

1. ASC Staff Draft Responses to GAO's Follow-up Questions

**GAO's Review of Title XI's Real Estate Appraisal Exemptions (Job code 104472)  
Follow-up Questions for Appraisal Subcommittee (ASC)**

**ASC Staff Draft Responses:**

**I. Clarification on ASC's Waiver Process**

1. From the procedures and frequently asked questions (FAQ), it appears the only difference between a request from the State Appraiser Regulator Agency and the other parties is that the other parties are not required to submit a plan for alleviating the scarcity and service delays. Are there other differences?

*Yes. It affects the process. When the ASC receives a request from a State Appraiser Regulatory Agency that meets the requirements set forth in 12 CFR § 1102.2, including a written duly authorized determination that there is a scarcity of certified or licensed appraisers leading to significant delays in obtaining appraisals in FRTs, the request will be published promptly in the Federal Register for comment. In the absence of such a written determination, the State Appraiser Regulatory Agency must ask the ASC for such a determination.*

*When the ASC receives a submission from any other party pursuant to 12 CFR § 1102.3, the ASC has the discretion to determine whether or not to initiate a temporary waiver proceeding. If the ASC makes a determination to initiate a temporary waiver proceeding, the ASC will promptly publish notice of the proceeding in the Federal Register.*

2. The request for this temporary waiver was from Governor Burgum, North Dakota Department of Financial Institutions, and the North Dakota Bankers Association. The requester was classified as other parties, correct?

*Correct.*

**II. Appraisal Subcommittee's Approval Process for Granting North Dakota a Temporary Waiver**

1. In July 9, 2019, ASC called a Special Meeting to consider North Dakota's request and voted to approve the issuance of the order granting temporary waiver relief. If available, please provide us with a copy of:

- A. The transcript or minutes of the meeting, including which members voted for and against the order, and

*See attached minutes and attendee list.*

- B. Any summaries or analysis that ASC staff prepared to help inform ASC members voting on North Dakota's waiver request.

*See attached Briefing doc.*

2. Section 1102.5 (subcommittee determination) states that "such order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding. To what extent did ASC provide its reasons for its findings in its Federal Register release granting the waiver?"

*See attached Reasons for Findings.*

**GAO's Review of Title XI's Real Estate Appraisal Exemptions (Job code 104472)  
Follow-up Questions for Appraisal Subcommittee (ASC)**

3. In its Federal Register release granting North Dakota's temporary waiver, ASC noted that North Dakota's appraisal turnaround time is one of the slowest in the country. We did not find such evidence based on our review of the comment letters. Based on what information did ASC make that determination? For example, did ASC rely on analysis from a consultant, such as Mercury Network?

*The observation was based on two documents attached. See attached **North Dakota Appraiser Stats and Heat Maps for CTR.***

4. Under its authority, ASC can provide a temporary waiver to a state or any geographical political subdivision of a state. Did ASC consider narrowing its temporary waiver to cover certain regions within North Dakota instead of the entire state? If no, why not (e.g., not part of the request)? If yes, why did it not take such actions?

*There is discussion reflected in the attached minutes from the July 9, 2019. This option was considered and discussed by ASC board members. Commissioner Kruse (Requester) stated that while the ASC could note specific lenders or counties, she did not want to appear as if the Requester had geographical preferences. ASC board members then discussed other options to pare down what was a broad request.*

5. In response to a congressional request, ASC noted that if there is conflicting data, ASC attempts to assess these differences through independent research and analysis.
  - a. What research or analysis did ASC conduct to reconcile or address inconsistent or conflicting data regarding appraiser scarcity and significant delays with appraisals?

*There are no accepted definitions of appraiser scarcity or significant delays with appraisals. This makes it very difficult to reconcile differences in opinion regarding availability of appraisers and appraisals.*

*The ND DFI and ND Appraisal Board provided lender and appraiser surveys but the veracity of such surveys is questionable. Data on appraisal turnaround times is very limited and often challenged by differing definitions of turnaround time and lender expectations.*

- b. What information, including sources, played the largest role in helping ASC members make their determination about scarcity and significant delay?

*Other than the information provided by the ND DFI, Appraisal boards and commenters, the only available data was from the Veterans Administration which showed North Dakota to have one of the slowest appraisal turnaround times in the country.*

**GAO's Review of Title XI's Real Estate Appraisal Exemptions (Job code 104472)  
Follow-up Questions for Appraisal Subcommittee (ASC)**

**III. Potential Challenges**

1. In its FAQ, ASC noted that no statutory definition exists for scarcity or a significant delay but provided examples of information that could be used to measure such terms.

A. What challenges, if any, did ASC encounter in determining whether a scarcity of appraisers or a significant delay existed, particularly in light of the lack of statutory definitions for such terms?

The primary challenge was dealing with a subjective standard without parameters or definitions. A notice of proposed rulemaking is in process to include definitions that ASC staff and member agencies believe will be helpful. Another significant challenge is the lack of available data regarding appraiser availability and turnaround times.

B. How feasible would it be for ASC to develop clearer metrics or benchmarks to guide future determinations?

Geographic variances make this a difficult task. The notice of proposed rulemaking is intending to provide clarity regarding burden of proof and verifiable information, statistical or otherwise.

It may make more sense to develop metrics that are outcome based such as delayed or lost loan closings due to appraisal delays.

2. Other than those discussed above, what other significant challenge, if any, did ASC encounter in reviewing and granting North Dakota's waiver request, and what procedural or other changes, if any, has ASC considered in light of such challenges?

- Definitions
- Clarification on who can file a Request
- Coordination with State appraiser regulatory agency (preemption)
- Timing after publication in Federal Register for comments
- Requirement for burden of proof on information to be submitted
- FFIEC concur/approve (term) and timing
- Require appraisals be subject to review for alleged violation of USPAP
- Expedited grants

Timeframes in existing rule are very difficult, *e.g.*, 45 days after publication in the Federal Register to make a decision, and if granted, approval from the FFIEC is required without specifics on their timeframe. The notice of proposed rulemaking is anticipated to include more realistic and specific timeframes.

**GAO's Review of Title XI's Real Estate Appraisal Exemptions (Job code 104472)  
Follow-up Questions for Appraisal Subcommittee (ASC)**

**IV. Future Plans**

1. The temporary waiver included a requirement for the requesters to collect data. Did ASC receive any data that shed light on the waiver's effect in alleviating the appraiser shortage with respect to residential mortgages?

No.

2. How, if at all, could ASC modify its Appraiser Registry to collect additional data on appraisers for use in assessing whether an appraiser scarcity exists in a particular location?

The Appraiser Registry could allow States to enter information on areas of practice for credentialed appraisers. However, it may present a challenge to require the States to provide such information and would likely require a rulemaking.

3. While congresspersons Brown and Waters asked about the need for ASC to establish a policy to determine minimum standards for data reliability, ASC did not expressly respond to that question. What are the benefits and costs of developing a policy to evaluate the accuracy, completeness, and applicability of submitted data?

The notice of proposed rulemaking is intending to provide clarity regarding burden of proof and verifiable information, statistical or otherwise. It will also address:

- Definitions
- Clarification on who can file a Request
- Coordination with State appraiser regulatory agency (preemption)
- Timing after publication in Federal Register for comments
- Requirement for burden of proof on info. to be submitted
- FFIEC concur/approve (term) and timing
- Require appraisals be subject to review for alleged violation of USPAP
- Expedited grants

## 2. July 9, 2019 ASC Meeting Minutes

**APPRAISAL SUBCOMMITTEE  
OPEN SESSION SPECIAL MEETING MINUTES  
JULY 9, 2019**

LOCATION: Partnership for Public Service  
1100 New York Avenue NW, Suite 200 East, Washington, DC 20005

**ATTENDEES**

**ASC MEMBERS:** FRB – Art Lindo (Chair)  
CFPB – Philip Neary  
FDIC – Marianne Hatheway  
FHFA – Robert Witt  
HUD – Bobbi Borland  
NCUA – Tim Segerson  
OCC – Richard Taft

**ASC STAFF:** Executive Director – Jim Park  
Deputy Executive Director – Denise Graves  
General Counsel – Alice Ritter  
Financial Manager – Girard Hull  
Attorney-Advisor – Ada Bohorfoush  
Policy Manager – Claire Brooks  
Policy Manager – Vicki Ledbetter-Metcalf  
Management and Program Analyst – Lori Schuster  
Administrative Officer – Brian Kelly

**OBSERVERS:** See Attachment

The Special Meeting was called to order at 10:10 a.m. by A. Lindo.

**ACTION ITEM**

- **State of North Dakota Temporary Waiver Request**

A. Lindo welcomed observers to the Meeting. The ASC is considering a Temporary Waiver Request (Request) from the North Dakota Governor's Office, the North Dakota Department of Financial Institutions and the North Dakota Bankers Association (collectively, the Requester). [Procedural status: On August 1, 2018, a letter requesting a temporary waiver was submitted to the ASC by 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 notice for comment was published on May 30th with comments due

on July 1st. Regulations.GOV shows 109 comments received in total with 105 viewable comments due to duplicates and 2 withdrawals.]

J. Park provided some background on temporary waiver requests and requirements. He said the Requester seeks a waiver of appraiser credentialing requirements for federally related transactions (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. He noted that most comments in response to the *Federal Register* notice were from North Dakota appraisers who were against approval of the Request. There were four responses from lending institutions in North Dakota that were in support of the Request.

A. Lindo invited the Requesters to speak. L. Kruse of the North Dakota Department of Financial Institutions (DFI) stated DFI's mission and the reasons for the Request. She emphasized that a scarcity of appraisers in the State was leading to a delay in turnaround times on appraisal reports which was affecting the closing of loans. She said population is not the only indicator of scarcity and that in North Dakota there is scarcity by reason of geography. She said the high cost of appraisals is paid by the customer which causes harm. DFI does not feel the waiver would cause safety and soundness issues. She commented on the Interagency Advisory on the Availability of Appraisers issued in May of 2017 and stated that in a meeting with Federal agency representatives, she was told that waivers could be used to address scarcity. She said the request was submitted and provided evidence in good faith to provide relief to consumers.

M. Foss spoke next representing the North Dakota Bankers Association (NDBA). She was the General Counsel for the NDBA when the Request was submitted in August 2018. She said that NDBA reached out to the North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board) to express concerns about an appraiser shortage in the State, and that NDBA also participated in various committees to address the scarcity issue which has caused lenders delays in assigning and receiving appraisal reports. She said the shortage does cause delay and lost loans because reports cannot be completed. She noted that since the request was submitted, the North Dakota Attorney General released an opinion on June 26<sup>th</sup> stating that permits are required to perform appraisals in North Dakota, but that existing exceptions in the law provide the foundation needed to implement any waiver that the ASC would grant. She does not feel that safety and soundness of the financial system would be affected as lenders located in North Dakota have shown their ability to evaluate for safety and soundness of a loan. She added that if approved, the waiver would be more available to agricultural and commercial loans.

C. Kost, Appraiser Member of the Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board), spoke on behalf of the Board. He asked the ASC to deny the Request as the Appraiser Board feels that scarcity was not adequately addressed by the Requesters. Approval of the Request would also supersede the Appraiser Board's authority. He referred to comments in response to the *Federal Register* notice by the Association of Appraiser Regulatory Officials (AARO) and the Appraiser Board and other comments from in-State appraisers who have been turned away from lender appraiser panels. He said the



AARO comment requested great deference be granted to the Appraiser Board as being in the best position to evaluate any scarcity. He noted that lenders have not attended any recent Appraiser Board Meetings and refuted the claim that either NDBA or DFI met with State appraisers to address the perceived shortage. He added that appraisers are eager to work with lenders but need to be given that opportunity. He stated that in 3 years, there has been no attempt to resolve differences. He commented that it is a well-supported conclusion that the number of appraisers in North Dakota is on par with other rural States and that timeliness in providing appraisals is improving. He said that lenders supporting a waiver are not interested in adding more appraisers to panel. He questioned how using uncredentialed appraisers would protect consumers; would appraisers with revoked credentials be allowed to appraise; how enforcement against an uncredentialed appraiser would be handled since the Appraiser Board would have no jurisdiction; what consequences would exist for lenders who participate in fraudulent appraisals; would users of appraisal services be made aware of an uncredentialed appraiser's background and would the use outweigh the risk. He suggested there are alternatives to granting a waiver stating that Licensed or apprentice appraisers are under-utilized, that SB2155 (now Title XI § 1127. *Exemption From Appraisals of Real Estate Located in Rural Areas* [12 U.S.C. 3356]) covers 90% of ND FRTs. He added that increased data availability would shorten the appraiser's turnaround time, citing the example of assessor records not being available online in the State. He also noted there are limitations to MLS and extreme weather slows everything down in the State. He noted a comment in response to the *Federal Register* notice that there is a lack of communication between lenders and appraisers.

R. Taft asked L. Kruse why geography and not population was the basis used to determine scarcity. L. Kruse responded that appraisers in North Dakota may cover multiple counties because of the rural geography of the State. The Requester also reviewed commercial and residential growth in North Dakota over the past few years. While the North Dakota economy did experience a slowdown in 2014, there was still growth. R. Taft asked how a temporary waiver would provide relief. L. Kruse responded that the scarcity issue has been ongoing, and the appraiser profession can be difficult to enter. She commented that while there has been some relief in the form of loosened Appraiser Qualifications Board Criteria, and the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), it will take time for those changes to be realized. R. Witt asked what the State has done to provide relief to procure timely appraisals to address delays. He added that if lenders are not utilizing Licensed appraisers on their panels that would not determine a scarcity. L. Kruse responded that transactions valued at or higher than \$1,000,000 must be appraised by Certified appraisers; lenders selling in the secondary market also want to utilize only Certified appraisers. R. Witt said that appraisers may serve multiple counties, not just the county they reside in. L. Kruse responded that North Dakota lenders are using all available appraisers, even out-of-State appraisers, but local appraisers are more knowledgeable of the area. She added that the cost of a report can increase if an out-of-State appraiser has to be used; weather, geography and long distances are also reasons for delay. She added that approximately 40% of appraisers in North Dakota limit their work to metropolitan areas of the State. M. Foss added that an employee within a lending institution does not need to be credentialed if they are only providing an estimate of value to their

employer. R. Witt asked if mostly smaller, rural lenders would use the temporary waiver. M. Foss responded “yes,” and added that some small lenders have ceased making residential loans because of the delay in receiving a completed appraisal report and federal requirements; larger lenders have marketing and mortgage origination programs and she does not think that they will alter their programs. R. Clayburgh, the President of the NDBA, said that not all in-State appraisers are available to all lenders as some appraisers limit their work to specific lenders or appraisal types. He said legislative leadership brought lenders and appraisers together to address education requirements and that there is a potential for State educational institutions to set up a program to assist those who want to enter the appraisal profession. He added that lending has slowed due to the difficulty in finding comparables which delays lenders from receiving completed appraisal reports. He feels that the information provided by the Requesters supported the Request. M. Hatheway asked M. Foss if there have been discussions with the Appraiser Board to discuss scarcity. M. Foss said this has been a longstanding issue. In her opinion, the problem is known to the Appraiser Board but no solutions have been put forth. She stated that in May 2017, the FDIC published FIL-19-2017 which inspired the State to act on the issues of scarcity and delay. She added that the Request is temporary and could be terminated once other solutions were put into place. T. Segerson asked what transactions would be covered under this temporary waiver, if granted, and also asked about the effect of Title XI § 1127. *Exemption From Appraisals of Real Estate Located in Rural Areas* (Section 1127) on scarcity. L. Kruse responded that few lenders have used the rural waiver authority under Section 1127 as they are awaiting the regulatory agencies to finalize rules since the law was vague on what constitutes good effort in contacting appraisers. She said they are also hopeful there will be a decision to raise the residential threshold. The Request, if approved, would mostly apply to commercial loans as lenders want to support the community and support small commercial loans. R. Taft asked how many commercial transactions in rural areas are FRTs. L. Kruse said there are not many but added that delays can hinder opportunities for rural areas. A. Lindo asked C. Kost why delivery times in North Dakota are longer than those in neighboring rural States. C. Kost responded that Minnesota has a higher number of appraisers from larger metropolitan areas, such as Minneapolis, who are willing to do rural appraisals. He did not feel that delivery times in North Dakota varied that much with turnaround times in Montana. He added other rural States may have better automated systems in which to obtain data and that the State could potentially help counties and municipalities develop more robust data systems. L. Kruse added that South Dakota and Minnesota also have issues with shortages and delays. C. Kost noted that turnaround times in North Dakota have improved over the past few years. A. Lindo asked ASC members for their opinions on approving the Request and if there are other possible solutions. M. Hatheway suggested a middle ground, noting the ASC cannot approve a waiver of USPAP-compliant appraisals. She proposed granting a temporary waiver for 1-2 years and added there should also be increased dialog between lenders and appraisers, similar to what we have seen in Tennessee. She commented that geography resulting in longer travel does contribute to delay. She stated she is supportive of approving a waiver for a shorter period of time while coming up with other solutions. P. Neary agreed with M. Hatheway’s suggestions. R. Taft acknowledged that delays could be occurring and added the State could address some of the issues such as lack of available data. He also supported short-term relief while the State and appraisers work towards other solutions. He

added if the regulatory agencies do approve raising the residential threshold, that could alleviate part of the problem, and that the length of any temporary waiver for residential appraisals should be correlated with when the regulatory agencies make a decision on the residential threshold. He commented that commercial real estate loans are more troublesome, in that there is less data. He noted the State and appraisers need to work together to understand each other's issues and that extending the temporary waiver beyond two years would not resolve the problems. He added that Section 1127 was self-enabling and lenders can decide now if they wish to use it. B. Borland stated that appraiser scarcity has not been proven by the Requesters and that commenters to the *Federal Register* notice also did not feel there was a delay in turnaround times. She would not vote for a temporary waiver to cover the entire State. R. Witt noted that a more robust data system would decrease turnaround time and could also help with the ability to do remote appraising along with using non-appraisers to gather data. He agreed with B. Borland that there was not a scarcity leading to a delay and would vote no on a temporary waiver as the current request is too general. He added that the Requesters could submit a narrowed temporary waiver request with better data. He also indicated that research back 10 years shows loans have declined. T. Segerson stated he has concerns with the scarcity justification. He noted both sides made strong cases for their positions. He added he would be more comfortable with a targeted temporary waiver for a shorter period than M. Hatheway suggested. He commented that the data provided on turnaround times did not show if it varies across the State. He would like to see conditions imposed on any temporary waiver such as collaboration between appraisers and lenders to determine where the challenges lie and joint research and hard data on where the challenges are. He affirmed that Section 1127 is self-enabling. He indicated he would not approve a temporary waiver to the request as submitted, but would consider alternatives. A. Lindo suggested providing a temporary waiver for residential lending but for less than five years with conditions. R. Witt stated that FHFA research did not show scarcity or delay. He noted that in rural areas, appraisals will take longer and that is customary for the market. A. Lindo questioned if such areas have been underserved, is that acceptable. R. Taft commented because these seem to be long-term issues, we should be looking to keep the waiver short term and require action by stakeholders to address the longer-term challenges. R. Witt responded that could be addressed by setting up a more robust MLS or data statewide, or by using remote appraisals, or property data collection by a non-appraiser. A. Lindo noted that most ASC members did not want to approve the Request as submitted, adding a temporary waiver could be targeted to specific areas and items. R. Witt questioned whether the ASC's decision will have any effect on helping the State address the issue. A. Lindo responded that the ASC can approve a recommendation today and work with the State and appraisers to find solutions and to also implement those solutions. R. Taft noted the Request was broad and the ASC could limit approval to rural areas. R. Taft asked L. Kruse if she knows of specific rural areas where there are issues. L. Kruse responded that while the ASC could note specific lenders or counties, she did not want to appear as if the Requester had geographical preferences. She is open to dialogue to find appropriate rural areas and she felt that Fargo could be considered a rural area since it is surrounded by rural counties. R. Witt asked L. Kruse if she is aware of the challenges that lenders are facing finding appraisers. L. Kruse responded that smaller lenders have fewer appraisers on their rosters while other small lenders are unable to find any appraisers, so the exemption provided by

Section 1127 is not helpful. L. Kruse noted that any recommendations by the ASC concerning automation of data would need legislative action by the State and the legislature does not meet until 2021. R. Witt suggested the National Association of Realtors may have MLS coverage in North Dakota. C. Kost responded that realtors in North Dakota are exploring that option. R. Witt asked whether commercial data is easily available. C. Kost responded that it varies and researching for commercial data can increase the turnaround time. B. Borland asked if the ASC did approve a temporary waiver that allowed an appraiser to take the exam and gain the education and experience within a specified timeframe, would that be helpful. C. Kost said it may and noted that the AQB Criteria lowered the education and experience requirements in 2018. He added that online education is readily available; gaining experience is more difficult as a trainee must locate and work under a supervisory appraiser. He added the Appraisal Foundation's proposed Practical Applications of Real Estate Appraisal (PAREA) may be helpful once it is developed. C. Kost said that consumers should be made aware that an appraiser has not attained all of the education and experience. A. Lindo responded that if an exam is taken and passed, why should consumers be notified about the appraiser's lack of education. C. Kost said that a single exam cannot cover everything learned through education and experience. R. Taft noted that lenders will still be required to obtain an appraisal that is USPAP compliant. If appraisals are non-USPAP compliant, the regulator could cite that during an examination. T. Segerson felt that small lenders would use a credentialed appraiser in most circumstances but allowing transitional appraisers could provide relief. C. Kost said the issue of oversight of uncredentialed appraisers needs to be clarified since the Appraiser Board would not have enforcement authority. J. Park noted that transitional licensing was used when State appraiser programs were first developed and allowing that category in this instance could be revisited. B. Borland asked if data was available regarding the number of residential loans below \$250,000 and commercial loans below \$500,000. L. Kruse responded that lenders would need to provide that information. B. Borland noted that increasing the limit to \$500,000 may not have much impact in rural areas. L. Kruse said that may be true for small towns but there are larger, more expensive homes now. M. Hatheway amended her proposal to offer a two-year waiver for residential and commercial appraisals subject to the condition that if the regulatory agencies were to increase the residential threshold, the temporary waiver for residential appraisals would expire 30-60 days after the effective date of that increase. A temporary waiver for commercial appraisals would be effective for two years. She added a lender could be cited by a regulator for appraisals that are not USPAP compliant and the ASC would encourage lenders and appraisers to communicate to find solutions within that two-year period. R. Taft suggested instead a one-year waiver with a one-year option; lenders and appraisers would need to communicate and recommend solutions; both the State and Appraiser Board would need to provide a status update to the ASC before the option year would be approved. R. Taft also agreed that if the regulatory agencies raise the residential threshold, the temporary waiver for residential loans could expire 60 days after the effective date of the increase. A. Lindo agreed with R. Taft's proposal. C. Kost noted that the Appraiser Board has had no communications with the lenders since the initial request was filed in August 2018. He is not optimistic about the two sides working together. He added a Statewide waiver is not appropriate as the metropolitan areas do not have a scarcity of appraisers; nor did the Requesters prove there is a scarcity. He said if there is a scarcity in a

geographical area of the State, and it can be proven, those areas should be considered for a temporary waiver. He stated the Appraiser Board has not heard of concerns about scarcity and that this is not a systematic statewide issue. He said the Appraiser Board expressed willingness to work with the Requesters on compiling data but did not receive a response. R. Clayburgh stated that the Requesters met with appraisers after the initial letter was sent in August 2018. The Appraiser Board members are appointed by the Governor and should work with the Requesters to find solutions, and there is an incentive for both sides to work together; otherwise the temporary waiver would expire after one year. He added lenders can lobby the State legislature to enact legislation to develop a database. M. Hatheway said that the Final Order should include wording regarding the option to extend for one year; otherwise the Requesters would need to resubmit a Request. She said the Requester should provide an update to the ASC in advance of the one-year expiration as to what both sides have discussed so that the ASC can determine whether or not to enact the option year. A. Ritter said the ASC would need to vote in open session to approve the option year. T. Segerson said it is important that if the ASC approves the option year, there should be clear and convincing evidence from the Requester, including data on loan activity, that scarcity and delay exists. He added data for metropolitan and rural areas needs to be provided and there should be ample time for both sides to obtain information. M. Hatheway questioned how much data would be available after one year and added communication between the lenders and appraisers would be of value. T. Segerson said he would hope to see numbers improve regarding the state of scarcity and timeliness of appraisals; that should be part of deliberations when deciding whether or not to extend. He added ASC should not automatically renew and stated he would not be inclined to do so with data available now. He reiterated the need for data for metropolitan and rural areas, and said there is plenty of time for parties to get information, including geographical data. B. Borland asked the Requesters who will do appraisals and how will those persons be trained. L. Kruse responded the lender would be responsible for training those persons. A. Lindo added that the regulator will evaluate bank performance and compliance with USPAP. A. Lindo confirmed the vote to be on granting a waiver in part for both residential and commercial for one year; ASC having option to extend for one year on showing of scarcity and delay, and showing progress made based on a status update to the ASC, with progress toward solutions and understanding challenges on both sides, with data to support extending the waiver, with a termination of the residential waiver 60 days after passage if the residential threshold is increased.

A. Lindo took a roll call vote:

M. Hatheway – yes; R. Taft – yes; T. Segerson – yes; B. Borland – no; R. Witt – no;

P. Neary – yes; A. Lindo – yes.

R. Taft reiterated the importance of the parties working together and that a waiver is not a permanent solution. A. Lindo confirmed that the FFIEC must concur before an Order can become effective. A. Ritter said the draft Final Order will be sent to ASC members for review and comment before it is sent to the FFIEC.

The Open Session adjourned at 12:55 p.m. The next ASC Meeting will be August 28, 2019.

Attachments: Observer List

ASC Special Meeting Observers

July 9, 2019

Affiliation	Name
Allterra Group	Joan Trice
American Society of Appraisers	John Russell
American Society of Farm Managers & Rural Appraisers	Stephen Frerichs
Appraisal Foundation	Dave Bunton
Appraisal Institute	Bill Garber
Appraisal Institute	Brian Rodgers
Conference of State Bank Supervisors	Susanna Barnett
Conference of State Bank Supervisors	Daniel Berkland
Conference of State Bank Supervisors	Mary Beth Quist
Conference of State Bank Supervisors	Alisha Sears
Consumer Financial Protection Bureau	Paul Sanford
Federal Deposit Insurance Corporation	Michael Briggs
Federal Deposit Insurance Corporation	Suzy Gardner
Federal Financial Institutions Exam. Council	Judith Dupre
Federal Housing Finance Agency	Ming-Yuen Meyer-Fong
Federal Reserve Board	Carmen Holly
Federal Reserve Board	Matt Suntag
National Credit Union Administration	Rachel Ackman
North Dakota Appraiser Board	Dave Campbell
North Dakota Appraiser Board	Corey Kost
North Dakota Appraiser Board	Tim Timian
North Dakota Appraisers Association	Joe Ibach
North Dakota Bankers Association	Rick Clayburgh
North Dakota Bankers Association	Marilyn Foss
North Dakota Dept. of Financial Institutions	Lise Kruse
North Dakota Senator Cramer's Office	Jason Stverak
Office of the Comptroller of the Currency	Joanne Phillips
Office of the Comptroller of the Currency	James Rives

3. ASC Staff Analysis of North Dakota Temporary Waiver Request – presented at July 2, 2019 ASC Briefing



■   ■   ■   ■   ■   ■   ■

# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

**TO:** Appraisal Subcommittee

**FROM:** Jim Park

**DATE:** July 2, 2019

**RE:** ASC Briefing: North Dakota Temporary Waiver Request

---

## **Summary**

Section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI) gives the ASC authority to waive any credentialing requirement relating to the certification or licensing of a person eligible to perform appraisals for federally related transactions (FRTs). The North Dakota Temporary Waiver Request (Request), filed by the State of North Dakota, the North Dakota Department of Financial Institutions and the North Dakota Bankers Association, petitions the ASC to use its authority to waive the requirement for an appraiser credential (rather than credentialing requirements) for FRTs under \$500,000 for 1-4 residential real estate transactions and under \$1,000,000 for agricultural and commercial real estate transactions. If a waiver is granted, in whole or in part, financial institutions would still need to obtain *Uniform Standards of Professional Appraisal Practice* (USPAP)-compliant appraisals conducted by other qualified individuals.

## **Review and Analysis of Request**

The Request asserts that a scarcity of appraisers exists, particularly in the rural areas of the western part of the State. Below is a summary of the support set forth by North Dakota (Requester) in their Request:

- In September 2018, there were 306 appraisers credentialed in the State (the Appraiser Registry currently shows 299). It deduces that 147 of those appraisers are “potentially available in ND” and 2/3 of those appraisers are located within one of the States three largest metropolitan areas.
- There are 53 counties in North Dakota; of these, 29 (55 percent) do not have a single appraiser residing in the county. Four counties do not have certified appraisers, although one or more licensed appraisers reside within these counties.
- Requester states, “if a waiver is granted, the licensed appraisers could be available to

conduct more complex appraisals that normally would require a certified appraiser.”<sup>1</sup>

- The western part of North Dakota is the area that has experienced a recent economic boom and is also the area most severely affected by the scarcity of appraisers. Only 17 appraisers are available to serve the western part of the State, which is why institutions report that they must engage appraisers from several States away.
- While the most severe impact of the appraiser shortage has been experienced in western and the most rural districts in North Dakota, the population centers are also impacted. The Requestor states, there is a high volume of residential real estate loans in MSAs and a limited number of appraisers to meet this demand.
- The Request states that many institutions have not kept detailed records. Therefore, a survey was conducted by ND DFI to determine what the lenders feel are appropriate turnaround times for residential and commercial appraisals. In the survey, 81% reported that 21-30 days is appropriate for residential appraisals and 80% reported 30-60 days for commercial appraisals as appropriate. Approximately 1/3 reported more than 5 appraisal delays and 1/2 to 3/4 report “unreasonable” delays.<sup>2</sup>
- ND DFI also surveyed lenders on appraisal costs which are reported in the Request. It states that the scarcity of appraisers is not only causing delays, but due to North Dakota being rural, costs are generally higher and increase the farther away from a city the property is located.
- The conclusion acknowledges that the NCUA and federal banking agencies have proposed increases to the appraisal threshold limits “and (if adopted) 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.”

---

<sup>1</sup> Federal banking regulations limit the scope of licensed appraisers’ activity for FRTs. Section 323 of the FDIC appraisal regulations states the following:

“Complex residential transactions of \$250,000 or more. All complex 1--to--4 family residential property appraisals rendered in connection with federally related transactions shall require a state certified appraiser if the transaction value is \$250,000 or more. A regulated institution may presume that appraisals of 1--to--4 family residential properties are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If while the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

- The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or
- The institution may engage a certified appraiser to complete the appraisal.

<sup>2</sup> It is likely that many, if not all, lending institutions and AMCs, maintain detailed data regarding appraisal turnaround times and fees. It is not clear how the turnaround time is determined. There are many ways to measure turnaround time. Since a copy of the survey was not provided, it is not clear what was asked.

## Comment Summary

The ASC published in the *Federal Register* a 30-day Notice for Comment regarding the Request. At most recent count (comment period closes July 1 11:59 pm), we have 96 comments. The vast majority of the comments are from appraisers and appraiser organizations opposing the Request. A few lenders (<5) have written in support of the Request.

Many of the commenters 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 and real estate markets. Other concerns included:

- The implications for the overall appraisal regulatory system and if approved, would this cascade into more markets
- SB 2155 as well as threshold proposals to raise the threshold could create significant confusion in the market
- Several commenters reported making attempts to be added to lender lists of approved appraisers without success
- Several comments focused on comparisons between the number of appraisers in North Dakota versus HMDA data and population data in other rural States
- Numerous comments made reference to issues with AMCs, fee and scope of work concerns
- Several comments acknowledged the added time and cost to rural appraisals
- A few commenters questioned the ASC's authority to take a temporary waiver action at this time

Several practical application questions were raised by commenters:

- For lending institutions to determine the applicability of a waiver, it must first determine whether a transaction qualifies as an FRT and there is significant confusion on this topic. For example:
  - Is a transaction determined to be an FRT at loan origination, closing, securitization?
  - What if, during the transaction, the loan terms change and the transaction changes from an FRT to non or vice versa?
- A waiver approval could lead to appraisers leaving the business/State creating further supply concerns.

- Multiple Listing Services and data in general is difficult to obtain in areas of North Dakota. Appraisers in the market routinely have their own data of transactions. Non-credentialed appraisers could be greatly challenged to retrieve data.
- There is likely to be a limited pool of individuals who are qualified to perform USPAP compliant appraisals who are not are credentialed appraisers?
- Where will consumers and others file complaints?
- What kind of liability will lenders and consumers assume by using non-credentialed appraisers?
- What will the minimum criteria be lenders use to find a competent appraiser?
- As North Dakota indicates in their letter, SB 2155 already achieves a similar effect a waiver may be redundant and confusing. In addition, recent and proposed threshold increases could add further confusion.
- How does this issue get resolved or does a temporary waiver become perpetual?

### **North Dakota Appraisal Board Comments**

The North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board) provided a letter in which they recommend denying the Request, supporting their position with the following:

- Data was obtained from an AMC that shows recent average turnaround time of 17-19 days for residential appraisals.
- The Appraiser Board also conducted a survey of appraisers which is summarized in their letter. Key results from the survey were:
  - 88% of residential appraisers report turn times of 20 days or less.
  - 78% of commercial appraisers report tun times of 45 days of less.
  - 85% of appraisers who tried to get on a lender's panel were unsuccessful.
- Information regarding the history of the oil boom several years ago, subsequent bust and the current demand for appraisals in the State.
- The Board reports a 44% increase in appraisers since 2009.<sup>3</sup>

---

<sup>3</sup> ASC staff comment: The Appraiser Registry shows a 34% increase in credentials over the same time-period.

- The letter also addresses recent regulatory changes that have been made or are being considered that address many of the concerns in the Request and what they believe are potential unintended consequences.

Economic Information and Supporting Information (*see* attachments):

- Econometric reports from Moody's Analytics on the State of North Dakota
- Stats provided by the Veteran Administration on appraiser turnaround times across the country, including North Dakota. Turnaround times for two large mortgage lenders are also included.
- September 7, 2018 meeting minutes between Governor Burgum's office and ND Board.

### **Options available to the ASC**

The ASC has numerous options available in response to the Request. The Board may approve or deny the Request, in total or in part. The Board could also consider placing performance requirements on the State in order to alleviate scarcity of appraisers. ASC staff has identified 5 main areas the Board may want to take into consideration in evaluating the Request:

1. Geography – location of the scarcity and associated relief
2. Transactions – which transactions are impacted (*i.e.*, property type and transaction value)
3. Criteria waived – which aspects of the AQB Criteria are to be waived (*e.g.*, education, experience, exam, supervisory/trainee requirements)
4. Time – length of waiver period and how the ASC determines a scarcity no longer exists
5. Solutions – how the scarcity is resolved

If approved, there are numerous waiver options available to the ASC. Examples include:

- Applying a waiver to rural counties without residing appraisers
- Limit the waiver to commercial or residential transactions
- Limiting further transaction amounts requested, for example, less than \$250,000 for residential and less than \$500,000 for commercial and agricultural properties
- Waiving education and experience, but retain the examination (without passing an examination it will be difficult for lenders and regulators to know if the appraiser was at least minimally qualified)
- Waiving Supervisory/Trainee Appraiser requirements (experience, due in part to these requirements, is the most difficult and time-consuming part of the credentialing process)

- Limiting the waiver to one year or any other time-frame the Board deems appropriate
- Making a waiver conditional on North Dakota helping to solve the problem by coordinating with the appropriate stakeholders to find solutions to the problem and report those results back to the ASC. North Dakota should make some type of commitment to assist in rectifying the problem
- Reinstating the transitional license first employed by several States at the outset of licensing that allowed appraisers to be licensed if they could pass the exam and then allowing them to complete education and experience subsequently

Attachments:

Econometric reports from Moody's Analytics on the State of North Dakota

Stats provided by the Veteran Administration on appraiser turnaround times

Minutes from September 7, 2018 meeting between Governor Burgum's office and the ND Board

## 4. Reasons for Findings

## 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 thresholds<sup>1</sup>, stating that “[if adopted, it] will have a positive effect that

---

<sup>1</sup> 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).



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 109<sup>2</sup> 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 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

---

<sup>2</sup> Regulations.gov shows 109 comments received in total with 105 viewable comments due to duplicates and 2 withdrawals.

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 area<sup>3</sup> 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,<sup>4</sup> 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<sup>5</sup> 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,

---

<sup>3</sup> The ASC's section 1119(b) temporary waiver authority is with respect to a State or any geographical political subdivision of a State.

<sup>4</sup> 83 FR 63110 (December 7, 2018).

<sup>5</sup> The request was for commercial and agricultural, but agricultural loans are already included in either commercial or business loans.

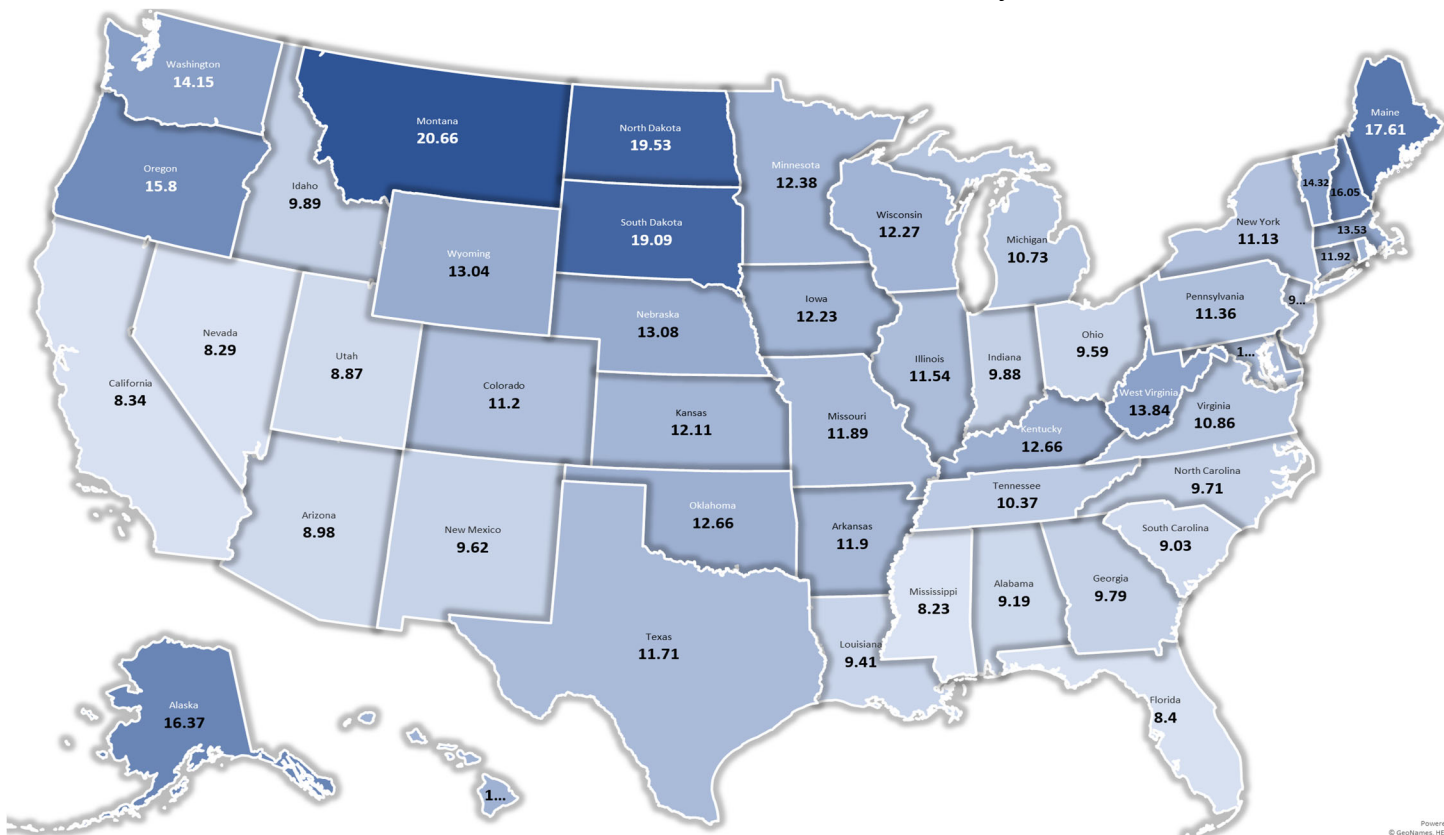
- to identify potential solutions to address appraiser scarcity and appraisal delay.
- At least 30 days prior to the expiration of the one-year period, the Requester should provide (1) a status report to the ASC on the plan that was developed in collaboration with stakeholders and any implementation 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.

## 5. FY19 North Dakota Appraiser Statistics



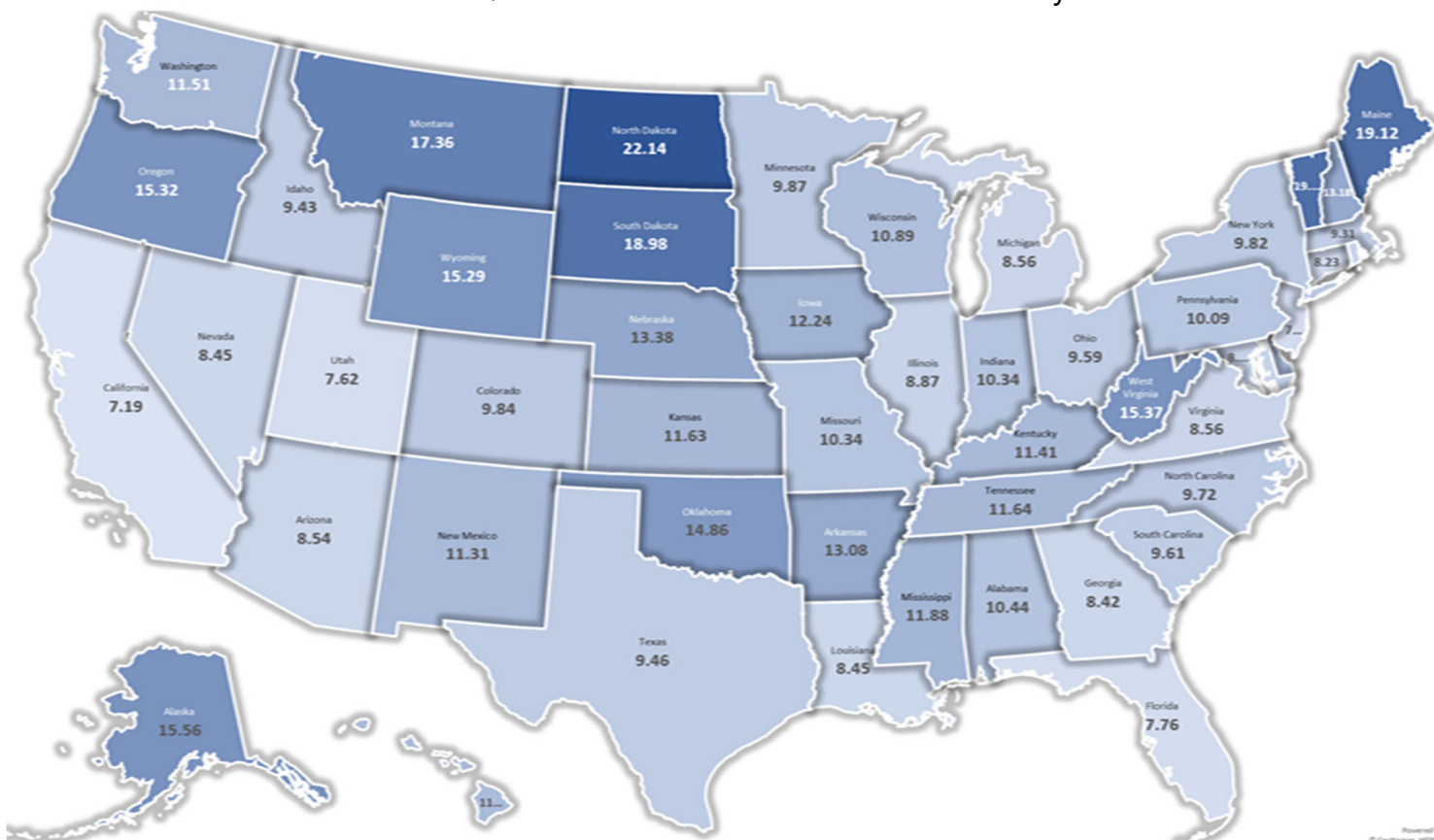
## 6. Heat Maps

## VA Timeliness in Calendar Days



Powered by  
© Geotitles, HERE

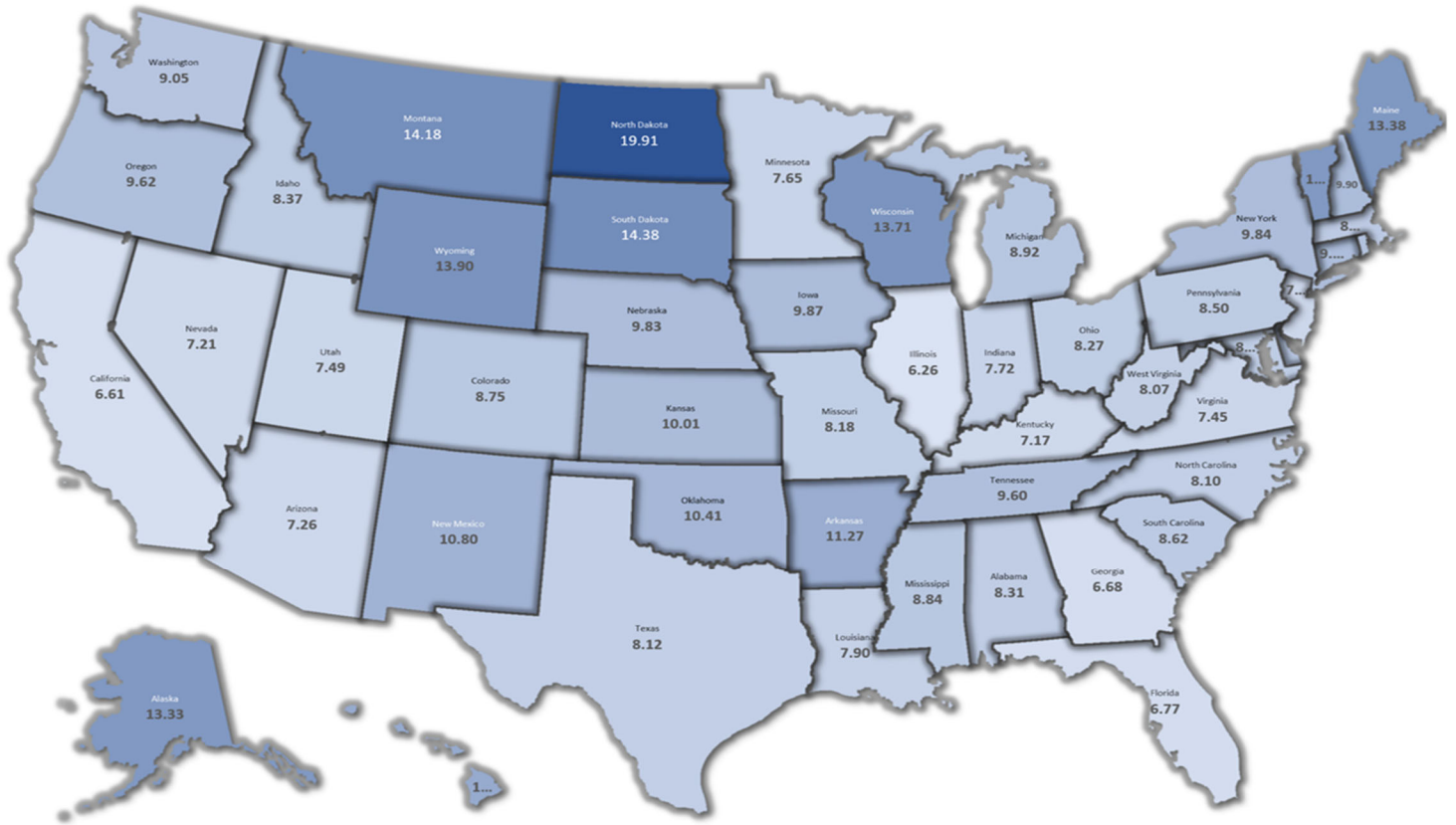
## Quicken Loans Timeliness in Calendar Days



Powered by  
© Geotitles, HERE



# Chase Bank Timeliness in Calendar Days



Comparison Data provided to develop the heat index maps above

State	VA Timeliness in Calendar Days	Quicken Timeliness in Calendar Days	Chase Bank Timeliness in Calendar Days
Alaska	16.37	15.56	13.33
Alabama	9.19	10.44	8.31
Arkansas	11.9	13.08	11.27
Arizona	8.98	8.54	7.26
California	8.34	7.19	6.61
Colorado	11.2	9.84	8.75
Connecticut	11.92	8.23	9.79
D.C.	10.65	8.75	8.43
Delaware	11.32	11.12	9.08
Florida	8.4	7.76	6.77
Georgia	9.79	8.42	6.68
Hawaii	12.49	11.18	11.57
Iowa	12.23	12.24	9.87
Idaho	9.89	9.43	8.37
Illinois	11.54	8.87	6.26
Indiana	9.88	10.34	7.72
Kansas	12.11	11.63	10.01
Kentucky	12.66	11.41	7.17
Louisiana	9.41	8.45	7.90
Massachusetts	13.53	9.31	8.57
Maryland	11.23	8.68	8.44
Maine	17.61	19.12	13.38
Michigan	10.73	8.56	8.92
Minnesota	12.38	9.87	7.65
Missouri	11.89	10.34	8.18
Mississippi	8.23	11.88	8.84
Montana	20.66	17.36	14.18
North Carolina	9.71	9.72	8.10
North Dakota	19.53	22.14	19.91
Nebraska	13.08	13.38	9.83
New Hampshire	16.05	13.18	9.90
New Jersey	9.82	7.73	7.36
New Mexico	9.62	11.31	10.80
Nevada	8.29	8.45	7.21
New York	11.13	9.82	9.84
Ohio	9.59	9.59	8.27
Oklahoma	12.66	14.86	10.41
Oregon	15.8	15.32	9.62
Pennsylvania	11.36	10.09	8.50
Rhode Island	12.34	8.57	9.43
South Carolina	9.03	9.61	8.62
South Dakota	19.09	18.98	14.38
Tennessee	10.37	11.64	9.60
Texas	11.71	9.46	8.12
Utah	8.87	7.62	7.49
Virginia	10.86	8.56	7.45
Vermont	14.32	19.25	13.29
Washington	14.15	11.51	9.05
Wisconsin	12.27	10.89	13.71
West Virginia	13.84	15.37	8.07
Wyoming	13.04	15.29	13.90