Administrative Guideline for Credit Unions 12-2

(Issued November 6, 2012)

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Reporting of Troubled Debt Restructures and Loan Interest Accruals for federally-insured State Chartered Credit Unions and all state-chartered credit unions using the 5300 Call Report Program

The Ohio Division of Financial Institutions (the "Division") is aware of recent changes in the National Credit Union Administration's (NCUA) reporting requirement effective with the quarter ending December 31, 2012 for all credit unions utilizing the 5300 Call Report program. The instructions for this cycle will reflect NCUA's final rule and guidance for Troubled Debt Restructures (TDRs).

In adopting an amendment to 12 C.F.R. § 741.3, and the addition of Appendix C to 12 C.F.R. part 741, NCUA has stated that "as a result of the changes approved by the Board, credit unions will now be able to modify loans without having to immediately classify Troubled Debt Restructures (TDRs) as delinquent." Specific changes include:

- Requiring federally insured credit unions to adopt and adhere to written policies that govern loan workout arrangements that assist borrowers.
- Allowing credit unions to calculate the past due status of all loans consistent with loan contract terms, including amendments made to loan terms through a formal TDR.
- Eliminating the dual and often manual delinquency tracking burden on credit unions for managing and reporting TDR loans.
- Reaffirming current industry practices by requiring credit unions to discontinue interest accrual on loans past due by 90 days or more and to establish requirements for returning such loans to accrual status."

Defined by the American Institute of Certified Public Accountants as "*a TDR is one in which the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider.*"

Ohio chartered credit unions are required to comply with generally accepted accounting principles pursuant to Ohio Admin. Code § 1301:9-2-11(A) which states: *Every credit union must maintain adequate, complete and correct accounts and shall observe generally accepted accounting principles (GAAP) and anything else the superintendent prescribes.*

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In addition, the Ohio Administrative Code § 1301:9-2-04 sets forth the following requirements for loan refinances and extension agreements:

> (H) Refinance or extension agreements.
>
> (1) In the determination of the amount of delinquency of a loan and the proper amount to be added to the allowance for loan losses account, the terms "refinance" and "extension" shall be treated as if they are one and the same.
>
> (a) Credit unions are authorized to grant to members, in certain cases, an extension of the time in which a loan must be paid off; this is accomplished by an agreement between the credit union and the member borrower.
>
> (b) In making such renegotiated arrangements, the credit union must comply with all provisions of the credit union's applicable policy.
>
> (i) In either case, the loan so negotiated shall be deemed to be of current status only if six consecutive payments are made thereon, pursuant to the new loan terms.
>
> (ii) Should the borrower make six consecutive payments and then default for any reason, the resultant delinquency and allowance for loan losses shall be determined based upon the original terms of the loan and not upon the renegotiated loans.
>
> (2) The new note or extension agreement and related documents shall be attached to a copy of the original note in either example given above.
>
> (3) Only one refinance or extension agreement shall be permitted for the purpose of determining delinquency and allowance for loan losses.

Given that the Ohio Administrative Code rule conflicts somewhat with the new NCUA rule with respect to classifying loans delinquent that may be a troubled debt restructure, the Division will not be enforcing compliance with its rule and, instead, defers to the NCUA reporting rule for the immediate future.

In sum, we believe this will provide some record keeping relief in that credit unions will no longer have to keep separate records for TDRs prior to the six month time frame. Furthermore, this should provide a more accurate depiction of asset quality ratios, primarily loan delinquency, by not including TDRs with new contract terms.

Additionally, loan interest accruals must cease three months after a loan becomes delinquent. This is a reduction from the state rule of six months, and management is further reminded that in addition to loan interest, late fees should be reversed as well after three months of non-payment.

All credit unions must have a policy to address loan workouts, refinances and extension agreements, and TDRs. The recent economic downturn has resulted in a high rate of foreclosures and delinquency and thus the need for credit unions (and all financial institutions) to "workout" many more loans than during normal times. If there is a question regarding whether a loan meets the definition of a TDR, the Division recommends the credit union consult with a licensed CPA.

Please note the Division reserves the right to rescind this guideline at its discretion and would make a reasonable effort to do so with notice. Should there be any questions regarding this guideline, please contact the Division's Credit Union Section at (614) 644-9574.

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