FDIC

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

DATE: June 11, 2010

MEMORANDUM TO: Acquiring Institutions with Loss Share Transactions

FROM: John Marchant,
                        Risk Sharing Asset Management Field Operations Manager

                        Jennifer Stockett,
                        Risk Sharing Asset Management Policy Manager

SUBJECT: FDIC Guidance of Certain Terms in the Single Family
                        Shared-Loss Agreements

1. **Purpose:** To provide guidance to Acquiring Institutions (AIs) and DRR Risk Sharing Asset Management Oversight Staff in response to a recent audit conducted by the FDIC Office of Inspector General.

2. **Background:** Periodically, the FDIC Office of Inspector General (OIG) performs audits of the AIs compliance with the provisions within the Shared-Loss Agreements. As a result of a recent OIG audit, we are providing the following guidance.

3. **Policy:** The following policy clarification pertains to respective Single Family Shared-Loss Agreement.

Accrued Interest and OREO Prior to Bank Closing

The Single Family Shared-Loss Agreements permits AIs to include Accrued Interest in loss claim calculations for Single Family Shared-Loss Loans. AIs may not include Accrued Interest in the Foreclosure Loss calculation for properties passed as Other Real Estate Owned (OREO) at the time of bank closing.

Loan Modification Effective Date and Restructuring Loss Calculation

Per the respective Single Family Shared-Loss Agreements, AIs are required to submit the loan modification date as the month-end date in which the Net Present Value (NPV) was calculated for the loan. For example, if the servicer runs the NPV on April 5, 2010, the loan modification effective date should be reported as April 30, 2010, assuming that the servicer has received the signed modification package from the borrower. No losses can be submitted until a signed package is on file with the servicer (no losses can be submitted during the trial period). Additionally, the discount rate used in the Restructuring Loss calculation is Freddie Mac's Primary Mortgage Market Survey (PMMS) rate on 30-year fixed rate loans as of the date NPV was run on the loan. The PMMS rate is the same as the interest rate cap on the modified loan.

The Restructuring Loss Calculation is the difference between (1) the sum of: the Unpaid Principal Balance (UPB) before restructuring/modification plus permitted Accrued Interest, permitted third party fees and expenses, and tax and insurance advances; (2) less the NPV of projected cash flows, mortgage insurance contributions, and T&I escrow account balances if positive. Tax and Insurance advances capitalized into the UPB at time of modification should be listed in the appropriate line item and not reflected in the UPB before restructuring.

Mortgage Insurance Proceeds

The respective Single Family Shared-Loss Agreements defines Foreclosure Loss as "the loss realized when the AI has completed the foreclosure on a Single Family Shared-Loss Loan and realized final recovery on the collateral through liquidation and recovery of all insurance proceeds". In the past, the FDIC has permitted AIs to submit Foreclosure Loss claims prior to fully realizing mortgage insurance proceeds where the AI had demonstrated diligent collection efforts.

As of the date of this memo, the FDIC is revising this policy. Single Family shared-loss assets covered by mortgage insurance must include (1) the realized mortgage proceeds or (2) the contractually binding mortgage coverage amount in the Foreclosure Loss claim. Option 2 will only be processed for the entire foreclosure loss claim given that the AI has exercised its best business judgment in managing, administering, and collecting mortgage insurance proceeds. If the proceeds are deemed unrealizable or less than the contractually binding proceeds, the AI may subsequently submit the deficiency as a covered expense. During due diligence reviews, the AI's policies and procedures, staffing, and methodology will be tested to ensure full compliance with the terms and conditions of the Shared-Loss Agreements and that requests for loss share payments and recoveries are complete and accurate.