

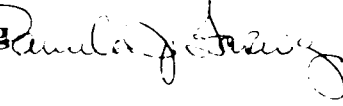


Federal Deposit Insurance Corporation
Division of Resolutions and Receiverships
550 17th Street, NW, Washington, DC 20429-9990

**Risk Sharing Asset Management
Guidance RSAM-2011-013**

To: Assuming Institutions with a Single Family Shared-Loss Agreement

Through: Jennifer Stockett 
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Subject: Covered Expenses - Facilitating Short Sales

Summary: This Risk Sharing Asset Management (“RSAM”) Guidance 2011-013 addresses credits and/or cash incentive payments made in connection with short sales that may be included as expenses in the calculation of losses. The guidance contained herein is limited to the Calculation of Short Sale Loss methodology in applicable Exhibits to the Single Family Shared-Loss Agreements. The FDIC will review in December 2011 the effectiveness of this guidance in increasing the number of short sales versus foreclosures.

Guidance:

This FDIC guidance provides Assuming Institutions with clarification regarding covered credits and/or cash incentive payments to elicit short sales as an alternative to foreclosure. Short sale incentives may be included in the loss calculation only if (1) the net recovery (sales price minus incentives) as a percent of property value on short sales effected within six months of a loan modification disqualification decision or re-default is at least 80 percent of property value, using at a minimum a brokers price opinion (BPO)* to determine value, or (2) the net recovery is at least 90 percent of property value (using at least a BPO to determine value) if the short sale is closed after six months of a loan modification disqualification decision or re-default.

Loss claims for expenses paid to elicit a short sale are subject to certain limitations and conditions. Loss claims for expenses paid to non-borrower third parties should be based on the reasonable value of the services provided by the third parties. A short sale must be publicly marketed and an arm’s length transaction by all parties. Permissible short sale incentives are:

1. Payments to borrowers to offset relocation costs. The FDIC recommends a payment substantial enough (for example, four percent of property value) to engage the borrower quickly, based upon the Assuming Institution’s determination of reasonableness;
2. Payments of the purchaser’s closing costs as long as the payments are consistent with bank policy and permissible under applicable law;
3. Real estate broker commissions in addition to the customary broker commission paid by the Assuming Institution for any additional services provided by the real estate broker and permissible under applicable law to effectuate a short sale transaction;

4. Payments to second mortgagees to release a junior mortgage lien, as long as the incentive is reasonable, prudent, and within the Assuming Institution's policy; and
5. Non-profit coordinator (for example, community assistance groups and housing counselors such as those mandated by HUD) payments.

Before pursuing a short sale solution, Assuming Institutions must always first determine whether a borrower qualifies for a loan modification, particularly in cases where the collateral is owner-occupied. It is prudent to institute loss mitigation processes that move efficiently with clear, timely communication to borrowers (refer to RSAM Guidance 2010-006 Loan Modification Guide, 4.1 FDIC Expectations about Borrower Notices, page 10). Assuming Institutions must inform borrowers within 10 business days of their decision that a modification has been approved, or, if denied, provide the reason for the denial along with foreclosure alternative options. Assuming Institutions must have sufficient designated loss mitigation staff, policies, and procedures so that (A) borrowers are apprised timely of loss mitigation options, (B) each borrower who is being considered for a loan modification or other loss mitigation solution will have a single point of contact with the Assuming Institution to respond to their questions regarding the process, and (C) foreclosure actions are not taken while a borrower's request for a loan modification or other loss mitigation solution is pending, or if the borrower is current on a trial or permanent modification.

In addition, the Assuming Institutions must document their consideration of loan restructuring, short-sale, and any other loss mitigation methods. They should always select the solution that they determine will result in the least loss. The financial documentation and hardship affidavit which a borrower is required to submit in connection with a modification application should be used by the Assuming Institution to determine alternatives to foreclosure when a modification is denied or the borrower re-defaults after a modification. If the least loss alternative is a short sale, the Assuming Institution should release borrowers who have a financial hardship documented with a signed Hardship Affidavit (as defined in RSAM Guidance 2010-006 Loan Modification Guide, page 6) from any deficiency balance remaining on the borrower's mortgage loan as applicable law permits.

Experience has shown that established short sale programs are more effective than ad hoc approaches to individual requests for short sales. Assuming Institutions are encouraged to establish policies and procedures to implement short sale programs. Short sale programs should include the following features:

- listing prices based on current valuations established at arms-length by third parties;
- timely borrower and other party response time goals and measurement;
- written procedures to identify minimum acceptable sales prices and criteria for waiving deficiencies;
- monthly loan payment forbearance for borrowers with a hardship during the short sale process;
- pre-foreclosure counseling especially regarding the tax implications of the extinguishment of the unpaid mortgage debt under applicable state and federal law;
- deed-in-lieu of foreclosure option if the short sale cannot be effected (see RSAM Guidance 2011-010R – Covered Expenses – Deeds-in-Lieu of Foreclosure);
- foreclosure proceedings not initiated during the short sale transaction unless required by state law;
- short sale agreements stipulate that the purchaser may not sell the property within 90 calendar days of closing;

- standardized letters, forms and agreements to communicate specifics of the short sale arrangement to the borrower and designated parties; and
- documentation of each stage of the transaction.

The FDIC and/or its contractors monitor the number of each Assuming Institution's loss mitigation resolutions. The FDIC expects the number of short sales to increase relative to foreclosures when short sale programs with the above characteristics are implemented. Assuming Institutions should set internal goals to improve the number of short sales versus foreclosures and are encouraged to review the establishment and progress of their short sale programs with their assigned Loss Share Specialist.

*Minimum acceptable valuation methods when offering incentives or credits are a BPO and/or a full appraisal. The BPO or full appraisal cannot be more than 90 days old as of the date the Assuming Institution evaluates the borrower for a short sale. Listing prices must be 1) disclosed in a timely manner to the borrower and its designated parties to the transaction, and 2) not more than 100 percent of property value.

Contact: Assuming Institutions should contact their Loss Share Specialist with any questions regarding this guidance.

This information is provided for general guidance and clarity on the matters contained therein. The 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.