

**Other Real Estate Owned
(OREO)
Minutes
September 1, 2009
10 – 12pm**

1. Roll Call –

Stakeholders in attendance included 6 participants in person and 11 participants via telephone.

2. Documents on the Web www.dfi.wa.gov –

The list of documents on the Web for the Sept 1, 2009, OREO rulemaking meeting:

- September 1, 2009 Meeting Agenda
- 4th Discussion Draft OREO Rule (Draft CR-102)
- Cost Projection Sample for Guidance
- Three Foreclosure Policy Samples for Guidance

3. Minutes –

The minutes from July 30 were approved unanimously.

4. Review 4th Discussion Draft of Proposed Rule (draft CR-102) –

Joanne Conrad presented the 4th draft discussion for comment in the official CR-102 format. Comments and changes are referenced by draft page number.

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Definition of “fair value” and “fair market value” were combined -

“Fair value” and “fair market value” mean the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale, in which the buyer and the seller are each acting prudently, knowledgeably and under no necessity to buy or sell. An appraisal at “fair value” primarily relies upon an estimate of the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. This is known as the “market data approach.” However, an appraisal at “fair value” may, in appropriate circumstances, be based upon the “cost approach” with regard to real estate improvements, including current replacement cost. (no comment)

Definition of “foreclosure” will include two definitions -

“Foreclosure” means:

(1) the involuntary termination of all rights of a trustor/grantor or mortgagor in the property covered by a deed of trust or mortgage, by means of statutory power of sale or judicial foreclosure, or by
(2) a Deed in Lieu of Foreclosure, the voluntary transfer (usually by quitclaim) of a trustor/grantor’s or mortgagor’s interest in real estate to the beneficiary of a deed of trust or mortgagee, in lieu of the beneficiary or mortgagee exercising the statutory power of sale or obtaining a judicial decree of foreclosure. (no comment)

Definition of “OREO” will include the means in which it is acquired -

“Other Real Estate Owned” (“OREO”) means real estate acquired by a credit union in whole or partial satisfaction of a debt owed to a credit union, by means of: (1) foreclosure or deed in lieu of foreclosure of the credit union’s deed of trust or mortgage, or (2) acquisition by the credit union and subsequent foreclosure, or deed in lieu of foreclosure of a superior lien interest. OREO is then held in inventory until sold.

“OREO” does not mean real property held for the credit union’s own business use or expansion under RCW 31.12.438. (no comment)

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Timeframe for submitting application was included -

"What if the OREO is not sold within the initial holding period?"

An application to hold other real estate owned beyond the five year initial holding period must be filed no less than six months prior to the end of the initial five years, on a form provided by DFI. In addition to the form, the Director may require justifying information, data and reports. The granting of an additional holding period of up to five years is at the regulatory discretion of the Director.

Comments:

- ◆ What happens if property is not sold within the initial 5 year period and a credit union application to extend the holding period is denied by the regulator? Each OREO will be unique and the circumstances will be carefully evaluated by the Director. After a close look at the fair market value and when the property cannot be sold, the Director may require the credit union to write down the property as zero value on the books.
- ◆ Can OREO be donated? Joanne will research.
- ◆ The draft application form will be available on the website for comment and suggestions by the taskforce prior to becoming final.

Accounting for OREO was streamlined to follow GAAP -

What accounting and reporting procedures are credit unions required to follow when accounting for OREO? Accounting and reporting for OREO must comply with GAAP. GAAP applies to accounting and reporting for OREO, regardless of materiality.

Where can GAAP be accessed and researched? The definitive text of U.S. GAAP, as codified, may be found at <http://asc.fasb.org> or as a link from fasb.org.

Can the DCU require charge offs or special reserves for OREO property? Yes, the DCU has authority to require a credit union to charge off or set a special reserve for OREO property. RCW 31.12.545(2)(c).

Comment:

- ◆ How will OREO be determined whether it requires special reserve or not? Two of the factors in making this determination will be comparing the property book value versus the fair market value and looking at GAAP.

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Minimal standards for safe and sound OREO management was shortened by suggestion -

What basic standards are used to determine the initial and ongoing regulatory acceptability of holding OREO? Holding requirements include, at a minimum, compliance with the following:

1. Accurate accounting for OREO. Refer to the accounting section of this rule at WAC 208-476-200
2. Obtaining independent written appraisals, or determinations of fair value, depending upon the nature of the loan, and updated periodically, to reflect changed market conditions
3. Diligent marketing efforts, including a written marketing plan, updated periodically to reflect changed market conditions
4. Compliance with any determination, order or directive issued by the Director regarding the acquisition, holding, management or disposition of OREO.

Are there requirements for credit union management of OREO? Yes. A credit union that is managing of OREO property must have a board policy that assures that the board is regularly informed of the nature and extent of the credit union's OREO holdings. In most cases, this requirement may necessitate the creation of a Special Assets committee, or some combination of executive staff, to oversee OREO management and report to the board, no less than quarterly.

Are credit unions required to have a written OREO policy? Yes. Credit unions must have a written OREO policy.

What should be included in a credit union OREO policy? At a minimum, the following elements should be covered in a credit union's written OREO policy:

- a. The credit union's staffing requirements for qualified management of OREO
- b. The credit union's plan to obtain legal advice from an attorney regarding the acquisition, holding and disposition of OREO
- c. The credit union's intended holding period for OREO
- d. The appraisal policy, or fair value methodology, for OREO
- e. The credit union's authorization to expend funds to improve and protect OREO
- f. The plan to market and dispose of OREO
- g. Identification of the person responsible for OREO management
- h. The OREO property management plan
- i. OREO internal controls
- j. Special Assets Committee (or other OREO reporter) responsibilities, including monitoring and reporting plan, and frequency of review by board and management
- k. Accounting procedures for Acquisition Phase
- l. Accounting for initial Holding Phase of OREO
- m. Accounting for Disposition of OREO
- n. Independent audit policy for OREO
- o. Responsibility for OREO file maintenance, document organization, storage, retrieval and retention

DFI recognizes that not all of the elements of the policy will apply to every OREO property.

Comment:

- ◆ It would make more sense to combine K, L, M, and add more specific accounting procedure in the Policy and Guidance.

What should a credit union do if there are questions about the management of OREO? A credit union may call the Division of Credit Unions at 360-902-8701, if questions arise during the lifecycle of OREO ownership. Information is also available on the DCU website www.dfi.wa.gov/cu/default.htm and in the DCU "OREO Owner's Manual" guidance book.

Comments:

- ◆ Concerns were raised about keeping contact information current in the rule. DCU will look at adopting a 3 year policy to review/update rules similar to what NCUA does.
- ◆ Will this rule apply to current OREO properties? Yes, and the original acquisition date of current OREO properties will apply towards the initial five year holding period.
- ◆ Examiners will begin checking for OREO compliance approximately 60 days after rule becomes effective.
- ◆ Is the application necessary if the OREO is written down as (zero) on the books? Yes
- ◆ The taskforce will be asked for comments and suggestions on the OREO Guidance prior to its finalization.

Please forward any additional comments to Joanne Conrad at jconrad@dfi.wa.gov

5. Action Item for next meeting –

Joanne Conrad will revise the draft to include the changes discussed today for the CR-102 proposed rule.

Joanne will research the issue of donating OREO.

Rhonda will send email and bulletin notification for official CR-102 hearing.

6. **Next Meeting:** Approximately Early October 2009 for the Official Hearing for CR-102
Meeting Adjourned 10:35 am