The NCUA Report

March 2010
Number 3
National Credit Union Administration

Net worth remains strong, shares expand, but loan growth slows and delinquency grows

Credit unions finished 2009 with nearly 10 percent net worth, while loan demand and delinquencies showed weakness in the face of economic stress, according to year-end Call Report data. Membership in the nation's 7,554 federally insured credit unions increased to nearly 90 million, and shares grew at the robust rate of 10.5 percent.

"Credit union membership growth is impressive and encouraging. The 'flight to safety' that landed new deposits at credit unions during the economic downturn continues, as evidenced by credit union share growth in several categories," noted NCUA Chairman Debbie Matz. "However, these positive developments are tempered by recognition of ongoing market stresses. This reality reinforces NCUA's decision to increase examination staff and augment regulatory oversight to monitor and assist credit unions faced with persistent, adverse economic conditions."

Reflecting stress in the job market and a struggling economy, delinquent loans to total loans grew to 1.82 percent. Credit unions continued to build provisions for loan losses as the ratio of net charge-offs to average loans grew from 0.85 percent to 1.21 percent during the year.

Overall loan volume grew 1.1 percent. A majority of loan growth in 2009 was in used automobile, credit card and first mortgages.

Net income returned to a positive $1.7 billion after a 2-year decline. This figure includes both National Credit Union Share Insurance Fund stabilization income and expense in 2009. Data also suggests that, by improving cost management, credit unions reduced operating expenses and the return on average assets grew 24 basis points compared to year-end 2008.

Details of major balance sheet items and member growth in federally insured credit unions from January through December 2009 follows:

- Assets increased 9.08 percent to $884.8 billion from $811.1 billion;
- Loans grew 1.1 percent to $572.4 billion from $566.0 billion;
- Shares increased 10.5 percent to $752.7 billion from $681.1 billion;

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NCUA FIRST FEDERAL AGENCY TO SIGN NTEU PARTNERSHIP AGREEMENT

National Credit Union Administration Chairman Debbie Matz and National Treasury Employees Union President Colleen Kelley signed a partnership agreement March 2, 2010, forming the NCUA/NTEU Partnership Council. The Council goal is to unite management and employees to meet the NCUA mission and enhance the work environment for all to ensure the agency delivers the highest quality service to its stakeholders.

HIGHLIGHTS

Chairman's Corner

Opportunities Ahead: New Era of Growth

As our nation's economy struggles to gain momentum, many of America's credit unions are landing new deposits from consumers' flight to safety.

If you look beyond today's challenges and look ahead toward recovery, the credit union industry seems poised for a new era of growth. By offering new products and exploring new approaches, credit unions can improve service to these new members, appeal to new demographics of potential members, and strengthen America's economy.

On the not-too-distant horizon, I see four opportunities offering promising pathways for growth:

Online Services

The expansion of online services presents an enormous opportunity. Offering a wider array of online capabilities will reduce expense ratios and appeal to a new generation of tech-savvy consumers, who expect to pay bills online and check balances from their iPhones.

To help credit unions provide online services that new members will demand, NCUA will host a webinar this spring with the CUNA Technology Council to discuss best practices.

Chairman Debbie Matz, center, recently welcomed IRS Commissioner Richard E. Byrd, Jr., and IRS Director Julie Garcia to NCUA to discuss the IRS VITA Program. NCUA is one of the top 15 national IRS VITA partners, and NCUA plans to include news and information about the VITA program in the financial education program of its new Office of Consumer Protection.

Short-Term Small Loans

The demand for alternatives to payday loans is huge. So is the opportunity to protect vulnerable consumers from predators who charge triple-digit rates.

NCUA is working on a proposed rule that would make it more feasible for credit unions to offer short-term small loans. By offering affordable payday loan alternatives, credit unions can fill a niche in the marketplace, attract new members, and help consumers keep more of their hard-earned dollars.

Member Business Loans

In recent weeks, I've had several meetings with lawmakers and Treasury officials to discuss opportunities to extend credit to businesses which can help jump-start our nation's economy. I've made it clear that if Congress raises the statutory cap on member business loans, NCUA would revisit our regulation to ensure that any credit unions increasing business lending do so in a safe and sound manner.

Raising the cap would create an estimated 110,000 new jobs each year. Especially now during this cycle of high unemployment, allowing credit unions to make more business loans would be a productive way to help small enterprises grow and access capital.

Supplemental Capital

Some credit unions need an opportunity to raise capital in ways beyond simply retaining earnings. Due to a statutory prohibition against supplemental capital, fast-growing healthy credit unions are effectively penalized by law for taking in new deposits—and thus are forced to turn away consumers.

This is why I am encouraging lawmakers to help consumers who are seeking a safe harbor at credit unions. Of course, as with business lending, any credit unions seeking supplemental capital would have to meet certain standards of safety and soundness.

Taking advantage of these opportunities would promote significant growth—and help propel the credit union industry past a historic milestone: reaching 100 million members by 2015.

Helping credit unions serve these members—with high-quality, low-cost services that families want, including business loans that our economy needs—will be the surest way to promote savings, build thriving communities, and invest in a stronger America.

Debbie Matz

Debbie Matz

NCUA INSIGHTS

The NCUA Report is published by the National Credit Union Administration, the federal agency that supervises and insures most credit unions.

Debbie Matz, Chairman
Christiane Gigi Hyland, Board Member
Michael E. Fryzel, Board Member

Information about NCUA and its services may be secured by contacting 703-518-6330.

Office of Public & Congressional Affairs
Cherie Umbel, Editor

National Credit Union Administration
1775 Duke Street, Alexandria, VA 22314-3428

BOARD *ACTIONS* February 18, 2010

NATIONAL CREDIT UNION SHARE INSURANCE FUND REPORT

NCUA's Chief Financial Officer reported the Fund's reserve balance totaled $726.4 million January 31, 2010, with $34.3 million charged to losses during January. NCUA collected a special assessment from federally insured credit unions in December 2009, and in early February 2010 NCUA paid Treasury $311 million, making the initial payment on $1 billion the Temporary Corporate Credit Union Stabilization Fund borrowed from Treasury.

January 2010 ended with an NCUSIF equity ratio of 1.24 percent based on expected share growth in the nation's federally insured credit unions. The equity ratio will be recalculated when actual year-end 2009 data is available within the next few weeks.

Two federally insured credit unions failed during January 2010—1 involuntary liquidation and 1 assisted merger.

There were 357 problem code credit unions at January 31, 2010, with shares of $42.0 billion representing 5.82 percent of total insured shares. In comparison, 271 problem code credit unions held shares of $16.4 billion representing 2.67 percent of total shares January 31, 2009.

Posing additional concern, currently there are 1,665 code 3 credit unions. These institutions represent $98.8 billion, or 13.69 percent of total insured shares.

During 2010, NCUSIF's annual revenue and expenses are projected to include investment income of $216 million, other income of $55.2 million, operating expense of $174.0 million, and insurance loss expense of $750 million. Through December 31, 2010, annual projections indicate NCUSIF will face a net loss of $652.8 million.

Chairman Matz reiterated that NCUA is diligently working to resolve the problems of code 4 and 5 credit unions and closely tracking code 3 credit unions. NCUA is committed to sustain and return these institutions to safe operating levels.

BRIEFING DETAILS ADOPTED INTERIM CAPITAL RULE

The NCUA Board heard an informational briefing on the interim final rule, approved by notation vote February 9th, designed to add flexibility to the redemption of secondary capital by low-income designated credit unions (LICUs). (The article below provides application information)

The Board acted quickly to enable LICUs to participate when the U.S. Treasury issued details of a new Community Development Capital (CDC) Initiative, a program to expand financial institution lending in low-income areas. Prior to Board action, LICUs were limited in the percentage of secondary capital they could redeem prior to maturation.

With approval by an NCUA regional director, the interim final regulation permits redemption of all, or part of government-funded secondary capital and its matching secondary capital after it has been on deposit for two years. The amended rule's effect is to allow LICUs to redeem secondary capital accepted under the CDC Initiative before interest rates escalate to 9 percent during the last five years of maturity. The amendment also changes the loss distribution procedures applicable to secondary capital by making CDC Initiative secondary capital senior to any required matching secondary capital.

The interim final rule has a 30-day comment period.

Board votes are unanimous unless otherwise indicated. NCUA rule changes are posted online at **www.ncua.gov** under *Resources/Regulations, Legal Opinions and Laws.*

Community Development CU Initiative

New secondary capital program benefits low-income CUs

Low-income credit unions (LICUs) are included in the Community Development Capital Initiative (CDCI), a new White House strategy to invest lower-cost capital in certain financial institutions. The program goal is to expand financial institution lending to small businesses and low-income areas.

This program is open to federally insured LICUs that are certified as Community Development Financial Institutions (CDFIs) by the U.S. Department of the Treasury's CDFI Fund. Applications must be submitted to the National Credit Union Administration (NCUA) at the email address below, or by facsimile at 703.518.6676. The application deadline is April 2, 2010. The Secondary Capital Plan must be submitted to NCUA no later than May 3, 2010.

Benefits of participation

LICUs may apply for up to 3.5 percent of total assets and not more than 50 percent of capital and surplus of the LICU. However, the maximum allowable is the lesser amount. The capital investments would carry an initial interest rate of 2 percent, compared to the 5 percent rate that was offered under Treasury's prior Capital Purchase Programs.

A Secondary Capital Plan (Plan) is a required part of the application process. At a minimum, the Plan must meet the requirements of NCUA's Rules and Regulations 701.34 (b)(1). Application and program materials are available via **www.financialstability.gov/roadtostability/comdev.html**. NCUA will post additional guidance on website **www.ncua.gov** under *Resources/CreditUnionDevelopment/index*

Direct program inquiries to NCUA at **LICUCapital@ncua.gov**.



Appearance calendar

Date: March 23, 2010
Who: Chairman Debbie Matz
Event: Missouri Credit Union League Annual Meeting
Location: Jefferson City, MO
Contact: Angela Sanders at **asanders@ncua.gov**

Date: March 23, 2010
Who: Board Member Gigi Hyland
Event: CUNA Marketing & Business Development Council
Location: Washington, DC
Contact: Jessica Vogel at **jvogel@ncua.gov** or 703-518-6318

Date: March 23, 2010
Who: Board Member Fryzel
Event: Teachers Credit Union Visit
Location: South Bend, IN
Contact: Katie Supples at **ksupples@ncua.gov**

Date: March 24, 2010
Who: Board Member Fryzel
Event: Illinois Credit Union System's Legislative Reception
Location: Springfield, IL
Contact: Katie Supples at **ksupples@ncua.gov**

Date: April 7-8, 2010
Who: Chairman Debbie Matz
Event: Texas Credit Union League Annual Meeting
Location: Grapevine, TX
Contact: Angela Sanders at **asanders@ncua.gov**

Date: April 15-16, 2010
Who: Chairman Debbie Matz
Event: Ohio Credit Union League Zenith 2010
Location: Cincinnati, OH
Contact: Angela Sanders at **asanders@ncua.gov**

Date: April 29-30, 2010
Who: Chairman Debbie Matz
Event: Illinois Credit Union League 80th Annual Convention
Location: Chicago, IL
Contact: Angela Sanders at **asanders@ncua.gov**

Date: April 30, 2010
Who: Board Member Gigi Hyland
Event: Alaska Credit Union League Annual Meeting & Conference
Location: Girdwood, AK
Contact: Jessica Vogel at **jvogel@ncua.gov** or 703-518-6318

Date: April 30, 2010
Who: Board Member Fryzel
Event: Illinois Credit Union League 80th Annual Convention
Location: Chicago, IL
Contact: Katie Supples at **ksupples@ncua.gov**

NET WORTH REMAINS STRONG from page 1

- Investments increased 27.3 percent to $210.9 billion from $165.7 billion;
- Net worth grew 1.9 percent to $87.7 billion from $86.1 billion; and
- Membership increased 1.5 percent to 89.9 million members from 88.6 million members.

Because share growth significantly outpaced loan growth during 2009, the loan-to-share ratio declined to 76.05 percent from 83.1 percent posted at year-end 2008. This resulted in significant investment growth.

Within share accounts, regular shares, share drafts, and IRA/KEOGH accounts each posted double-digit increases, and money market shares grew a substantial 23.5 percent. Funds in federally insured credit union share certificates declined 0.2 percent. Lending saw used automobile loans gain 4.1 percent. First mortgage real estate loans and lines of credit grew 4.4 percent in 2009. Credit cards posted a 6.6 percent increase, 2 percent lower than the 8.6 percent unsecured credit card debt posted in 2008. New automobile loans declined 7.7 percent and other types of real estate loans declined 4.3 percent.

To protect against potential losses, federally insured credit unions increased provisions for loan and lease losses by 34.1 percent during 2009 following a 120 percent increase in 2008. Over $9.4 billion is now set aside to cover loan and lease losses. Delinquent loans grew 33.7 percent to a reported $10.4 billion.

Details of December 2009 data are available in an Aggregate Financial Performance Report (FPR), and a 1-page December 2009 Facts Summary is also posted online at **www.ncua.gov** under *DataServices/FOIA*.

Visit the NCUA website www.ncua.gov to access the latest information directly from NCUA.

Focus on the future

FROM GIGI HYLAND

During last month's CUNA Governmental Affairs Conference, I spoke about the future of the credit union movement. That topic is important enough to continue what I hope will be a dialogue within the system over the next months and perhaps years.

By all accounts, 2010 will be a tough year. Historical data from previous recessions shows there is a lag effect on credit unions in recovering from an economic recession. On top of this unsettling information, we know the financial world is in a state of upheaval and change. Congress is undertaking an effort to legislate potentially sweeping reforms in the regulation and supervision of the nation's financial services sector. NCUA is undertaking significant reform to the corporate credit union system. If I were you, I might exclaim, "Future?! Who has time to think about the future when we have so much on our plates right now?"

My response—If not now, when?

The future comes whether we want it to or not. But you have the ability and power to develop compelling visions of what you want the future of the credit union movement to be. At last year's 75th Anniversary Symposium which I hosted, collaboration, sustainability and change were the key discussion points. Symposium participants agreed that if credit unions do not collaborate, do not adapt their business model to respond to a changing market, then credit unions' sustainability is unlikely. But, credit union sustainability doesn't just happen. Credit union collaboration doesn't just happen. They take work, dedication and, most importantly, they take vision. A vision backed up with powerful actions to make the future what you want it to be.

Change, in monumental form, is upon us. It is the end of the world as we know it. Building on a century of success and shaping credit unions' future is still squarely in your hands. Identify mutual interests with your colleagues and expand the dialogue, collaboration and cooperation. Create a compelling vision for credit unions' future and back it up with strong actions.

In need of a crystal ball

FROM MICHAEL E. FRYZEL

There is an old saying that goes, if you put 10 lawyers in a room, give them a document to read, and ask each of them the same question, you will get 10 different answers.

Similarly, in today's economic climate, if you ask 10 economists when the recession will end, you could get 10 different answers. That is because no one really knows when this economy will turn and when we will be headed toward a brighter future.

There are just too many variables in the mix for anyone to get a handle on the direction of the economy. Each month we look at the unemployment figures, housing numbers and retail performance of major companies and monitor the effects they have on consumer confidence. Every day we watch the stock market go up, down, then up and down again. Sometimes, the fluctuations are due to a major speech by a policy maker, sometimes the result of change in a major economic indicator, and other times for reasons no one can really explain other than to speculate. We look to our economists for answers, but they do not have a crystal ball to see into the future. Their responses are based on intense models, mathematical formulas, and history in dealing with these types of events. There are no easy answers and no magic solutions. So what do we do?

We do what Americans do best. We keep on working, we keep trying different options, we never lose focus of the future while we handle the problems of the present, and we never forget that we are all in this together. It takes a cooperative effort.

Is the cooperative system alive and well? When times are good, a robust cooperative system is evident. But, when times are tough, will people still come together and offer credible solutions and alternatives? Will it be one for all and all for one, or will me first mentality prevail? There is no doubt these are tough times and the crystal ball could show tougher times ahead for credit unions. However, what works in the cooperative model is when those in the industry reach a consensus and offer solutions for the good of the community. Credit unions do make a difference and the cooperative model can continue to be a strong force today, as it has been, even through this difficult period. To achieve that mission we must continue to work collectively and support one another. Only then can we all take the next steps toward solutions to preserve the credit union community and its future.

Just like the cooperative credit union movement has succeeded for over 100 years, by solving problems together, so must our country work together to solve the problems before them today.

People helping people, a motto, a commitment, an ideal that has made credit unions the premier financial service institution in this country, and it is the same formula that will be the key to getting America back on track to being the economic leader throughout the world.

ASSET LIABILITY MANAGEMENT ADVICE

Understanding interest rate risk

This is the third in a series of articles emphasizing sound practices for managing interest rate risk at credit unions, especially in the current environment of low, short-term interest rates combined with a steep yield curve.

There is considerable uncertainty about when rates may rise, how much they may rise, and the future shape of the yield curve. Accordingly, financial regulators issued an interagency advisory on interest rate risk management in January 2010. The advisory highlights the board and senior management responsibility to "clearly understand" their approach in managing the impact of interest rate changes on earnings and capital. Only by this means can interest rate risk management be effective.

Credit union management should be aware of the implications of balance sheet strategies on interest rate risk exposure, and the risk tolerance of the board should be reflected by the exposure limits it sets. Senior management is accountable for ensuring policies, procedures and reporting processes are in place to protect the safety and soundness of their institution. Management must be able to accurately assess the impact of interest rate changes on balance sheet positions to achieve effective risk management. Management must also understand the effect of assumptions in any measure used to make this assessment. *Scenario analysis* and *sensitivity testing* are important tools to accomplish these objectives.

Scenario analysis evaluates the effect of projected future interest rate changes on asset or liability cash flow. For example, interest rate levels may rise or fall, the slope of yield curves may steepen or flatten, or the relationship between key market rates (basis risk) may change. Changes in each element of future interest rate variables are likely to influence both earnings and future capital. Therefore, it is critical for credit union boards and management to evaluate the impact on cash flows from each instrument on the balance sheet to understand the credit union's interest rate risk exposure.

Sensitivity testing assists management when it makes assumptions to measure interest rate risk exposure. For example, the number of future mortgage prepayments will depend on borrower response to future interest rates. It is important management consider how prepayment assumptions alter the level of interest rate risk exposure attributed to mortgages on a credit union's balance sheet. Sensitivity testing analyzes the impact of changes in this or any other assumption by varying one assumption while other assumptions and variables remain constant.

Using scenario analysis and sensitivity testing allows management to carefully evaluate and understand a credit union's interest rate risk exposure. This also enables management to clearly report exposure to the board to better manage interest rate risk.

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the note, possesses it and retains the servicing rights, there are generally no standing issues. If a credit union acquired or sold ownership of the note and/or servicing rights, the credit union should secure and retain the original note endorsed in blank (endorsed without restrictions), so the note remains unrestricted, and record their assignment correctly with county courts where the property is located.

- *The credit union is missing the original note.* Because notes are negotiable instruments, the holder of the note has rights under UCC. This is why the original note is required in a Florida foreclosure. Some credit unions that lost records during hurricanes of 2005 are still dealing with the problem of missing or destroyed notes. Credit unions can re-establish a lost note with testimony at trial. A lost note bond may be required by the court.
- *Right of Rescission was not provided for non-purchase money mortgages.* The credit union needs to maintain evidence they provided the right of rescission to the property owners, not just the borrowers. The ability to use this as a foreclosure complaint defense is limited to three years. After that period, the parties are presumed to not rescind.
- *Material disclosures were incorrect at the time of origination.* This is why material disclosures (APR, amount financed, etc.) are tested during loan reviews. If material disclosures are incorrect, foreclosure can go forward but the credit union may have to contend with a counter-suit seeking to off-set a portion of the judgment.

WHEN *LIS PENDENS* APPEARS IN MORTGAGE FILES

During review of mortgage files, you might see a *lis pendens* in the file. This is a notice recorded in the county where the real estate is located. It places the public on notice of a lawsuit pending that could impact title with respect to the real estate. A lis pendens gives case type (credit union or bank vs. borrower) and case number but does not reveal the nature of the litigation. Generally, a lis pendens in the second mortgage file means the first mortgagee has likely initiated a foreclosure action.

Some related NCUA examination procedures include searching neighboring county websites and querying all modifications and lis pendens both to and from the credit union for the prior quarter.

A sample test of:

- Lis pendens *to* the credit union to determine if second mortgages are appropriately written down. For example, if the first

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Everything you ever wanted to know about exam appeals

For NCUA's mission to succeed, agency staff must communicate effectively and display fairness and consistency when supervising credit unions. All levels of NCUA management continually reinforce the importance of staff interacting with agency stakeholders in a professional, results-oriented manner. However, as in any business environment, exceptions can occur. To address this possibility, NCUA provides credit union officials formal and informal avenues of recourse for registering objections about NCUA's supervision process.

A credit union official who disagrees with a report issued by NCUA's field staff can request the appropriate regional director review the concerns. To exercise this option, he or she should submit the request for review in writing to the appropriate regional office within 30 days after receiving the final report. The regional director will review concerns in detail, provide a written response, and, when necessary, initiate appropriate corrective action. NCUA's experience indicates credit unions and agency staff are able to resolve most disagreements informally and expeditiously because the concerns originally stemmed from a breakdown in communication.

Role of the Supervisory Review Committee

If a credit union official remains dissatisfied after receiving a response from the regional director; or, if the regional director does not provide a written response within 60 days of receiving the request for review, the complainant may submit an appeal to NCUA's Supervisory Review Committee under certain circumstances.

Specifically, NCUA's Supervisory Review Committee reviews concerns relative to material supervisory determinations as defined by Interpretative Ruling and Policy Statement (IRPS) 95-1, as amended by IRPS 02-1. IRPS 95-1, which indicates supervisory determinations, are limited to decisions NCUA staff makes concerning: (1) composite CAMEL ratings of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant as determined by the appealing credit union. In addition, IRPS 02-1 indicates credit union officials may appeal a regional director's decision to revoke any portion of a credit union's RegFlex authority.

The Supervisory Review Committee consists of three regular members of NCUA's senior staff appointed by the NCUA Chairman. None of the members shall currently serve as a regional director, associate regional director, executive director or executive assistant to a Board Member. The NCUA Chairman designates one committee member as chairperson.

Submit an appeal

The board of directors of the appealing credit union must authorize filing of the appeal. Appeals must be submitted in writing and mailed or delivered to: Chairman, Supervisory Review Committee, NCUA, 1775 Duke Street, Alexandria, VA 22314-3428.

File appeals in writing and include the name of the appellant credit union, the material supervisory determination being appealed and the reasons for the appeal. Credit unions should submit all information and supporting documentation relevant to the matter in dispute. Appellants are entitled to a personal appearance before the Committee. The Committee chairperson reserves the right to attempt to work out the dispute through teleconference.

Appeal time frames

After receiving an appeal, the Supervisory Review Committee considers the facts in detail. The committee may request additional information from the appellant and/or the regional director within 15 days receipt of the appeal. Requested information must be submitted within 15 days of receiving the request. The committee will make a determination within 30 days receipt of the appeal or 30 days receipt of requested additional information. Time requirements can be adjusted by the committee on its own, or at the request of the appellant or the region involved. After completing its review, the committee will make a final decision. Within 30 days of receipt, the decision is appealable to the NCUA Board.

When a matter is under review by the Supervisory Review Committee, the material supervisory determination remains in effect. The appeal does not prevent NCUA from taking any action, either formal or informal, that it deems appropriate during a pending appeal.

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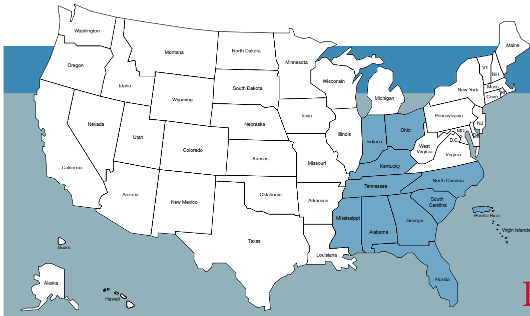
is in foreclosure and is owed $100,000 but the property is only worth $80,000, the credit union's second mortgage would likely need to be written off.

- Lis pendens *from* the credit union to determine all problem loans. If the credit union is filing a lis pendens on a property for a foreclosure action, it would likely appear on the delinquency reports, foreclosure in process reports, and be accounted for in the allowance account (if necessary).
- Modifications *from* the credit union to ensure all modifications are reported as part of the review of troubled debt restructurings. Compare to the list of loan modifications to test for completeness.

While each state has different foreclosure rules, many terms are similar to what you might see in Florida.



Region *III*

A Focus on Florida Real Estate

FLORIDA REQUIRES JUDICIAL FORECLOSURES

Florida has one of the highest default and foreclosure rates in the country, and it has a large second home market. Unlike many non-judicial foreclosure states that generally rely on the power of sale clause allowing a trustee to sell the home, Florida is a judicial foreclosure state and requires an order from a judge to foreclose. Credit unions throughout the country may have loans in default secured by properties in Florida. Since state law is involved, the following generalities apply to Florida property.

FLORIDA FORECLOSURE REQUIREMENTS

In order to execute a cause of action for a mortgage foreclosure in Florida, the credit union must prove:

- A loan was granted with a mortgage recorded in the county where the property is located.
- The borrower who received the loan has defaulted. A default includes failure to make payments, sale of the property if there is a due on sale clause, and failure to pay taxes and insurance, etc.
- The credit union or loan servicer sent a notice of intent to accelerate (require payment in full) to the borrower. Most importantly, the notice of intent to accelerate and 30-day cure period must occur prior to filing the mortgage foreclosure complaint. If the credit union/servicer failed to send the notice of intent to accelerate, does not have evidence demonstrating notice, or fails to wait the 30-day cure period, foreclosure will not be granted. What's more, if a credit union accelerates and the borrower sends a payment, the funds must be returned or left in suspense. Accepting a payment after a notice of intent to accelerate is issued is fatal to a mortgage foreclosure action in Florida (the credit union must dismiss and begin the process anew).
- After the notice of intent to accelerate is provided and the 30-day right to cure period has passed, the credit union can file the foreclosure complaint in the county the property is situated, if the borrower has not cured the default.

If foreclosure prevails, the credit union will receive a judgment and title to the property. After 30 days, the credit union can sell the property, with proper notice, unless the sale date is set aside by the court.

Currently, some county courts in Florida are so backlogged uncontested foreclosures are taking a year, and contested foreclosures can take much longer.

FORECLOSURE DEFENSES

Common defenses used in Florida often include:

- *The credit union does not have standing.* The most common foreclosure defense, this is an affirmative defense also known as the "Yes, I am in default, but…" defense. Standing means the party bringing the foreclosure complaint has the ability to enforce the note and mortgage. It ensures the correct party is before the court. Remember, notes are negotiable instruments just like a check. If a note is endorsed in blank (paid to the order) as a negotiable instrument under the Uniform Commercial Code (UCC), the holder of the note has rights under the document, provided it is endorsed correctly. If the credit union originated

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