

September 28, 2017

MEMORANDUM TO: Board of Directors

FROM: Doreen Eberley
Director, Division of Risk Management Supervision

SUBJECT: Federal Register Statement and Order to Issue Temporary Exceptions to the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* (FIRREA) Appraisal Requirements in Areas Affected by Severe Storms and Flooding Related to Hurricanes Harvey, Irma, and Maria

Summary of Recommendation

Staff recommends that the FDIC's Board of Directors (Board) approve the issuance of the attached *Federal Register* Statement and Order (FR Statement and Order), entitled *Temporary Exceptions to FIRREA Appraisal Requirements in Areas Affected by Severe Storms and Flooding Related to Hurricanes Harvey, Irma, and Maria*, for publication in the *Federal Register*. The FR Statement and Order would waive appraisal requirements for areas declared by the President to have experienced a major disaster as a result of Hurricanes Harvey, Irma, and Maria.¹ If approved, the FR Statement and Order would be issued jointly by the FDIC, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the National Credit Union Administration (collectively, the Agencies).

Background

Under the Depository Institution Disaster Relief Act of 1992 (DIDRA), which added section 1123 to Title XI of FIRREA, the Board has statutory authority to waive appraisal requirements to assist institutions operating within areas where the President has determined a major disaster exists, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5170), provided that the waiver would facilitate recovery from the major disaster and is consistent with safety and soundness.² The Board has exercised this authority several times, most recently in 2016 to facilitate relief efforts after severe flooding in Louisiana.

On August 25, 2017, President Trump declared areas of Texas a major disaster as a result of Hurricane Harvey. This declaration has been expanded to cover 39 counties in that state. On September 7, 2017, President Trump declared two of the U.S. Virgin Islands (USVI) a major disaster in connection with the severe storms and flooding that resulted from Hurricane Irma. On September 10, 2017, President Trump declared areas in Florida and Puerto Rico a major disaster, also as a result of Hurricane Irma. These declarations have been expanded to cover 48 counties in Florida and four municipalities in Puerto Rico.

¹ The appraisal requirements are set forth in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C §§ 3331 *et seq.*, and its implementing regulations contained in Part 323 of Title 12 of the Code of Federal Regulations (Part 323), 12 C.F.R. Part 323.

² 12 U.S.C. § 3352.

In addition, on September 15, 2017, President Trump declared areas in Georgia a major disaster, again due to Hurricane Irma. Moreover, on September 20, 2017 and September 21, 2017, the President declared a major disaster existed in additional areas in Puerto Rico and the USVI, respectively, as a result of the severe storms and subsequent flooding from Hurricane Maria.

On August 26, 2017, the FDIC issued a press release, *Federal and State Banking Agencies Issue Statement on Supervisory Practices Regarding Financial Institutions and Borrowers Affected by Hurricane Harvey* (PR-64-2017).³ In PR-64-2017, the FDIC, along with the other Federal financial institution regulatory agencies, recognized the serious impact of Hurricane Harvey on the customers and operations of many financial institutions and encouraged institutions in the affected areas to meet the financial services needs of their communities.

On August 29, 2017, the FDIC published a Financial Institution Letter, *Meeting the Financial Needs of Customers Affected by Hurricane Harvey and its Aftermath* (FIL-38-2017)⁴ to provide guidance to financial institutions and facilitate recovery in affected areas of Texas and Louisiana. In FIL-38-2017, the FDIC encouraged institutions to work constructively with borrowers experiencing difficulties because of damage caused by the severe weather and stated that the FDIC would provide regulatory assistance to institutions subject to its supervision.

On September 5, 2017, the FDIC, along with the other Agencies, issued a press release, *Federal and State Banking Agencies Issue Statement on Supervisory Practices Regarding Financial Institutions and Borrowers Affected by Hurricane Irma* (PR-69-2017).⁵ In PR-69-2017, the Agencies further encouraged depository institutions to consider all reasonable and prudent steps to assist customers in communities affected by recent storms and flooding caused by Hurricane Irma.

The FDIC also recently issued another Financial Institution Letter, *Meeting The Financial Needs of Customers Affected by Hurricane Irma and its Aftermath* (FIL-43-2017), with an update to reflect the major disaster declaration in Georgia, that also encouraged depository institutions to work constructively with their borrowers and to take prudent steps to assist customers.⁶ In addition, the FDIC issued Financial Institution Letter, *Guidance to Help Financial Institutions and Facilitate Recovery in Areas Affected by Hurricane Maria* (FIL-46-2017), with an update to reflect the major disaster declaration in the USVI and Puerto Rico that also encouraged depository institutions to work constructively with their borrowers and to take prudent steps to assist customers.⁷

Summary of the Depository Institution Disaster Relief Act and Statutory Requirements

Section 1123 of FIRREA, authorizes the FDIC, OCC, FRB, and NCUA to waive certain appraisal rules if specific statutory requirements are met. Under section 1123, each Federal financial institutions regulatory agency may, by regulation or order, make exceptions to appraisal

³ See <https://www.fdic.gov/news/news/press/2017/pr17064.html>.

⁴ See <https://www.fdic.gov/news/news/financial/2017/fil17038.html>.

⁵ See at <https://www.fdic.gov/news/news/press/2017/pr17069.html>.

⁶ See at <https://www.fdic.gov/news/news/financial/2017/fil17043.pdf>

⁷ See at <https://www.fdic.gov/news/news/financial/2017/fil17046.pdf>

requirements set forth in FIRREA for transactions involving institutions for which the agency is the primary Federal regulator with respect to real property located within a designated disaster area, if the agency: (1) makes the exception not later than 36 months after the date on which the President determines 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.

The Agencies have determined that the disruption of real estate markets in areas declared a major disaster interferes with the ability of insured depository institutions to obtain appraisals that comply with FIRREA and the implementing regulations. Further, the Agencies have concluded that providing institutions with exceptions from compliance with these statutory and regulatory requirements would facilitate recovery in areas declared a major disaster.⁸

Issuance of the FR Statement and Order would exempt real estate transactions in areas declared a major disaster from all requirements of Title XI of FIRREA and Part 323 for a period of three years from the dates of their respective declarations. However, the FDIC and other Agencies would continue to require that lenders make real estate loans that are consistent with safe and sound banking principles. Specifically, financial institutions relying on the appraisal exemption would be required to determine and maintain documentation that:

- (1) the transaction involves real property located in an area declared a major disaster by President Trump on August 25, 2017, September 7, 2017, September 10, 2017, September 15, 2017; September 20, 2017; and September 21, 2017;
- (2) there is a binding commitment to fund a transaction that was respectively entered into on or after August 25, 2017; September 7, 2017; September 10, 2017; September 15, 2017; September 20, 2017; and September 21, 2017; but no later than three years after those dates; and
- (3) the value of the real property supports the institution's decision to enter into the transaction.

Recommendation

Given the nature and extent of the devastation caused by Hurricanes Harvey, Irma, and Maria, staff believes that relief from the appraisal requirements would facilitate recovery in the affected areas and that the conditions for such relief discussed above will ensure real estate loans are made on a safe and sound basis. Therefore, staff recommends the Board approve the attached Resolution to adopt and authorize the publication in the *Federal Register* of the attached FR Statement and Order. If approved by the Board, and subject to the other Agencies' approval processes, the FR Statement and Order would be published jointly by the Agencies in the Federal Register.

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⁸ In addition, 12 C.F.R. § 303.12 provides that the Board may waive the applicability of any FDIC regulatory provision for good cause and to the extent permitted by statute.

CONCUR on Joint Final Statement and Order Concerning Temporary Exceptions to FIRREA Appraisal Requirements in Areas Affected by Severe Storms and Flooding Related to Hurricanes Harvey, Irma, and Maria:

Charles Yi
General Counsel
Legal Division

Attachments