BANKING ISSUANCES

RESCINDED

Comptroller of the Currency
Administrator of National Banks

Type: Banking Bulletin

Subject: Depository Institutions Disaster Relief Act of 1992

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To: Chief Executive Officers of All National Banks, Deputy Comptrollers, Department and Division Heads, and All Examining Personnel

PURPOSE

On October 23, 1992, the President signed the Depository Institutions Disaster Relief Act of 1992 ("Act"). The Act grants the federal financial institution regulatory agencies (Agencies) the authority to temporarily exempt certain regulatory requirements within locations that are declared a "major disaster area" by the President of the United States.

The Act covers the financial regulatory areas that Congress deemed most beneficial to the prompt recovery of an area, as follows:

- Appraisal Requirements. Permanent change. Section 2 of the Act permits the Agencies to grant exceptions to the federal appraisal requirements for qualifying real property related transactions in a declared Major Disaster Area ("MDA"). The exemption lasts for a period not to exceed three years from the date of declaration.

  For this Section to be in effect, the Agencies must publish a Statement and Notice of Order, or a regulation, in the Federal Register activating the provisions for a specific MDA.

- Truth in Lending and Expedited Funds Acts. Temporary change. From October 23, 1992 through April 20,1993, the Board of Governors of the Federal Reserve System (FRB) is authorized by Section 3 to grant exceptions to the requirements of the Truth in Lending Act and the Expedited Funds Availability Act for transactions in an MDA.

  For this section to be in effect, the FRB must publish a regulation or Order in the Federal Register activating the provisions for the specific MDA.

- Publication Requirements. Temporary change. From October 23, 1992 through April 20, 1993, Section 5 of the Act authorizes the Agencies to grant exemptions from publication and notice requirements relating to corporate activities as well as certain requirements of the Administrative Procedures Act.

For this section to be in effect, the Agencies must publish a Statement and Notice of Order, or a regulation, in the Federal Register activating the provisions for the specific MDA.

- Deposits of Insurance Proceeds. Temporary change. From October 23, 1992 through April [illegible]2, 1994, Section 4 of the Act authorizes the Agencies to grant an exception for abnormal deposit growth of a financial institution located in the MDA. This exception permits the deduction of certain disaster_related deposits from total assets when calculating the leverage ratio under risked_based capital for the prompt corrective action requirements of Section 38 of the Federal Deposit Insurance Act.

  This section does not require publication of an order in the Federal Register. However, to be in effect, each bank desiring to be granted an exception must qualify and apply for a specific order to be issued to the bank by the District.

ACTION

The OCC, on November 17, 1992, in conjunction with the other participating Agencies, published a Statement and Notice of Order activating the provisions of Section 2 the Act for the MDAs declared on:

- May 2, 1992 for the civil unrest in Los Angeles;
- August 24, 1992 for Hurricane Andrew in Florida;
- August 26, 1992 for Hurricane Andrew in Louisiana; and,
- September 12, 1992 for Hurricane Iniki in Hawaii.

The Order is effective as of the date of publication, November 17, 1992. Accordingly, the provisions of this Act my be applied retroactive to the date of declaration for qualifying transactions in each of the specific MDAs.

Attached to this Banking Bulletin are:

1. A copy of the interagency news release.

2. A copy of the interagency Statement and Order dealing with real estate appraisals.

3. A copy of Fannie Mae's guidance regarding real estate appraisals and the secondary market.

4. A copy of the Order published by the Federal Reserve regarding Truth in Lending.

5. An enrolled copy of DIDRA.

Questions concerning the applicability of the provisions in the Act to your bank should be directed to the OCC office responsible for supervising your institution. Specific questions

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regarding Truth in Lending and Expedited Funds Availability should be directed to your District Federal Reserve Bank

RESPONSIBLE OFFICE

Questions concerning this bulletin should be directed to the Office of the Chief National Bank Examiner, (202) 874-51[illegible]0.

Jerilyn Gilland
Acting Chief National Bank Examiner

Related Links

- Joint News Release
- Statement and Order - Real Estate Appraisals
- FannieMae Guidance on Real Estate Appraisals
- Order - Truth in Lending
- Enrolled Copy of DIDRA

Joint News Release

Federal Reserve Board

Comptroller of the Currency

Office of Thrift Supervision

Federal Deposit Insurance Corporation

National Credit Union Administration

For immediate release November 13, 1992

The federal financial institutions regulatory agencies today announced several initiatives to facilitate recovery in major disasters areas such as those areas affected by Hurricanes Andrew and Iniki and the Los Angeles civil unrest. These initiatives are being taken to implement the provisions of the Depository Institutions Disaster Relief Act of 1992 ("DIDRA"), which was enacted on October 23, 1992.

As authorized under section 2 of DIDRA, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board, the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) have jointly issued an interagency order to waive the real estate appraisal requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), and the agencies' appraisal regulations promulgated under FIRREA, for a period of 36 months from the date the President declared a major disaster in the areas affected by Hurricanes Andrew and Iniki and the Los Angeles civil unrest. A copy of the Federal Register notice is attached.

The FDIC, Federal Reserve, OCC, and OTS are also in the process of implementing section 4 of DIDRA, Deposit of Insurance Proceeds. This section allows the agencies, by individual order, to grant relief from leverage ratio capital standards under prompt corrective action if an institution experiences a temporary increase in its total asset position because of the deposit of insurance proceeds or government assistance funds paid to depositors in connection with damage or loss caused by a major disaster. Depository institutions that are headquartered in a major disaster area and that derive more than 60 percent of their total deposits from the area of intense devastation should contact the appropriate Federal Reserve Bank, FDIC or OTS regional office, or OCC district office if they believe that an exception from the leverage ratio capital standards will be necessary. Such regulatory relief may be allowed for an 18-month period from the enactment of DIDRA.

The Federal Reserve Board has also adopted an order to permit an exception to the Regulation Z rules regarding consumer waivers of the right to cancel certain home-secured loans so that borrowers in the major disaster areas may more readily gain access to loan funds. Regulation Z sets a mandatory waiting period of three days before funds can be disbursed so that consumers have time to reflect on the terms of the loan and to elect to cancel the loan. This order makes it easier for a consumer in a major disaster area to waive the three-day waiting period if the home securing the extension of credit is located in the disaster area. This exception expires one year from the date of enactment of DIDRA or from the date the area was declared a major disaster, whichever is earlier. A copy of the Federal Register notice is attached.

Further, the FDIC, Federal Reserve, OCC, and OTS have extended the interagency statement on supervisory practices issued in connection with the Los Angeles civil unrest and Hurricane Andrew to communities devastated by Hurricane Iniki. The statement indicates that efforts to restructure debt or extend repayment terms--so long as these efforts are consistent with safe and sound banking practice--should not be subject to examiner criticism. A copy of this statement is attached.

Finally, in keeping with the intent of DIDRA and the agencies' previous initiatives to encourage financial institutions to meet the needs of communities devastated by major disasters, the FDIC, Federal Reserve, OCC, and OTS in assessing Community Reinvestment Act ("CRA") performance will give positive consideration to a financial institution's active participation in programs where most or all of the financing provided may ultimately benefit low- and moderate-income borrowers or such neighborhoods located outside of the institution's delineated community. In determining whether and to what extent positive consideration will be given, the agencies will assess the activities undertaken in the context of an institution's overall CRA program. Where such participation augments or complements an overall CRA program that is directly responsive to the credit needs in an institution's delineated community, it will be considered favorably in reaching an overall CRA conclusion. Further, under section 6 of DIDRA, national banks and state member banks are authorized to make community development investments of up to 5 percent of capital stock plus 5 percent of their unimpaired surplus.

3900 Wisconsin Avenue, NW
Washington, DC 20016-2899
202 752 7000

FannieMae

Date: November 6, 1992

To: All Fannie Mae Lenders

Subject: Property Valuations on One- to Four-Family Properties in Areas Impacted By Hurricane Andrew

In the aftermath of Hurricane Andrew, Fannie Mae has taken a number of steps to assist lenders in addressing problems that have arisen in connection with the sale and servicing of mortgages secured by properties located in areas impacted by the hurricane. Our earlier letters to lenders concentrated on defining our policies (August 27, 1992) and responding to specific questions about mortgage eligibility criteria or servicing procedures (September 4, 1992). Fannie Mae lenders that have been working closely with residents of the South Florida area have noted that one of the concerns in the area is the viability of the mortgage market, considering the effect that the widespread devastation has had on an appraiser's ability to establish a reliable estimate of market value for properties in the affected areas. We are releasing this supplemental letter to address this concern.

Many of the appraisers that we or our lenders have talked to have indicated that they are experiencing difficulty in performing appraisals on properties located in the areas affected by Hurricane Andrew for two basic reasons -- the uncertainty of the general economic conditions in the areas and the lack of post-hurricane comparable market data (such as closed sales or contract sales) that would enable them to measure the hurricane's impact on property values.

We expect appraisers to make every effort to use all market data that is currently available in their analyses of properties in areas that were impacted by Hurricane Andrew. The appraiser's analysis must focus on the community in which the subject property is located, taking into consideration the forces that theoretically influence value -- economic conditions, governmental regulations, environmental conditions, and social trends and standards -- and how those forces come into play in that market area. These sources are often interrelated, rather than being distinct or mutually exclusive. For instance, the interaction of economic, governmental, and environmental forces is directly affecting the value of real estate in the communities impacted by

Hurricane Andrew. Many kinds of economic forces influence the value of real property. Demand (or purchasing power) is affected by economic conditions such as (but not limited to) the community's economic base, employment opportunities, employment and wage levels, price levels and patterns, industrial contraction or expansion, and the cost and availability of credit. Supply is affected by economic conditions such as (but not limited to) occupancy rates, construction costs, the availability of both vacant and improved properties, new properties under construction or in the planning stage, rent and price patterns of existing properties, etc. Political and legal actions at many levels are governmental forces that can influence the value of real property. The government provides and maintains the necessary public facilities and services; local zoning, building, and health codes and land-use regulations either support or obstruct specific land uses. Environmental influences -- such as proximity to, and sources of, employment and access to public transportation, schools, stores, recreational facilities, service establishments, places of worship, etc. -- can have a significant impact on the marketability of a property, as well as on its value. Many of these factors are at issue in the communities of South Florida that were affected by Hurricane Andrew.

We expect appraisers to analyze the general market conditions in the communities within South Florida that were impacted by Hurricane Andrew by focusing on the existence of an employment base that can support their viability. It is important to recognize that this support does not necessarily have to come from within the community itself. Since large cities like Miami usually serve as employment centers for the surrounding areas, this support is likely to come from the employment base of the associated metropolitan area. When appraising properties in communities in which residents are likely to commute to employment centers that were not affected by Hurricane Andrew, the appraiser can reasonably assume that the community will return to a level of stability similar to its pre-Hurricane Andrew condition. In such cases, the appraiser may use pre-Hurricane Andrew market data from within the subject neighborhood, as well as more current sales from comparable neighborhoods that were not affected by Hurricane Andrew, as the basis for the value conclusion for post-Hurricane Andrew appraisal reports. In the appraisal report, the appraiser should define the subject neighborhood and community, describe the degree of physical damage to both, and provide the basis for his or her assumption that the damages from Hurricane Andrew will not significantly affect the property values in the community over the long-term.

This guidance and flexibility will help appraisers in estimating property values in many areas; however, we acknowledge that it may not be applicable in severely damaged areas because of the degree of the damage and uncertainty about the general economic base of the community. Theoretically, the appraiser cannot report a post-Hurricane Andrew estimate of market value in these areas because of the uncertainty about whether the community will recover to the point that conditions will be at least equal to those prior to the hurricane. We will continue to work with the appraisal organizations, federal and state regulatory agencies, the Mortgage Bankers Association of Florida, and other interested parties to seek a solution to this problem that will result in a reasonable approach to estimating property values in the areas that were hardest-hit by Hurricane Andrew.

We have also been asked about the eligibility of properties located in areas affected by Hurricane Andrew that may have experienced a short-term appreciation in value because of the increased demand for undamaged housing, especially since the increased value may not be sustainable. We will accept mortgages secured by properties that have experienced short-term appreciation -- if the increase in value is relatively minimal in relation to the pre-Hurricane Andrew value of the property and the appraiser's adjustments for the appreciation are supported by pending or closed comparable sales. When reviewing a post-Hurricane Andrew sale, the appraiser should focus on the contract date (or the date of the "meeting of the minds" of the parties to the transaction), rather than simply looking at the closing date.

Another question that has been raised is when existing properties should be appraised "as is" and when they should be appraised "as repaired." When there are minor conditions or needed repairs that do not currently affect the livability of the property (and it is reasonable to expect that they will not affect the structural integrity, soundness, or livability of the property in the future should they not be corrected within a reasonable period of time), the appraisal may be based on the "as is" condition of the property -- as long as the appraiser's estimate of value reflects the existence of the conditions. (If there are no physical deficiencies that would affect the livability or structural integrity of the property, the lender does not need to require that minor repairs be completed before it delivers the mortgage to us.) When there are physical deficiencies or conditions that affect the livability, structural integrity, or soundness of the property, the appraisal must be based on the "as repaired" condition of the property. (In such cases, the repairs must be made before the mortgage is delivered to us.)

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We recognize that it may be some time before the general marketplace adjusts to the point that the current difficulties in estimating market values in South Florida are eliminated (or at least substantially reduced). Until then, we will make every effort to offer sound advice and to consider the needs of the local residents as we work with lenders and appraisers to reach an acceptable comfort level for property valuations in severely damaged areas. We are designating the Loan Acquisition staff in our Atlanta regional office as the national contact point for Fannie Mae lenders that have loan applications for properties in these markets. We encourage any lender to contact this group for advice so that we can work together for a solution on an individual case basis. Lenders that have specific questions or concerns about the eligibility of mortgages secured by properties located in areas affected by Hurricane Andrew should call this group (at 404-365-6233) for assistance.

Robert J. Engelstad

Robert J. Engelstad
Senior Vice President -
Mortgage and Lender Standards

One Hundred Second Congress of the United States of Ame

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January, one thousand nine hundred and ninety-two

An Act

To facilitate recovery from recent disasters by providing greater flexibility for depository institutions and their regulators, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Depository Institutions Disaster Relief Act of 1992".

SEC. 2. APPRAISAL REQUIREMENTS.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section:

"SEC. 1123. EMERGENCY EXCEPTIONS FOR DISASTER AREAS.

"(a) IN GENERAL.—Each Federal financial institutions regulatory agency may, by regulation or order, make exceptions to this title, and to standards prescribed pursuant to this title, for transactions involving institutions for which the agency is the primary Federal regulator with respect to real property located within a disaster area if the agency—

"(1) makes the exception not later than 30 months after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a major disaster exists in the area; and

"(2) determines that the exception—

"(A) would facilitate recovery from the major disaster; and

"(B) is consistent with safety and soundness.

"(b) 3-YEAR LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than 3 years after the date of the determination referred to in subsection (a)(1).

"(c) PUBLICATION REQUIRED.—Any Federal financial institutions regulatory agency shall publish in the Federal Register a statement that—

"(1) describes any exception made under this section; and

"(2) explains how the exception—

"(A) would facilitate recovery from the major disaster; and

"(B) is consistent with safety and soundness.

"(d) DISASTER AREA DEFINED.—For purposes of this section, the term 'disaster area' means an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists.".

SEC. 3. TRUTH IN LENDING ACT; EXPEDITED FUNDS AVAILABILITY ACT.

(a) TRUTH IN LENDING ACT.—During the 180-day period beginning on the date of enactment of this Act, the Board of Governors of the Federal Reserve System may make exceptions to the Truth in Lending Act for transactions within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists, if the Board determines that the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

(b) EXPEDITED FUNDS AVAILABILITY ACT.—During the 180-day period beginning on the date of enactment of this Act, the Board of Governors of the Federal Reserve System may make exceptions to the Expedited Funds Availability Act for depository institution offices located within an area referred to in subsection (a) of this section if the Board determines that the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

(c) TIME LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than the earlier of—

(1) 1 year after the date of enactment of this Act; or

(2) 1 year after the date of the Presidential determination referred to in subsection (a).

(d) PUBLICATION REQUIRED.—The Board of Governors of the Federal Reserve System shall publish in the Federal Register a statement that—

(1) describes any exception made under this section; and

(2) explains how the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

SEC. 4. DEPOSIT OF INSURANCE PROCEEDS.

(a) IN GENERAL.—The appropriate Federal banking agency may, by order, permit an insured depository institution, during the 18-month period beginning on the date of enactment of this Act, to subtract from the institution's total assets, in calculating compliance with the leverage limit prescribed under section 38 of the Federal Deposit Insurance Act, an amount not exceeding the qualifying amount attributable to insurance proceeds, if the agency determines that—

(1) the institution—

(A) had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists, on the day before the date of that determination;

(B) derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster (such as that portion of Dade County, Florida, south of Kendall Drive and east of Everglades National Park, as damaged by Hurricane Andrew);

(C) was adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act) before the major disaster; and

(D) has an acceptable plan for managing the increase in its total assets and total deposits; and

(2) the subtraction is consistent with the purpose of section 38 of the Federal Deposit Insurance Act.

(b) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(2) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(3) LEVERAGE LIMIT.—The term "leverage limit" has the same meaning as in section 38 of the Federal Deposit Insurance Act.

(4) QUALIFYING AMOUNT ATTRIBUTABLE TO INSURANCE PROCEEDS.—The term "qualifying amount attributable to insurance proceeds" means the amount (if any) by which the institution's total assets exceed the institution's average total assets during the calendar quarter ending before the date of the Presidential determination referred to in subsection (a)(1)(A), because of the deposit of insurance payments or governmental assistance made with respect to damage caused by, or other costs resulting from, the major disaster.

SEC. 5. BANKING AGENCY PUBLICATION REQUIREMENTS.

(a) IN GENERAL.—During the 180-day period beginning on the date of enactment of this Act, a qualifying regulatory agency may take any of the following actions with respect to depository institutions or other regulated entities whose principal place of business is within, or with respect to transactions or activities within, an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has determined that a major disaster exists, if the agency determines that the action would facilitate recovery from the major disaster:

(1) PROCEDURE.—Exercising the agency's authority under provisions of law other than this section without complying with—

(A) any requirement of section 553 of title 5, United States Code; or

(B) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

(2) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

(A) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

(B) any similar publication requirement.

(b) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

(1) describes any action taken under this section; and

(2) explains the need for the action.

(c) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this section, the term "qualifying regulatory agency" means—

(1) the Board of Governors of the Federal Reserve System;

(2) the Comptroller of the Currency;

(3) the Director of the Office of Thrift Supervision;

(4) the Federal Deposit Insurance Corporation;
(5) the Financial Institutions Examination Council;
(6) the National Credit Union Administration; and
(7) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

SEC. 4. COMMUNITY DEVELOPMENT AUTHORITY OF BANKS.

(a) NATIONAL BANKS.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end the following new paragraph:

"Eleventh. To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the association's capital stock actually paid in and unimpaired and 10 percent of the association's unimpaired surplus fund.".

(b) STATE MEMBER BANKS.—Section 9 of the Federal Reserve Act (12 U.S.C. 321–338) is amended by adding at the end the following new paragraph:

"State member banks may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law, and subject to such restrictions and requirements as the Board of Governors of the Federal Reserve System may prescribe by regulation or order. A bank shall not make any such investment if the investment would expose the bank to unlimited liability. The Board shall limit a bank's investments in any 1 project and bank's aggregate investments under this paragraph. A bank's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the bank's capital stock actually paid in and unimpaired and 5 percent of the bank's unimpaired surplus fund, unless the Board determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the bank is adequately capitalized. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.".

SEC. 7. SENSE OF THE CONGRESS.

It is the sense of the Congress that the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration should encourage depository institutions in areas affected by such major disasters as Hurricane Andrew, Hurricane Iniki, and the Los Angeles civil unrest to meet the financial services needs of their communities.

SEC. 8. OTHER AUTHORITY NOT AFFECTED.

Nothing in this Act limits the authority of any department or agency under any other provision of law.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

Signed Oct-21-92