

Office of Thrift Supervision, Treasury

§ 564.1

Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and 12 CFR 563.180(b)).

§ 563g.21 Filing of copies of offering circulars in certain exempt offerings.

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirement of § 563g.2 by reason of § 563g.3(e) or § 563g.4 of this part shall be mailed to the Office within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the Office and shall not be deemed to be "filed" with the Office pursuant to § 563g.2 of this part. The mailing to the Office of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 563g.2 of this part.

PART 564—APPRAISALS

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*

NOTE: At 57 FR 54173, Nov. 17, 1992 a statement and order was issued by the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA), signed by the President on October 23, 1992, authorizes the agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions.

This order is effective on November 17, 1992, and expires for specific areas on the dates listed.

Exceptions for Florida and Louisiana counties affected by Hurricane Andrew expire Au-

gust 23, 1995, and August 25, 1995, respectively. Exceptions for Hawaii counties affected by Hurricane Iniki expire September 11, 1995. Exceptions for Los Angeles County expire May 1, 1995.

ORDER

In accordance with section 2 of DIDRA, relief is hereby granted from the provisions of title XI of FIRREA and the agencies' appraisal regulations promulgated thereunder¹ for any real estate-related financial transaction that requires an appraisal under those provisions; provided that the transaction involves real property located in an area designated eligible for Federal assistance by the Federal Emergency Management Agency as a result of Hurricanes Andrew² or Iniki³ or of the Los Angeles civil unrest in May 1992;⁴

Provided

The real property involved was directly affected by the major disaster; or

The real property involved was not directly affected by the major disaster but the institution's records explain how the transaction would facilitate recovery from the disaster;

And further provided

There is a binding commitment to fund a transaction that is made within three years after the date the major disaster was declared by the President; and

The regulated institution retains in its files, for examiner review, appropriate documentation supporting the property's valuation.

§ 564.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Office of Thrift Supervision ("OTS") under title XI of the Financial

¹12 CFR part 34, subpart C (OCC); 12 CFR parts 208 and 225, subpart G (Board); 12 CFR part 323 (FDIC); 12 CFR part 564 (OTS); 12 CFR part 722 (NCUA).

²Florida counties: Broward, Collier, Dade, Monroe.

Louisiana parishes: Acadia, Allen, Ascension, Assumption, Avoyelles, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, West Feliciana.

³Hawaiian counties: Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, Oahu.

⁴Los Angeles County.

Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. 101-73, 103 Stat. 183, 511 (1989)), 12 U.S.C. 3301 *et seq.*, and the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1461 *et seq.*, as amended by FIRREA.

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This part implements the requirements of title XI and applies to all federally related transactions entered into by the OTS or by institutions regulated by the OTS ("regulated institutions").

(2) This part: (i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the OTS.

[55 FR 34547, Aug. 23, 1990]

§ 564.2 Definitions.

(a) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institution Examination Council.

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syn-

dicate, sole proprietorship, or other business entity.

(e) *Complex 1-to-4 family residential property appraisal* means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(f) *Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990, that:

(1) The OTS or any regulated institution engages in or contracts for; and

(2) Requires the services of an appraiser.

(g) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(h) *Real estate or real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(i) *Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property,