



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

94-CC-14

June 24, 1994

[REDACTED]

Re: Applicability of the appraisal requirements to a series of construction loans on similar buildings: 12 C.F.R. § 563.170 and Part 564

Dear [REDACTED]:

This responds to your inquiry regarding whether it would be permissible to use a single appraisal made on an 8-unit condominium building "to support the value of a series of loans on similar buildings even though each would be a separate loan." For the reasons set forth below, we conclude that it would not be permissible to use a single appraisal to support the series of loan transactions you describe, although there may be other circumstances where the use of a master appraisal would be appropriate. The purpose of an appraisal is to establish the value of the particular property securing the loan. In the situation you describe, while the buildings may be identical, their location in the subdivision and the timing of the property sale may affect the value of the property.

The legal requirements for an appraisal are designed to assure that the appraisal reflects the value of the particular property securing the loan. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 3331 et seq., required the Office of Thrift Supervision ("OTS") to adopt regulations governing real estate appraisals used by savings associations in connection with certain loans secured by real estate. 12 U.S.C. § 3339. Pursuant to this mandate, the OTS has promulgated 12 C.F.R. Part 564, as amended at 59 Fed. Reg. 29482 (June 7, 1994), which, subject to certain exceptions, requires savings associations to obtain appraisals "for all real estate-related financial transactions" 59 Fed. Reg. at 29502-03 (June 7, 1994) (to be codified at 12 C.F.R. § 564.3(a)) (emphasis added). The term "real estate-related financial transaction" has been defined to include, inter alia, "any transaction involving . . . [t]he use of real property or interests in property as security for a loan

or investment. . . ." Id. at 29502 (redesignating 12 C.F.R. § 564.2(h) (1994) as 12 C.F.R. § 564.2(i)). See also id. (to be codified at 12 C.F.R. § 563.170(c)(1)(iv)) (emphasis added), which requires savings associations to maintain an appraisal consistent with Part 564 in connection with "each loan that such lender makes on the security of real estate. . . ." Moreover, the regulations require that an appraisal set forth the market value of the specific property being offered as security for the loan, rather than an analogous property that was the security for another transaction. 12 C.F.R. § 564.2(a) (1994); 59 Fed. Reg. at 29502 (redesignating 12 C.F.R. § 564.2(f) (1994) as 12 C.F.R. § 564.2(g)).

Thus, on their face, OTS regulations require that each individual loan transaction involving the use of real property security have an appraisal of the specific property offered as security for each loan, subject to certain exceptions set forth in Part 564 (which presumably are inapplicable in your situation). Accordingly, in the scenario you present, each loan transaction in the series requires a separate appraisal even though you describe the buildings to be used as security for each loan as "similar." We believe this regulatory outcome is consistent with safe and sound thrift practices inasmuch as the passage of time, market conditions, vacancy rates, and external physical factors such as proximity to highways and power lines may significantly affect the market value of "similar" buildings, even when located in the same project and constructed by the same builder. An individual appraisal for each loan transaction can take into consideration the unique characteristics of each property and will reflect an estimated market value that will protect the safety and soundness interests of thrifts and meet the requirements of the appraisal regulation.

In certain limited situations, the OTS has indicated that the use of a master appraisal to underwrite the construction financing of single family tract homes may be acceptable as long as all of the requirements of the appraisal regulation are met, and the subject transaction is a loan for a single family tract construction project (either the whole project or a phase of the project), and not a separate loan to finance the purchase of an individual home. The attached letter dated August 11, 1993 from John Price, Acting Assistant Director for Policy, OTS, gives some guidance as to when the use of a master appraisal may be permitted consistent with the requirements of the appraisal regulation. A master appraisal would differ from the type of appraisal you propose in that a master appraisal supports a single loan for the entire project or one of its phases and is based on an estimate of the market value of all of the property offered as security for the loan.

In reaching the conclusions presented in this letter, we have relied on the factual representations contained in your April 28, 1994 letter. Our conclusions are based on the

accuracy and completeness of your representations. Any material change in circumstances from those set forth in your letter could result in conclusions that differ from those expressed herein.

If you have any further questions regarding this matter or regarding possible use of a master appraisal, you may contact Ellen Sazzman, Counsel (Banking and Finance), at (202) 906-7133.

Very truly yours,


Carolyn S. Lieberman
Acting Chief Counsel

Enclosure