



FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS19-06]

Appraisal Subcommittee; Final Order Granting In Part Temporary Waiver Relief

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Final Order granting in part, with specified terms and conditions, and with the Federal Financial Institutions Examination Council (FFIEC) concurrence, temporary waiver relief.

SUMMARY: The Appraisal Subcommittee (ASC) of the FFIEC is issuing a final order pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI) and the rules promulgated thereunder. This order grants in part, with specified terms and conditions, and with the FFIEC concurrence, a request for temporary waiver relief received from Governor Doug Burgum, State of North Dakota, the North Dakota Department of Financial Institutions, and the North Dakota Bankers Association, notice of which was published in the Federal Register on May 30, 2019.

DATES: Applicable [**Insert date published in Federal Register**].

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595-7575, or Alice M. Ritter, General Counsel, at (202) 595-7577, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant statutory provisions and regulations

The ASC was established by Title XI.¹ The purpose of Title XI is “to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”² Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis and with concurrence of the FFIEC, “any requirement relating to certification or licensing of a person to perform appraisals under [Title XI] upon a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions³ in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.”⁴ Congress intended that the ASC exercise this waiver authority “cautiously.”⁵

The ASC has promulgated regulations that set forth procedures⁶ governing the processing of temporary waiver requests. After receiving a waiver request, the ASC is required to issue a public notice in the *Federal Register* requesting comment on the request for a proposed temporary waiver. Within 15 days of the close of the 30-day comment period, the ASC, by order, must grant or deny a waiver, in whole or in part, and with specified terms or conditions, including provisions for waiver termination. The ASC’s order shall respond to comments received, provide reasons for its finding,

¹ The ASC Board consists of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [Bureau], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

² Title XI § 1101, 12 U.S.C. 3331.

³ “Federally related transaction” (FRT) refers to any real estate related financial transaction which: (a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1121 (4), 12 U.S.C. 3350.)

⁴ 12 U.S.C. 3348(b).

⁵ House Comm. on Banking, Finance and Urban Affairs, Report Together with Additional, Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101-54 Part 1, 101st Cong., 1st Sess., at 482-83.

⁶ 12 CFR part 1102, subpart A.

and be published promptly in the *Federal Register*. Any ASC approval order shall be effective only upon FFIEC concurrence.

B. Procedural Status

On August 1, 2018, a letter requesting a temporary waiver was submitted to the ASC by Governor Doug Burgum, State of North Dakota, the North Dakota Department of Financial Institutions, and the North Dakota Bankers Association (collectively, the Requester). On September 7, 2018, ASC staff replied to the Requester by letter, in which ASC staff described the information required to file a completed waiver request pursuant to 12 CFR §§ 1102.2 and 1102.3. The Requester submitted additional information in a letter dated April 10, 2019, in response to the ASC's September 7, 2018 letter. On April 15, 2019, the ASC convened a Special Meeting and determined to publish a notice for comment on the request for temporary waiver in the *Federal Register*. The request seeks a waiver of appraiser credentialing requirements for appraisals for FRTs under \$500,000 for 1-to-4 family residential real estate transactions and under \$1,000,000 for agricultural and commercial real estate transactions throughout the State of North Dakota for a period of not less than five years.

On May 30, 2019, the ASC published a Notice of Received Request for a Temporary Waiver giving interested persons 30 days to submit comments, including submission of written data, views and arguments.⁷ The comment period closed on July 1, 2019. A discussion of the public comments received by the ASC concerning the request for temporary waiver relief follows in Section III below.

The ASC called a Special Meeting to consider this matter on July 9, 2019, and voted to approve the issuance of this final order granting in part, upon specified terms and conditions, and

⁷ 84 FR 25052 (May 30, 2019).

subject to FFIEC concurrence, temporary waiver relief. The FFIEC met via teleconference on July 12, 2019, and a quorum of the Council being present, took the following action: pursuant to § 1119(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, the Council approved the temporary waiver granted by the ASC on July 9, 2019.

II. Request for a Temporary Waiver

The Requester sought a temporary waiver of the appraiser credentialing requirements for appraisals for FRTs under \$500,000 for 1-to-4 family residential real estate transactions and under \$1,000,000 for agricultural and commercial real estate transactions throughout the State of North Dakota for a period of not less than five years. The Requester stated that a scarcity of appraisers exists, particularly in the rural areas of the western part of the State, indicating that of the 53 counties in North Dakota, 29 counties do not have a single appraiser residing in the county, and that while the most severe impact of the appraiser scarcity has been experienced in western and the most rural districts in North Dakota, the population centers are also impacted.

The Requester conducted a survey to assess what lenders deem are appropriate turnaround times for residential and commercial appraisals. The Requester summarized the results of the survey as follows:

- 81 percent reported that up to 30 days is appropriate for residential appraisals.
- 80 percent reported that up to 60 days is appropriate for commercial appraisals.
- 65 percent reported a delay in receiving a residential real estate appraisal, and 71 percent reported a delay in receiving a commercial appraisal.
- 57 percent reported unreasonable delays in receiving residential real estate appraisals in the prior 12 months. 72 percent reported unreasonable delays in receiving commercial appraisals in the prior 12 months.

The Requester acknowledged that federal banking agencies and NCUA have proposed increases to the appraisal thresholds⁸, stating that “[if adopted, it] will have a positive effect that is similar to that which can be achieved by the granting of this waiver since both approaches will provide much needed relief.”

III. Summary of Comments

The ASC received 109⁹ comment letters in response to the published Notice of Received Request for a Temporary Waiver and request for comment. These comment letters were received from State appraiser certifying and licensing agencies, appraiser and mortgage lending associations, professional associations, appraisal firms, appraisers, and several banks and financial institution associations in the State of North Dakota.

While a few commenters supported the granting of a temporary waiver, the majority of comments received were from appraisers opposing the granting of a temporary waiver. Associations representing insured depository institutions in North Dakota (banks and credit unions) meanwhile argued that the waiver would provide some measure of relief in local communities without increasing any safety and soundness risks. Several other commenters disputed that there was a shortage of appraisers in North Dakota and that there are significant delays. Specifically, commenters offered data showing that the number of appraisers in North Dakota is consistent with other similarly populated States. Commenters also stated that the turn time of appraisals in North Dakota average within the Requester’s range of appropriate turn times. Commenters also noted decreased economic activity in North Dakota and that turn times

⁸ See 83 FR 63110 (December 7, 2018) (OCC, Board, and FDIC proposing to increase the residential real estate appraisal threshold level from \$250,000 to \$400,000); 83 FR 49857 (October 3, 2018) (NCUA proposing to increase the appraisal threshold for non-residential real estate transactions from \$250,000 to \$1,000,000).

⁹ Regulations.gov shows 109 comments received in total with 105 viewable comments due to duplicates and 2 withdrawals.

have improved in recent years. Several commenters also expressed varying concerns about the long term impact a waiver would have on appraisers and the appraisal profession, consumers and the safety and soundness of the North Dakota banking system. Several commenters reported making attempts to be added to lender lists of approved appraisers without success. Several commenters asked if a waiver were granted, who would be qualified to perform a *Uniform Standards of Professional Appraisal Practice* (USPAP)-compliant appraisal without the training and education a credentialed appraiser is required to have, and with whom consumers and other parties would file a complaint. Commenters also expressed concern over the loss of protection to the public if a waiver is granted. The ASC acknowledges these concerns and emphasizes that this is a temporary waiver while more long-term solutions are researched and implemented by the Requester and interested stakeholders in the State of North Dakota. In the interim, lenders are still required to obtain USPAP-compliant appraisals for FRTs and should review appraisals for compliance with USPAP. Several commenters challenged the ASC's authority to exercise temporary waiver discretion at this point in time, commenting that the statutory provision was meant to be applied when States were first setting up appraiser regulatory programs and were perhaps not going to be able to meet the statutory deadline to establish a program. The ASC notes that the statute includes no expiration of the waiver provisions in the statute.

The North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board) provided a letter in which they recommend denying the request. The Appraiser Board reported a 44 percent increase in appraisers since 2009 and submitted data in support of their position. The letter from the Appraiser Board also addressed recent regulatory changes that have been made or are being considered that address many of the concerns in the request.

IV. ASC discussion

In order to grant a temporary waiver, the ASC must make a determination that a scarcity of credentialed appraisers is leading to significant delays in obtaining appraisals for FRTs in the geographic area¹⁰ specified in the request. In considering this request, the ASC examined both evidence of a scarcity of appraisers in North Dakota, and evidence of scarcity leading to significant delay. The ASC noted that North Dakota's appraisal turnaround time is one of the slowest in the country. In this case, while data provided to the ASC by the Requester and the Appraiser Board and included in public comments, was not consistent and sometimes conflicted, the majority of the ASC members concluded that a scarcity of appraisers does exist in North Dakota and that the scarcity is leading to a significant delay in appraisal services for FRTs. Therefore, by majority vote, the ASC determined to grant in part, subject to specified terms and conditions, and subject to FFIEC concurrence, temporary waiver relief as follows:

- A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under \$500,000 for 1-to-4 family residential real estate transactions throughout the State of North Dakota for a period of one year, unless the federal banking agencies issue a rule increasing appraisal exemption threshold limits for residential real estate transactions,¹¹ in which case the residential waiver will terminate 60 days after the effective date of that threshold increase.

¹⁰ The ASC's section 1119(b) temporary waiver authority is with respect to a State or any geographical political subdivision of a State.

¹¹ 83 FR 63110 (December 7, 2018).

- A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under \$1,000,000 for commercial real estate transactions¹² throughout the State of North Dakota for a period of one year.
- During the one-year period, the Requester is expected to develop a plan through continued dialogue with North Dakota stakeholders, including the Appraiser Board, to identify potential solutions to address appraiser scarcity and appraisal delay.
- At least 30 days prior to the expiration of the one-year period, the Requester should provide (1) a status report to the ASC on the plan that was developed in collaboration with stakeholders and any implementation progress made on that plan toward identifying meaningful solutions to resolve appraiser scarcity and delay issues faced in North Dakota; and (2) supporting data showing that appraiser scarcity leading to significant delays continues to exist, which may include information to identify specific localities affected by appraiser scarcity. The ASC will consider the information as presented by the Requester, and by vote in open session, may extend the temporary waiver for an additional one-year period.
- The ASC at any time may terminate a waiver order on a finding that significant delay in the receipt of appraisals for FRTs no longer exists, or that the terms and conditions of the order are not being satisfied.

V. Order

¹² The request was for commercial and agricultural, but agricultural loans are already included in either commercial or business loans.

For the reasons stated above, and pursuant to section 1119(b) of Title XI and 12 CFR part 1102, subpart A, the ASC grants temporary waiver relief to the Requester, subject to the following specified terms and conditions:

- A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under \$500,000 for 1-to-4 family residential real estate transactions throughout the State of North Dakota for a period of one year, unless the federal banking agencies issue a rule increasing appraisal exemption threshold limits for residential real estate transactions,¹³ in which case the residential waiver will terminate 60 days after the effective date of that threshold increase.
- A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under \$1,000,000 for commercial real estate transactions throughout the State of North Dakota for a period of one year.
- During the one-year period, the Requester is expected to develop a plan through continued dialogue with North Dakota stakeholders, including the Appraiser Board, to identify potential solutions to address appraiser scarcity and appraisal delay.
- At least 30 days prior to the expiration of the one-year period, the Requester should provide (1) a status report to the ASC on the plan that was developed in collaboration with stakeholders and any implementation progress made on that plan toward identifying meaningful solutions to resolve appraiser scarcity and delay issues faced in North Dakota; and (2) supporting data showing that appraiser scarcity leading to significant delays continues to exist, which may include information to

¹³ 83 FR 63110 (December 7, 2018).

identify specific localities affected by appraiser scarcity. The ASC will consider the information as presented by the Requester, and by vote in open session, may extend the temporary waiver for an additional one-year period.

- The ASC at any time may terminate a waiver order on a finding that significant delay in the receipt of appraisals for FRTs no longer exists, or that the terms and conditions of the order are not being satisfied.

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By the Appraisal Subcommittee,

Dated: August 2, 2019.

Arthur Lindo,
Chairman.
Billing Code 6700-01

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