

FDIC  
Speeches

STATEMENT ON

SUPERVISORY AND ENFORCEMENT EFFORTS IN  
IMPLEMENTING THE ENFORCEMENT PROVISIONS OF THE  
FINANCIAL INSTITUTIONS REFORM, RECOVERY,  
AND ENFORCEMENT ACT OF 1989

PRESENTED TO

SUBCOMMITTEE ON COMMERCE, CONSUMER, AND MONETARY AFFAIRS  
COMMITTEE ON GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES

BY

ARTHUR L. BEAMON  
ASSOCIATE GENERAL COUNSEL, LEGAL DIVISION  
FEDERAL DEPOSIT INSURANCE CORPORATION

9:30 a.m.

THURSDAY, MARCH 15, 1990

ROOM 247, RAYBURN HOUSE OFFICE BUILDING

OPENING REMARKS

Good morning Mr. Chairman and Members of the Subcommittee. My name is Arthur L. Beamon. I am Associate General Counsel in the FDIC Legal Division, head of the Compliance and Enforcement Section, which has staff both in the Regions and in Washington. I have been the head of this Section for approximately 6 years - my tenure spans both pre- and post- FIRREA activities. I would therefore like to relate to you some of FDIC's experiences with the enforcement provisions of the FDI Act, both before and after FIRREA. The staff has prepared specific responses to your written questions. These are contained in a separate report provided to the Subcommittee.

Since 1987, the year of our last report to this Subcommittee, the number of formal enforcement actions initiated by the FDIC has remained at a relatively consistent level - in 1987, 236 formal enforcement actions were initiated, in 1988, 223 formal actions were initiated, and in 1989, 207 formal actions were initiated. This does not include Memoranda of

Understanding, Letter Agreements, Board Resolutions and other informal arrangements. With the recent advent of FIRREA, we expect these numbers to grow. More parties can be reached with the expanded enforcement powers of FIRREA, higher penalties can be imposed, and broader jurisdiction should reach more actionable offenses. On the other hand, heightened public awareness of FIRREA could lessen the number of offenses.

#### REMOVALS AND PROHIBITIONS

Implementation of all the new provisions of FIRREA has taken some time, but that was to be expected. It has taken time to become familiar with the new provisions on the part of both regulators and the banking industry, as well as time to adopt new interpretive rulings. Moreover, certain restrictions against retroactivity contained in FIRREA itself - notably with regard to removals and prohibitions, and civil money penalties - have limited current application of many of its provisions. On the other side of the equation, FIRREA has breathed new life into many removal actions that had been in limbo since the Stoddard

decision. These cases are now being processed. One area, however, where FIRREA is less clear, is in the applicability of the industrywide bar to individuals against whom removal/prohibition orders had been issued prior to FIRREA. A more detailed explanation of this is contained in our written response.

#### CIVIL MONEY PENALTIES

Since the new larger civil money penalties may not, for the most part, be applied to activities that occurred prior to FIRREA, the FDIC has had little opportunity to test their application. Of the 49 individuals assessed civil money penalties in 1989, a total of 16 individuals elected to stipulate and pay their penalties. The remainder are currently litigating their assessments. We have every reason to believe that the larger penalties will promote an even more litigious response on the part of assessed individuals!

In the area of increased call report penalties, we have recently made the first assessments under the increased penalty

provisions of FIRREA. The change in these penalty amounts have probably drawn more objection from the banking industry than any other enforcement change brought about by FIRREA. It is too soon to tell what positive effect, if any, the increased penalty amounts here will have on timely and accurate call report filing - for the September Call, there were 14 late submissions; for the December Call, there were 30 late submissions. Although a higher penalty than that originally contained in the FDI Act was clearly justified, the dramatically increased amounts contained in FIRREA seem somewhat incongruous with the gravity of the offense, and thus may not prove to have a substantial deterrent effect.

#### TERMINATION OF INSURANCE

FIRREA has also made some significant changes to termination of insurance proceedings. With the shortened time frames, we expect to reach more rapid resolution of termination of deposit insurance for those institutions whose condition or activities threaten the insurance fund. Even with the FIRREA changes to this subsection, involuntary deposit insurance termination still

will take at least one year to conclude, barring failure of the institution. Several such cases are presently scheduled for hearing.

To date, we have attempted temporary suspension of deposit insurance on one institution. Although the action was ultimately successful, a problem arose with interpretation of one provision of FIRREA. Since deposit insurance may not be suspended unless the condition of the institution has deteriorated to the point of insolvency, an additional wait of 30 days after giving notice to the primary regulator is inconsistent. Such a wait could only allow the condition of the institution to deteriorate further, and cause even greater exposure to the insurance fund. Amendment of this subsection is clearly warranted. Without such a waiting requirement, we believe the temporary suspension of deposit insurance provision of FIRREA, could prove to be an effective tool in minimizing loss to the insurance fund.

OTHER PROJECTS

Other projects we have completed pursuant to the provisions of FIRREA include adopting new regulations pertaining to applications of senior executive officers and directors under new Section 32 of the FDI Act, new publication guidelines for final administrative enforcement orders, a model brief in support of retroactive application of Sections 904 and 905 of FIRREA, a financial institutions letter issued to all state non-member banks and national banks explaining application of the new call-report penalties, and sample pleadings for termination of insurance proceedings, 8(e) removal proceedings with expanded jurisdiction under FIRREA, and civil money penalties proceedings issued post-FIRREA. Other projects in process include adopting a new policy memorandum applying the expanded provisions of Section 19 to persons convicted of crimes, preparing a letter of understanding between the FDIC and OTS defining "exigent circumstances," and establishing joint agency committees to address issues of shared ALJ "pools" and uniform rules of

procedure.

CONCLUSION

As these items illustrate, we are in a time of trial and testing, but we look forward to the challenge of the coming year in light of our expanded new powers under FIRREA.

Thank you, Mr. Chairman. I will be pleased to answer any questions you or members of the Subcommittee may have.