



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

**Risk Sharing Asset Management
Guidance RSAM-2010-008**

To: Acquiring Institutions under Share Loss Agreements

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Subject: Share-Loss Agreement Guidance for Accrued Interest

Summary: The FDIC is issuing this guidance to Assuming Institutions (AIs) to provide clarification on the amount of earned and unpaid interest (“Accrued Interest”) that the AIs can include in the calculation of 1) the Losses under the Single Family Shared-Loss Agreement (“SFSLA”) and 2) Charge-Offs under the Commercial Shared-Loss Agreement (“CSLA”)

Highlights:

- Limitation on Accrued Interest
- Failed Bank Accrued Interest
- Regulatory Limitations on Accrued Interest
- Effect of Accruals in Excess of 90 Days

Contact: Acquiring Institutions should contact their Loss Share Specialist with any questions regarding this Guidance.



FDIC Shared-Loss Agreement Guidance Accrued Interest

Objective

The FDIC is issuing this guidance to Assuming Institutions (AIs) to provide clarification on the amount of earned and unpaid interest (“Accrued Interest”) that the AIs can include in the calculation of 1) the Losses under the Single Family Shared-Loss Agreement (“SFSLA”) and 2) Charge-Offs under the Commercial Shared-Loss Agreement (“CSLA”) (the “Agreements”).

Limitation on Accrued Interest

While the terminology of the Agreements is different the maximum amount of Accrued Interest than can properly be included in the calculation of Losses under the SFSLA and Charge-Offs under the CSLA is ninety (90) days, irrespective of whether the interest was accrued by the failed bank prior to bank failure or by the AI after it acquired the Shared-Loss Loans under the Purchase and Assumption Agreement (“P&A”). Ninety (90) days of Accrued Interest is the maximum and accruals after the Shared-Loss Asset is placed on non-accrual status are not eligible for inclusion in the calculation even if the placement of the Assets on non-accrual status occurred before the loan was ninety (90) days past due.

Both the SFSLA and the CSLA limit Accrued Interest as defined in the Agreements to no more than 90 days.

The SFSLA provides in pertinent part:

“Accrued Interest” means, with respect to Single Family Shared-Loss Loans, the amount of earned and unpaid interest at the note rate specified in the applicable loan documents, limited to 90 days. (Emphasis supplied.)

The CSLA limitation on Accrued Interest is set forth in the definition of Charge-Off, which provides in pertinent part:

(i) the aggregate amount of Accrued Interest (including any reversals thereof) for the period after Bank Closing that shall be included in determining the amount of Charge-Offs for any Shared-Loss Loan shall not exceed ninety (90) days’ Accrued Interest; (Emphasis supplied)

Failed Bank Accrued Interest

Unpaid interest, if any, accrued by the failed bank is eligible for inclusion in the calculation of Accrued Interest under the Agreements if it passed to the AI under the terms of the P&A. As noted in the definition of Book Value in the P&A:

.... The Book Value of any item shall be determined as of Bank Closing after adjustments made by the Receiver for differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary. . . . Without limiting the generality of the foregoing, the Book Value of a Loan shall reflect adjustments for earned interest, or unearned interest (as it relates to the "rule of 78s" or add-on-interest loans, as applicable), if any, as of Bank Closing (Emphasis supplied.)

This provision of the P&A follows the accrual method of accounting, whereby a bank adds earned but unpaid interest to the book value of a loan as it accrues, and reduces the accrued but unpaid interest, and defeases principal, when a payment is made. If Accrued Interest was included in the purchase price of the related Shared-Loss Asset that will be reflected on the proforma statements, the settlement worksheets, and loan level detail, it may be included in the shared-loss claim, subject to the 90 day limitation.

Regulatory Limitations on Accrued Interest

The 90 day limitation on shared-loss coverage of Accrued Interest under the Agreements is consistent with the general rule imposed by the federal bank supervisory agencies with respect to accrual of interest for purposes of the quarterly report of income and condition ("Call Reports") that all national banks, state member banks and insured state non member banks must file. The Call Report instructions provide that "banks shall not accrue interest . . . upon principal or interest has been in default for a period of 90 days or more" ¹ While the general rule referred to above has an for exception single family loans, and the AI is not required to place a single family loan on non accrual status when it is ninety (90) days past due so long as bank income is not materially overstated, as noted above, the maximum amount of Accrued Interest eligible for inclusion in the loss calculations is ninety (90) days even if the failed bank or the AI was allowed to continue the accruals under regulatory guidelines.

Effect of Accruals in Excess of 90 Days

If the Failed Bank was accruing earned and unpaid interest the AI, in effect, assumes that period of past due interest. For example, if 30 days of earned and unpaid interest had accrued prior to bank failure then the AI can accrue no more than an additional 60 days. When the loan becomes 90 days past due, taking into account any period of accrual by the Failed Bank, the AI is required under the Call Report instructions to place the loan on non-accrual. Accruing unpaid interest on a loan for more than 90 days unpaid interest is inconsistent with the Examination Criteria and Call report requirements and may be grounds for denial of shared-loss coverage on the Shared-Loss Loan.

¹See, Call Report Glossary, FFIEC 031 and 041, page A-59 (6-07).