FDIC **FEDERAL DEPOSIT INSURANCE CORPORATION** **RISK SHARING ASSET MANAGEMENT** # GUIDANCE	TYPE AND NUMBER	
	RSAM Guidance 2013-G001	
	CONTACT	TELEPHONE NUMBER
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	DATE	
	January 7, 2013	
	RESCINDED DOCUMENT	
	Replaces Guidance RSAM-2011-010 dated February 27, 2011	

TO: Assuming Institutions
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SUBJECT: "Cash for Keys"

STATEMENT: Under the "Cash for Keys" program, Assuming Institutions (AIs) may offer the borrower or tenant of a property securing a Shared Loss asset a payment **up to** $3,000 for conforming and government-backed-mortgage loans and **up to** $5,000 for non-conforming mortgage loans to defray moving costs in exchange for quick possession. The borrower or tenant must leave the premises in broom-clean condition and execute a written "Cash for Keys" agreement with an AI that includes a provision that the premises be vacated **by no later than** 90 days from execution of the agreement.

PURPOSE: "Cash for Keys" provides the borrower or tenant occupying a property securing a Shared Loss asset with financial assistance in exchange for the agreement that the property is vacated within 90 days and is left in satisfactory condition. This alternative is used to avoid formal eviction before foreclosure, as part of a deed-in-lieu of foreclosure or an uncontested foreclosure arrangement, and after foreclosure, but in both cases, only if the borrower does not qualify for a loan modification.

"Cash for Keys" saves the lender most of the legal expenses associated with an eviction and/or a prolonged foreclosure process and avoids other property expenses related to delayed possession of the property. The payment to the borrower or tenant provides a financial incentive to leave the property in satisfactory condition at an agreed upon time and covers some or all of the costs of moving to a new property.

OBJECTIVE:

The RSAM Policy Group is rescinding Guidance RSAM-2011-010 and is issuing new guidance to AIs, RSAM Specialists, Managers and Compliance Monitoring Contractors to ensure the proper monitoring of the AI's treatment of the "Cash for Keys" payment program.

The changes reflected in Guidance RSAM 2012-G003 are as follows:

- Cash payments may be made to tenants in addition to borrowers who occupy properties securing Shared Loss assets.
- The borrower or tenant must vacate the premises **by no later than** 90 days from execution of the written "Cash for Keys" agreement.

CONSIDERATIONS:

General Considerations

"Cash for Keys" payments should be offered to single-family or one-to-four-unit residential borrowers or tenants as an incentive to prevent a costly and/or lengthy eviction or foreclosure alternative. The eligibility of the expense for inclusion in the Foreclosure Loss calculation is subject to the following conditions:

- "Cash for Keys" can be offered to borrowers or tenants who occupy properties securing a Shared Loss asset;
- Borrower must be at least 60 days delinquent or in imminent danger of default;
- Borrower does not qualify for loan modification;
- Second mortgage liens must have been released in a deed-in-lieu situation;
- The "Cash for Keys" consideration may not be released until the AI or the AI's representative has inspected the vacant property and determined that the occupants left the property in broom-clean condition;
- AI must maintain documentation of the date and amount of the "Cash for Keys" offer and the agreed upon date of vacancy – which shall be no later than 90 days after execution of the agreement, and
- The released "Cash for Keys" consideration becomes a Reimbursable Expense claim when all occupants have vacated the property by the agreed-upon date with the AI or AI representative.

Other Considerations for Tenants

Pursuant to the **"The Protecting Tenants at Foreclosure Act of 2009"**, part of the Helping Families Save Their Homes Act of 2009 (Public Law 111-22, approved May 20, 2009) ("PTFA"), any foreclosure on a federally related mortgage loan or on any dwelling or residential real property after the date of enactment of PTFA, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:

No Sudden Evictions

PTFA requires the new owner give month-to-month tenants at least 90 days prior notice of eviction. The notice period is calculated from the date of the foreclosure notice to the date the property is vacated. This requirement applies regardless of whether the mortgage is federally insured or a conventional loan. The law also prohibits the current owner or successor in interest from preemptively evicting month-to-month tenants prior to the foreclosure notice.

Leases Protected

For tenants under a lease who are current on their rental obligations, PTFA prohibits an eviction prior to the end of their lease terms -- the lease survives foreclosure. The new owner must fulfill the landlord's responsibilities under the lease, but he is under no legal obligation to renew or extend the lease. There is an exception to the lease protection: if the new owner intends to occupy the rental property as his primary residence, the new owner can break the lease, but the tenant must be given 90 days from the eviction notice date to vacate the property.

A lease or tenancy shall be considered bona fide only if:

- the borrower or the child, spouse, or parent of the borrower under the contract is not the tenant;
- the lease or tenancy was the result of an arms-length transaction; and
- the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or local subsidy.

PTFA does not shorten or lessen the requirements of any state or local law that provides longer time periods or other additional protections for tenants.

RELATED GUIDANCE:

Upon default or imminent default of a mortgage, mortgagees shall engage in loss mitigation actions for the purpose of providing an alternative to foreclosure (including actions such as special forbearance, loan modification, pre-foreclosure sale, deed in lieu of foreclosure, support for non-profit coordinators, subordinate lien resolution, and borrower or tenant relocation). Please reference **Guidance RSAM 2011-013 Facilitating Short Sales** to determine what expenses are Reimbursable Expenses for Short Sales.

Borrowers eligible for the Home Affordable Foreclosures Alternative (HAFA) program are given an equitable way to avoid foreclosure by performing a Short Sale or by giving the property back to the lender as part of a deed in lieu of foreclosure transaction. Borrowers benefit by receiving fair time frames for completing each step of the process, compensation for moving expenses and protection from collection actions by their lenders. Some of the key benefits are:

- Borrowers and tenants receive up to $3,000 for relocation assistance for conforming and government-backed mortgage loans and up to $5,000 for non-conforming mortgage loans, and

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- Lenders must allow the opportunity for the borrower to attempt a Short Sale or accept a deed in lieu of foreclosure before following through with a foreclosure.

Borrowers are fully released from future liability for the first mortgage debt. AIs or AI representatives cannot ask for a cash contribution, promissory note, or deficiency judgment to complete a Short Sale or deed in lieu of foreclosure. Additionally, junior lien holders, (i.e. 2nd mortgages) who participate in the HAFA incentives must also release borrowers from future liability.

Q & A

How Much Do Banks Pay to Exchange "Cash for Keys"?

The cash payment amount is negotiable, but the FDIC will cap the amount as noted above. The following categories of expenses are reasonable to consider when determining the amount of the cash offer:

- Security deposit and first/last month's rent;
- Moving expenses;
- Rental truck;
- Utility deposits; and
- Temporary living quarters such as a motel.