FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Division of Resolutions and Receiverships

Via: Venue File Exchange

To: Assuming Institutions with Commercial Shared-Loss Agreements

From: Patrick M. Mitchell
Associate Director

Date: May 2, 2014

RE: Shared-Loss Recovery Period / Year 5

As you may be aware, most of the Commercial Shared-Loss Agreements ("CSLA") require the Receiver ("FDIC") to reimburse the Assuming Institution ("AI") for a percentage of the AI's Charge-off and expense claims for the first five years of the term of the CSLA, with the AI sharing a percentage of Recoveries with the FDIC for final three years of the term of the CSLA. The end of the five year loss sharing period of the CSLA is rapidly approaching for a number of AIs; through March 31, 2014, nine CSLAs have reached the fifth anniversary, another 77 will reach the fifth anniversary by year end 2014, and another 121 will reach the fifth anniversary some time during 2015.

While shared-loss coverage is limited to the first five years of the term of the CSLA, the standards for management and servicing of the Shared-Loss Assets as set forth in Article III of the CSLA apply during the entire eight year term of the CSLA. AIs are required to follow usual and prudent business and banking practices, and pursue the course of action that maximizes collections, throughout the entire term of the CSLA.

Reporting on Shared-Loss Assets is required during the entire eight year term of the CSLA. This reporting is necessary for a number of reasons including, but not limited to:

- The requirement to monitor loan sales and loan workouts, and to understand the effectiveness of the program, over the entire term of the agreement
- Responses to Congressional and Government Accountability Office (GAO) inquiries
- Internal and external research and econometric analysis

Reports are not necessary for certain of the Shared-Loss Assets which are no longer covered by loss sharing because of a "terminal event" such as the sale of the Shared-Loss Asset, if the Shared-Loss Asset was paid-in-full, or if a Shared-Loss Asset with no prior claim is refinanced through the origination of a new loan and payoff of the Shared-Loss Loan. AIs cannot request, and loss share specialists cannot approve, removal of a Shared-Loss Asset from loss sharing and the associated reporting requirements.

Section 4.1 of most of the CSLAs typically gives AIs the right, with the consent/concurrence of the FDIC and commencing on a specified point during the fifth year of the CSLA (normally as of the first day of the third to last Shared-Loss Quarter), to liquidate some or all of the Shared-Loss Assets then held by the AI by means of sealed bid sales to third parties (a "Portfolio Sale"). The FDIC does not intend to consider Portfolio Sale requests submitted pursuant to Section 4.1 prior to the date specified in the applicable CSLA.

Although the CSLA does not require the FDIC to consider requests by the AIs for approvals of loan sales other than as set forth in Section 4.1 of the CSLA, the FDIC is willing to consider requests for approval of an individual loan sale at any time during the term of the CSLA, and has established a Loan Sale Review Committee for the purpose of evaluating such requests. The FDIC's expectations regarding requests for approval of an individual loan sale are the same as those pertaining to Portfolio Sale requests, and are set forth in the letter from Pamela J. Farwig dated October 9, 2012 (attached). To reiterate, the FDIC will only consent to, or concur with, a loan sale request if the AI has clearly demonstrated that the proposed sale maximizes collections on the individual loan(s), the AI is not relying on the sale as the primary resolution strategy, and the proposed sale otherwise satisfies the requirements of Article III.

The FDIC expects all loan sale requests to include, at a minimum, the following:

- Documentation supporting the sale as the least loss alternative
- Borrower/guarantor analysis
- Alternative resolution strategies considered
- Valuation support and documentation
- Sales and marketing efforts to-date
- Purchaser information (if not sealed bid)

It should be noted that fees and expenses for financial advisors, third party brokers or sales agents, and other independent professional consultants regarding the sale of Shared-Loss Loans, either individually or in bulk, are not considered reimbursable expenses.

If you have questions, please contact your FDIC specialist.

Sincerely,

Patrick M. Mitchell
Associate Director, Asset Management

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Division of Resolutions and Receiverships

October 9, 2012

Chief Executive Officer
Assuming Institutions with Shared-Loss Agreements

Nearly four years ago, the FDIC entered into its first Shared-Loss Agreement ("SLA") as an alternative resolution strategy for determining the least costly resolution of failed insured depository institutions. Since the financial crisis began, the shared-loss alternative has been the least costly resolution for 297 failed insured depository institutions with $214 billion in assets sold to 148 different Assuming Institutions ("AIs"). The FDIC's use of shared-loss transactions has minimized the immediate impact of these 297 failures on the Deposit Insurance Fund ("DIF") during a period of significant market distress. While the importance of this achievement cannot be overstated, its long term benefit to the DIF will only be fully realized through the continued efforts of the AIs to maximize collections on Shared-Loss Assets.

As you know, Article III of the Commercial Shared Loss Agreement ("Agreement") sets forth the standards for the management, administration, and collection of Shared-Loss Assets (the "Management Standards"). These Management Standards apply throughout the entire term of the Shared-Loss Agreement regardless of resolution strategy including any Portfolio Sale proposed by the AI during the last few Shared Loss Quarters pursuant to Section 4.1 of the SLA.

The AI's right to conduct Portfolio Sales under Section 4.1 is conditional, as it requires the FDIC's prior concurrence/consent on any proposed transaction. While the FDIC will consider all proposals for Portfolio Sales the FDIC will only provide its concurrence or consent if the AI has clearly demonstrated to the FDIC that the proposed Portfolio Sale maximizes collections on an asset-by-asset basis and otherwise satisfies the requirements of Article III and Section 4.1.

The FDIC expects that each AI will continue to use its best efforts to maximize collections and should not rely on Portfolio Sales as the primary resolution strategy for Shared-Loss Assets. In fact, one of the factors that will be considered by the FDIC in determining whether or not to consent to a proposed Portfolio Sale will be the AI's documented prior efforts to maximize collections through alternative resolution strategies. The FDIC is unlikely to consent to any Portfolio Sale involving non-performing assets with limited prior collection activity if the AI cannot document prior best efforts to maximize collections.

The FDIC intends to provide timely responses to all proposals. A failure by FDIC to respond to a proposal does not constitute concurrence or consent. We are in the process of establishing a committee comprised of experienced credit professionals from various areas of the FDIC's Division of Resolutions and Receiverships that will be tasked with reviewing fully documented loan sale proposals and rendering timely decisions on them.

This letter is not intended to modify, or otherwise supplant, any provisions or definitions set forth in your Commercial Shared Loss Agreement with the FDIC

Sincerely,

Pamela J. Farwig
Deputy Director
Division of Receiverships and Resolutions