

MEMO

TO: Board of Directors

FROM: Doreen Eberley
Director, Division of Risk Management Supervision

DATE: February 14, 2024

RE: Federal Register Statement and Order to Issue Temporary Exceptions to the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* (FIRREA) Appraisal Requirements in Maui County as Affected by Hawaii Wildfires

I. 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 Maui County as Affected by Hawaii Wildfires*, for publication in the *Federal Register*. The FR Statement and Order would waive appraisal requirements for the area declared by the President to have experienced a major disaster as a result of the wildfires.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).

Concur:

Harrell M. Pettway
General Counsel

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 the FDIC's implementing regulations are found at 12 CFR Part 323 (Part 323).

II. 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 an area 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 2017 to facilitate relief efforts after severe storms and flooding caused by Hurricanes Harvey, Irma, and Maria in areas of Florida, Georgia, Puerto Rico, Texas, and the U.S. Virgin Islands.

On August 10, 2023, President Biden declared an area of Hawaii a major disaster due to damage resulting from wildfires. This declaration covers Maui County to provide assistance to affected individuals in Maui County.

On August 11, 2023, the FDIC published a Financial Institution Letter, *Guidance to Help Financial Institutions and Facilitate Recovery in Areas of Hawaii Affected by Wildfires* (FIL-41-2023)³ to provide guidance to financial institutions and facilitate recovery in areas of Hawaii affected by wildfires. In FIL-41-2023, the FDIC encouraged institutions to work constructively with borrowers experiencing difficulties beyond their control because of damage caused by wildfires and stated that the FDIC would provide regulatory assistance to institutions subject to its supervision.

On August 17, 2023, the FDIC issued a press release, *Federal and State Financial*

² 12 U.S.C. § 3352.

³ See <https://www.fdic.gov/news/financial-institution-letters/2023/fil23041.html>.

*Regulatory Agencies Issue Interagency Statement on Supervisory Practices Regarding Financial Institutions Affected by the Hawaii Wildfires (PR-63-2023).*⁴ In PR-63-2023, the FDIC, along with the other Federal financial institution regulatory agencies, recognized the serious impact of the Hawaii wildfires on the customers and operations of many financial institutions and encouraged institutions in the affected area to meet the financial services needs of their communities.

III. 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 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 30 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 the area 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 the area declared a

⁴ See <https://www.fdic.gov/news/press-releases/2023/pr23063.html>.

major disaster.

Issuance of the FR Statement and Order would exempt real estate transactions in the area 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 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:

- (1) the transaction involves real property located in Maui County that have been designated as adversely affected by a major disaster by the President as a result of the wildfires beginning on August 8, 2023;
- (2) there is a binding commitment to fund the transaction that was respectively entered into on or after August 10, 2023, but no later than August 10, 2026⁵; and
- (3) the value of the real property supports the institution's decision to enter into the transaction.

IV. Recommendation

Given the nature and extent of the devastation caused by the Hawaii wildfires, staff believes that relief from the appraisal requirements would facilitate recovery in the affected area 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

⁵ This relief also includes loans modified during the effective period of this order.



Agencies' approval processes, the FR Statement and Order would be published jointly by the Agencies in the Federal Register.

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Attachments