




Federal Deposit Insurance Corporation  
Division of Resolutions and Receiverships (DRR)  
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Risk Sharing Asset Management  
Response Required/  
Guidance RSAM-2010-005

**To:** Acquiring Institutions (AIs) under Shared-Loss Agreements (SLA)  
Managing Members (MMs) in joint ventures or partnerships

**Through:** Herbert J. Held, Associate Director, DRR 

**From:** John Marchant, Field Operations, DRR  
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**Date:** October 6, 2010

**Subject:** Foreclosure Process Review

**Summary:** Response required by October 15 regarding loans covered by a SLA or joint venture agreement with the FDIC that involves procedures for foreclosure process documentation

This letter is directed to AIs that manage loans under a SLA and MMs that manage loans in joint ventures or partnerships with the FDIC that are subject to servicing standards. AIs that are regulated by the FDIC will also be contacted by the FDIC's Division of Supervision and Consumer Protection for a similar request; please focus the response to this memo, to the extent possible, on procedures applied by the AI to the failed institution loans under SLA. For non-FDIC regulated institutions, please respond to this memo with information on procedures used by the AI and MM by their servicers.

Recent announcements have alerted DRR of widespread deficiencies in documentation for foreclosure proceedings in judicial foreclosure states. This has raised concerns on the policies and procedures relating to the execution of legal documents, including affidavits and verifications, for all AIs and MMs processing loan defaults.

AIs and MMs are requested to certify to their assigned RSAM Specialist by October 15 whether any asset covered under a SLA or joint venture servicing standards could be affected by potential defects with affidavits in support of motions for summary judgment in states with judicial foreclosure processes. Specifically, the concern is whether an employee, contractor or third-party servicer for the AI, failed bank, or MM has executed affidavits on behalf of the AI or MM without having the required knowledge of the information contained in the affidavits and related loan documents.

The FDIC is also reminding AIs and MMs that during the semi-annual compliance reviews, FDIC contractors will review and verify the AI's and servicer's modification process of determining borrower eligibility, including borrower income verification, total monthly mortgage payment and total monthly gross debt payment calculations, NPV calculations

escrow analysis, escrow advances, and escrow set-up (as applicable). The AIs are to retain relative documentation to satisfy these inquiries and may refer to Section 2.1 of the SLA, *Loss Mitigation and Loan Modification*; MMs are referred to the servicing standards applicable to their transaction for more information on this requirement.

Records should also be retained to document the reason(s) for a modification denial or modification default. If the modification is denied due to a “negative” NPV result, AIs, MMs and servicers shall retain appropriate information illustrating the reason for this outcome and the efforts to pursue other loss mitigation alternatives such as short sale or deed in lieu transactions before commencing foreclosure proceedings.

The FDIC is requesting all of its AIs and MMs to immediately begin a review of their policies and procedures relating to the execution of affidavits, mortgage assignments, and other legal documentation in connection with the foreclosure legal process for compliance with applicable Federal and state laws. If the AI or MM identifies any issues or concerns with its policies and procedures or their implementation or with failed bank default documentation, the AI or MM must notify their assigned RSAM Specialist by October 15 with the outcome of the review.

Each loan under a SLA or joint venture agreement must be managed and administered in accordance with usual and prudent business and banking practices and industry servicing procedures. The AIs and MMs are to exercise the best business judgment in managing, administering and collecting amounts owed on the loans. The AIs are reminded that under Article III of the SLA, mismanagement of the loans may lead to a total loss of shared-loss payments. It is imperative that the AIs and MMs identify any specific information on any loan that is affected by potential defects in affidavits of failed institution loans acquired under a SLA or joint venture agreement for foreclosure process documentation and findings using the attached template. Additionally, RSAM compliance monitoring contractors will be performing a more detailed review of the foreclosure process documentation and the foreclosure claims submitted for payment.

**Contact: Acquiring Institutions and Managing Members should contact their RSAM Specialist with any questions regarding this Guidance.**