



Federal Deposit Insurance Corporation

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Division of Supervision and Consumer Protection

September 26, 2005

MEMORANDUM TO: The Board of Directors —

FROM: Christopher J. Spoth
Acting Director
Division of Supervision and Consumer Protection

SUBJECT: Flexibility in Administering Regulatory Requirements for
Depository Institutions Within Areas Affected by Hurricanes
Katrina and Rita

PROPOSAL

The Division of Supervision and Consumer Protection (DSC) recommends that the Board of Directors (Board) grant to the Director and Deputy Directors of DSC delegated authority in administering the FDIC's Rules and Regulations (Regulations) as they are applied to insured depository institutions (institution(s)) in areas affected by Hurricanes Katrina and Rita. These temporary flexibilities will address brokered deposit waivers (12 CFR §303.243), main office and branch relocations (12 CFR §303.45).

DSC also recommends to the Board that it grant relief from the appraisal requirements in 12 CFR § 323. In connection with the appraisal regulations, DSC recommends that the Board issue the exemptive order from the requirements of the appraisal regulations, and approve the attached Federal Register notice and authorize its publication.

Concur:

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BACKGROUND

There are approximately 280 institutions within the area affected by Hurricane Katrina and at least 18 additional institutions within the area affected by Hurricane Rita. Some institutions' main and branch offices have been lost to storm and flood water damage, while others' recordkeeping, data processing and information technology infrastructures have been damaged. Community credit needs and increased demand for cash from deposit accounts have occurred and may create temporary credit shortages and liquidity problems for institutions operating in the disaster area. The actual level of damage to individual institutions is still being assessed, but disruption to overall banking operations in the areas impacted by Hurricanes Katrina and Rita is significant. The FDIC is communicating with its institutions located in the disaster area to ensure that FDIC actions do not interfere with response and recovery efforts. The FDIC has already, on a case-by-case basis, exercised its delegated authority and administrative discretion at the regional level to assist institutions experiencing difficulty in meeting certain regulatory requirements. FDIC staff will continue to assess the impact of the hurricanes on institutions, customers, employees and the financial markets and take all necessary steps to assist in the recovery.

FDIC staff has identified several areas where the Board could provide flexibility or waiver of certain regulatory requirements to assist institutions operating within the affected areas. The Board has taken actions previously to facilitate the relief efforts in areas affected by Hurricanes Andrew and Iniki, and Los Angeles civil unrest in 1992, flooded areas of the Midwest in 1993; and flooding in Texas in 1994. At the Board's direction, DSC could act with delegated authority from the Board to waive certain otherwise applicable regulatory requirements to assist institutions affected by Hurricanes Katrina and Rita.

DISCUSSION

Brokered Deposit Waivers

Section 29 of the FDI Act prohibits an institution that is not well capitalized from accepting funds for deposit obtained directly or indirectly through a deposit broker. A well capitalized institution may accept brokered deposits without restriction. For an adequately capitalized institution, the FDIC may on a case-by-case basis, waive the applicability of this requirement upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice.¹ An undercapitalized institution is prohibited from accepting brokered deposits.

Section 303.243 (c) of the Regulations implements Section 29 and contains the waiver application requirements for adequately capitalized institutions.² The application shall contain the following:

1. The time period for which the waiver is requested,

¹ 12 U.S.C.A. §1831f

² 12 CFR §303.243 (c)

2. A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;
3. The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;
4. How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;
5. Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;
6. Management systems overseeing the solicitation, acceptance and use of brokered deposits,
7. A recent consolidated financial statement with balance sheet and income statements; and
8. The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

Section 303.12, provides a waiver and contemplates relief from its provisions so long as the Board of Directors of the Corporation finds good cause and such waiver is made to the extent permitted by statute.³ Institutions located within the Katrina and Rita disaster areas may have difficulty in obtaining some information required by section 303.243 (c) due to the difficulty in retrieving records or other operational difficulties. These institutions may face increased demand for cash and other withdrawals from accounts by persons and businesses impacted by Hurricanes Katrina and Rita. Flexibility by the FDIC in administering the section 303.243 (c) will assist institutions in meeting current funding demands. DSC recommends that the Board temporarily provide the Director and Deputy Directors of DSC, or their designee, delegated authority to modify the waiver filing requirements in section 303.243 (c) on a case-by-case basis when information is not available or other good cause is demonstrated by institutions in the disaster areas. DSC further recommends this temporary delegated authority expire 18 months after Board approval of this case.

Main Office and Branch Relocations

Part 303 (Subpart C) of the Regulations addresses relocations and re-designations of institutions' branch and main offices. Section 303.45 incorporates provisions applicable to emergency or disaster situations, and requires insured institutions to notify the FDIC of temporary relocations and re-designations, and submit a written application following the relocation or re-designation.⁴ The contents of the application are limited to:

1. Addressing the nature of the emergency or disaster;
2. Specifying the location of the temporary branch; and
3. Providing an estimate of the duration of time the institution plans to operate the temporary branch.

³ 12 CFR §303.12

⁴ 12 CFR §303.45

The FDIC may also waive public notice requirements. In the case of re-designations, the waiver of public notice requirements requires the absence of significant or novel policy, supervisory, Community Reinvestment, or legal concerns, and may only be granted in the case of a re-designation within the applicant's home state.

Authority is currently delegated to Regional and Deputy Regional Directors, as well as Area Directors, to approve such applications, subject to institution compliance with the filing requirements, including the timing of the submission and its contents. No additional delegation of authority is requested.

In the case of the filings or applications required for branch relocations (section 303.45), section 303.12, provides a specific waiver and contemplates relief from its provisions so long as the Board of Directors of the Corporation finds good cause and such waiver is made to the extent permitted by statute.⁵ There is a substantial likelihood that hardship will result for some institutions in the Hurricane Katrina and Hurricane Rita disaster areas if the FDIC strictly imposes the procedural requirements of the above referenced rules. Some institutions may simply not have the administrative support to comply with the filings required by Part 303 Subpart C within the timeframe set forth in the Regulations.

In the aftermath of Hurricane Katrina, DSC has adopted a posture of regulatory flexibility to enable affected institutions to meet their customer needs. This flexibility has included accepting notices and applications in forms and under time frames considered reasonable in light of the extreme circumstances faced by the affected institutions. DSC recommends that the Board formalize and ratify this flexibility by expanding the form and manner in which notices and applications are received and acted upon by the FDIC. Specifically, DSC recommends that the Board determine that the requirement for "written" applications will be satisfied or waived in the case of those applications received through FDICconnect, electronic mail services, facsimile, and telephonic communication, provided that all telephonic applications be reduced to a written memorandum to the file or other appropriate document memorializing the institution's request. DSC further recommends that this flexibility expire 18 months after Board approval of this case.

Appraisal Regulations

Part 323 of the FDIC's Regulations requires that real estate appraisals used in connection with federally related transactions be prepared in writing and conform to certain uniform standards. Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA) (12 U.S.C. §3352) authorizes the FDIC to exempt transactions involving real estate in major disaster areas from the appraisal requirements in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and agency regulations. The law requires that exceptions facilitate recovery from the major disaster and be consistent with safety and soundness. Any exceptions can be made no later than thirty months after the date on which the President determines that a major disaster exists in the area and will expire not later than three years after the date of that determination by the President. The FDIC must also publish a notice in the Federal Register describing the exception.

⁵ 12 CFR §303.12

Given the nature and extent of the devastation from Hurricanes Katrina and Rita the Board's actions to extend emergency appraisal relief to institutions in declared disaster areas of the states of Alabama, Florida, Louisiana, Mississippi and Texas will facilitate the recovery. The administration of such relief by the agencies can be closely monitored to ensure that loans made under this waiver are consistent with safe and sound banking practices

Adoption by the Board of the attached Order will exempt real estate transactions in designated disaster areas from all requirements of Part 323 of the Regulations. This will mean that for up to three years affected transactions would not require an appraisal by a state licensed or certified appraiser and that appraisals of real property collateral value will not have to be prepared in accordance with the strict requirements of the regulations. Lenders, however, will be expected to continue to make loans only on a safe and sound basis. The staff believes that safety and soundness would not be adversely affected so long as exempted transactions continue to be subject to review during the examination of regulated institutions.

The attached Order is prepared on an interagency basis and it is anticipated that the FDIC will continue to work in concert with the other agencies on this and other related matters.

RECOMMENDATION

In appropriate circumstances and subject to general rules of administrative law, the FDIC can waive or except the application of its Regulations. There is a substantial likelihood that hardship will result for some institutions in the Hurricanes Katrina and Rita disaster areas if the FDIC strictly imposes the requirements for the above referenced rules. Some insured institutions may face increased demand for cash and other withdrawals from accounts by persons and businesses impacted by Hurricanes Katrina and Rita. It will be essential for these institutions to meet current funding demands. Flexibility by the FDIC in administering the brokered deposit regulation in Part 303 Subpart M may be critical for these institutions. We recommend to the Board that it finds good cause to temporarily delegate the authority to the Director and Deputy Directors, or their designee, of DSC to accept applications for brokered deposit waivers (section 303.243 (c)) (to the extent permitted by statute) where doing so is necessary and appropriate to avoid hardship to institutions in the disaster areas affected by Hurricanes Katrina and Rita. Such temporary authority will expire 18 months after Board approval of this case.

Other institutions may not have the administrative capacity to comply with the filings required by the branch relocation requirements of Part 303 Subpart C. We recommend to the Board that it formalize and ratify this flexibility by expanding the form and manner in which notices and applications are received and acted upon by the FDIC pursuant to section 303.45. We also recommend that the requirement for "written" applications include those applications received through FDICconnect, electronic mail services, facsimile, and telephonic communication, provided that all telephonic applications be reduced to a written memorandum to the file or other appropriate document memorializing the institution's request (to the extent permitted by statute) as is necessary to avoid hardship to institutions in the disaster areas affected by Hurricanes

Katrina and Rita.⁶ Such temporary authority and waiver will expire 18 months after Board approval of this case.

In the case of the appraisal regulations (Part 323), Section 2 of DIDRA allows the exceptions to the appraisal standards to be made with respect to real property in a disaster area (after Presidential declaration) if the exception would facilitate recovery from the disaster and is consistent with safety and soundness. Given the nature and extent of the devastation from Hurricanes Katrina and Rita, extending the emergency appraisal relief to institutions in Presidential declared disaster areas of a state will facilitate recovery efforts. The administration of such relief by the agencies can be closely monitored to ensure that loans made under this waiver are consistent with safe and sound banking practices

Attachments

⁶ 12 CFR §303.12

Concur:

Jodey C. Arrington
Chief of Staff