

Office of Thrift Supervision, Treasury

§ 564.2

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 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 en-

tered 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, syndicate, 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

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.

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, including interests in property, or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(j) *State certified appraiser* means any individual who has satisfied the requirements for certification in a State or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade upon a suitable examination adminis-

tered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the National Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA. The OTS may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(k) *State licensed appraiser* means any individual who has satisfied the requirements for licensing in a State or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The OTS may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(l) *Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

(m) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan or extension of credit;

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

[55 FR 34547, Aug. 23, 1990, as amended at 57 FR 12705, Apr. 13, 1992; 59 FR 29502, June 7, 1994]

§ 564.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real