

Chapter 208-476 WAC

CREDIT UNION—OTHER REAL ESTATE OWNED

(Formerly chapter 419-72 WAC)

WAC

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WAC 208-476-010 Reason for rule. Why do credit unions need a rule on the handling of "other real estate owned" (OREO), property legally owned by the credit union as the result of foreclosure, or acquired as the result of default on a loan collateralized by real property? Although most financial institutions that do real estate lending have experienced an occasional foreclosure, the volume and asset value of foreclosed property has significantly increased recently. Due to the economic downturn that began in the fourth quarter of 2007, credit unions are now experiencing a greater number of foreclosures and acquiring portfolios of OREO. Because this type of economic effect is cyclic, it is useful for credit unions to be prepared to handle OREO property in a safe and sound manner. Some credit unions may find their number of OREO properties is becoming more difficult to manage. Some credit unions may be dealing with OREO properties for the first time.

The department of financial institutions (DFI), division of credit unions, is responsible for regulating to protect the integrity of credit unions as cooperative institutions, and to ensure that they remain viable and competitive. RCW 31.12.-015. It is important to provide regulatory standards for safe and sound management of OREO. RCW 31.12.005(24).

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-010, filed 11/24/09, effective 12/31/09.]

WAC 208-476-020 Rule-making authority. What is DFI's rule-making authority for these OREO rules? The division of credit unions is delegated rule-making authority by the director of DFI. The director's rule-making authority is based upon the Washington Credit Union Act (WCUA), RCW 31.12.516(2), which allows the director to adopt rules that are reasonable and necessary to carry out the purposes of the WCUA. The director has the power and broad administrative discretion to administer and interpret the provisions of the WCUA. RCW 31.12.516(4). In addition, the director has specific rule-making authority regarding secured or unsecured loans to members. RCW 31.12.426(1).

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-020, filed 11/24/09, effective 12/31/09.]

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WAC 208-476-030 Authority of director to require reports. What legal authority does DFI have to require special reports from credit unions, accounting for OREO? The director has the statutory authority to require a credit union to file any financial or statistical report the director may require. The director, therefore, has the authority to require special reports on OREO properties held by Washington state chartered credit unions. RCW 31.12.567.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-030, filed 11/24/09, effective 12/31/09.]

WAC 208-476-040 Authority for credit unions to hold real estate. What is the legal authority for a credit union to acquire, hold and dispose of OREO? A Washington state chartered credit union is permitted to own foreclosed and other OREO property, based on its statutory power to make secured and unsecured loans to its members. RCW 31.12.426 (1). If the borrower defaults on a loan secured by real property, the credit union has the authority to obtain title to the property as a power incidental to its normal course of business.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-040, filed 11/24/09, effective 12/31/09.]

WAC 208-476-050 Definitions. For purposes of these rules, the following definitions apply:

"Appraisal" means a written report by a certified or licensed appraiser containing sufficient information to support the credit union's evaluation of OREO, taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards, unless principles of safe and sound credit union practices require stricter standards.

"DCU" means the division of credit unions of the Washington state department of financial institutions.

"DFI" means the Washington state department of financial institutions.

"Director" means the director of the department of financial institutions, or the director's designee, typically the assistant director of the division of credit unions. RCW 43.320.-050.

"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."

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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.

"Foreclosure" means:

(a) 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

(b) 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.

"GAAP" means "generally accepted accounting principles," as codified in the financial accounting standards board accounting standards codification (FASB ASC).

"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:

(a) Foreclosure or deed in lieu of foreclosure of the credit union's deed of trust or mortgage; or

(b) 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.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-050, filed 11/24/09, effective 12/31/09.]

WAC 208-476-100 Limitations on holding of OREO.

How long is a credit union allowed to hold OREO? OREO must be disposed of as soon as prudent business judgment dictates, and in no case longer than five years, absent special circumstances and discretionary approval by the director. The longer real estate is held, the more speculative an investment it becomes.

When does the holding period begin? The holding period begins on the date that the credit union takes title to the OREO property.

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.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-100, filed 11/24/09, effective 12/31/09.]

WAC 208-476-200 Accounting for OREO. 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.

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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).

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-200, filed 11/24/09, effective 12/31/09.]

WAC 208-476-300 Minimal standards for safe and sound OREO management. (1) 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:

(a) Accurate accounting for OREO. Refer to the accounting section of this rule at WAC 208-476-200;

(b) Obtaining independent written appraisals, or determinations of fair value, depending upon the nature of the loan, and updated periodically, to reflect changed market conditions;

(c) Diligent marketing efforts, including a written marketing plan, updated periodically to reflect changed market conditions;

(d) Compliance with any determination, order or directive issued by the director regarding the acquisition, holding, management or disposition of OREO.

(2) Are there requirements for credit union management of OREO? Yes. A credit union that is managing OREO property must have a board-approved 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.

(3) Are credit unions required to have a written OREO policy? Yes, if a credit union has OREO, the credit union must have a written OREO policy.

(4) 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;

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(j) Special assets committee (or other OREO reporter) responsibilities, including monitoring and reporting plan, and frequency of review by board and management;

(k) The accounting policy for the acquisition, holding and disposition phases of OREO;

(l) Independent audit policy for OREO;

(m) 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.

(5) **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 life cycle of OREO ownership. Information is also available on the DCU web site www.dfi.wa.gov/cu/default.htm and in the DCU "*OREO Owner's Manual*" guidance book.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. WSR 09-24-050, § 208-476-300, filed 11/24/09, effective 12/31/09.]