

§ 563g.21

§ 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 August 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.

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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 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.

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.

(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, 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 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

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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 administered 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 pur-

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chase, 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 estate-related financial transactions except those in which:

(1) The transaction value is \$250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of \$1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan,

or real property interest met OTS regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The OTS determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The OTS reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

(d) *Transactions requiring a State certified appraiser—*(1) *All transactions of \$1,000,000 or more.* All federally related transactions having a transaction value of \$1,000,000 or more shall require an appraisal prepared by a State certified appraiser.

(2) *Nonresidential and residential (other than 1-to-4 family) transactions of \$250,000 or more.* All federally related transactions having a transaction value of \$250,000 or more, other than those involving appraisals of 1-to-4

family residential properties, shall require an appraisal prepared by a State certified appraiser.

(3) *Complex residential transactions of \$250,000 or more.* All complex 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is \$250,000 or more. A regulated institution may presume that appraisals of 1-to-4 family residential properties are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

(e) *Transactions requiring either a State certified or licensed appraiser.* All appraisals for federally related transactions not requiring the services of a State certified appraiser shall be prepared by either a State certified appraiser or a State licensed appraiser.

(f) *Effective date.* Savings associations are required to use State certified or licensed appraisers as set forth in this part no later than December 31, 1992.

[55 FR 34548, Aug. 23, 1990, as amended at 57 FR 12705, Apr. 13, 1992; 59 FR 29502, June 7, 1994]

§ 564.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

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(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this part; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

[59 FR 29503, June 7, 1994]

§ 564.5 Appraiser independence.

(a) *Staff appraisers.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment and that the appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing an appraisal in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

[55 FR 34549, Aug. 23, 1990, as amended at 59 FR 29503, June 7, 1994]

§ 564.6 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or licensed, as appropriate. However, a State certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

[55 FR 34549, Aug. 23, 1990]

§ 564.7 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, who violate this part may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, as amended, or other applicable law.

[55 FR 34549, Aug. 23, 1990]

§ 564.8 Appraisal policies and practices of savings associations and subsidiaries.

(a) *Introduction.* The soundness of a savings association's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy

because appraisal reports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of §§563.170 and 563.172 of this part.

(b) *Definition.* For purposes of this section, management means: the directors and officers of a savings association, or service corporation of such savings association, as those terms are defined in §§561.18 and 561.35 of this chapter respectively.

(c) *Responsibilities of management.* An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which savings associations may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the savings association's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall ensure that adequate appraisals are obtained and proper appraisal procedures are followed consistent with the requirements of this part 564.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the savings association consistent with the requirements of this part 564. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's State certification or licensing, professional education, and type of experience. An appraiser's membership in professional appraisal organizations may be considered consistent with the requirements of §564.6

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with (i) the savings association's appraisal policies and procedures; and (ii)

the reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of §564.4(b) through (d) shall not apply with respect to appraisals on nonresidential properties prepared on form reports approved by the Office and completed in accordance with the applicable instructional booklet.

[54 FR 49552, Nov. 30, 1989. Redesignated and amended at 55 FR 34549, Aug. 23, 1990; 55 FR 43440, Oct. 29, 1990; 59 FR 29503, June 7, 1994; 59 FR 53571, Oct. 25, 1994]

PART 565—PROMPT CORRECTIVE ACTION

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AUTHORITY: 12 U.S.C. 1831o.

SOURCE: 57 FR 44903, Sept. 29, 1992, unless otherwise noted.

§ 565.1 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This part is issued by the OTS pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this part is to define, for savings associations, the capital measures and capital levels