Chapter 208-476 WAC
CREDIT UNION—OTHER REAL ESTATE OWNED
(Formerly chapter 419-72 WAC)

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).


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).


(11/24/09)
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 mortgagee 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 mortgagee'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.

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).

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.

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.

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.

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;

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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(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.