



PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS SINCE 1905

**Idaho Department of Finance
Guidance Statement
2021-01-FIB**

GUIDANCE - DISPOSITION OF BANK-OWNED REAL ESTATE

ISSUE DATE: OCTOBER 4, 2021

I. Background

Idaho Code § 26-707, regarding Real Estate Holdings, was amended during the 2021 Idaho Legislative Session. The amendment is effective July 1, 2021, and eliminates a provision that required Idaho-chartered banks to write down the value of other real estate owned (OREO) by twenty percent each year during the second five-year OREO holding period, if the additional holding period is approved by the Director. While the write-down provision was eliminated, Idaho-chartered banks must still submit an application to the Idaho Department of Finance (Department) and obtain Director approval to extend the OREO holding period for an additional five years, resulting in a total holding period of ten years. To obtain approval, Idaho-chartered banks must demonstrate a good faith attempt to dispose of OREO within the first five-year period, or that disposal within the first five-year period would be detrimental to the bank.

This guidance clarifies the applicability of Idaho Code § 26-707 to Idaho-chartered banks that received Director approval to hold OREO for the second five-year holding period prior to July 1, 2021. Additionally, it clarifies when the holding period for OREO begins. Finally, this guidance clarifies the Department’s interpretation of what constitutes a “good faith attempt” to dispose of OREO, as well as generally describe situations in which disposal of OREO within the first five-year period would be considered detrimental to the bank.

The Department recognizes that each situation is different, and that disposal of OREO can present unique risks that bank management must evaluate prior to disposal. The Department will continue to evaluate each OREO holding extension request on a case-by-case basis. Idaho-chartered banks are asked to submit a letter and supporting documentation requesting an OREO holding extension at least sixty (60) days prior to the expiration date of the first five-year holding period.

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II. Applicability

Idaho-chartered banks that received Director approval prior to July 1, 2021, to extend the holding period of OREO for an additional five years do not have to act for the amendment to be applicable to those properties. No further write-downs are required for the remaining holding period, with the expectation that OREO is disposed by the end of the second five-year holding period, or otherwise written-off. It is not appropriate to reverse any prior write-downs applied to these properties.

III. Holding Period

The holding period begins on the date that ownership of the property is originally transferred to the bank, including as a result of a merger with or acquisition of another organization holding OREO.

As part of the foreclosure process, certain states have a mandatory period following a foreclosure sale during which the borrower can redeem its interest in the property by satisfying the debt. During this redemption period, the borrower generally has the right to occupy the property, thereby maintaining physical possession of the collateral. Foreclosed real estate should be accounted for as OREO pursuant to Generally Accepted Accounting Principles (GAAP) and Call Report Instructions without regard to any state redemption statutes. The five-year holding period does not, however, begin until the end of the redemption period, assuming the borrower does not redeem the property through payment in full

IV. Good Faith Attempt

The Department considers that a bank has made a good faith attempt to dispose of OREO during the first five-year period if the bank can demonstrate that the property has been, and is at the time the extension application is received by the Department, actively listed at a reasonable asking price. A property is actively listed when a listing agreement exists between the bank and a listing agent, and the property can be found in readily available online sources that list real estate for sale. The Department expects asking prices to be reasonable and in-line with the value derived by the most recent market evaluation or appraisal performed on the real estate at the time the listing price is established.

While institutions may list OREO for more than market value, these instances should be rare. The Department will heavily scrutinize instances in which offers above market value have been received but not accepted by the bank. Asking prices that are above market value are generally considered to be not reasonable unless extenuating circumstances exist, and the bank can adequately support the reason for the elevated asking price.

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A counteroffer made by an Idaho-chartered bank that is significantly above the market value of the property is generally considered to show a lack of a good faith attempt. As previously stated in this document, the Department will continue to evaluate each request on a case-by-case basis.

V. Disposal is Detrimental to Bank

If an Idaho-chartered bank is unable to demonstrate that a good faith attempt was made to dispose of the OREO, then the bank must demonstrate that disposal of the OREO within the first five-year holding period would have been detrimental to the bank. The Department generally will evaluate whether disposal of the real estate would have negative consequences to the safety and soundness of the institution. Instances in which the bank actively marketed the property at a reasonable asking price, but only received offers below market value would be considered to have met this threshold. Situations involving environmental, legal, reputational, or other risks will be evaluated based on the support provided by bank management during the application to extend the OREO holding period.

Contact - You may direct comments or requests for additional information regarding this Guidance Statement to:

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