



Federal Deposit Insurance Corporation
Division of Resolutions and Receiverships
550 17th Street, NW, Washington, DC 20429-9990

**Risk Sharing Asset Management
Guidance RSAM-2011-16**

To: Assuming Institutions under Single Family Shared-Loss Agreements

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**Subject: FDIC Loan Modification and Covered Loss Event Guidance
for Subordinate Liens and/or Loans with Balloon Payments**

Summary:

The FDIC is providing this guidance to Assuming Institutions and Servicers, subject to a Single Family Shared-Loss Agreement (“Agreement”), with portfolios of subordinate liens and/or loans with balloon payments on Schedule 4.15a.

Highlights:

- **Pursuing the Least Costly Loss Mitigation Alternative**
- **Activity Qualifying for a Restructure Loss Claim**
- **Activity Qualifying for a Charge-off Loss Claim**
- **Activity with no Loss Claim – First and Subordinate Liens**
- **Balloon Payment Date**

Contact: Assuming Institutions should contact their Loss Share Specialist with any questions regarding this Guidance.

The attached information is provided for general guidance and clarity on the matters contained therein. The attached information is not intended to modify, or otherwise supplant, any provisions or definitions contained with the applicable Shared-Loss Agreements. The Assuming Institution is strongly encouraged to seek appropriate legal counsel for a comprehensive analysis and understanding of the matters contained within Shared-Loss Agreements.



FDIC Loan Modification and Covered Loss Event Guidance for Subordinate Liens and/or Loans with Balloon Payments

Objective

The FDIC is providing this guidance to Assuming Institutions and Servicers, subject to a Single Family Shared-Loss Agreement (“Agreement”), with portfolios of subordinate liens and/or loans with balloon payments on Schedule 4.15a. Subordinate liens may have some of the following characteristics:

- Term - amortizing, non-amortizing
- Rate - interest only, adjustable, fixed
- Type - HELOC, 2nd mortgage
- Payment - balloon payment at maturity
- Status - imminent default, delinquent
- Relation – first lien may or may not be a Shared-Loss Loan covered under an Agreement

This guidance uses the defined term “junior lien mortgage loan” for all loans collateralized by the same property where the first lien Shared-Loss Loan qualifies for a loan modification. The term “Home Equity Loan” refers to subordinate liens where the Failed Bank did **not** have a first lien as collateral on the same property.

This guidance does not apply to subordinate liens that are eligible for the Home Affordable Modification Program’s (HAMP) Second Lien Modification Program (2MP) for those Assuming Institutions and Servicers that are current participants. Please refer to www.hmpadmin.com for further details and instructions for the HAMP subordinate lien directive.

Pursuing the Least Costly Loss Mitigation Alternative

Applicable loss mitigation solutions include:

- refinance, renewal or extension for qualifying loans;
- standard repayment or forbearance plans for short term hardships; and
- modification, short sale or deed-in-lieu for distressed borrower situations.

Assuming Institutions and Servicers shall review their portfolios that are subject to an Agreement, to identify junior lien mortgage loans and Home Equity loans that are delinquent and/or under imminent threat of default, as determined in accordance with bank examination criteria, for borrower eligibility for a loan modification. In the event that the borrower is qualified, Assuming Institutions and Servicers must offer the borrower a modification. If the borrower is not qualified, Assuming Institutions and Servicers must review all other loss mitigation alternatives prior to initiating foreclosure proceedings.



The Single Family Shared-Loss Agreement defines different covered loss events for restructure loss claims on junior lien mortgage loans than it does for charge-off loss claims on Home Equity Loans.

Activity Qualifying for a Restructure Loss Claim

Junior lien mortgage loans for defaulted borrowers or borrowers who are considered to be in imminent default should be evaluated for modification using the FDIC Loan Modification program specified in Exhibit 5, the FDIC Non-Owner Occupied guidance issued on October 27, 2010, or programs consistent with other Modification Guidelines approved for Shared-Loss Loans. The Assuming Institution shall submit for approval Alternative Modification Guidelines for evaluating loans which do not qualify for any of the above programs.

If it is determined that the first lien mortgage qualifies for a modification, then the junior lien mortgage should be considered for a modification at the same time the first lien mortgage is being modified with the unpaid principal balance of the subordinate lien added to the first lien mortgage for net present value (NPV) evaluation and/or modification purposes. If the first lien mortgage is not in default or is not considered in imminent default, the junior lien mortgage loan may be considered for modification according to bank examination criteria.

For borrowers where modification results in the least loss, a Restructure Loss may be claimed using the methodology specified in the Single Family Shared Loss Agreement and reporting requirements communicated in the FDIC Data Reporting Guide.

Activity Qualifying for a Charge-off Loss Claim

Home Equity Loans for defaulted borrowers or borrowers who are considered in imminent default should be evaluated for modification. The Assuming Institution may charge off the loan based on examination criteria and submit a claim for a Charge-Off Loss. If the loan subsequently performs and the Charge-off Loss is reversed per examination criteria, the Assuming Institution must report this activity as a Recovery.

Activity with no Loss Claim – First and Subordinate Liens

For all first lien mortgage loans, junior lien mortgage loans, Home Equity Loans and balloons that are currently performing and not in imminent default, the bank may extend, renew or refinance as per their examination criteria and credit guidelines. The loan term may be extended beyond the Shared-Loss Agreement termination date without jeopardizing Loss Share coverage during the term of the Single Family Shared-Loss Agreement. If the loan is refinanced, it should be reported in the paid-in-full listing and the new loan is not covered under loss share.



Balloon Payment Date

If a first lien or non-owner occupied balloon loan is in default or imminent default, including borrowers who have missed the balloon payment date and may or may not be making monthly payments, the loan should be evaluated for a modification according to Exhibit 5 if it is a first lien owner occupied loan or the FDIC Non-Owner Occupied guidance if it is not an owner occupied loan.

Note

The above criterion are minimum guidelines which the Assuming Institutions and Servicers should supplement with formal policies and procedures as required by the Agreement so that business decisions are consistent with the management standards set forth in the Agreements. In addition, all Shared Loss assets shall be well documented and available, as requested by the FDIC and its contractors, for review.