



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

**Risk Sharing Asset Management
Guidance RSAM-2010-009**

To: Acquiring Institutions under Shared-Loss Agreements

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Date: December 17, 2010

**Subject: Commercial Loss Mitigation Guidance
Commercial Real Estate (CRE) Loans**

Summary: The FDIC is providing this guidance to Assuming Institutions (AIs) regarding the administration of Shared-Loss Loans that are secured by commercial real estate (“Shared-Loss CRE Loans”) under the terms of the Commercial Shared-Loss Agreement (“CSLA”) when considering Short Sales and Discounted Pay-Offs if loan modifications do not present the best net present value (NPV) alternative or are not otherwise feasible.

Highlights:

Evaluation of Alternatives

A. Loan Modification

B. Permitted Loss Mitigation Alternatives

C. Loan Sales

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

The attached information is provided for general guidance and clarity on the matters contained therein. The attached information is not intended to modify, or otherwise supplant, any provisions or definitions contained with the applicable Shared-Loss Agreements. The Assuming Institution is strongly encouraged to seek appropriate legal counsel for a comprehensive analysis and understanding of the matters contained within Shared-Loss Agreements.



FDIC Commercial Loss Mitigation Guidance Commercial Real Estate (CRE) Loans

Objective

The FDIC is providing this guidance to Assuming Institutions (AIs) regarding the administration of Shared-Loss Loans that are secured by commercial real estate (“Shared-Loss CRE Loans”) under the terms of the Commercial Shared-Loss Agreement (“CSLA”) when considering Short Sales and Discounted Pay-Offs (which are defined below) if loan modifications do not present the best net present value (NPV) alternative or are not otherwise feasible. This guidance is intended to clarify the restructuring alternatives that may be available to the AI with respect to those Shared-Loss Loans that were originated for the purpose of financing, acquiring, constructing, developing and/or maintaining business properties such as retail, offices, hospitality, and multifamily residential developments. This guidance is for informational purposes only as the AI considers restructuring alternatives such as Short Sales or Discounted Payoffs where loan modification is not a viable option if one of those restructuring alternatives will lessen the loss to the FDIC and the AI.

The capitalized terms used in this guidance have the meaning set forth below or as they are separately defined in the CLSA.

Defined terms.

Short Sale: a sale of the collateral securing the Shared-Loss CRE Loan to a third party where the AI accepts from the Obligor a payoff of an amount less than the balance due on the Shared-Loss CRE Loan and 1) the Obligor presents the AI with a secured or unsecured note for all or a portion of the deficiency or 2) the deficiency is forgiven by the AI in whole or in part.

Discounted Pay-Off: the AI accepts from the Obligor a payoff of an amount less than the balance due on the Shared-Loss CRE Loan and 1) the Obligor presents the AI with a secured or unsecured note for all or a portion of the deficiency or 2) the deficiency is forgiven by the AI in whole or in part.

Evaluation of Alternatives

A review of the loan portfolio should be conducted in order to identify Shared-Loss CRE Loans that are candidates for modification. This review should include a comprehensive evaluation of the borrower’s willingness and capacity to repay, borrower guarantees, the borrower’s business plan, the debt coverage of the collateral, and the value of the underlying collateral. The evaluation should be initiated upon 30 days of nonpayment or when imminent monetary default is probable (i.e. maturing loan; inadequate cash flow). A loan modification should be offered if the evaluation indicates that it will minimize the loss to the FDIC and the AI on that Shared-Loss CRE Loan. The evaluation and analysis of Shared-Loss CRE Loans should be consistent with the AI’s current underwriting practices for non shared-loss loans. The analysis should identify any related debt such as senior or junior liens and Related Loans with a common principal or guarantor(s). The documentation for the evaluations and the cost analysis must be retained by the AI for purposes of the FDIC’s monitoring and oversight of restructuring loss claims under the CLSA.



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A. Loan Modification

A loan modification (governed by the definition of Permitted Amendment under the CSLA) is designed to convert a non-performing loan, or a loan that is on the verge of being nonperforming, to performing status consistent with the ability of the borrower to repay the debt. Loan modifications can reduce the loan payment for a period of two to four years and may permanently alter some conditions of the loan, including extension of the term of the loan, interest rate reduction, and principal forbearance or forgiveness which may be adjusted in any sequence. An amendment extending the term of a Shared-Loss CRE Loan beyond the end of the final Shared-Loss Quarter is not a Permitted Amendment as the term is defined in the CSLA, and any such amendment **will extinguish the** shared-loss coverage on the amended Shared-Loss CRE Loan.

The AI should calculate the net present value (NPV) for each applicable Shared-Loss CRE Loan and determine if the NPV of the loan modification will exceed the net present value of the foreclosed collateral, Discounted Payoff, or Short Sale, as applicable, before proceeding with a modification. AIs are encouraged to document the condition of the collateral (whether or not it is impaired) and borrower's economic capacity (i.e. credit worthiness; willingness to pay) and then determine if a short term payment reduction or a modification is the alternative that will minimize the loss to the FDIC and the AI before pursuing a Discounted Payoff, Short Sale, or foreclosure.

Shared-Loss CRE Loan modifications must be Permitted Amendments as defined in the CSLA in order to be eligible for shared-loss coverage under the CSLA. The AI must complete the Loan modification Certification set forth below and retain a signed copy on file. The following factors should be considered in the analysis for loan modifications/workouts.

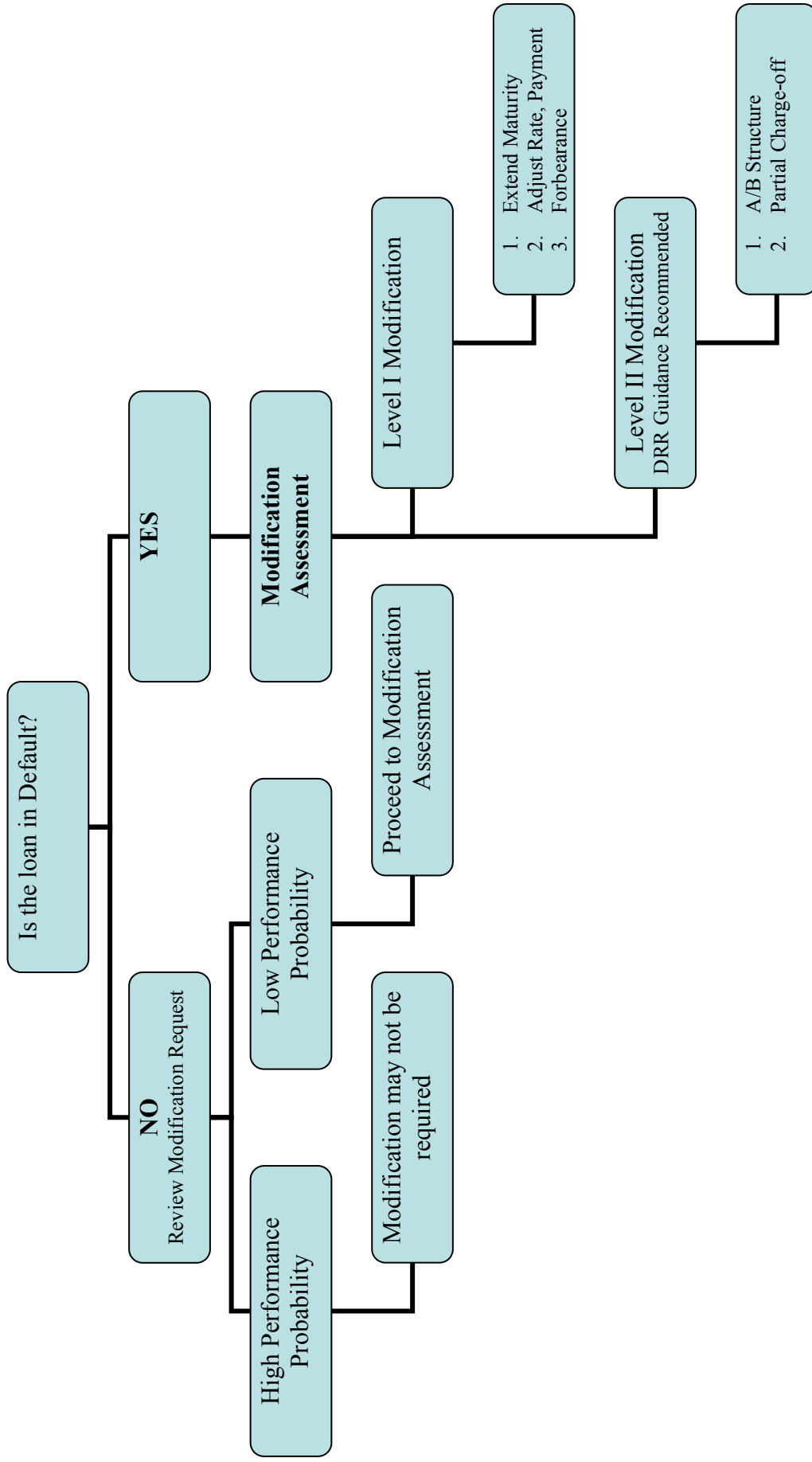
1. Consider the following options when choosing the alternative that will minimize loss:
 - a. Restructuring/Modification Loss
 - b. Short Sale Loss
 - c. Foreclosure Loss/Deed in Lieu (DIL) Loss
2. Property Income Verification (subject to applicability)
 - a. Audited/Unaudited Property Financial statements
 - b. Tax Statements
 - c. Common Area Maintenance Billings
 - d. Lease documents
3. Property Condition
 - a. Clean Environmental Site Assessment
 - b. Property is in fair condition or better
 - c. Property value is temporarily impaired due to market
 - d. No subordinate liens
4. Valuation Practices
 - a. AIs should follow Chartering Authority guidance, or where applicable, AIs should follow industry standards and benchmarking
 - b. Collateral valuation methodology and analysis must be documented



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5. Interest Rate Reduction
 - a. Reducing the interest rate may be appropriate in those instances where the cash flow produced by the collateral is insufficient for market debt service coverage
6. Term Extension
 - b. Term extensions beyond the last Shared-Loss Quarter are not permitted under the terms of the CSLA
 - a. There is no restriction on amortization adjustments
7. Forbearance and Principal Forgiveness
 - c. Forbearance and/or principal forgiveness may be appropriate in certain circumstances
8. Required Documentation
 - a. The cost analysis shall include NPV methodology (AIs are certifying that their NPV model assumptions are documented and validated through periodic independent reviews)
 - b. Property income documentation with hardship affidavit and signed modification agreement
 - c. Leases, rental history and rent/cost comparisons to market rents
 - d. Property management analysis
9. Recourse
 - a. AIs should thoroughly document its guarantor analysis and attempt at securing borrower recourse for restructuring
 - b. Additional collateral, substitution of collateral, and/or additional guarantees
10. Modification Examples

Additional CRE workout guidance is available at:
www.fdic.gov/news/news/financial/2009/fi109061.html





Loss Mitigation and Commercial Modification Certification

Affirmed as Complete

Supervisory Scrutiny

The asset has been subject to classification as "non-performing" in compliance with Regulatory standards, or has perceived weaknesses

Standard Practice

Modification conforms to: existing bank policy, Regulatory Guidelines and section 3.2 of Loss-Share Agreement

Analysis

Modification minimizes the loss to the FDIC when compared to Note Sale, Deed in Lieu, Foreclosure with NPV analysis in file

Individual Asset

The transaction consists of only one single loan number

Property Income Verification

Property financial statements have been reviewed

Property Condition

Verification of property condition has been performed (ie property is in fair condition or better with clean ESA and Title)

Appraisal

Valuation techniques have been performed in accordance with Primary Federal Regulator Guidelines

Borrower Recourse

Attempt was made at securing additional collateral, substitution of collateral, and/or additional guarantees

Revocation of Authority

AI has met with all the above criterion and accepts the revocation of asset loss coverage in the absence of compliance.

AI Contact Info	_____	Office Phone	_____
	Name		
	_____	Mobile Phone	_____
	Email		

Loan Number	_____	Unpaid Loan Balance	_____
FDIC Number	_____	Sales Price	_____
Failed Institution	_____	Expected Loss	_____
Acquiring Institution	_____	Date of Sale	_____

COMMENTS

Acquiring Institution Officials Signature and Date

Acquiring Institution Name and Title



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B. Permitted Loss Mitigation Alternatives

If the Shared-Loss CRE Loan does not qualify for a loan modification, other alternatives such as Short Sales and Discounted Pay-Offs (referred to individually and collectively as an “SLA Disposition”) may be considered if 1) one of those alternatives will minimize the loss to the FDIC and the AI on the Shared-Loss CRE Loan and 2) the AI’s actions are consistent with its duties under Article 3 of the CSLA and Examination Criteria.

In order for losses realized in connection with an SLA Disposition to be eligible for shared-loss coverage under the CSLA the disposition must be completed in compliance with the requirements set forth below, documented by the SLA Disposition Checklist and Certificate (form attached), attested to by an authorized representative of the AI, and maintained in the AI’s permanent loan file. The FDIC may consider SLA Dispositions which do not meet the requirements listed below on a case by case basis but without FDIC approval any losses realized on such SLA Dispositions will not be eligible for shared-loss coverage. In addition, unauthorized SLA Dispositions of Shared-Loss CRE Loans will receive additional scrutiny during the FDIC’s monitoring and oversight process and the FDIC may reverse any Charge-Off previously taken on such Shared-Loss CRE Loan in anticipation of the unapproved SLA Disposition.

- **Supervisory Scrutiny:** The Shared-Loss CRE Loan or underlying collateral being sold or partially repaid by a Short Sale or Discounted Pay-Off has experienced a partial or complete Charge-Off in accordance with the terms of the CSLA and applicable Examination Criteria.
- **NPV Analysis:** The AI shall maintain in the Shared-Loss CRE Loan file an analysis and documentation that supports the SLA Disposition as the best NPV alternative, and demonstrates that a loan modification was not feasible or did not minimize the loss to the FDIC and the AI.
- **Standard Practice:** The SLA Disposition conforms to the AI’s standard business practices, policies and procedures and is in accordance with regulatory policy of the Chartering Authority that oversees the AI. Shared-Loss CRE Loan being sold or partially paid off is being treated the same as non shared-loss CRE loan. Documentation of the restructuring practices for non shared-loss loans must be maintained for purposes of the FDIC’s monitoring of compliance with Section 3 of the CLSA.
- **Publicly Marketed:** With respect to Short Sales, the Shared-Loss CRE asset must be publicly marketed via a non-affiliated third-party for a minimum of thirty (30) days. The AI must maintain documentation of the marketing of such Shared-Loss CRE asset.
- **Loan File:** AI’s standardized loan narrative summarizing the pertinent details of the transaction must be maintained in the permanent loan file and should contain the following: Transaction Summary, Borrower Financial Summary, Background and Current Status of Collateral, Loss Minimization Analysis, Current Valuation, Guarantor Financial Analysis and Summary and Release Provisions if applicable, the Marketing Program, and the justification for the release of any Guarantor (s) if applicable. This file must be available for review by the FDIC’s on-site due diligence review contractors.
- **Portfolio Sales:** Sales of Shared-Loss CRE Loans individually or in portfolio require prior consent of the Receiver.



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C. Loan Sales

The AI is free to sell Shared-Loss CRE Loans but if it does so without the prior approval of the FDIC it will lose loss coverage on the Shared-Loss CRE Loans, i.e. it will not be allowed to submit a loss claim under the CSLA for any loss on the unapproved sale. The FDIC will not consider requests for approvals for the sale of Shared-Loss CRE Loans if the AI has not exhausted all possible restructuring alternatives. In addition, unapproved sales of Shared-Loss CRE Loans will receive additional scrutiny during the FDIC's monitoring and oversight process and the FDIC may reverse any Charge-Off previously taken on such Shared-Loss CRE Loan in anticipation of the unapproved sale. For the avoidance of doubt, Short Sales and Discounted Pay-Offs are not considered loan sales under the CLSA.



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Commercial Real Estate (CRE) Loans**



Division of Resolutions and Receiverships
Loss Share & Structured Transactions Monitoring

SLA Disposition Certificate

Affirmed as Complete

Supervisory Scrutiny

The asset has been subject to a Charge-Off and classified as a loss in compliance with examination criteria and the Shared Loss Agreement

Disposition Amount

The SLA Disposition amount received will equal or exceed the current book value of the Loss Share Asset

Loss Analysis

Analysis and documentation supports that the SLA Disposition minimizes loss to the FDIC and AI

Standard Practice

Conforms to existing bank policy, Regulatory Guidelines and section 3.2 of Loss-Share Agreement

Publicly Marketed

With respect to a Short Sale, the Asset has been marketed for a minimum of 30 days

Loan File

Signed Certificate and supporting documentation is contained in the Loan file

Loan / Portfolio Sale

SLA Disposition is not a Loan Sale

Revocation of Authority

AI has met with all the above criterion and accepts the revocation of asset loss coverage in the absence of compliance.

Loan Number _____

Current Book Balance _____

FDIC Number _____

Net Proceeds Received _____

Failed Institution _____

Date of Sale _____

COMMENTS

Acquiring Institution Official's Signature and Date

Official's Name and Title