



# RISK SHARING ASSET MANAGEMENT GUIDANCE

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RSAM Guidance 2016-G001	
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## RECOVERY REPORTING FOR COMMERCIAL SHARED-LOSS AGREEMENTS

**Summary:** Commercial Shared-Loss Agreements (CSLA) have an eight year term. During years one through five, the Assuming Institution (AI) and the FDIC as Receiver for the Failed Bank share Charge-Offs, Reimbursable Expenses and Recoveries. Beginning in year six, AIs enter into a three-year Recovery Period in which they share Recoveries only. This guidance sets forth recovery reporting guidelines for CSLAs.

<p><b>Distribution:</b> Assuming Institutions RSAM Specialists and Managers Oversight Managers Compliance Monitoring Contractors</p> <p><b>FROM:</b> David T. Davis, Assistant Director, Structured Transactions and Risk Share Management, Division of Resolutions and Receiverships</p> <p><b>Related Topics:</b></p> <p>Respective Commercial Shared-Loss Agreements</p> <p>RTSP Data Specifications</p>	<p><b>Highlights:</b></p> <ul style="list-style-type: none"> <li>• As AIs enter into Recovery Quarters, they are subject to new RTSP data reporting requirements which have a direct effect on Recovery Quarter payment calculations.</li> <li>• AIs are required to manage, administer, and collect all Shared-Loss Assets while owned by it or any of its Affiliates in accordance with the rules, requirements and standards regarding management, administration and collection of Shared-Loss Assets ("Management Standards") throughout the entire term of the CSLA.</li> <li>• Reporting on all Shared-Loss Assets is required during the entire eight years whether or not the asset experienced a Charge-Off or expense claim.</li> <li>• Prior to the transition into the first Recovery Quarter, assets will be reclassified into two distinct asset pools in accordance with the new RTSP data reporting requirements:             <ul style="list-style-type: none"> <li>○ Recovery Assets</li> <li>○ Non-Recovery Assets</li> </ul> </li> <li>• The Quarterly Certificate for the first Recovery Quarter can include claims for Reimbursable Expenses incurred by the AI prior to or during the final Shared-Loss Quarter if those expenses were paid by the AI during the first Recovery Quarter.</li> <li>• Recoveries do not include gains in excess of the total amount of any Failed Bank Charge-Offs, Charge-Offs and Reimbursable Expenses effected and claimed prior to the end of the final Shared-Loss Quarter.</li> </ul>
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## RECOVERY REPORTING FOR COMMERCIAL SHARED-LOSS AGREEMENTS

### PURPOSE

To provide clarification on Recovery Quarter reporting guidelines for Commercial Shared-Loss Agreements (CSLAs).

### STATEMENT

Als are required to comply with the “Management Standards” set forth in Article III of the Shared-Loss Agreement which states “During the term of this Agreement the Assuming Institution shall manage, administer, and collect all Shared-Loss Assets while owned by it or any of its Affiliates in accordance with the rules, requirements and standards regarding management, administration and collection of Shared-Loss Assets.” Included among the AI's duties to collect and effect Charge-Offs and Recoveries of Shared-Loss Assets is the requirement to follow usual and prudent business and banking practices and to pursue the course of action that maximizes collections throughout the entire term of the CSLA.

### ***Recovery Asset Classification***

During the Recovery Period, Als will continue to report on all assets and transactions regardless of asset classification.

Prior to the initial Recovery Quarter, the FDIC will provide the AI with a list of assets (Asset Portfolio Report) and the AI must validate the classification of each asset as either a Recovery or Non-Recovery Asset:

- Recovery Assets:
  1. Charge-Offs
  2. Failed Bank Charge-Offs
  3. Owned Real Estate (ORE)
- Non-Recovery Assets:
  1. No prior claims submitted to the FDIC
  2. No recoveries due to the FDIC
  3. Prohibited from claiming recovery expenses

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### ***Recovery Period Reporting - Assets Removed from Shared-Loss***

Als are required to continue to report on **all** Shared-Loss Assets during the remaining term of the CSLA whether or not the asset experienced a loss or expense claim. As such, Als cannot arbitrarily drop assets to avoid reporting, with exception of certain Shared-Loss Assets that are no longer covered by loss sharing as a result of a "terminal event":

Terminal events include:

- Loss of coverage due to a violation of terms of the CSLA
- Sale of the Shared-Loss Asset
- Shared-Loss Asset is paid in full
- Shared-Loss Asset with no prior claim is refinanced through the origination of a new loan

Non-Recovery Assets will generally not be audited during the Recovery period, and loan file documentation outside of the AI's usual business practices for legacy assets is not expected or required.

### ***Data Specifications***

Data specifications for the reporting NSF recoveries during the Recovery period are listed on the [fdic.gov](http://fdic.gov) website.

### ***Recovery/Reimbursable Expenses***

Depending on the respective CSLA, expenses incurred during Recovery Quarters may be defined as Recovery Expenses or Reimbursable Expenses. In either case, expenses incurred during Recovery Quarters are included in the calculation of Net Recoveries and are not directly reimbursed.

Als should claim Reimbursable Expenses in the same quarter they were paid by the AI. Als are expected to monitor and control Reimbursable Expenses from third party servicers and vendors and to submit Reimbursable Expense claims in a timely manner.

In the first Recovery Quarter Certificate only, Als may submit claims for Reimbursable Expenses that were:

- Incurred prior to or during the final Shared-Loss Quarter, and
- Not included in any previous Quarterly Certificates, and
- Paid by the AI during the first Recovery Quarter

Reimbursable Expenses that were paid by the AI during any Shared-Loss Quarter are not eligible for reimbursement during the first Recovery Quarter or as an offset to Recoveries. The first Recovery Quarter is not a clean-up quarter for expenses paid in previous Shared-Loss Quarters that the AI failed to submit in a timely manner.

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Table 1. Summary regarding the payment of Reimbursable Expenses

Reimbursable Expense Was Incurred by the AI During	Reimbursable Expense Was Paid by AI During	Eligible for Payment by the FDIC on the First Recovery Quarter Certificate?
Shared-Loss Quarter	Shared-Loss Quarter	No
Shared-Loss Quarter	First Recovery Quarter	Yes
Recovery Quarter	Recovery Quarter	No - The expenses are netted against the Recoveries.

Reimbursable Expenses applicable to Shared-Loss Quarters will be coded separately for the first Recovery Quarter Certificate using “R” code on the expense reason<sup>1</sup>.

**Charge-Offs during Recovery Quarters**

Recoveries are limited to the total amount of any Failed Bank Charge-Offs, Charge-Offs and Reimbursable Expenses effected and claimed prior to the end of the final Shared-Loss Quarter.

If all Charge-Offs on a Shared-Loss Asset were made after the end of year 5, there is no obligation to share the recovery. If the AI made partial Charge-Offs during the Shared-Loss Quarters then Recoveries are shared.

In the event that Charge-Offs occur in both Shared-Loss and Recovery Quarters, Recoveries will be applied first to Charge-Offs in Recovery Quarters, with excess proceeds reported as a Recovery on Charge-Offs and Expenses claimed during the Shared-Loss Quarters:

Table 2. Example of Shared Recoveries Calculation

	Scenario A	Scenario B	Scenario C
Shared-Loss Period (C/Os and Expenses)	\$400,000	\$300,000	\$300,000
Recovery Period (C/Os)	\$0	\$100,000	\$100,000
Total C/Os and Reimbursable Expenses	\$400,000	\$400,000	\$400,000
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Total Recovery	\$100,000	\$100,000	\$150,000
<b>Amount Reported as Recovery</b>	\$100,000	\$0	\$50,000

<sup>1</sup> See FDIC Loss Share Data Specifications v1.4.1 for Non-Single Family (NSF) Portfolios, NSF Loss and Recoveries file(.xls)

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***Recovery Terms***

A number of different terms will have a direct effect on payment calculations during Recovery Quarters. These terms and corresponding payment calculations are shown below.

***Recoveries Definitions***

- **Gross Recoveries** - aggregate amount of “Recoveries” as defined in applicable CSLA
- **Net Recoveries** - Gross Recoveries during any Calendar Quarter minus Reimbursable Expenses during such Calendar Quarter *Note: Recoveries and expenses should be reported as received or paid, respectively, i.e. expenses should be included in the quarterly calculation regardless of whether an associated Recovery was received*
- **Positive Net Recoveries**- when Gross Recoveries exceed Reimbursable Expenses; payment is due to the FDIC
- **Negative Net Recoveries** - when Reimbursable Expenses exceed gross Recoveries; if a Negative Net Recovery exists, the value shall be offset against the amount of Gross Recoveries received in the following Recovery Quarter

***Net Recoveries Calculation***

In Table 3 below, Reimbursable Expenses exceed Gross Recoveries in Recovery Quarters 1 & 2, resulting in Negative Net Recoveries.

Negative Net Recoveries are applied against Recoveries in subsequent quarters until such time as the calculation results in a positive number and payment if due to the FDIC.

Table 3. Example of Net Recoveries Calculation

	Recovery Quarter			
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Gross Recoveries	\$100,000	\$10,000	\$50,000	\$100,000
Less: Reimbursable Expenses	(\$120,000)	(\$20,000)	(\$10,000)	(\$10,000)
Negative Net Recovery	\$0	(\$20,000)	(\$30,000)	\$0
Net Recoveries	(\$20,000)	(\$30,000)	\$10,000	\$90,000
<b>Payment to FDIC*</b>	<b>\$0</b>	<b>\$0</b>	<b>\$8,000</b>	<b>\$72,000</b>

\*Assuming 80% Applicable Percentage

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Owned Real Estate (ORE) Definitions

- **ORE Income** - income from the operation of an ORE property and gains recognized from the disposition of ORE
- **ORE Expenses** - expenses paid to third parties after the final Shared-Loss Quarter to manage, operate, and maintain ORE (property taxes, insurance, maintenance and sales commissions) *Note: ORE Expenses can be submitted regardless of whether or when the asset experienced a Charge-Off*
- **Net ORE Income** – ORE Income exceeds ORE Expenses; report amount as a Recovery
- **Net ORE Loss Carryforward** – Net ORE Income is negative; amount is forwarded to subsequent quarter to calculate Net ORE Income

Net ORE Loss Carryforward Calculations

In the Table 4 below, ORE Expenses exceed ORE Income; therefore, Net ORE Income is negative in Recovery Quarters 2 & 3; therefore, Net ORE Income is negative

The negative Net ORE Income (\$10,000) and (\$5,000) in Recovery Quarters 2 & 3, respectively are forwarded and reported as Net ORE Loss Carry-forward in the subsequent Recovery Quarters 3 & 4:

Table 4. Example of Net ORE Loss Carryforward Calculation

	Recovery Quarter			
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
ORE Income	\$100,000	\$40,000	\$60,000	\$75,000
Less: ORE Expenses	\$50,000	\$50,000	\$55,000	\$25,000
Net ORE Loss Carryforward	<u>\$0</u>	<u>\$0</u>	<u>(\$10,000)</u>	<u>(\$5,000)</u>
Net ORE Income	\$50,000	(\$10,000)	(\$5,000)	\$45,000
<b>Amount Reported as Recovery</b>	<b>\$50,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$45,000</b>

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### Net ORE Loss Carryforward - Final Recovery Quarter

As shown in Table 5 below, for the final Recovery Quarter, Net ORE Income is calculated as the amount of ORE Income received during the final Recovery Quarter less ORE Expenses from the beginning of the final Recovery Quarter up to the date the AI is required to submit the Final Recovery Certificate (30 days after quarter end).

If there is a Net ORE Loss Carryforward at the end of the final Recovery Quarter, an amount equal to the Carryforward up to but not exceeding the total Net ORE Income reported as a Recovery on all Quarterly Certificates for all Recovery Quarters may be included as a Recovery Expense on the Final Recovery Certificate.

Table 5. Example of Net ORE Loss Carryforward – Final Recovery Quarter

	Scenario A	Scenario B
ORE Income – Final Recovery Quarter	\$500,000	\$500,000
ORE Expenses – Final Recovery Quarter	(\$300,000)	(\$500,000)
ORE Expenses to Cert Filing (add'l 30 days)	<u>(\$100,000)</u>	<u>(\$100,000)</u>
Net ORE Income – Final Recovery Quarter (A)	\$100,000	(\$100,000)
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Prior Net ORE Loss Carryforward (B)	(\$500,000)	(\$500,000)
Final/Ending Net ORE Loss Carryforward (A + B)	(\$400,000)	(\$600,000)
Prior Net ORE Income Reported as Recovery	\$200,000	\$200,000
Final/Ending Net ORE Income as Recovery	\$200,000	\$200,000
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<b>Final Recovery Quarter Reporting:</b>		
Amount Reported as Recovery	\$0	\$0
Amount Reported as Recovery Expense	(\$200,000)	(\$200,000)

### Final Recovery Quarter Definitions

CSLAs prior to Version 3.0 provide for a series of final calculations of Recoveries and Expenses accumulated throughout the Recovery Quarters to be performed at the end of the final Recovery Quarter.

If at the end of the final Recovery Quarter there is a Net Negative Recovery, the AI does not receive any payment.

These calculations will be completed in the framework described below:

- **Aggregate Recovery Period Recoveries:** Aggregate amount of all Recoveries across all Recovery Quarters
- **Aggregate Recovery Expenses:** Aggregate amount of all Recovery Expenses (Reimbursable Expenses) across all Recovery Quarters

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- **Aggregate Offset Recovery Expenses:** Only those expenses that have been used to offset Aggregate Recovery Period Recoveries across all Recovery Quarters

### Final Recovery Quarter Calculations

A calculation will be done in the final Recovery Quarter for the results of the following three calculations:

- (i) A – C
- (ii) B – C
- (iii) Lesser of (i) and (ii) X 80%

If (iii) > \$0, the AI can request this amount be reimbursed from the Receiver:

Table 6. Example of Final Recovery Quarter Calculations

	Recovery > Expense	Recovery < Expense	Expense = Offset Expense
(A) Recoveries	\$5,000,000	\$1,000,000	\$500,000
(B) Expenses	\$1,000,000	\$5,000,000	\$1,000,000
(C) Offset Expenses	\$500,000	\$500,000	\$1,000,000
(i) A-C	\$4,500,000	\$500,000	(\$500,000)
(ii) B-C	\$500,000	\$4,500,000	\$0
(iii) Lesser of (i) & (ii)	\$500,000	\$500,000	\$0
	x 80%	x 80%	x 80%
REIMBURSE TO AI	\$400,000	\$400,000	\$0

### **End of Shared-Loss Coverage/Termination Dates**

Shared-Loss coverage will extend from the commencement of the CLSA until the end of the Calendar Quarter in which the fifth anniversary of the Commencement Date occurs. Claims for Charge-Offs effected during Shared-Loss Quarters and adjustments to previously submitted Charge-Off claims are not eligible for submission and payment during the Recovery Quarters. Reimbursable Expenses incurred during Shared-Loss Quarters and paid during the first Recovery Quarter may be included on the Quarterly Certificate for the First Recovery Quarter.

In the example below, if the fifth anniversary date is April 30th, Shared-Loss coverage and the ability to submit claims for Charge-Offs and Reimbursable Expenses, extends through June 30th. If the anniversary date is September 2nd, Shared-Loss coverage extends to September 30th, etc. The Recovery period works on the same principle; the Termination Date of the CSLA extends to the end of the Calendar Quarter in which the eight anniversary of the Commencement Date occurs. In contrast, the Termination

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Date of the Single Family Agreement extends to the end of the Month in which the tenth anniversary of the Commencement Date occurs.

Table 7. End of Shared-Loss Coverage

CSLA Commencement Date	Year 5 Anniversary Date	End of Shared-Loss Calendar Quarter
April 30, 2009	April 30, 2014	June 30, 2014
September 2, 2009	September 2, 2014	September 30, 2014
November 7, 2009	November 7, 2014	December 31, 2014
February 20, 2010	February 20, 2015	March 31, 2015

### CONCLUSION

Als should consistently follow prudent business and banking practices during the entire term of the CSLA. The AI's obligation to maximize collections on Shared-Loss assets and comply with the other "Management Standards" set forth in Article III of the CSLA does not terminate at the end of the last Shared-Loss Quarter. The reporting procedures change during the Recovery Period and AI's who are entering their final Shared-Loss Quarter should familiarize themselves with this guidance and direct any questions to their specialist.

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