




RESCINDED

Office of Thrift Supervision
 Department of the Treasury
 1700 G Street, N.W., Washington, D.C. 20552 (202) 906-1304

This rescission applies to the transmitting document only and not the attached interagency guidance. Refer to (OCC 2005-36) for the status of the attached interagency guidance.

October 12, 2005

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM: Scott M. Albinson 

SUBJECT: Appraisal Exceptions in Major Disaster Areas

The Office of Thrift Supervision along with the other federal financial institution regulatory agencies issued the attached Order to facilitate recovery in areas severely affected by hurricanes Katrina and Rita. The Order grants temporary relief to depository institutions by waiving, for a period of three years, the agencies' appraisal regulations for transactions involving real property located in certain major disaster areas listed in the attached Appendix.

The Order addresses the agencies' determination that the disruption in certain real estate markets as a result of the disaster interferes with the ability of depository institutions to obtain appraisals that comply with the agencies' regulatory requirements. As a result, the disruption impedes institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected area. Consequently, the agencies have issued a temporary waiver to facilitate the appropriate extension of credit by institutions in the affected areas. To qualify for the waiver, institutions must document: (1) that the property involved was directly affected by the disaster area or would facilitate recovery from the disaster; (2) there is a binding commitment to fund the transaction that is made within three years after the date the major disaster was declared; and (3) and the appropriate support for the valuation of the real property used in the credit decision.

Given the unique challenges of valuing properties within a disaster area, we expect institutions to establish internal standards¹ on preparing and reporting value estimates for real estate collateral. Your standards for value estimates may vary to reflect conditions in a particular real estate market, yet could include (1) identifying the preparer's name, an effective date, and contain a signature; (2) describing the condition of real estate, its current and projected use; and (3) describing sources of information for the analysis, the analysis, and supporting information, such as calculations, assumptions, and, if used, supporting comparables. When institutions elect to rely on the appraisal waiver, we expect that they will continue to extend credit on terms consistent with safe and sound banking practices. The transactions should also be subject to collateral monitoring standards consistent with prudent portfolio management.

For more information, contact Debbie Merkle, Project Manager, Credit Policy at (202) 906-5688.

¹ See Interagency Appraisal and Evaluation Guidelines for OTS standards; <http://www.ots.treas.gov/docs/8/84042.pdf>

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

12 CFR Part 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas

AGENCIES: Office of the Comptroller of the Currency, Treasury Department (OCC);

Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance

Corporation (FDIC); Office of Thrift Supervision, Treasury Department (OTS); and National Credit Union Administration (NCUA), collectively referred to as “the Agencies.”

ACTION: Statement and Order; temporary exceptions.

SUMMARY: Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA) authorizes the Agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions. The exceptions are available for transactions that involve real property in major disaster areas when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness. In this notice, the Agencies grant exceptions for certain real estate-related transactions in areas affected by Hurricanes Katrina and Rita. The expiration dates for the exceptions are set out in the Supplementary Information section.

DATES: This order is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires for specific areas on the dates indicated in the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT:

OCC

Dena G. Patel, Credit Risk Specialist, (202) 874-5170, Office of the Chief National Bank Examiner; or Sue Auerbach, Counsel, (202) 874-5300, Chief Counsel's Office, 250 E Street, SW, Washington, DC 20219.

Board

Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202) 452-2521, Division of Banking Supervision and Regulation; or April Snyder, Attorney, (202) 452-3099, Legal Division. Mail: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC, 20551.

FDIC

James D. Leitner, Examination Specialist, (202) 898-6790, Division of Supervision and Consumer Protection; or Mark G. Flanigan, Counsel, (202) 898-7426, Legal Division, 550 17th Street, NW., Washington, D. C., 20429.

OTS

Deborah Merkle, Project Manager, Credit Policy, (202) 906-5688; Karen Osterloh, Special Counsel, Regulation and Legislation Division, Chief Counsel's Office, (202) 906-6639, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC, 20552.

NCUA

Regina Metz, Staff Attorney, Office of General Counsel, (703) 518-6540; or Anthony LaCreta, Deputy Director, Office of Examination and Insurance, (703) 518-6360, 1775 Duke Street, Alexandria, VA., 22314.

SUPPLEMENTARY INFORMATION:

Statement

Section 2 of DIDRA, 12 U.S.C. §3352, authorizes the Agencies to make exceptions to statutory and regulatory appraisal requirements for certain transactions. These exceptions are available for real property located in areas that the President has determined, pursuant to 42 U.S.C. §5170, that a major disaster exists, provided that the exception would facilitate recovery from the major disaster and is consistent with safety and soundness.¹ Such exceptions expire not later than three years after the date of the President's determination that a major disaster exists in the area.

On August 29, and September 24, 2005, the President declared several areas in certain Alabama, Mississippi, and Texas counties and Louisiana parishes as Major Disaster Areas and individual assistance was authorized by the Federal Emergency Management Agency (“FEMA”) as a result of the extensive damage caused by Hurricanes Katrina and Rita. The Agencies believe that granting relief from the appraisal requirements for real estate transactions in certain designated disaster areas is consistent with the provisions of DIDRA.²

The Agencies have determined that the disruption of real estate markets in those FEMA-designated disaster areas interferes with the ability of depository institutions to obtain

¹ The agencies must make the exception no later than 30 months after the date on which the President determines that a major disaster exists in the area.

² Those counties and parishes designated by FEMA as receiving “Individual and Public Assistance (all categories)” and “Individual and Public Assistance (Categories A and B).”

appraisals that comply with statutory and regulatory requirements. Therefore, the Agencies have determined that the disruption may impede institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected areas. Accordingly, the Agencies have determined that recovery from these two major disasters would be facilitated by excepting certain transactions involving real estate located in the areas directly affected by the hurricanes from the real estate appraisal requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended, and the regulations promulgated thereunder. This order has the effect of excepting the transactions specified below from the definition of “federally related transactions” in Title XI of FIRREA and the agencies’ appraisal regulations, and thereby from the statutory and regulatory real estate appraisal requirements for such transactions.

The Agencies also have determined that the exceptions are consistent with safety and soundness, subject to the requirement that the depository institution’s records relating to any excepted transaction appropriately document the following: (1) the property involved was directly affected by the major disaster or the transaction would facilitate recovery from the disaster; (2) there is a binding commitment to fund the transaction that is made within three years after the date the major disaster was declared; and (3) the value of the real property supports the institution’s decision to enter into the transaction. In addition, the transaction must continue to be subject to review by management and by the Agencies in the course of examinations of the institution.

Expiration Dates

Exceptions provided under this order expire not later than three years after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5170 (DREAA), that a major disaster exists in the area. Accordingly, exceptions for the major disasters declared due to Hurricane Katrina expire on August 29, 2008, in Alabama, Mississippi and Louisiana; and exceptions for the major disasters declared due to Hurricane Rita expire on September 24, 2008, in Louisiana and Texas.

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 for any real estate-related financial transaction that requires the services of an appraiser under those provisions, provided that:

(1) The transaction involves real property located in an area that the President has determined, pursuant to section 401 of DREAA, is a major disaster area as a result of Hurricane Katrina (August 2005) in Alabama, Louisiana, and Mississippi; or as a result of Hurricane Rita (September 2005) in Louisiana and Texas, and has been designated eligible for federal assistance by FEMA;³

³ Those areas designated by FEMA as receiving "Individual and Public Assistance (all categories)" and "Individual and Public Assistance (Categories A and B)" in Alabama, Mississippi, and Texas counties and Louisiana parishes, as listed in the appendix to this order.

(2)(a) The real property involved was directly affected by the major disaster;

or

(2)(b) The real property involved was not directly affected by the major disaster but the transaction would facilitate recovery from the disaster;

(3) 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

(4) The institution retains in its files, for examiner review, appropriate documentation indicating that the requirements of Items (1)-(3) above are met and supporting the valuation of the real property involved in the transaction.

Appendix

Counties and parishes designated by FEMA as receiving “Individual and Public Assistance (all categories)” and “Individual and Public Assistance (Categories A and B)”

Hurricane Katrina

Alabama: Baldwin, Choctaw, Clarke, Greene, Hale, Mobile, Pickens, Sumter, Tuscaloosa and Washington

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

Mississippi: Adams, Amite, Attala, Choctaw, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo.

Hurricane Rita

Louisiana: Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis,
Lafayette, Lafourche, St. Mary, Terrebonne, and Vermilion

Texas: Chambers, Galveston, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, and
Tyler

[THIS SIGNATURE PAGE RELATES TO THE JOINT STATEMENT AND ORDER;
TEMPORARY EXCEPTION ENTITLED “REAL ESTATE APPRAISAL
EXCEPTIONS IN MAJOR DISASTER AREAS”]

Dated: _____

John C. Dugan
Comptroller of the Currency

[This signature page relates to the Joint Statement and Order; temporary exception entitled “Real Estate Appraisal Exceptions in Major Disaster Areas”]

By order of the Board of Governors of the Federal Reserve System

Date

Jennifer J. Johnson
Secretary of the Board

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL STATEMENT AND ORDER; TEMPORARY EXCEPTION ENTITLED “Real Estate Appraisal Exceptions in Major Disaster Areas”]

By order of the Board of Directors.

Dated at Washington, D.C., this _____ day of _____, 2005.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman
Executive Secretary

(SEAL)

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL STATEMENT AND ORDER
CONCERNING THE WAIVER OF APPRAISAL REQUIREMENTS.]

Dated:

By the Office of Thrift Supervision,

John M. Reich,
Director.

[This signature page relates to the Joint Statement and Order; temporary exception entitled “Real Estate Appraisal Exceptions in Major Disaster Areas”]

By order of the National Credit Union Administration

Date

Mary F. Rupp
Secretary of the Board

FDIC: 6714-01-P (20%)

OCC: 4810-33-P (20%)

Board: 6210-01-P (20%)

OTS: 6720-01-P (20%)

NCUA: 7535-01-U (20%)