar with leasing agreements and servicing. The FDIC has maintained a membership in the Equipment Leasing and Finance Association, and through this organization it reaches out to prospective purchasers of leases in its marketing effort.

NON-MARKETABLE ASSETS

Not all loans are marketable, as noted earlier. These include FDIC employee loans and other excluded assets, as explained below.

FDIC Employee Loans

Non-performing loans in which either the borrower or guarantor is currently employed by the FDIC should not be sold.

Excluded Assets

Policy Statement

Assets described below are to be excluded from sales:

- 1. The borrower has been fully discharged in bankruptcy, no collateral exists to satisfy the debt, and no sureties or guarantors of the note or the obligations contained therein can provide recourse. These assets are to be a non-discretionary write-off.**

- 2. A court of competent jurisdiction enters a final judgment holding that neither the borrower, guarantor, or surety has an enforceable obligation to pay the holder of the note or its assignee(s). These assets are to be a non-discretionary write-off.**
- 3. The former bank, or the FDIC, has executed and delivered to the borrower, and to all guarantors and sureties, a release of liability from all obligations under the note. These assets are to be a non-discretionary write-off.**
- 4. FDIC write-offs, including discretionary in which an IRS Form 1099-C, Information Reporting for Cancellation of Debt has been issued and non-discretionary in which it has been determined the debt is uncollectible.**
- 5. Loans made by a failed institution to its holding company**
- 6. Restitution Orders and related assets as designated by Investigations**
- 7. Loans made by the receiver to its subsidiary**

Note: The Legal Division should be consulted if there are questions concerning whether any of the items above apply to a specific loan. Loans where the statute of limitations has expired can be sold, unless Item 2 above applies. Loans that meet Item 4 above have been determined to have no value, and should be appropriately disposed.

Other business considerations that may result in a loan being excluded or removed from a sale include defensive litigation, imminent foreclosure, pending settlement, pending repossession of collateral, and inadequate documentation (e.g., neither an original nor a copy of a note can be found).

Chapter 3 Loan Pooling

DETERMINING POOLING CRITERIA

Pooling is the identification of loans to be included in a specific package, or “pool.” Pooling may begin during the initial review of a potentially failing institution’s loan portfolio pre-closing. Potential resolution strategies (e.g., whole bank, whole bank with loss share, and purchase and assumption) are presented to the Resolution Strategy Committee (RSC) for review and approval. In some instances, pools or categories of loans are excluded from the franchise transaction. Examples of exclusions include non-performing loans, land loans, loans identified for inclusion in securitizations, and loans targeted by Investigations or Legal. Refer to [DRR Directive Circular 1160.2: DRR Resolution Strategy Committee](#), which sets forth the operational framework for the RSC.

At closing, the loans that are retained by the receivership and are not subject to a securitization are pooled at a high level, based on an institution’s loan servicing data generally using loan type and/or collateral type. The pools may need to be further refined, once internal due diligence is completed.

Pooling may also occur during interim servicing while at a receivership site or post-conversion to an FDIC-contracted loan servicer after an institution is closed. Regardless of the timing, a stratification of the loan portfolio is made by loan classification (performance status), loan type, and any unique characteristics of the portfolio. Refer to Chapter 30, Loan Valuation, of the ARM for loan classification definitions. Pooling criteria may change from time to time at management’s discretion.

Generally, certain types of loans are targeted for inclusion in cash sales, while other types may be included in a structured transaction or a securitization depending on volume. For example, government-guaranteed loans are typically included in cash sale transactions due to the specific agency’s requirements (e.g., Small Business Administration, Farm Service Agency) for prospective purchasers to qualify as approved lenders. To attract the greatest number of serious prospective purchasers with specific interests, assets should be offered, when feasible, in pools containing loans of similar type, size, or collateral.

Individual judgment is always necessary in determining whether certain assets should be separately packaged or included with others. For example, a participated loan is a likely candidate for inclusion in an individual sale because the market may be limited solely to other financial institutions. The geographic location of the assets (or of their collateral) may also be considered an important criterion when developing a pool.

Pooling associated with cash sales generally does not require presentation to or approval from the RSC. If a loan sale advisor is contracted to assist with a sale, pooling proposals are provided to Asset Marketing for review and, if satisfactory, recommendation of formal acceptance by the oversight manager (OM).

For information on assets included in structured transactions, refer to the Structured Transactions Manual and the corresponding Structured Transactions job aids.

EXAMPLES OF LOAN TYPES

When making pooling decisions, consider the assets' type and collateral, such as the following:

- Consumer (secured/unsecured)
- Real Estate (residential)
- Real Estate (commercial)
- Real Estate (acquisition, development, and construction)
- Commercial (by collateral type)
- Participations
- Agricultural
- Government-guaranteed
- Judgments, deficiencies, and charge-offs (JDCs)
- Credit cards
- Leases
- Other (mobile home, timeshare, etc.)

POOLING EXCEPTIONS

Exceptions to the above guidelines are commonplace, due to the individual circumstances of each failed institution or portfolio of loans. Adjustments to the guidelines must be made for cross-collateralized loans and similar situations where the loans should be placed in the same pool.

Further, it may be beneficial to preserve the integrity of existing loan relationships by pooling together all loans to one borrower, including any affiliates and guarantees (related lines). A good example of this is a small rural agricultural bank where many of the bank's borrowers have commercial, real estate, and consumer loans of various sizes and performance levels. In this situation, pools of loans should be established based on related lines of credit, and bids should be evaluated and based on DRR's expected recoveries and the cost and time to collect the entire line.

MINIMIZING LOANS SUBJECT TO REPURCHASE

During the loan pooling process, reasonable efforts should be made to remove loans that should be excluded from sale that are subject to repurchase by the FDIC. These loans should not be sold. Although they can never be eliminated, minimizing repurchase requests serves the best administration and public relations interests of the FDIC.

Chapter 4 Loan Sale Documents

BID PACKAGE DOCUMENTS

The bid package for loan sales includes the following documents:

- Confidentiality Agreement
- Security Deposit Agreement
- Invitation to Bid
- Bid Instructions
- Bid Certification
- Purchaser Eligibility Certification (PEC)
- LSA (with attachments)

The LSA and other bid package documents reflect DRR policies and guidelines, so no modifications can be made to these documents except as provided for in [DRR Directive Circular 7100.6: DRR Legal Documents Committee](#). The Legal Division (Special Issues Unit) maintains the official version of the bid package documents and should therefore prepare them for a specific loan sale. It is critical that the Legal Division is involved in the initial planning of every sale.

The documents apply to loan sales by the FDIC, in its corporate and receivership capacities, and are designed for sales that include the following:

- Performing and non-performing loans, including participation loans
- Leases
- Contracts for deed
- Judgments, deficiency balances, and bank charge-offs
- Loans serviced by others (LSBOs)
- Loans secured by securities (documents will require revision by the Legal Division)

A brief summary of the bid package documents is provided in the following sections.

Invitation to Bid

The Invitation to Bid includes the sale's name and identifying number and a general description of the loans offered for sale. Descriptions of quality should be limited to factual statements, such as non-performing, performing, or sub-performing.

The Invitation to Bid explains the procedures for conducting the sale, including, but not limited to, the following:

- A schedule of the key dates in the sale, such as bidder due diligence period, initial deposit due date, bid deadline, bid award date, and loan sale closing date

- The bid package contents
- The bidder due diligence process, including the conditions under which the FDIC may provide personally identifiable information (PII). Refer to [DRR Directive Circular 7220.5: Protecting Obligor Personally Identifiable Information](#).
- The disclosure of winning bid information

Furthermore, the Invitation to Bid gives details of any special conditions for the sale, such as fees charged for due diligence information.

Bid Instructions

In addition to informing prospective purchasers of the bidding process, the Bid Instructions describe earnest money deposit requirements and the notification procedures to the winning bidder. Moreover, the Bid Instructions expressly state that the FDIC reserves the right to accept or reject any or all offers. The Bidding Procedures section of this manual explains the bidding process and earnest money requirements.

Loan Sale Agreement (LSA)

The LSA provides the terms and conditions of the sale and includes the standard representations and warranties, which are limited in scope. The representations and warranties provided to purchasers are in the repurchase provisions described in the LSA. The loans are sold “as is,” “with all faults,” and without recourse.

OTHER REQUIRED DOCUMENTS

To ensure that the bidder maintains confidentiality of the transaction, the Confidentiality Agreement and Security Deposit Agreement, along with submission of a \$50,000 security deposit, must be agreed to electronically online or executed by a prospective purchaser before given access to loan-level information for due diligence review.

As a prerequisite to submitting a bid, prospective purchasers must agree to the Bid Certification electronically and execute the PEC. A prospective purchaser certifies in the Bid Certification that it has submitted its bid in good faith, has not colluded with any other party in making its bid, and is a sophisticated purchaser capable of evaluating and bearing the risks of investment in the loans. By executing the PEC, the prospective purchaser certifies that it is eligible to purchase assets from the FDIC under the laws, regulations, and policies governing such sales. Refer to [DRR Directive Circulars 7220.4: Purchaser Eligibility Certification](#) and [7220.2: Collection Policy: Sale of Assets to Prospective Purchasers with Delinquent Obligations](#).

A copy of the Bid Certification and PEC must be sent via fax or email to the FDIC or its contracted loan sale advisor. Additionally, an initial deposit must be remitted to the FDIC, or its contracted loan sale advisor, as specified in the Bid Instructions.

All bids are to be received by the FDIC, or its contracted loan sale advisor, before the stated bid deadline. If the sale is marketed via the Internet, the bids may be received electronically and are documented in bid reports.

All sale documents, with the exception of the LSA, are to be signed by all bidders for every sale. Because a bidder's circumstances may change from time to time, sale-specific documents are required for each sale. Only the winning bidder is required to execute the LSA.

The above procedures are included in the Invitation to Bid and Bid Instructions. All executed documents are to be maintained as part of the loan sale file.

Chapter 5 Loan Sale Preparation

NOTIFICATION TO AFFECTED PARTIES

Notification of a sale is sent at various stages in the process to a number of parties. This includes other DRR departments and FDIC divisions, third-party contractors, the borrowers, the Office of Foreign Assets Control (OFAC), and Division of Risk Management Supervision (RMS).

Internal Notifications

Providing other DRR departments and FDIC divisions with adequate notice of assets involved in upcoming sales can contribute significantly toward a smooth and successful sale.

The following functional areas should be given notice when assets are first identified for a potential sale: Asset Management, Legal, Business Information Systems (BIS), Accounting, and Contract Oversight. These areas are typically included in any pre-marketing or kick-off meetings held prior to the sale. Any third-party contractors employed to manage the assets or assist with the sale should also participate in the kick-off meeting. The marketing specialist should consult with affected areas to establish sales coordination and timing of notices. Notification is generally in the form of an invitation to the kick-off meeting. Circumstances may dictate notifying departments other than those previously listed.

Borrower Notification

In addition to internal notifications, borrowers should be given notice that the FDIC intends to market and sell the borrower's loans. As part of the closing function, a notification is sent to all borrowers whose loans are retained by the FDIC. The notification informs the borrower of the potential sale and provides information related to its loan obligation.

Office of Foreign Assets Control Notification

Asset Marketing provides a list of all bidders to the OFAC liaison, and the list is compared against the OFAC database to:

- Identify bidders that could potentially be money launderers, terrorists, international narcotics traffickers, etc.
- Ensure that the FDIC is not about to enter into a transaction with such a party

In addition to comparing bidders, a list of borrowers is also compared against the OFAC database during an institution's closing. If loans in a sale are from an institution that has been closed more than 90 days, then another comparison of the borrowers against the OFAC database is completed.

RMS Notification

Guiding Principle

To inform RMS of those financial institutions that are directly or indirectly submitting bids to purchase loans from the FDIC, a written list of all bidders must be provided to the appropriate RMS Regional Director by the DRR office conducting the loan sale through the DRR Regional Manager.

Notification to RMS may be accomplished by providing a list of all bidders participating in a loan sale after receipt of the bids. It is RMS's responsibility to advise DRR, and to take appropriate action, including notifying the bidder that it is disallowing the sale.

DRR is not responsible for enforcing the RMS notification; therefore, a sale is not canceled if the bidder chooses to complete the sale. However, DRR should inform RMS that the sale is taking place. If RMS requires the winning bidder to withdraw from the sale, DRR should return the earnest money deposit.

All notifications are retained as part of the loan sale file.

DUE DILIGENCE

A review and analysis or "due diligence" of the loan files and other pertinent information is completed by the FDIC or its contracted loan sale advisor and by prospective purchasers interested in a sale. Due diligence is conducted electronically on the contracted loan sale advisor's secure website, with controls in place to protect the information.

Internal Due Diligence

Before valuing assets for sale, internal due diligence should be performed on the loan files, which may be in hard copy or electronic image form. The due diligence can be performed by DRR personnel or by contractors.

Due diligence involves a review of all, or a sample if appropriate, of the loan files to determine that all pertinent documentation is present. The purpose of loan file reviews is to:

- Provide Asset Marketing personnel, and the contracted loan sale advisor, with a solid understanding of the assets for sale
- Provide objective data to be used in valuing the assets
- Ensure that certain documents, such as internal environmental reviews, correspondence regarding environmental reports, and information identified as confidential by the Legal Division are removed prior to bidder due diligence
- Yield information for bidder due diligence

Bidder Due Diligence

To protect a borrower's PII, the FDIC requires prospective bidders to go through a vetting process and submit a security deposit prior to being given access to PII. The vetting process establishes that a prospective bidder is an active participant in the secondary market. As such, the bidder understands the risks associated with purchasing loans and is likely to have the financial capacity to close the sale. The security deposit is a partial deposit held by the FDIC against the potential liability for any breach of the Confidentiality Agreement. A Security Deposit Agreement governs the terms and conditions by which security deposits are held and specifies the provisions for release of a prospective purchasers' security deposit.

Once the vetting and security deposit requirements are met, the prospective bidder can participate in due diligence. Generally, information and documents included in the loan files are disclosed to prospective bidders conducting due diligence, subject to a Confidentiality Agreement being agreed to electronically or executed in hard copy. Prospective bidders performing due diligence should be provided such information as payment histories, borrower correspondence, financial statements, collateral appraisals, security agreements, environmental reports, workout or settlement negotiations, and litigation pleadings. Refer to the Environmental Policies and Procedures Manual for the disclosures required for environmental studies.

Loan-level spreadsheets are also made available during bidder due diligence. A standardized set of data elements are presented in the spreadsheets. Asset Marketing provides due diligence material for the assets being sold.

Loan Valuations

A third-party valuation contractor or DRR personnel (excluding marketing specialists) completes an estimated value of the loans in a pool, or a sample of the loans. The loans are valued based on the FDIC's Standard Asset Value Estimation (SAVE) methodology or other approved valuation models of the valuation contractor. Refer to the FDIC Asset Valuation Reference (FAVR) for asset valuation guidelines. Asset Marketing reviews the valuation and, if satisfactory, makes a recommendation of formal acceptance to the OM.

Asset Marketing uses loan valuations as a benchmark against which bids are reviewed. A case memorandum, which is written to obtain approval to sell loans, includes valuation results. Refer to the Obtaining Approval to Sell Assets section of this manual for a brief description of case preparation and format. When loans are competitively marketed, bids may be accepted below valuation prices if approved by the appropriate delegated authority.

OBTAINING APPROVAL TO SELL ASSETS

Approval must be obtained from the appropriate delegated authority before a sale can be awarded to a winning bidder. A case memorandum is written that documents and supports the proposed action to be taken. Approval is documented in FACTS.

Case Preparation

Case memoranda seeking approval to sell assets are typically prepared after marketing is concluded and bids are received. The results of the marketing efforts and the bids received are presented to the authorized FDIC decision maker(s) to facilitate an informed decision. Refer to [DRR Directive Circular 1000.2: DRR Delegations of Authority and Committee Structure](#).

Case Format

The standard case format is used for sales cases and includes the following sections:

- Recommendation
- Executive Summary
- Description of Pools
- Background
- Discussion
- Conclusion
- Contacts and Presenters
- Exhibits

Refer to [DRR Directive Circular 7000.6: Case Preparation](#) for additional information regarding case memoranda.

Loan Additions and Deletions to a Pool

Over the course of marketing one or more pools, loans may be deleted for many reasons – for example, if a loan was paid in full, compromised, or determined to be unsalable. Generally, assets are not added to a sale after the marketing period begins so that prospective bidders have sufficient time to complete due diligence.

Chapter 6 Marketing, Bidding, and Sale Closing

MARKETING OF ASSETS

Generating interest in a loan sale is the first step in the marketing process and begins with notifying prospective purchasers of an upcoming sale. The marketing process continues with interested parties performing due diligence on a portfolio of assets.

Prospective Purchaser Notifications

Prospective purchasers are apprised of sales through various means: email notifications, sale announcements on the FDIC's website and its contracted loan sale advisor's website, and advertising in other publications, if warranted. The objective is to motivate prospective purchasers to seek additional information and complete bidder due diligence.

Sales of certain loan types are designated as "specialty" cash sales, such as participations, credit cards, government-guaranteed, or agricultural loans. Depending on the loan type, a specific audience may be targeted. For instance, notification of the sale of agricultural loans would be aimed toward banks or other lenders specializing in agricultural loans.

Policy Statement

Whenever placing advertisements (including announcements on the Internet) for the sale of assets (other than performing 1-to-4 unit residential mortgage loans, owned real estate, or owned personal property), the following statement is to be included:

This advertisement is an announcement only and does not constitute an offer to sell, or a solicitation of an offer to buy, any loans or any interest therein. Information concerning the loans will be furnished only to persons who represent that they have a level of financial sophistication and resources sufficient to evaluate and bear the risks of an investment in the loans.

The FDIC and its contracted loan sale advisor must include this statement on any announcements made to advertise a sale, including email notifications.

Bidder Due Diligence

It is in the best interest of all parties to encourage prospective bidders to perform their own due diligence on the loan files. Just as Asset Marketing personnel and the contracted loan sale advisor should know what they are selling, prospective bidders should be fully knowledgeable of what they are attempting to purchase. The expanded use of imaging and indexing loan files enables prospective bidders to complete due diligence electronically with 24/7 access. For additional information on bidders' due diligence, refer to the Due Diligence section of this manual.

Additional Information

Any additional information, such as updated schedules or material changes in the pool(s), should be made available to anyone who has expressed an interest in the sale. When appropriate, an updated schedule of assets, typically with data as of a specified date (the calculation date), should be provided to all prospective bidders before bids are submitted.

BIDDING PROCEDURES

Loan sales may be conducted using either a sealed bid format or an open-outcry auction format; however, the sealed bid format is used most often. A description of the sealed bid procedures is provided below.

Prerequisites to Bid Submission

Certain prerequisites must be met before a bidder can submit a bid. Within a specified time frame prior to the bid deadline, the FDIC or its contracted loan sale advisor must receive an executed Bid Certification, PEC, and Power of Attorney for agents or brokers, if applicable. Refer to [DRR Directive Circulars 7220.4: Purchaser Eligibility Certification](#) and [7220.2: Collection Policy: Sale of Assets to Prospective Purchasers with Delinquent Obligations](#).

A deposit (“initial deposit”) in the amount identified in the bid instructions must also be received during this time frame. Initial deposits are returned to all unsuccessful bidders within a reasonable period of time after selecting the winning bidder.

Bidding Format

The manner in which bids are accepted may vary depending on the characteristics of a sale. The bidding format, like pooling, can affect the degree of market participation for a given sale. It is important to construct bidding formats that maximize competition and price for the assets involved. The most common bidding format is one that accepts bids both on individual pools and on multiple pools that have been combined as described below.

Bids Accepted on Individual Pools

Bidders may submit a bid on an individual pool, which may include one or more loans. If multiple pools are offered in a sales initiative, the bidder must submit a separate, independent bid for each pool that has been bid upon.

Bids Accepted on Bidder-established Combinations

Under this format, the FDIC allows the bidders to combine (or “link”) any number of individual pools and to submit a single bid (“linked bid”) for that loan pool combination. The linked bid is an “all or nothing” bid for the combination of pools designated. A frequent combination used by bidders is a linked bid for all pools, which is often referred to as an aggregate bid. This bidding format provides bidders with the greatest flexibility.

Depending on the number of bid combinations received, however, the bid analysis can be more complex for linked pool bids than for individual pool bids. Additionally, the FDIC may not be able to disclose specific repurchase price percentages at the time of bidding because the bidder's pool combinations are unknown.

Bids Accepted on FDIC Pre-established Combinations

It is also possible for the FDIC to establish set combinations of pools within a sale. While this method is seldom used, at times it may provide greater flexibility in the overall process.

Receipt of Sealed Bids

Online Bids

Sealed bids should be submitted electronically to the FDIC, or its contracted loan sale advisor, in accordance with the bid instructions. Loan sale advisors may provide a secure online bidding platform that is capable of receiving both individual and linked bids. When bids are received, the date and time should be documented to ensure compliance with stated deadlines. Received bids should be properly stored in a secure area until the bid deadline.

In the event that a bidder is unable, for technical or other reasons, to gain access to an online bidding platform, the bidder may make a request that the FDIC, or its contracted loan sale advisor, enter the bidder's bid on its behalf (a "surrogate bid"). Detailed guidance on submitting a surrogate bid is provided in the bid instructions.

Fax Bids

To supplement online bidding, the FDIC permits bidders to submit bids via fax. Special consideration must be given when accepting bids by fax. Two main concerns to be addressed are that all bidders are treated equally and that a proper level of security is maintained. For all bidders to receive equal treatment, bid instructions are to include procedures for submitting bids via fax.

Faxed bids with a time and date stamp before the bid deadline are considered conforming, even if they are actually received by the FDIC, or its contracted loan sale advisor, after the deadline. A fax machine monitored by designated staff (of either the FDIC or the contracted loan sale advisor) should be used for receiving bids. The assigned staff should input faxed bids into the appropriate system with any other bids received.

Subsequent Rounds of Bidding

The bid instructions should include not only the terms under which bids are to be submitted, but also the procedures to be followed if there are identical or reasonably similar acceptable bids on the same pool or if the bids received are unacceptable. In the case of identical or reasonably similar acceptable bids, only those bidders involved should be given the opportunity to increase their bid.

The FDIC also reserves the right to conduct a best and final round of bidding. Where bid procedures include subsequent rounds of bidding for a best and final bid or due to unacceptable bids, those parties that the FDIC deems appropriate are given the opportunity to re-bid. Although steps to obtain an acceptable bid vary, it is important to convey the same information to all bidders throughout a sale. A record should be kept with the date and time that contact was attempted or made for any subsequent rounds of bidding, as well as for any new information that was provided.

If the FDIC, or its contracted loan sale advisor, is unable to notify a bidder regarding an identical or reasonably similar bid, an unacceptable bid, or a best and final bidding round, that bidder forfeits the opportunity to adjust its bid.

Opening Sealed Bids

With the use of online bidding, the dynamics of a bid opening have changed. There are no longer hard copy bids to physically open unless faxed bids are received. Online bidding enables bid reports to be generated shortly after the bid deadline, and an analysis of the bids can then be completed.

Bid Selection Analysis

Almost all sales conducted by the FDIC involve a competitive bidding process. Proper evaluation of competing bids is critical to ensuring that the FDIC selects bids that provide the best disposition results, subject to bidding instructions and other documents governing the sale. While some sales are straightforward about selecting winning bids, others are not. Certain bidding formats can be analyzed in more than one way, leading to inconsistent decisions. Therefore, these guidelines are designed to help ensure that the FDIC is consistent in its bid selection analysis. These guidelines do not apply to the analysis of bids for deposits or assets in resolution transactions, which is performed in accordance with the Least Cost Test Manual.

Bids on Individual Pools

Sales that require bids to be submitted only on individual pools are straightforward. The winning bid for each pool is the highest conforming bid subject to bidding instructions and other documents governing the sale.

Bids on Combinations of Pools

This bid selection analysis applies to sales that include either bidder-established, linked bids or FDIC pre-established combinations of multiple pools. The analysis for these sales involves comparing bids by more than one bidder that include the same pools. For example, Bidder A bids on Pool 1, Bidder B bids on Pool 3, and Bidder C places a linked (all or nothing) bid for Pools 1, 2, and 3. Each bid is evaluated against the other.

Guiding Principle

Conforming bids on individual pools or on combinations of pools are analyzed to determine the highest return to the Corporation. In the event numerous bid combinations are received, it may be necessary for FDIC, or its contracted loan sale advisor, to utilize bid optimization software. Adequate market participation should be a key consideration if high bids fall below the valuations established for the pools.

AWARDING THE BID

Buyers should be notified as soon as possible after the bids are evaluated and the approval to sell under the appropriate delegated authority is granted. An attempt to notify the winning bidder by telephone, email, or fax is made, followed by a letter confirming the notification (the bid confirmation letter) sent via overnight carrier or email.

The letter should include pertinent details of the pool(s) won, such as the pool number, book value, number of assets, percent and amount of the winning bid, and whether a final deposit is required and, if so, how much.

All other bidders should be notified by telephone or email that the bid has been awarded and thanked for participating in the sale. These notifications should be sent within a few days following the bid award, because it is prudent to wait for receipt of the final deposit from the winning bidder before notifications are sent. The name of the winning bidder and the bid amount should not be disclosed prior to the sale closing.

Earnest Money Deposits

Earnest money deposits are required on all loan sales for which bids are accepted. The amount of the deposit is normally equal to 10 percent of the bid, but it may vary depending on the type and size of the sale. The earnest money deposit has two components: the initial deposit, which is received prior to bid submission, and the final deposit. Only winning bidders submit a final deposit. The final deposit, which represents 10 percent of the bid amount less the initial deposit, must be received within one business day of the notification to the winning bidder, unless otherwise specified in the Invitation to Bid.

The FDIC's, or its contracted loan sale advisor's, possession of the earnest money deposit provides strong motivation for the winning bidder to quickly complete the sale. Additionally, in a situation where the winning bidder is unable or unwilling to perform, retaining the deposit provides the FDIC some relief from the expenses incurred in marketing the assets.

UNSUCCESSFUL SEALED BID SALES

If a sealed bid sale is unsuccessful, the FDIC, in its sole discretion, may choose to remarket the loan pools in a form or manner of its choice. The bid instructions should make it clear when a sealed bid sale ends so that bidders are aware that no further action relative to the subject sale will be taken.

CONSUMMATING THE SALE

The LSA stipulates a specific date to close the sale that is within 20 business days of awarding the bid; every attempt should be made to close the sale as quickly as practicable. Loan sale closings are generally conducted by mail but, on occasion, can be conducted in person. After receipt of the executed loan sale documents from the purchaser, an FDIC attorney-in-fact countersigns the documents. The executed documents are delivered to the purchaser after confirmation of payment receipt. The FDIC must receive payment, in the form of immediately available U.S. dollars, prior to releasing the loans and related documents. A list of all assets and files being conveyed may be generated. Sale proceeds should be applied in accordance with the authorization given in the case memorandum.

Chapter 7 Post-sale Closing Activities

Disclosure Requirements of Sale-related Information

Policy Statement

It is DRR policy to fully comply with the spirit of the Freedom of Information Act (“FOIA”) and make public all information relative to the FDIC’s disposition activities if the information is not required to be held confidential and its release does not cause competitive harm to the Corporation.

The FDIC Board of Directors determined that the FDIC, in response to processing FOIA requests for bid information on receivership whole bank transactions and assets sales subsequent to May 2009, would provide certain winning and unsuccessful bid information as described below:

Winning bids and bidders – The amount of the winning bid and the name and address of the winning bidder should be disclosed to all persons requesting such information after the sale is closed.

Unsuccessful bids and bidders – DRR is required to furnish the names and bid amounts of the unsuccessful bidders, except for the cover bid (second-best bid) and the name of the cover bidder, in a manner that delinks the unsuccessful bidders’ names from their bid amounts. However, in cases in which there are a total of three bidders, the name of the cover bidder is provided, but not the cover bid amount. The cover bid and the name of the cover bidder will be provided one year after the sale has closed.

Number and book value of loans sold – The number of assets and the aggregate book value of assets sold should be disclosed to all requestors.

Asking prices – Asking prices, if any, should be disclosed to all requestors.

Loan valuations – Disclosing valuations or reserves, if any, (also known as minimum prices) on loans or pools of loans could cause competitive harm to the FDIC. They must not be disclosed except to anyone legally entitled to such information.

Procedures for disclosing information – Information that should be disclosed (e.g., winning bids and bidders, number of assets, and size of pool, unsuccessful bidders and bid amounts delinked) should be provided to any person requesting such information. However, this information should be provided only after the sale has been closed. Any person requesting information that should not be directly disclosed (e.g., loan valuations) should be instructed that such information is not disclosed informally, but may be available under the FOIA. Requests for such information should be directed to the FDIC’s Freedom of Information Act/Privacy Act Group, Legal Division in accordance with 12 C.F.R. Part 309 or made via the “FOIA Service Center” on the FDIC’s website.

LOAN REPURCHASES

Early in the loan sale process, reasonable efforts should be made to remove loans from sale that meet repurchase provisions. However, in the event a purchaser identifies one after a sale has closed the LSA provides a mechanism for repurchase.

Warranty/Repurchase Period

The warranty/repurchase period for loan sales is normally 180 days from the sale's closing date, as defined in the LSA. This gives the purchaser a reasonable time to identify loans meeting repurchase criteria and to obtain and present the necessary documentation for consideration by the FDIC.

Depending on the number and type of loans, and the type of warranty or repurchase provisions, an extended period may be appropriate. For example, a performing loan sale may call for extended warranties and warranty period, whereas a sale of small non-performing and distressed loans normally requires only the 180 days. Any exceptions to the standard 180-day period must be approved by the Legal Documents Committee prior to being inserted into the governing LSA. Asset Claims Administration processes the repurchase of assets under the terms of the executed LSA. Refer to the Representations and Warranty Claims Manual.

Repurchase Price

A repurchase percentage is used to calculate the repurchase price of a loan that qualifies for buy back under repurchase provisions in the LSA. Repurchase percentages represent the FDIC's allocation of a purchaser's bid amount among the loans purchased in either an individual loan pool or a loan pool combination, as appropriate. The calculation of repurchase percentages is based on the FDIC's or its valuation contractor's loan value, which takes into consideration the type and performance of the loans. Repurchase percentages are specific to each loan.

The repurchase percentage is multiplied by the bid amount of an individual loan pool or a loan pool combination, as appropriate, which contains the loan being repurchased. The bid amount is derived by multiplying the total book value of a loan pool, or a loan pool combination, by the purchaser's bid percentage.

Attachment B to the LSA contains the repurchase percentages for each loan. FAMB management may provide guidance on whether to include a list of the loan-specific repurchase percentages to prospective purchasers in the bid package during bidder due diligence. However, a repurchase percentage for each loan must be provided at the sale's closing. All repurchase percentages must be carried to the ten thousandth of one percent (e.g., 25.8374 percent) and must also add up to 100 percent for all loans in a loan pool or loan pool combination.

DOCUMENT RETENTION AND THE LOAN SALE FILE

Documenting the sale begins at the inception of the loan sales process with records being retained for a period after a sale has closed. It is important to maintain a record of each sale to facilitate research of any post-sale issues.

Loan Sale File

A loan sale file should be created for each sale to memorialize the sale and house the essential documents for historical reference. Sales-related electronic documents, memoranda, spreadsheets, etc. are maintained in sale folders on a shared drive throughout the sales process. Within a specified time frame after a sale has closed, the file is reviewed and a checklist completed. All essential data and documents in the loan sale file are uploaded to FDIC's Digital Library (FDL) by using the Consolidated Document Information System (CDIS) for final retention. This file also serves as a central location for the Representation and Warranty Claims Administration section within Strategic Programs to research claims or for other departments to complete historical research or test the validity of Asset Marketing's system of internal controls.

Retention Periods

Many factors should be considered when setting the minimum retention periods for Asset Marketing-related and other documents. Representations and warranties set forth in the LSA dictate the initial consideration. Also, certain data may be needed to support FOIA requests and congressional inquiries. All pertinent information must be retained for legal matters that extend (or have the potential to extend) beyond the sale's consummation date and must be retained until the matters are satisfactorily concluded.

Finally, if post-sale problems arise with any asset or group of assets, all related information should be retained until the problem is resolved.

Closed Sale Reporting

Asset Marketing in the FOB gathers information on loan sales that have closed, and subsequently assimilates and reports the information to the Washington, DC office on a monthly basis. Some of the data is used by headquarters to update the FDIC's website containing historical sales information.

Job Aids

Job aids for the many procedures involved in a cash sale provide in-depth direction to Asset Marketing staff and can be found in the Asset Marketing – Cash Sale job aids.

Chapter 8 Asset Purchaser Eligibility Requirements

This section contains information on asset purchaser eligibility requirements. For more information on purchaser eligibility requirements, refer to [DRR Directive Circulars 7220.4: Purchaser Eligibility Certification](#) and [7220.2: Collection Policy: Sale of Assets to Prospective Purchasers with Delinquent Obligations](#).

ELIGIBILITY RULES FOR PURCHASERS OF ASSETS

Policy Statement

It is the general policy of DRR to sell assets, subject to appropriate marketing and established reserves, if any, to the highest acceptable bidder(s). To determine whether a bidder is acceptable, DRR has adopted a certification for bidders to execute. The Purchaser Eligibility Certification (PEC) is to be completed by all potential purchasers to identify those who are not eligible to purchase assets from the FDIC. Any potential purchaser who is unwilling or unable to complete the PEC truthfully will not be eligible to purchase assets. The PEC, obtainable from the Legal Division, is not to be modified without the written consent of the Deputy Director, Franchise and Asset Marketing Branch.

Contractor Waiver Requests

The requirement that a PEC be obtained applies to every sales transaction. The PEC, among other things, requires that if a prospective purchaser is a contractor that has provided services relating to the assets being sold, it must obtain a waiver from the Legal Division. Any such requests for a waiver – together with information on the services performed by the contractor, the nature of any potential conflicts, and information relevant to a determination – should be directed to the FDIC Legal Division (Washington, DC), Senior Counsel, Contracting and Risk Management Unit. Refer to [DRR Directive Circular 7220.4: Purchaser Eligibility Certification](#).

Delinquent Obligor Waiver Requests

The FDIC does not sell assets to a prospective purchaser if it or any of its affiliated business entities has a delinquent obligation, unless a waiver has been granted in accordance with [DRR Directive Circular 7220.2: Collection Policy: Sale of Assets to Prospective Purchasers with Delinquent Obligations](#). A waiver may be obtained from the Collection Policy Committee or the Deputy Director of FAMB, if circumstances prevent consideration by the committee. Requests for waivers are considered only on a sale-by-sale basis and must be submitted in writing. Prospective purchasers should be encouraged to submit waiver requests as early as possible to allow sufficient time for review. No blanket waivers will be authorized. The FDIC is under no obligation to delay sales to address waiver requests.

Suspected False Certification

Occasionally the FDIC may have reason to believe, or third parties may allege, that a prospective purchaser has certified falsely, and thus the prospective purchaser is not eligible to purchase FDIC assets. These allegations may arise before or after the closing of a sale. The marketing specialist should review the completed PEC with the prospective purchaser to ensure that the prospective purchaser understands the certifications. The marketing specialist should also consult with the Legal Division on the matter. If the FDIC continues to have concerns regarding the truthfulness of the certification, the marketing specialist should advise the prospective purchaser that the matter will be referred to the Office of the Inspector General (OIG).

At the time of the referral to the OIG, simultaneous notice of the referral must be given to the Assistant Director, Asset Marketing, and Assistant General Counsel, Asset and Special Issues. All relevant documentation should accompany the simultaneous notice.

After referring the matter to the OIG, DRR personnel should immediately cease all investigation and refer all inquiries to the OIG. DRR personnel should cooperate fully as requested by the OIG. If the OIG determines that the matter warrants a referral to the Department of Justice, the OIG refers the matter to the appropriate assistant U.S. attorney for prosecution. The assistant U.S. attorney either accepts the matter for prosecution or notifies the OIG that it declines to prosecute. The OIG notifies the party making the referral of the disposition of the matter.

If DRR personnel discover the false certification prior to closing the sale and reasonably believe the certification to be false, the Deputy Director, FAMB, or Assistant Director, Asset Marketing, should be notified immediately. The decision of whether to terminate the sales contract prior to closing due to false certification is made by the Deputy Director, FAMB, or Assistant Director, Asset Marketing, or their designees.

Chapter 9 Asset Marketing Contracts

Asset Marketing engages third-party contractors to facilitate the sales process. Some of the contracted services include loan sale advisory and credit reporting. The marketing specialist, acting as technical monitor, should obtain a copy of the Receivership Basic Ordering Agreement (RBOA) and applicable task order. The specialist should read and understand both to effectively monitor the performance of the contractors. In addition, the specialist can use Asset Marketing job aids for guidance on administration of the contract and acceptance of deliverables.

LOAN SALE ADVISORY SERVICES – RBOA

FAMB is responsible for the timely marketing of loans, real estate, and other assets acquired from failed institutions. DRR's goal for cash loan sales is to market 95 percent of the book value of marketable loans within 90 days of the institution's failure. The loan sale advisory contractor has the skill and capacity to provide a variety of marketing and marketing support services.

Services Provided

A primary function of the contractor is to be a conduit for marketing acquired assets to the largest number of interested parties using the Internet. The contractor has the technical capacity for customers to conduct online due diligence and bidding. This supports the FDIC's marketing, analysis, and monitoring of asset sales.

Some of the contractor's services include the following:

- Website and bid platform capabilities:
 - Accept multiple simultaneously linked or individual bids
 - Maintain flexibility to extend deadlines and allow for multiple rounds of bidding
 - Perform bid analysis to determine maximum recovery
 - Provide and maintain a customer database with customer support
 - Facilitate the automatic exchange of data to and from FDIC systems
 - Authenticate a bidder or its agent
 - Use the FAMB's pool codes
 - Administer the FDIC Confidentiality Agreement each time an investor enters the site
- Due diligence services:
 - Provide Internet access to due diligence materials
 - Use FDIC legal documents for sale of assets and allow prospective bidders access to the documents
 - Limit prospective bidders' access to PII until an appropriate time in the sale (after registration and vetting is completed and the security deposit is received)
 - Provide the ability to remotely monitor, track, and report customer interest

- Provide a system to track the disposition of asset files, if applicable
- Provide hard copy due diligence files wherever necessary
- Imaging and indexing services:
 - Image and index asset documentation
 - Secure documents while in contractor's possession
 - Conduct "make ready" repairs to documents in preparation for imaging
 - Deliver the imaged documentation in a medium defined by the FDIC
 - Convert electronic documents to a readable format
- Valuation services:
 - Inventory assets and collect data to determine the best method for valuing the assets, including appraisals, broker's price opinions, etc.
 - Estimate asset values
- Pooling services:
 - Provide pooling recommendations designed to garner the highest bids based on loan performance, loan type, and loan characteristics
- Closing of sales:
 - Supervise, coordinate, and implement closing activities
 - Prepare closing statements and legal documents specific to the sale
 - Monitor transfer of assets
 - Monitor transfer of funds
 - Prepare hello/goodbye letters
- Other support services:
 - Provide or obtain broker's price opinions of value for real estate assets
 - Provide or obtain automated value models to value other assets
 - Provide title policies or other acceptable means of determining lien positions on collateral
 - Obtain Uniform Commercial Code (UCC) searches to determine lien positions on other collateral
 - Provide advertising services
 - Collect deposits and sale proceeds

CREDIT SERVICES CONTRACT

The FDIC requires credit services in the form of electronic scores and credit reports on individual borrowers and guarantors in support of the FDIC asset marketing effort. Credit bureau scores are often called FICO scores, because most credit bureau scores used in the United States are produced from software developed by FICO. FICO scores are provided to lenders by the major credit reporting agencies.

Services Provided

The contractor provides credit services in the form of electronic FICO scores and credit reports on borrowers and guarantors of loans in the pools offered to prospective purchasers by the FDIC. The contractor submits the credit information via a secured website for viewing by Asset Marketing specialists and prospective purchasers.

Glossary

Attorney-in-fact – The person appointed under a Power of Attorney document to conduct the affairs and deal with the property of another. An attorney-in-fact is not required to be a lawyer. An FDIC employee executes documents as an attorney-in-fact.

Bid package – Used in cash sales and includes the following documents: Confidentiality Agreement, Security Deposit Agreement, Loan Sale Agreement, Invitation to Bid, Bid Instructions, Bid Certification, and Purchaser Eligibility Certification

Bid Reports (referred to as Bid Day Reports) – Reports received on bid day that include the sale number, loan count, number of pools, book value, highest bid, and potential winning purchaser

Calculation date (used interchangeably with cut-off date) – In a cash sale, refers to the “as of” date of the unpaid principal balance (or book value) upon which prospective purchasers submit bids. This date is used to calculate the purchase price. Any payments received on account of any loan on or before the calculation date belong to the FDIC and any payments received after the calculation date belong to the purchaser.

Case memorandum – A comprehensive memorandum in a specific format prepared when requesting authority to take a proposed action (e.g., compromise, foreclosure, sale of an asset, payment of dividends, termination of a receivership). The case is written to the person or committee who has the delegated authority to approve the action.

Consolidated Document Information System (CDIS) – System that provides users with the ability to create and manage FDIC records, based on their organizational profile and security privileges

FDIC Digital Library (FDL) – FDL is a corporate electronic repository used to store and manage electronic documents (such as word processing documents, spreadsheets, images, audio-visual recordings, email, and faxes). The FDL helps to ensure the integrity of the content and improve information management and decision-making by centralizing vital information in a single, managed repository.

Kick-off meeting – A meeting between the contracted loan sale advisor, Asset Marketing staff, and other affected functional areas at the beginning of a sale. The meeting opens communication lines between all parties to obtain necessary information about the assets and to begin the sale process.

Loan Sale Agreement (LSA) – The legal document that outlines the terms and conditions governing the sale of loans between the FDIC and a purchaser; used in cash sales and specialty cash sales

Open outcry auction – A sales strategy in which assets are sold either individually or in pools to the highest bidder in an open (live) bidding auction, typically held online platform

Participated loan – Loan subject to a shared credit, participation or similar inter-creditor agreement under which the financial institution was lead or agent financial depository institution or otherwise managed the credit or sold participations, or under which the financial institution was a participating financial depository institution or purchased participations in a credit managed by another.

Pooling – The process of grouping loans into pools for sale according to guidelines established by the FDIC.

Receivership Basic Ordering Agreement - An RBOA is used to expedite the acquisition of goods and services in support of failing or failed financial institutions and their subsidiaries. An RBOA is similar to a Basic Ordering Agreement (BOA) in all respects, except that it is limited to awards in support of the DRR and it is not assigned a monetary value or a ceiling amount. Instead, dollar value ceiling controls are established at the task order level, allowing DRR the ability to formulate requirements and resultant cost estimates as needs become better defined.

Sale announcement – A public advertisement informing interested parties of upcoming sales. Sale announcements may be in the form of email, print, website, and association notices by either the FDIC or its contracted loan sale advisor.

Sale folder – A compilation of electronic records and documentation associated with a particular sale initiative, sometimes referred to as the loan sale file

Security deposit – A partial deposit made by a prospective purchaser, against potential liability for breach of the Confidentiality Agreement. Security deposits are obtained in both cash and structured sales.

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