FDIC Shared-Loss Program
2013 Risk Sharing Conference
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Questions & Answers

FDIC Risk Sharing Asset Management
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1. Recoveries

Questions 1, 2, and 3 are related.

Q1. It has been stated multiple times that expenses are netted against recoveries on an aggregate level during the recovery period. That is somewhat misleading since during the recovery period you can only submit expenses on assets that also have a recovery. In other words, if the AI has an asset where no recoveries are made then they eat 100% of those expenses. Is this correct?

Q2. I was under the impression that during the recovery period, expenses may be claimed in conjunction with an offsetting recovery at the asset level. So for loans where the AI incurs expenses but does not obtain a recovery, the AI should not report those expenses? If this is accurate, it appeared to me that during the conference it was stated numerous times that expenses can be netted against recoveries on an aggregate basis. That is only true for assets that have recoveries, and for those assets any expense in excess of a recovery would not be paid?

Q3. Please clarify regarding loss carry-forward. If asset A has $10,000 in reimbursable expenses during a quarter but no recoveries, can that $10,000 be claimed if other assets have recoveries in excess of $10,000 of their asset level expenses?

A: Questions 1-3 seek clarification on the treatment of Reimbursable Expenses during the Recovery Quarters. During Recovery Quarters the amount of the Recoveries to be shared with the FDIC is determined by subtracting the amount of all Reimbursable Expenses paid during the Recovery Quarter from the amount of all Recoveries received during the Recovery Quarter ("Net Recoveries"). Reimbursable Expenses are eligible to be included in this calculation without regard to whether the expense produced a Recovery during the same quarter.

If Net Recoveries is positive, the appropriate percentage of that amount (80%, for example) is payable to the FDIC. If that amount is negative (meaning that Reimbursable Expenses exceeded Recoveries), then it is carried forward to the subsequent quarter and applied against gross Recoveries to determine Net Recoveries for that quarter. If the amount is still negative, it is carried forward again to the next quarter, and so on.

In the specific example in Question 3, the $10,000 would be included in total Reimbursable Expenses for all assets and deducted from total Recoveries for all assets to determine Net Recoveries.

Note: Versions of the Agreements that preceded Version 3.0 defined expenses incurred during Recovery Quarters as Recovery Expenses. Whether defined as Reimbursable Expenses or Recovery Expenses, expenses incurred during Recovery Quarters receive the same treatment in that they are included in the calculation of Net Recoveries and not directly reimbursed.

Q4. Does the AI have to share recoveries on loans that were charged-off after year 5? (Note: Charge-Off occurred after year 5 so there was no loss claim).

A: No. Recoveries are limited to the total amount of any Failed Bank Charge-Offs, Charge-Offs, and Reimbursable Expenses affected and claimed prior to the end of the final Shared-Loss Quarter. If all of the Charge-Offs on the Shared-Loss Asset were made after the end of year 5 there is no obligation to share. If the AI made partial Charge-Offs during the Shared-Loss Quarters then recoveries are shared.

Q5. If Charge-Offs occurred during both a loss share quarter and later in a recovery quarter, in what order are recoveries applied?

A: Recoveries will be split proportionately between the sum of Charge-Offs and Expenses during Shared-Loss Quarters and Charge-Offs in Recovery Quarters. The full amount of the Recovery will be reported, and the FDIC through RTSP will calculate the amount applied in the aggregate Recovery calculation. Example:

	Shared-Loss Quarters (1)	Recovery Quarters (2)	Total
Charge-Offs & Other Claims	$300,000	$100,000	$400,000
FDIC/AI Recovery Split	75%	25%	100%
Recovery reported after all Charge-Offs		$150,000	
Amount Applied as Recovery ($150K x 75%)		**$112,500**	
1) Sum of Failed Bank Charge-Offs, Charge-Offs, and Reimbursable Expenses 2) Charge-Offs Only			

Q6. If a loan gets disqualified so the Charge-Off claim is not allowed, does the AI have to share subsequent recovery?

A: No, not if the entire claim was disallowed and there are no other loss claims. If any claims for Charge-Offs or Reimbursable Expenses are allowed and reimbursed, or there was a Failed Bank Charge-Off, then Recoveries are shared, even if the asset has been disqualified from further shared-loss coverage. If there is no payment by the FDIC and no Failed Bank Charge-Off, then no Recoveries are shared with the FDIC.

Q7. How will net recoveries in the recovery quarter impact the True-up calculation, if triggered?

A: Generally, Recoveries factor into the calculation of total losses in the True-Up calculation.

The True-up calculation has three versions introduced on the following dates:

Version 1 – 10/30/2009
Version 2 – 6/18/2010
Version 3 – 7/20/2012

How Recoveries impact the calculation varies based on version.

Q8. You stated that the recovery in the recovery payment is limited to the Charge-Offs and Reimbursable Expenses paid by the FDIC in the loss-share period. Please confirm that recoveries no longer include failed bank charge-offs.

A: That is not correct. The definition of Recovery includes collection on Failed Bank Charge-Offs.

Q9. Please define or elaborate on the term "maximize recovery" and "maximize collections." Does this mean you cannot offer deficiency relief or write-off of principal to maximize recovery?

A: "Maximize recovery and collections" means to resolve shared-loss assets using the course of action that provides the highest net present value (NPV) return on that asset. AIs are required to consider all options, including modifications and restructures, necessary for the maximization of collections.

Resolution of an impaired asset may include, among other things, waiving rights to pursue deficiencies and/or accepting a discounted pay-off amount. Credit decisions must be properly documented to indicate the options considered, and how the chosen course of action maximizes collections on the asset.

Q10. If there are "roll-forwards" of recoveries, why are there "negative" Payment Vouchers – i.e. where the AI pays the FDIC?

A: "Negative" payment vouchers can occur during Shared-Loss Quarters when Recoveries and/or FDIC Adjustments exceed losses, resulting in a payment due to the FDIC.

During Recovery Quarters, if gross Recoveries exceed Reimbursable Expenses, resulting in positive Net Recoveries, a payment is due to the FDIC from the AI. If Reimbursable Expenses exceed gross Recoveries, resulting in Negative Net Recoveries, this negative amount is applied against gross Recoveries in the subsequent quarter to determine Net Recoveries.

Q11. If a performing loan is justifiably charged down, is the interest income reported as a recovery?

A: If an AI recognizes interest income for financial accounting purposes on an asset that was subject to a Charge-Off by the AI or Failed Bank prior to the Recovery period, then a portion of that income is treated as a Recovery based on the calculation specified in the Agreement. *(Note: Prior to Agreement Version 3.0 this calculation is found in the definition of Recoveries. Versions 3.0 and later contain an exhibit that sets forth a formula for the calculation.)*

Recognition of income on an asset that has experienced a Charge-Off is based on accounting guidelines.

2. Loan Modifications – A/B Splits

Q12. Page 27 of the FDIC conference materials states under Recoveries, "In the case of a restructured note, payments applied as a Recovery would be the difference between the final proceeds received at loan maturity and the UPB of the note at repayment up to the total amount of losses and expense previously claimed." Please provide an example.

My understanding of the terms of the LSA is: If you restructure a note from a UPB of $500,000 to A note of $400,000 and B note of $100,000, and you have charged off the B note of $100,000 as so permitted under the agreement, it is my understanding that the recovery of the $400,000 is not a Recovery by definition but in fact is a payment of unpaid principal. Any funds received in excess of $400,000 would be applicable to a Recovery up to the charged off amount of $100,000. Applying the literal words above in your presentation the definition of a recovery would appear to be as shown below; is this correct?

Final payment received at loan maturity is the last and final payment of $5,000; the UPB at this time is $5,000, thus the difference is zero and there is no recovery. If the final payment was $6,000 and the UPB is $5,000 then the recovery would be $1,000. Please confirm your understanding of the formula in light of what I have shown.

A: Principal payments received after an A/B restructure are applied to reduce principal and are not Recoveries. Proceeds received at repayment above the amortized balance are Recoveries, up to the sum of Charge-Offs (including Failed Bank Charge-Offs) and Reimbursable Expenses, not just AI Charge-Offs. The example above assumes that the loan is fully self-amortizing; it is assumed that most restructures will be shorter term.

Below are examples of how repayments are applied on an A/B split:

	Scenario A	Scenario B	Scenario C
UPB @ Restructure	$500,000	$500,000	$500,000
Charge-Off / B Note	$100,000	$100,000	$100,000
Restructured Note and Terms			
A Note	$400,000	$400,000	$400,000
Term	3 years	3 years	3 years
Interest Rate	6%	6%	6%
Amortization	25 years	25 years	25 years
Monthly P & I	$2,577	$2,577	$2,577
B Note – all payments deferred until maturity			
Repayment at Maturity			
Amortized A Balance*	$365,340	$365,340	$365,340
Final Proceeds to AI	$365,340	$400,000	$500,000
Recovery	$0	$34,660	$134,660
* Rounded, assumes all P&I applied to principal during first 6 months			

Q13. We understand that the A/B Note structure for workouts is permissible; however, we've had conflicting information as to note B and if we're able to include that charged off portion in the certificate for reimbursement. Is it permissible to include the amount that is charged-off over the "as is" appraised value of the underlying collateral?

A: The Charge-Off of the B note in an A/B split may be submitted as a loss claim. Reimbursement of the loss claim will be based on the market or fair value of the collateral, typically the as-is appraised value.

3. Owned Real Estate (ORE)

Q14. If an asset was taken into ORE without a corresponding loss – appraised value exceeded UPB at the time of foreclosure and there were no prior charge-offs – is that asset still considered a recovery asset? Are expenses still reimbursable? Is income considered a recovery if there has been no loss event?

A: ORE assets are covered under the Shared-Loss Agreement, and expenses to manage, operate, or maintain ORE are reimbursable to the extent they exceed income received, regardless of whether the asset experienced a prior Charge-Off. These expenses may include, but are not limited to, property taxes, insurance, and reasonable and customary sales commissions.

Recoveries include the amount of gain on any sale or other disposition of ORE, and collections on prior Charge-Offs (including Failed Bank Charge-Offs) and Reimbursable Expenses, not to exceed the aggregate amount of those Charge-Offs and expenses. If there have been no Charge-Offs or Reimbursable Expenses related to an ORE asset, then any gains on the sale are not considered a Recovery.

Income received from all ORE assets is applied against expenses disbursed on all ORE assets in the calculation of Recoveries. This calculation applies to all ORE assets, regardless of whether an ORE asset has experienced a Charge-Off.

4. Reimbursable Expenses

Q15. Are expenses in excess of collateral value reimbursable on Schedule B?

A: Reimbursable Expenses are expenses incurred in the prudent management of, and to pursue recoveries on, assets that have experienced losses, even where the collateral value is exceeded; for example, an asset in litigation.

However, spending more than the collateral is worth to pursue recoveries would typically call into question prudent management and possibly result in denial of claims. In such situations, AIs are strongly encouraged to contact their specialist to review.

5. Compliance

Q16. Will there continue to be field audits during the recovery period?

A: Yes. The type of review and frequency will be determined based on a number of factors, but generally speaking the FDIC will be conducting some form of review during the recovery period.

Q17. Are charge-offs and actions taken on assets during the recovery period that have not had a charge-off in the loss-share period subject to review by the FDIC?

A: Yes, those Shared-Loss Assets remain subject to review. While the FDIC is not entitled to share in any recoveries on assets on which the FDIC did not pay loss claims, the FDIC is interested in comparing the AI's management of those assets as compared to the recovery efforts on assets on which the FDIC did pay paid loss claims.

6. Portfolio Sales / Note Sales

Q18. Does the AI need to go to loan sale committee for approval once they are in the recovery period?

A: Certain Shared-Loss Agreements require the AI to obtain the consent of the FDIC to sell any Shared-Loss Loan.

If the loan in question experienced a loss claim for which the AI was reimbursed, the AI is required to demonstrate that the sale maximized collections, including the potential recovery from the borrower and/or guarantor.

7. Loans with Governmental and/or Private Institutional Guarantees

Q19. May loss share claims be processed on SBA or USDA loans after loss share coverage ends in the 5th year if the claim has been made to the SBA or USDA but not received (is in process with documentation)?

A: Prior to filing a claim with the FDIC for shared-loss coverage on such assets, AIs are required to fully pursue all avenues of collection and recovery on the asset and finalize all agency or institutional guaranty claims available to it.

Shared-loss coverage typically expires in the 5th year of the agreement. Per the terms of the Shared-Loss Agreement, AIs must submit loss claims prior to the end of the final Shared-Loss Quarter.

For further information, please refer to RSAM Guidance 2011-012.

Q20. May the bank submit a loss share claim once the guaranteed portion of the SBA or USDA (G) loan is repurchased? Or must all collateral be liquidated, pursuit of judgment against personal guarantees, etc. be completed prior to submissions of a loss share claim?

A: As noted, AIs are required to fully pursue and finalize all agency or institutional guaranty claims prior to submitting a loss claim. In the event the government agency or private institution does not cover 100 percent of the loss amount, the AI may present the remaining loss claim for consideration of shared-loss coverage.

The statement above refers to agency or institutional guarantees. A loss claim may be filed prior to the completion of pursuit of guarantees, deficiencies, or judgments against individual borrowers or guarantors.

All subsequent collections of any guaranties are treated as Recoveries.

For further information, please reference RSAM Guidance 2011-012.

Q21. On USDA and SBA (G) loans, can these loans be sold at par and if so does the FDIC have to approve the sale, particularly when the Bank does not wish to continue servicing after termination of loss share coverage?

A: Certain Shared-Loss Agreements require the AI to obtain the concurrence of the FDIC to sell any Shared-Loss Loan. All Shared-Loss Loans sold without FDIC approval lose shared-loss coverage.

8. SFR Certificate Reporting

Q22. On what certificate should deficient valuation/court-ordered cram-down be reported, the charge-off certificate? These loans are all N/O/O (non-owner occupied?) SFR and we have had 48 loans to-date. We have been reporting them on the charge-off certificate as advised by DC in 2010. Now, three years later, we are being told that we should be reporting them on the restructure certificate, which we believe would be incorrect.

A: Bankruptcy cram-downs are a court-ordered restructure and they should be reported on the SFR Restructured Loans loss file. The SFR Charge-Off data file is for 2nd lien/HELOC Charge-Offs only.

9. Examiner / Primary Federal Regulator

Q23. After expiration of NSF coverage what shall we expect to be the Regulators view of former covered assets in relation to classified asset designations? Are they treated as organic assets in classified definitions? If so, is it based on UPB or carrying value?

A: The carrying value of assets formerly covered by FDIC shared-loss protection will be evaluated based on the same criteria applied to any other asset, primarily focusing on the protection provided by the sound worth and paying capacity of the obligor and any collateral pledged.

Q24. How is the FDIC going to view asset classifications for banks with an SFR agreement after NSF expiration? Will loss share still be considered for SFR classification?

A: Classifications of assets covered by SFR SLAs will continue to reflect the benefit of the FDIC guaranty until the SFR SLAs expire. The expiration of NSF loss-share protection will have no impact on the classifications of assets covered by SFR SLAs.

10. General

Q25. Is there still a need to mail paper copies of signed certificates if the certificate is uploaded with the appropriate signatures to Venue?

A: No. With the implementation of the RTSP and RDVP process, it is no longer necessary to mail paper certificates if the certificates with the appropriate signatures are uploaded to Venue.

Q26. Have there been any discussions about improving the FDIC Loan Modification Program? I've heard that proposals have been made and there are FDIC folks working on this. Any updates?

A: The FDIC is not currently considering changes to the FDIC Loan Modification Program. Suggestions for improving the FDIC Loan Modification program are welcome and should be communicated to your specialist.