

Open Session Cover Page

December 8, 2021

■ ■ ■ ■ ■ ■ ■

Appraisal Subcommittee

Federal Financial Institutions Examination Council

Agenda

Date: December 8, 2021
Time: 11:00 a.m. ET
Location: Virtual Meeting. Please click the link below to register:
https://www.zoomgov.com/meeting/register/vJItduihqzIjGtMqLkMLkOIZOoJ_vH8NGqE

Open Session

Reports

- **Chairman** **T. Segerson**
- **Executive Director** **J. Park**
 - PAVE Task Force Update
- **Grants Director** **M. Abbott**
- **Financial Report** **G. Hull**

Action and Discussion Items

- **Approval of Minutes** **T. Segerson**
 - September 15, 2021 Open Session Quarterly Meeting
- **Notice of Proposed Rulemaking on Temporary Waiver** **A. Ritter**

**APPRAISAL SUBCOMMITTEE
OPEN SESSION MEETING MINUTES
SEPTEMBER 15, 2021**

LOCATION: Zoom Conference

ATTENDEES

ASC MEMBERS: CFPB – John Schroeder
FDIC – John Jilovec
HUD – Bobbi Borland
NCUA – Tim Segerson
OCC – Enice Thomas

ASC STAFF: Executive Director – Jim Park
Deputy Executive Director – Denise Graves
General Counsel – Alice Ritter
Grants Director – Mark Abbott
Financial Manager – Girard Hull
Attorney-Advisor – Ada Bohorfoush
Management and Program Analyst – Lori Schuster
Administrative Officer – Brian Kelly
Regulatory Affairs Specialist – Maria Brown
Policy Manager – Claire Brooks
Policy Manager – Neal Fenochietti
Policy Manager – Kristi Klamet
Policy Manager – Jenny Tidwell

OBSERVERS: See attached list.

The Meeting was called to order at 10:00 a.m. by Chair T. Segerson.

REPORTS

• **Chairman**

T. Segerson thanked observers for attending. He noted that the ASC member agencies are working collaboratively on diversity, equity, and inclusion issues. The ASC agencies as well as ASC staff are members of the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE).

- **Executive Director**

J. Park updated the ASC on recent staff activity as noted below.

- The State Off-Site Assessments (SOA) that were initiated at the beginning of 2021 are going well. Nine SOAs have been completed and 11 are in process. There are several States that are struggling with compliance in their appraisal management company (AMC) oversight programs. Policy Managers are working to assist these States and clarify compliance requirements.
- The ASC Roundtable entitled *Building a More Equitable Appraisal System* will take place virtually on September 22nd from 11:00 a.m. to 1:30 p.m. ET and will include featured speakers, audience question and answer sessions, theme-based concurrent breakouts, and closing comments outlining next steps. Secretary Marcia Fudge from the U.S. Department of Housing and Urban Development will provide opening comments. Registration information is on the ASC website and LinkedIn page.
- The review of the Uniform Standards of Professional Appraisal Practice (USPAP) and Real Property Appraiser Qualification Criteria (Criteria) as well as the appraiser census/survey project are underway. ASC staff hopes to have the review completed by years end or early 2022. The timing for completion of the census/survey is unclear. M. Abbott added that ASC staff is working with ASC member agencies to see if they have data that could be shared and used in the census/survey. Interviews have been held with two bidders thus far for the USPAP and Criteria review.

- As noted by T. Segerson, J. Park said that the PAVE Task Force is holding regular meetings. HUD is overseeing PAVE and plans to have outreach with the appraisal profession and other stakeholders. Information regarding PAVE can be found at <https://pave.hud.gov/home>.

- **Grants Director**

M. Abbott's report concerned the Notice of Funding Availability (NOFA) for State Support Grants and NOFA for the Appraisal Foundation (TAF) which is included in the Action Items (below) for the Fiscal Year (FY) 2022 NOFAs.

- **Financial Manager**

G. Hull provided a financial update since the ASC's June 2021 Meeting.

- As of June 30th, the ASC has recognized FY21 registry revenue of \$6M, with roughly \$1.9M for appraiser fees and \$4.1M for AMC fees.
- Expenses for the period ending June 30th total \$6.1M. The ASC Reserve balance for the 3rd quarter of FY21 is \$5.2M. He does not foresee incurring any substantial or unusual budget activity that may produce a significant impact on the FY21 budget.

ACTION ITEMS

- **June 2, 2021 Open Session Minutes**

J. Jilovec made a motion to approve the June 2nd open session meeting minutes as presented.

E. Thomas seconded and all members present voted to approve.

- **Fiscal Year 2022 Notice of Funding Availability Summary for TAF**

M. Abbott said that the NOFA for TAF was amended to a \$2M two-year award covering FY22 and FY23. TAF did not accept funding of \$1M for FY21. As noted in the NOFA for FY21, TAF can request grant funds for support for AQB and ASB activities, and for other activities, including: (1) providing trainees and credentialed appraisers with a free or reduced cost copy of USPAP Standards 1-4 and associated annotations; (2) USPAP publishing and revenue model; (3) AQB/ASB/Board of Trustees operational assessment; and (4) other initiatives. J. Schroeder moved to approve the NOFA Summary as amended. E. Thomas seconded and all members present voted to approve.

- **Fiscal Year 2022 Notice of Funding Availability Summary for State Support Grants**

M. Abbott said that fourteen grants were awarded in FY21 to State Appraiser Regulatory Agencies. ASC staff is recommending changes to the NOFA for FY22-23. The change would allow States or Territories with an existing grant to request supplemental funds for special initiatives, needs or projects that have costs that exceed \$120,000. Several States have expressed interest in special initiatives such as assisting trainees with education and paying supervisory appraisers to assist these trainees in underserved markets. J. Schroeder asked if there would be a cap on the supplemental funding and would the ASC approve them. M. Abbott responded that a cap is a good idea and asked for a suggested amount. He also

said that per the Grants Handbook, the ASC Executive Director would have the final approval on the supplemental funding requests. T. Segerson and E. Thomas agreed that a cap would be helpful and asked for suggestions. E. Thomas asked if any States had requested grants that exceed \$120,000. M. Abbott responded “no.” He added that special initiatives could include demonstration projects that are larger and may need to be resourced with contractors. He suggested \$350,000 as a cap. T. Segerson, J. Schroeder and E. Thomas felt that was reasonable. T. Segerson asked if the NOFA could be approved with a secondary cap of \$350,000 for a supplemental grant. A. Ritter said “yes.” J. Jilovec and T. Segerson asked for clarification that \$350,000 is separate from the \$120,000 for the initial or existing grant. M. Abbott responded that if a State was awarded a grant in FY21, the \$350,000 would be in addition, thereby possibly totaling up to \$470,000. For example, a State could have a current grant of \$90,000 and request funding up to \$350,000 for a special project or initiative. J. Park wanted verification that these additional funds are part of the \$10M that was approved by the ASC in 2020. M. Abbott responded “yes.” T. Segerson suggested that the ASC could discuss increasing the grant budget if it appears that funds will be exhausted before the end of FY23. He also questioned whether the ASC would commit to multi-year projects, or will the State be expected to fund projects after grant funds are exhausted. J. Jilovec moved to approve the State Support Grant NOFA Summary as amended. J. Schroeder seconded and all members present voted to approve.

- **FY22 ASC Budget Proposal**

J. Park said that he, G. Hull, and M. Abbott met individually with ASC members to discuss the proposed FY22 ASC budget. Suggestions from ASC members have been incorporated into the proposed budget. Net revenue of approximately \$1M is projected for FY21. As of August 21st, 45 States and the District of Columbia are populating the AMC Registry. G. Hull noted that five States (Georgia, Hawaii, Maine, Massachusetts, and Michigan) are not submitting data, but they are all expected to be submitting data by FY23. J. Park said that AMC Registry fees are projected to decrease in FY22 by approximately \$1M from \$6.4 projected in FY21. AMCs have begun to reduce their use of individual appraisers to decrease their AMC Registry fees which has been anticipated. Appraiser Registry fees for FY22 are estimated at \$3,760,000 versus \$3,720,000 for FY21. Net revenue for FY22 is estimated to be \$111,000. The FY22 operating budget is estimated to be \$4.2M, grants are estimated to be \$4.8M for a total budget of approximately \$9M. E. Thomas moved to approve the FY22 ASC budget proposal as discussed. J. Jilovec seconded and all members present voted to approve.

- **Proposed revisions to the Policy on Monitoring and Reviewing the Appraisal Foundation**

J. Park said the following changes would be made to the Policy:

- ASC staff will attend public meetings as observers of the AQB and ASB as well as the Board of Trustees. This will be delegated to staff on a rotating basis.

- ASC staff will not routinely attend work sessions, conference calls, closed session or committee, subcommittee, or subject matter expert panel meetings, but will be available for those meetings on an as needed basis.
- ASC staff will provide written public comment on TAF exposure drafts and other work product.
- Written memos prepared by ASC staff for TAF staff regarding TAF meetings will be provided to TAF for review and comment prior to finalization, with a one-week turnaround time.
- ASC staff will request meeting materials and minutes for all meetings (public and private).

J. Schroeder moved to approve the revisions as noted. J. Jilovec seconded and all members present approved.

Dave Bunton of TAF was granted five minutes to speak to the ASC.

- He was agreeable to the changes to the Monitoring and Review Policy and requested a copy of the Policy.
- He commented that TAF can pay for general operating expenses of the AQB, ASB and Board of Trustees. TAF would like grant funding for special projects but does not feel that TAF should be required to accept funding for the TAF Boards as required in the FY21 NOFA.

- He added that the USPAP publishing cycle has been decoupled from the continuing education requirement.
- He said that TAF has set up a Task Force on Board Diversity to review how candidates are solicited for Board positions. TAF will engage an outside diversity inclusion consultant with expertise in board member selection to assist in these efforts. TAF Board of Trustees has also set up a Diversity, Equity, and Inclusion Special Committee (Committee) to promote more diversity in the valuation profession. The Committee hopes to help raise awareness of the reporting mechanisms available to property owners to use if they suspect bias or discrimination. There have been several recent stories in the media regarding alleged appraiser bias, but no data has been provided in these stories. The ASC and TAF could work collaboratively on a baseline to measure efforts in diversity, equity, and inclusion.
- He noted that TAF requested funding from the ASC in the past to provide grant funds to send a copy of USPAP to trainees and appraisers. He said that the ASC denied that request. Standards 1-4 of USPAP were published in the *Federal Register* in the early 1990s. It would cost approximately \$5M to send out a copy to trainees and appraisers now.
- He acknowledged the passing of ASC Policy Manager Vicki Ledbetter-Metcalf.

The Open Session adjourned at 10:55 a.m. The next regularly scheduled ASC Meeting will be held on November 17, 2021.

Attachment: Observer list

DRAFT

Meeting:	Appraisal Subcommittee Meeting	Meeting Date:	September 15, 2021
Time:	10:00 AM ET	Location:	Zoom Meeting

Observers	
Name	Affiliation
JoEllen Alberts	Appraisal Foundation
David Bunton	Appraisal Foundation
Kelly Davids	Appraisal Foundation
Aida Dedajic	Appraisal Foundation
Lisa Desmarais	Appraisal Foundation
Edna Nkemngu	Appraisal Foundation
Amy Timmerman	Appraisal Foundation
Scott DiBiasio	Appraisal Institute
Bill Garber	Appraisal Institute
Brian Rodgers	Appraisal Institute
John Ryan	Appraiser Qualifications Board Vice Chair
Justin Kane	American Society of Appraisers
David Cherner	Clear Capital
Deana Krumhansl	Consumer Finance Protection Bureau
Brian Barnes	Department of Housing and Urban Development
Barbara Leslie	Department of Housing and Urban Development
Richard Foley	Federal Deposit Insurance Corporation
Patrick Mancoske	Federal Deposit Insurance Corporation

Mark Mellon	Federal Deposit Insurance Corporation
George Parkerson	Federal Deposit Insurance Corporation
Sara Todd	Federal Housing Finance Agency
Matt McQueeney	Federal Reserve Board
Matt Suntag	Federal Reserve Board
Deborah Geiger	Geiger Communications
Steve Sousa	Massachusetts Board of Real Estate Appraisers
Jonathan Miller	Miller Samuel Inc.
Jacqueline Olson	Minnesota Department of Commerce
James Rist	Minnesota Department of Commerce
Rachel Ackmann	National Credit Union Administration
Gira Bose	National Credit Union Administration
Stacey Fluellen	Office of the Comptroller of the Currency
Kevin Lawton	Office of the Comptroller of the Currency
Joanne Phillips	Office of the Comptroller of the Currency
Mark Schiffman	Real Estate Valuation Advocacy Association
Jeremy Gray	Rock Canyon Bank & Appraisal Foundation Board of Trustees Chair
Craig Steinley	Steinley Real Estate Appraisals and Consulting
Magdalene Vasquez	Wells Fargo
Joshua Walitt	Walitt Solutions



Appraisal Subcommittee
Federal Financial Institutions Examination Council

NPRM - Clean Draft

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. **Insert**]

Appraisal Subcommittee; Appraiser Regulation; Temporary Waiver Requests

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

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) proposes to amend existing rules of practice and procedure governing temporary waiver proceedings, which were promulgated in 1992 pursuant to § 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The proposed amendments are intended to provide for greater transparency and clarity on temporary waiver proceedings.

DATES: Comments must be received on or before [**Insert date**].

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number [**Insert**], by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *E-Mail:* webmaster@asc.gov. Include the docket number in the subject line of the message.

- *Mail:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.
- *Hand Delivery/Courier:* 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the Regulations.gov website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. At the close of the comment period, all public comments will also be made available on the ASC's website at <https://www.asc.gov> (follow link in "What's New") as submitted, unless modified for technical reasons.

You may review comments and other related materials that pertain to this rulemaking action by the following method:

- **Viewing Comments Electronically:** Go to <https://www.regulations.gov>. Enter "Docket ID [Insert]" in the Search box and click "Search." Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

FOR FURTHER INFORMATION CONTACT:

Lori Schuster, Management and Program Analyst, lori@asc.gov, or Alice M. Ritter, General Counsel, alice@asc.gov, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of Title XI¹ 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 [FRTs] 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

Title XI requires that real property appraisals performed in connection with FRTs be performed in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP)³ as promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The Federal financial institutions regulatory agencies’ appraisal regulations require appraisals for FRTs to meet these minimum appraisal standards as evidenced by (USPAP).⁴ Title XI also requires that certified and licensed appraisers meet the minimum qualification criteria as set forth in *The Real Property Appraiser Qualification Criteria* (AQB Criteria) issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.⁵ The State appraiser regulatory agencies enforce these federal minimum requirements for credentialed appraisers in their State

¹ The ASC was established by Title XI. The ASC Board consists of seven members. Five members are designated by the heads of the FFIEC federal member 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. *See also*, 12 U.S.C. 3331.

³ Title XI § 1109(1). *See also*, 12 U.S.C. § 3339 (1).

⁴ Title XI § 1121 (4), 12 U.S.C. § 3350, implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

⁵ Title XI § 1103(b), Title XI § 1116(a) and (c). *See also*, 12 U.S.C. § 3332 (b), 12 U.S.C. § 3345 (a) and (c).

and are subject to federal oversight by the ASC.⁶

Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis, subject to approval of the FFIEC:

any requirement relating to certification or licensing of a person to perform appraisals under [Title XI] if the [ASC] or a [State appraiser regulatory agency] makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with [FRTs] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. A waiver terminates when the [ASC] determines that such significant delays have been eliminated.⁷

Congress intended that the ASC exercise this waiver authority “cautiously.”⁸

The ASC published rules of practice and procedure governing temporary waiver proceedings in 1992.⁹ The ASC has ordered temporary waiver relief on two occasions. The first was for the Commonwealth of the Northern Mariana Islands in February 1993 (preceded by an interim order for relief issued in December 1992). The second was in August 2019 for the State of North Dakota (which was extended in part for one additional year in 2020).

Under the existing rules of practice and procedure, when the ASC receives a request from a State appraiser regulatory agency that meets the requirements set forth in 12 CFR § 1102.2, *Requirements for requests*, 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 is

⁶ Title XI § 1118. *See also*, 12 U.S.C. 3347. “State appraiser regulatory agencies” are referred to in the proposed rule as “State Appraisal Agencies.”

⁷ Title XI § 1119(b). *See also*, 12 U.S.C. 3348(b).

⁸ 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.

⁹ 12 CFR part 1102, subpart A.

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 pursuant to 12 CFR § 1102.3, *Other requests and information submissions*, 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*. Within 45 calendar days of the date of publication in the *Federal Register*, the existing rules provide that the ASC will grant or deny a waiver, in whole or in part, by Order. The ASC must seek FFIEC approval if the waiver is granted and the waiver cannot take effect unless approved by the FFIEC.

Application of the existing rules of practice and procedure in the present day led the ASC to recognize there may be advantages in proposing revisions to the existing rules to define terms and provide greater clarity on the proceedings. The ASC also believes there may be advantages in proposing revisions to the timeframes in the existing rules of practice and procedure (as established in 1992 to accommodate newly formed State appraiser regulatory agencies) to be more conducive to deliberation by the ASC or FFIEC. Accordingly, the ASC proposes to amend the existing rules of practice and procedure as set forth below. The ASC created a flow chart for temporary waiver proceedings as set forth in this notice of proposed rulemaking [[insert link](#)].

The ASC is also proposing interpretations of several of the terms used in § 1119(b) of Title XI. These interpretations are proposed to be included in the “definitions” section of the rule.

Though neither procedural rules nor published agency interpretations of their statutory authority require notice and comment under the Administrative Procedure Act (APA),¹⁰ the ASC is voluntarily submitting this proposed rule and interpretations for public comment in order to seek feedback from

¹⁰ 5 U.S.C. 553(b).

interested parties.

II. The Proposed Rule

Authority, purpose, and scope.

Proposed § 1102.1 would clarify the purpose and scope of the processes available for ASC consideration of temporary waiver relief by making a clear distinction between: (1) a request from a State appraiser regulatory agency accompanied by a written determination, referred to in the proposed rule as a “Request for Temporary Waiver”; and (2) information received from other persons or entities (which could include a State appraiser regulatory agency) referred to in the proposed rule as a “Petition.” As subsequent sections in the proposed amended rule clarify, the procedure followed varies depending on whether the ASC has received a Request for Temporary Waiver or a Petition requesting that the ASC initiate a temporary waiver proceeding.

The basis for this distinction is in the statute itself. Section 1119(b) of Title XI authorizes the ASC to grant a temporary waiver only when the ASC or a State appraiser regulatory agency has made the statutorily required written determination that: (1) there is a scarcity of certified or licensed appraisers to perform appraisals in connection with FRTs in a State, or in any geographical political subdivision of a State; and (2) such scarcity is leading to significant delays in the performance of such appraisals for FRTs.¹¹ Accordingly, the proposed rules seek to clarify the procedural differences in processing a Request for Temporary Waiver accompanied by a written determination as compared to a Petition requesting the ASC exercise its discretion to initiate a temporary waiver proceeding.

Definitions.

Proposed § 1102.2 would establish definitions for the following terms:

¹¹ Title XI § 1119(b). *See also*, 12 U.S.C. 3348(b).

Federally related transaction (FRT). Proposed § 1102.2(a) proposes to define *federally related transaction (FRT)* to mean 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 under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. § 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

Performance of appraisals. Proposed § 1102.2(b) proposes to define *performance of appraisals* to mean that the appraisal service requested of an appraiser has been provided to the lender or appraisal management company (AMC).

Petition. Proposed § 1102.2(c) proposes to define *Petition* to mean information submitted to the ASC by the federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency (defined below), asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in proposed § 1102.4.

Request for Temporary Waiver. Proposed § 1102.2(d) proposes to define *Request for Temporary Waiver* to mean information submitted to the ASC with a written determination from a State Appraisal Agency (defined below) requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in proposed § 1102.3.

Scarcity of certified or licensed appraisers. Proposed § 1102.2(e) proposes to define *scarcity of certified or licensed appraisers* to mean the number of active certified or licensed appraisers

within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

Significant delays in the performance of appraisals. Proposed § 1102.2(f) proposes to define *significant delays in the performance of appraisals* to mean delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated federally related transactions based on factors such as geographic location (*e.g.*, rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.*, inability to access the subject property).

State Appraisal Agency. Proposed § 1102.2(g) proposes to define *State Appraisal Agency* to mean the State appraiser certifying and licensing agency.¹²

Temporary waiver. Proposed § 1102.2(h) proposes to define *Temporary waiver* to mean a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the requirement for a USPAP-compliant appraisal.¹³

Request for Temporary Waiver.

Proposed § 1102.3 clarifies: who can file a Request for Temporary Waiver; what a Request for Temporary Waiver should contain; ASC review of a Request for Temporary Waiver for purposes of determining sufficiency of the document's content and receipt by the ASC; and what

¹² Title XI § 1121(1). *See also*, 12 U.S.C. 3350(1).

¹³ The regulations of the Federal financial institutions regulatory agencies (agencies' appraisal regulations) require appraisals for FRTs to meet minimum appraisal standards including conformance to generally accepted appraisal standards as evidenced by USPAP. The ASC cannot waive the requirement for USPAP-compliant appraisals where applicable under the agencies' appraisal regulations. Therefore, when a waiver is in effect, appraisals that comply with the agencies' appraisal regulations (including conformance with USPAP) would still be required when applicable under those regulations, but they could be performed by persons who are not credentialed. (*See* 12 CFR § 34.44(a); 12 CFR § 225.64(a); 12 CFR § 323.4(a); and 12 CFR § 722.4(a)).

is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency.

Proposed § 1102.3(a) states that the State Appraisal Agency for the State in which temporary waiver relief is sought may file a Request for Temporary Waiver as distinguished from a Petition from other persons or entities as proposed in § 1102.4. A State Appraisal Agency may alternatively submit a Petition as set forth in proposed § 1102.4. The ASC believes this is consistent with the intent of the existing rules.¹⁴

Proposed § 1102.3(b) states that a Request for Temporary Waiver will not be deemed to have been received by the ASC unless it fully and accurately sets out:

- (1) a written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;
- (2) the requirement(s) of State law from which relief is being sought;
- (3) the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (4) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (5) how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and

¹⁴ “The rules provide persons other than the State appraisal regulatory agencies (‘State agencies’) with the opportunity to submit informational submissions to the ASC. They also may request that the ASC exercise its discretionary authority to provide temporary waiver relief. The ASC will consider such submissions and requests in determining whether it should initiate a temporary waiver proceeding.” *57 Federal Register* 10980 (April 1992).

(6) meaningful suggestions and recommendations for remedying the situation.

The existing rules state that in the absence of a written determination by the State Appraisal Agency, it must ask the ASC for such a determination. That language is removed from this proposed subsection for the reason that if the ASC were to make such a determination when asked to do so by a State Appraisal Agency, it would be processed as an ASC Order initiating a temporary waiver proceeding pursuant to proposed § 1102.5(a).

The proposed amendments to this subsection seek to provide clarity on information that should be included in a Request for Temporary Waiver and to remove redundancy from that information. For example, the existing rules, in addition to the above, ask for “[a] description of all significant problems currently being encountered in efforts to comply with [T]itle XI” which would be captured in the information sought in proposed § 1102.3(b). The proposed amendments also modify the requirement for a State Appraisal Agency to provide “a specific plan for expeditiously alleviating the scarcity and service delays” to “meaningful suggestions and recommendations for remedying the situation” recognizing that the situation creating scarcity and delay may be completely outside the control of the State Appraisal Agency.

The proposed amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” This is intended to provide clarification as to what a Request for Temporary Waiver should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining receipt (*see* proposed § 1102.3(c) below). A Request for Temporary Waiver should include clear and specific data to support a claim that there is a scarcity of appraisers leading to significant delays in the performance of covered appraisals. The data supporting such a claim

may vary from location to location and situation to situation. Information about the following could assist the ASC in reviewing a Request for Temporary Waiver:

1. Geography – location(s) of the scarcity leading to significant delay.
2. Transactions – types of FRTs impacted (*i.e.*, property and transaction type(s) and transaction amount(s)).
3. Time – length of time for waiver requested.

Proposed § 1102.3(b) includes that a Request for Temporary Waiver address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted.

Proposed § 1102.3(c) is intended to clarify that a Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b).

Proposed § 1102.3(d) sets forth what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency. In either case, written notice from the ASC would be required with an explanation for such a determination.

Petition requesting the ASC initiate a temporary waiver proceeding.

Proposed § 1102.4 clarifies: who can file a Petition requesting that the ASC exercise its discretionary authority to issue an Order, thereby initiating a temporary waiver proceeding; what a Petition should contain; the need to forward a copy of a Petition to the State Appraisal Agency of the impacted State; what the ASC may review for purposes of determining whether the Petition may be processed for further action; what is required in the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition*, and thereby is either denied or referred back to the petitioner; and what further action may be taken.

Proposed § 1102.4(a) states that a Petition may be filed by the federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency.

Proposed § 1102.4(b) states that a Petition should include:

- (1) information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and
- (2) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation.

The existing rules generally request the same information from State Appraisal Agencies as it does from other persons or institutions seeking consideration of temporary waiver relief (with the exception of “a specific plan to alleviate scarcity and service delays” which is unique to State Appraisal Agencies). The proposed amendments to this subsection seek to provide clarity on information that should be included in a Petition while easing the expectation that a Petition contain the specificity of a Request for Temporary Waiver from a State Appraisal Agency.

The proposed amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” This is intended to clarify what a Petition should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the

performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining whether to process a Petition for further action (*see* proposed § 1102.4(d) below).

Proposed § 1102.4(c) clarifies the existing requirement for a petitioner to provide a copy of their Petition to the State Appraisal Agency, unless the party filing the Petition is the State Appraisal Agency.

Proposed § 1102.4(d) provides that a Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of proposed § 1102.4(b) and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

Proposed § 1102.4(e) sets forth what is required in the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition*, and thereby is either denied or referred back to the petitioner. In either case, written notice from the ASC would be required with an explanation for such a determination.

Proposed § 1102.4(f) states that if a Petition is processed for further action, the ASC may initially refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for evaluation and further study, or the ASC may take further action without referring a Petition to the State Appraisal Agency. Alternatively, a Petition may be denied or referred back to the petitioner for further action.

Proposed § 1102.4(g) states that in the event the State Appraisal Agency opts to conduct evaluation and further study on a Petition, the State Appraisal Agency may issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant

delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State. Assuming the State Appraisal Agency has addressed the items that would be included in a Request for Temporary Waiver as set forth in proposed § 1102.3(b)), the Petition would now be subject to the procedures and requirements for a Request for Temporary Waiver. The ASC is proposing its interpretation of the terms “scarcity of certified or licensed appraisers” and “significant delays in the performance of appraisals” in proposed § 1102.2 to help petitioners and the public understand how the agency interprets those terms as they are used in § 1119(b) of Title XI.

The State Appraisal Agency could alternatively recommend that the ASC take no further action on the Petition, or moreover decline to conduct evaluation and further study on a Petition. In either case, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding.

Proposed § 1102.5 clarifies that an Order initiating a temporary waiver proceeding may be in response to a Petition or may be initiated by the ASC without a Petition having been submitted. In either event, such an Order would include consideration of items that would be addressed in a Request for Temporary Waiver. (See § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b). This is consistent with the existing rules of practice and procedure.

Notice and comment.

Proposed § 1102.6 does not vary in substance from the existing rules of practice and procedure, § 1102.4, *Notice and comment*, which provides for a 30-day notice and comment

period on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding.

ASC determination.

Proposed § 1102.7 would expand the existing 45-day deadline, which commences on the date of publication above, for the ASC to make a determination. With respect to recent requests for temporary waivers, or other information submissions requesting the ASC initiate a proceeding, the 45-day turnaround limited the time available to process and evaluate information submitted, including comments received during the notice and comment period.

The ASC believes that the 45-day time period was imposed in 1992 primarily because States were still in the process of setting up State appraiser regulatory programs, and absent a temporary waiver, could have been left without any means to provide appraisals for FRTs. That is not the case today. Even absent a temporary waiver, a State would likely be able to continue to provide appraisals, especially given the use of temporary practice permits and reciprocity.

The ASC proposes to expand the timeframe for an ASC determination, on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding, from 45 calendar days to 90 calendar days from the date of publication in the *Federal Register* to allow sufficient time for thorough processing and consideration. Proposed § 1102.7 also seeks to clarify that in the event the ASC issues an Order approving a temporary waiver, which is only effective upon FFIEC approval of the waiver, that the FFIEC consideration of the waiver would not be subject to the ASC's proposed 90-day timeframe for a determination.

The existing rules of practice and procedure allow the ASC to issue an interim approval Order simultaneously with a publication for notice and comment, and apply when the ASC determines that an emergency exists. A waiver approved by such an Order also requires approval by the FFIEC. For the reasons stated above, the ASC believes the existing rules were

intended to accommodate nascent State Programs, which is not applicable today. States now have options to cope with an emergency that were not available when the existing rules of practice and procedure were finalized. Additionally, the ASC believes that notice and comment is critical to thorough processing of a Request for Temporary Waiver or a Petition. Therefore, as proposed, § 1102.6 would eliminate the interim Order from the rules of practice and procedure.

Waiver extension.

Proposed § 1102.8 does not vary in substance from the existing rules of practice and procedure, § 1102.6, *Waiver extension*.

Waiver termination.

Proposed § 1102.8 would clarify the distinction between mandatory waiver termination versus discretionary waiver termination. Section 1119(b) of Title XI states, “[t]he waiver terminates when the [ASC] determines that such significant delays have been eliminated.” Therefore, proposed § 1102.8 would require termination in the event of such a finding by the ASC. Proposed § 1102.8 would retain the provision for a discretionary termination in the event the ASC finds that the terms and conditions of the waiver Order are not being satisfied and the procedure for the ASC’s publication in the *Federal Register* for notice and comment in the case of discretionary waiver termination, which does not vary in substance from the existing rules of practice and procedure, § 1102.7, *Waiver termination*. In the absence of further ASC action to the contrary, the finding of a discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

III. Request for Comment

The ASC requests comment on all aspects of the proposed amendments to the existing rules of practice and procedure governing temporary waiver proceedings.

IV. Regulatory Requirements

The ASC has concluded that, if finalized, the proposed amendments to the procedural rule would, like the current rule, constitute a rule of agency organization, procedure, or practice, and that they would therefore be exempt from the notice-and-comment rulemaking requirements of the APA.¹⁵ For the same reason, the proposed amendments would not be subject to the 30-day delayed effective date for substantive rules under the APA.¹⁶ Moreover, agency interpretations of terms used in their statutory authority are exempt from the notice and comment requirement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.¹⁷

Paperwork Reduction Act

There is no collection of information that would be required by this proposed rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Paperwork Reduction Act of 1995¹⁸ (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The ASC has reviewed this notice of proposed rulemaking and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this proposed rule.

Unfunded Mandates Reform Act of 1995 Determination

This proposed rule if finalized would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule would amend the existing rule to

¹⁵ 5 U.S.C. 553(b).

¹⁶ 5 U.S.C. 553(d).

¹⁷ 5 U.S.C. 603(a), 604(a).

¹⁸ 44 U.S.C. 3501–3521.

provide definitions of terms and greater clarity on the proceedings for a temporary waiver. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

List of Subjects

12 CFR Part 1102

Administrative practice and procedure, Appraisers, Appraisal Management Company Registry Fees, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the ASC proposes to amend 12 CFR 1102 subpart A as follows:

PART 1102—APPRAISER REGULATION

Authority: 12 U.S.C. 3348(b).

Subpart A—Temporary Waiver Requests

Sec.

- 1102.1 Authority, purpose, and scope.
- 1102.2 Definitions.
- 1102.3 Request for Temporary Waiver.
- 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.
- 1102.5 Order initiating a temporary waiver proceeding.
- 1102.6 Notice and comment.
- 1102.7 ASC determination.
- 1102.8 Waiver extension.
- 1102.9 Waiver termination.

§ 1102.1 Authority, purpose and scope.

(a) *Authority.* This subpart is issued under § 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI; 12 U.S.C. § 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under § 1119(b) of Title XI (12 U.S.C. 3348(b)). These procedures apply whenever a Request for Temporary Waiver is submitted to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) for a temporary waiver of any requirement relating to State certification or licensing (credentialing requirements) of persons eligible to perform appraisals for federally related transactions (FRTs) under Title XI. These procedures also apply in the event the ASC receives a Petition requesting the ASC initiate a temporary waiver proceeding. This subpart also contains the ASC's interpretations of terms used in § 1119(b) of Title XI.

§ 1102.2 Definitions.

For purposes of this subpart:

- (a) *Federally related transaction (FRT)* means 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 under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. § 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].
- (b) *Performance of appraisals* means the appraisal service requested of an appraiser is provided to the lender or appraisal management company (AMC).

- (c) *Petition* means information submitted to the ASC by the federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in § 1102.4.
- (d) *Request for Temporary Waiver* means information submitted to the ASC by a State Appraisal Agency with a written determination requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in § 1102.3.
- (e) *Scarcity of certified or licensed appraisers* means the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.
- (f) *Significant delays in the performance of appraisals* means delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated FRTs based on factors such as geographic location (*e.g.*, rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.*, inability to access the subject property).
- (g) *State Appraisal Agency* means the State appraiser certifying and licensing agency.¹⁹
- (h) *Temporary waiver* means a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive

¹⁹ Title XI § 1121(1). *See also*, 12 U.S.C. 3350(1).

the requirement for a *Uniform Standards of Professional Appraisal Practice* (USPAP)-compliant appraisal.

§ 1102.3 Request for Temporary Waiver.

(a) *Who can file a Request for Temporary Waiver.* The State Appraisal Agency for the State in which the temporary waiver relief is sought may file a Request for Temporary Waiver.

(b) *Contents and Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver from a State Appraisal Agency will not be deemed received by the ASC unless it fully and accurately sets out:

- (1) a written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;
- (2) the requirement(s) of State law from which relief is being sought;
- (3) the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (4) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (5) how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and
- (6) meaningful suggestions and recommendations for remedying the situation.

(c) *Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if

the ASC determines that the information submitted meets the requirements of § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*, to support that a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(d) *Deny or Refer back.* In the event the Request for Temporary Waiver is not deemed received, it may be denied in its entirety or referred back to the State Appraisal Agency for further action. In either case, the ASC shall provide written notice to the State Appraisal Agency providing an explanation for the determination.

§ 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.

(a) *Who can file a Petition requesting the ASC initiate a temporary waiver proceeding.* The federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, may petition the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding.

(b) *Contents of a Petition.* A Petition should include:

- (1) information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and
- (2) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation.

(c) *Copy of Petition to State Appraisal Agency.* In the case of a Petition from a party other than a State Appraisal Agency, the party must promptly provide a copy of its Petition to the State Appraisal Agency.

(d) *ASC review of a Petition.* A Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of § 1102.4(b), *Contents of a Petition*, and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(e) *Deny or Refer back.* In the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition*, it may be denied in its entirety or referred back to the petitioner for further action. In either event, the ASC shall provide written notice to the petitioner providing an explanation for the determination.

(f) *Further action on a Petition.* If the ASC determines that a Petition should be processed for further action, at its discretion the ASC may:

(1) refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for further evaluation and study, to include items that would be addressed in a Request for Temporary Waiver (see § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*); or

(2) take further action without referring the Petition to the State Appraisal Agency.

(g) *State Appraisal Agency Action.*

(1) In the event the State Appraisal Agency opts to conduct further evaluation and study on a Petition, the State Appraisal Agency may:

- a. issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State (or request that the ASC issue such a written determination), in which case, the procedures and requirements of § 1102.3 and 1102.6(a) shall apply; or
- b. recommend that the ASC take no further action.

(2) In the event the State Appraisal Agency either recommends no further action or declines to conduct further evaluation and study on a Petition, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding in accordance with § 1102.5(a) below.

§ 1102.5 Order initiating a temporary waiver proceeding.

The ASC may exercise discretion in determining whether to issue an Order initiating a temporary waiver proceeding in response to a Petition, or alternatively, the ASC may exercise discretion to initiate a temporary waiver proceeding on its own initiative without a Petition being submitted.

In either event, such an Order would include consideration of items that would be addressed in a Request for Temporary Waiver. (*See § 1102.3(b), Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b).

§ 1102.6 Notice and comment.

The ASC shall publish promptly in the *Federal Register* a notice respecting:

- (a) a received Request for Temporary Waiver (*see §1102.3(c)*); or

(b) an ASC Order initiating a temporary waiver proceeding (*see* § 1102.5).

The notice of a received Request for Temporary Waiver or ASC Order initiating a temporary waiver proceeding shall contain a concise statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views, and arguments.

§ 1102.7 ASC determination.

(a) *Order by the ASC.* Within 90 calendar days of the date of publication of the notice in the *Federal Register*, the ASC, by Order, shall either grant or deny a waiver, in whole or in part, and upon specified terms and conditions, including provisions for waiver termination. The Order shall be published in the *Federal Register*, which in the case of an Order approving a waiver, shall only be published after FFIEC approval of the waiver (*see* subsection (b) below). Such Order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding(s).

(b) *Approval by the FFIEC.* Any ASC Order approving a waiver shall be effective only upon FFIEC approval of the waiver. FFIEC consideration of a waiver is not subject to the ASC's 90-day timeframe for a determination.

§ 1102.8 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.6, 1102.7 and 1102.9 of this subpart. A State Appraisal Agency also may seek an extension of temporary waiver relief by forwarding an additional written Request for Temporary Waiver to the ASC. A request for an extension from a State Appraisal Agency shall be subject to all the requirements of this subpart.

§ 1102.9 Waiver termination.

(a) *Mandatory waiver termination.* The ASC shall terminate a temporary waiver Order when the ASC determines that significant delays in the performance of appraisals by certified or licensed appraisers no longer exist.

(b) *Discretionary waiver termination.* The ASC at any time may terminate a waiver Order on the finding that the terms and conditions of the waiver Order are not being satisfied. In the case of a discretionary waiver termination, the ASC shall publish a finding of waiver termination promptly in the *Federal Register*, giving interested persons no less than 30 calendar days from publication in which to submit written data, views, and arguments. In the absence of further ASC action to the contrary, the finding of discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

* * * * *

By the Appraisal Subcommittee,

Tim Segerson
Chairman
Billing Code 6700-01

Date



Appraisal Subcommittee
Federal Financial Institutions Examination Council

NPRM - Redline

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. **Insert**]

Appraisal Subcommittee; Appraiser Regulation; Temporary Waiver Requests

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

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) proposes to amend existing rules of practice and procedure governing temporary waiver proceedings, which were promulgated in 1992 pursuant to § 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The proposed amendments are intended to provide for greater transparency and clarity on temporary waiver proceedings.

DATES: Comments must be received on or before [**Insert date**].

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number [**Insert**], by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *E-Mail:* webmaster@asc.gov. Include the docket number in the subject line of the message.

- *Mail:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.
- *Hand Delivery/Courier:* 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the Regulations.gov website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. At the close of the comment period, all public comments will also be made available on the ASC's website at <https://www.asc.gov> (follow link in "What's New") as submitted, unless modified for technical reasons.

You may review comments and other related materials that pertain to this rulemaking action by the following method:

- **Viewing Comments Electronically:** Go to <https://www.regulations.gov>. Enter "Docket ID [Insert]" in the Search box and click "Search." Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

FOR FURTHER INFORMATION CONTACT:

Lori Schuster, Management and Program Analyst, lori@asc.gov, or Alice M. Ritter, General Counsel, alice@asc.gov, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of Title XI¹ 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 [FRTs²] 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.”³

Title XI requires that real property appraisals performed in connection with FRTs be performed in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP)⁴ as promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The Federal financial institutions regulatory agencies’ appraisal regulations require appraisals for FRTs to meet these minimum appraisal standards as evidenced by (USPAP).⁵ Title XI also requires that certified and licensed appraisers meet the minimum qualification criteria as set forth in *The Real Property Appraiser Qualification Criteria* (AQB Criteria) issued by the Appraiser

¹ The ASC was established by Title XI. The ASC Board consists of seven members. Five members are designated by the heads of the FFIEC federal member 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 ~~FRT includes 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 under the interagency appraisal rules. [(Title XI § 1121 (4), 12 U.S.C. § 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].~~

³ Title XI § 1101. *See also*, 12 U.S.C. 3331.

⁴ Title XI § 1109(1). *See also*, 12 U.S.C. § 3339 (1).

⁵ Title XI § 1121 (4), 12 U.S.C. § 3350, implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

Qualifications Board (AQB) of the Appraisal Foundation.⁶ The State appraiser regulatory agencies enforce these federal minimum requirements for credentialed appraisers in their State and are subject to federal oversight by the ASC.⁷

Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis, subject to approval of the FFIEC:

any requirement relating to certification or licensing of a person to perform appraisals under [Title XI ~~upon~~] if the [ASC] or a [State appraiser regulatory agency] makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally-related transactions [FRTs] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. A waiver terminates when the [ASC] determines that such significant delays have been eliminated.⁸

Congress intended that the ASC exercise this waiver authority “cautiously.”⁹

The ASC published rules of practice and procedure governing temporary waiver proceedings in 1992.¹⁰ The ASC has ordered temporary waiver relief on two occasions. The first was for the Commonwealth of the Northern Mariana Islands in February 1993 (preceded by an interim order for relief issued in December 1992). The second was in August 2019 for the State of North Dakota (which was extended in part for one additional year in 2020).

⁶ Title XI § 1103(b), Title XI § 1116(a) and (c);. *See also*, 12 U.S.C. § 3332 (b), 12 U.S.C. § 3345 (a) and (c).

⁷ Title XI § 1118. *See also*, 12 U.S.C. 3347. “State appraiser regulatory agencies” are referred to in the proposed rule as “State Appraisal Agencies.”

⁸ Title XI § 1119(b). *See also*, 12 U.S.C. 3348(b).

⁹ 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.

¹⁰ 12 CFR part 1102, subpart A.

Under the existing rules of practice and procedure, when the ASC receives a request from a State appraiser regulatory agency that meets the requirements set forth in 12 CFR § 1102.2, *Requirements for requests*, 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 is 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 pursuant to 12 CFR § 1102.3, *Other requests and information submissions*, 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*. Within 45 calendar days of the date of publication in the *Federal Register*, the existing rules provide that the ASC will grant or deny a waiver, in whole or in part, by Order. The ASC must seek FFIEC approval if the waiver is granted and the waiver cannot take effect unless approved by the FFIEC.

Application of the existing rules of practice and procedure in the present day led the ASC to recognize there may be advantages in proposing revisions to the existing rules to define terms and provide greater clarity on the proceedings. The ASC also believes there may be advantages in proposing revisions to the timeframes in the existing rules of practice and procedure (as established in 1992 to accommodate newly formed State appraiser regulatory agencies) to be more conducive to deliberation by the ASC or FFIEC. Accordingly, the ASC proposes to amend the existing rules of practice and procedure as set forth below. The ASC created a flow chart for temporary waiver proceedings as set forth in this notice of proposed rulemaking [[insert link](#)].

The ASC is also proposing interpretations of several of the terms used in § 1119(b) of Title XI. These interpretations are proposed to be included in the “definitions” section of the rule.

Though neither procedural rules nor published agency interpretations of their statutory authority require notice and comment under the Administrative ~~Procedures~~Procedure Act, (APA),¹¹ the ASC is voluntarily submitting this proposed rule and interpretations for public comment ~~to ensure that all viewpoints are considered~~in order to seek feedback from interested parties.

II. The Proposed Rule

Authority, purpose, and scope.

Proposed § 1102.1 would clarify the purpose and scope of the processes available for ASC consideration of temporary waiver relief by making a clear distinction between: (1) a request with a written determination from a State appraiser regulatory agency (accompanied by a written determination, referred to in the proposed rule as a “Request for Temporary Waiver”); and (2) information received from other persons or entities (which could include a State appraiser regulatory agency) referred to in the proposed rule as a “Petition”).” As subsequent sections in the proposed amended rule clarify, the procedure followed varies depending on whether the ASC has received a Request for Temporary Waiver or a Petition requesting that the ASC initiate a temporary waiver proceeding.

The basis for this distinction is in the statute itself. Section 1119(b) of Title XI authorizes the ASC to grant a temporary waiver only when the ASC or a State appraiser regulatory agency has made the statutorily required written determination that: (1) there is a scarcity of certified or licensed appraisers to perform appraisals in connection with FRTs in a State, or in any geographical political subdivision of a State; and (2) such scarcity is leading to significant delays in the performance of such appraisals for FRTs.¹² Accordingly, the proposed rules seek to clarify the procedural differences in processing a Request for Temporary Waiver accompanied by a written determination

¹¹ 5 U.S.C. 553(b)(A).

¹² Title XI § 1119(b). *See also*, 12 U.S.C. 3348(b).

as compared to a Petition requesting the ASC exercise its discretion to initiate a temporary waiver proceeding.

Definitions.

Proposed § 1102.2 would establish definitions for the following terms:

Federally related transaction (FRT). Proposed § 1102.2(a) proposes to define *federally related transaction (FRT)* to mean 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 under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. § 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62~~and~~62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

Performance of ~~an appraisal~~appraisals. Proposed § 1102.2(b) proposes to define *performance of ~~an appraisal~~appraisals* to mean that the appraisal service requested of an appraiser has been provided to the lender or appraisal management company (AMC).

Petition. Proposed § 1102.2(c) proposes to define *Petition* to mean information submitted to the ASC by the federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency (defined below), asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in proposed § 1102.4.

Request for Temporary Waiver. Proposed § 1102.2(d) proposes to define *Request for Temporary Waiver* to mean information submitted to the ASC with a written determination from

a State Appraisal Agency (defined below) requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in proposed § 1102.3.

Scarcity of certified or licensed appraisers. Proposed § 1102.2(e) proposes to define *scarcity of certified or licensed appraisers* to mean the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

Significant delays in the performance of appraisals. Proposed § 1102.2(f) proposes to define *significant delays in the performance of appraisals* to mean delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated federally related transactions based on factors such as geographic location, (e.g., rural versus urban,) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (e.g., inability to access the subject property).

State Appraisal Agency. Proposed § 1102.2(g) proposes to define *State Appraisal Agency* to mean the State appraiser certifying and licensing agency for the relevant State jurisdiction.¹³

Temporary waiver. Proposed § 1102.2(h) proposes to define *Temporary waiver* to mean a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the requirement for a USPAP-compliant appraisal.¹⁴

¹³ Title XI § 1121(1). *See also*, 12 U.S.C. 3350(1).

¹⁴ The regulations of the Federal financial institutions regulatory agencies (agencies' appraisal regulations) require appraisals for FRTs to meet minimum appraisal standards including conformance to generally accepted appraisal standards as evidenced by USPAP. The ASC cannot waive the requirement for USPAP-compliant appraisals where applicable under the agencies' appraisal regulations. Therefore, when a waiver is in effect, appraisals that comply with the agencies' appraisal regulations (including conformance with USPAP) would still be required when applicable under those regulations, but they could be performed by persons who are not credentialed. (*See* 12 CFR § 34.44(a); 12 CFR § 225.64(a); 12 CFR § 323.4(a); and 12 CFR § 722.4(a)).

Request for Temporary Waiver.

Proposed § 1102.3 clarifies: who can file a Request for Temporary Waiver; what a Request for Temporary Waiver should contain ~~and the ASC's~~; ASC review of a Request for Temporary Waiver for purposes of determining sufficiency of the document's content and receipt by the ASC; and what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency.

Proposed § 1102.3(a) states that the State Appraisal Agency for the State in which temporary waiver relief is sought may file a Request for Temporary Waiver as distinguished from a Petition from other persons other than their entities as proposed in § 1102.4. A State Appraisal ~~Agencies~~Agency may alternatively submit a Petition as set forth in proposed § 1102.4. The ASC believes this is consistent with the intent of the existing rules.¹⁵

Proposed § 1102.3(b) states that a Request for Temporary Waiver will not be deemed to have been received by the ASC unless it fully and accurately sets out:

- (1) a written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;
- (2) the requirement(s) of State law from which relief is being sought;
- (3) the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

¹⁵ “The rules provide persons other than the State appraisal regulatory agencies (‘State agencies’) with the opportunity to submit informational submissions to the ASC. They also may request that the ASC exercise its discretionary authority to provide temporary waiver relief. The ASC will consider such submissions and requests in determining whether it should initiate a temporary waiver proceeding.” *57 Federal Register* 10980 (April 1992).

- (4) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (5) how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and
- (6) meaningful suggestions and recommendations for remedying the situation.

The existing rules state that in the absence of a written determination by the State Appraisal Agency, it must ask the ASC for such a determination. That language is removed from this proposed subsection for the reason that if the ASC were to make such a determination ~~at the request of~~ when asked to do so by a State Appraisal Agency, it would be processed as an ASC Order initiating a temporary waiver proceeding pursuant to proposed § 1102.5(a).

The proposed amendments to this subsection seek to provide clarity on information that should be included in a Request for Temporary Waiver and to remove redundancy from that information. For example, the existing rules, in addition to the above, ask for “[a] description of all significant problems currently being encountered in efforts to comply with [T]itle XI” which would be captured in the information sought in proposed § 1102.3(b). The proposed amendments also modify the requirement for a State Appraisal Agency to provide “a specific plan for expeditiously alleviating the scarcity and service delays” to “meaningful suggestions and recommendations for remedying the situation” recognizing that the situation creating scarcity and delay may be completely outside the control of the State Appraisal Agency.

The proposed amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” This is intended to provide clarification as to what a Request for Temporary Waiver should include to support the existence of a scarcity of certified or licensed

appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining receipt (*see* proposed § 1102.3(c) below). A Request for Temporary Waiver should include clear and specific data to support a claim that there is a scarcity of appraisers leading to significant delays in the performance of covered appraisals. The data supporting such a claim may vary from location to location and situation to situation. Information about the following could assist the ASC in reviewing a Request for Temporary Waiver:

1. Geography – location(s) of the scarcity leading to significant delay.
2. Transactions – types of FRTs impacted (*i.e.*, property and transaction type(s) and transaction amount(s)).
3. Time – length of time for waiver requested.

~~Pursuant to Title XI, State Appraisal Agencies are required to maintain an effective regulatory program over the activities of certified and licensed appraisers;⁴⁶ however in the case of a temporary waiver being granted, there is a potential void in how complaints concerning appraisals by persons who are not certified or licensed would be processed.~~ Proposed § 1102.3(b) includes that a Request for Temporary Waiver address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted.

Proposed § 1102.3(c) is intended to clarify that a Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b).

Proposed § 1102.3(d) sets forth what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State

⁴⁶~~Title XI § 1118. See also, 12 U.S.C. 3347.~~

Appraisal Agency. In either case, written notice from the ASC would be required with an explanation for such a determination.

Petition requesting the ASC initiate a temporary waiver proceeding.

Proposed § 1102.4 clarifies: who can file a Petition requesting that the ASC exercise its discretionary authority to issue an Order, thereby initiating a temporary waiver proceeding; what a Petition should contain; the need to forward a copy of a Petition to the State Appraisal Agency of the impacted State; what the ASC may review for purposes of determining whether the Petition will may be processed for further action; what is required in the event a Petition does not meet the requirements of § 1102.4(b), Contents of a Petition, and thereby is either denied or referred back to the petitioner; and what further action may be taken.

Proposed § 1102.4(a) states that a Petition may be filed by the federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency.

Proposed § 1102.4(b) states that a Petition should include:

- (1) information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and
- (2) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation.

The existing rules generally request the same information from State Appraisal Agencies as it does from other persons or institutions seeking consideration of temporary waiver relief (with the exception of “a specific plan to alleviate scarcity and service delays” which is unique to State Appraisal Agencies). The proposed amendments to this subsection seek to provide clarity on information that should be included in a Petition while easing the expectation that a Petition contain the specificity of a Request for Temporary Waiver from a State Appraisal Agency.

The proposed amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” This is intended to clarify what a Petition should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining whether to process a Petition for further action (*see* proposed § 1102.4(d) below).

Proposed § 1102.4(c) clarifies the existing requirement for a petitioner to provide a copy of their Petition to the State Appraisal Agency, unless the party filing the Petition is the State Appraisal Agency.

Proposed § 1102.4(d) provides that a Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of proposed § 1102.4(b) and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

Proposed § 1102.4(e) sets forth what is required in the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition*, and thereby is either denied or referred back to the petitioner. In either case, written notice from the ASC would be required with an explanation for such a determination.

Proposed § 1102.4(f) states that if a Petition is processed for further action, the ASC may initially refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for evaluation and further study, or the ASC may take further action without referring a Petition to the State Appraisal Agency. Alternatively, a Petition may be denied or referred back to the petitioner for further action.

Proposed § 1102.4(~~f~~g) states that in the event the State Appraisal Agency opts to conduct evaluation and further study on a Petition, the State Appraisal Agency may issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State. Assuming the State Appraisal Agency has addressed the items that would be included in a Request for Temporary Waiver as set forth in proposed § 1102.3(b)), the Petition would now be subject to the procedures and requirements for a Request for Temporary Waiver. The ASC is proposing its interpretation of the terms “scarcity of certified or licensed appraisers” and “significant delays in the performance of appraisals” in proposed § 1102.2 to help petitioners and the public understand how the agency interprets those terms as they are used in § 1119(b) of Title XI.

The State Appraisal Agency could alternatively recommend that the ASC take no further action on the Petition, or moreover decline to conduct evaluation and further study on a Petition.

In either case, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding.

Proposed § 1102.5 clarifies that an Order initiating a temporary waiver proceeding may be in response to a Petition or may be initiated by the ASC without a Petition having been submitted.

~~In either case, a written determination by the ASC that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State, is required as set forth in § 1119(b) of Title XI.¹⁷In either event, such an Order would include consideration of items that would be addressed in a Request for Temporary Waiver. (See § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*).~~ If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b). This is consistent with the existing rules of practice and procedure.

Notice and comment.

Proposed § 1102.6 does not vary in substance from the existing rules of practice and procedure, § 1102.4, *Notice and comment*, which provides for a 30-day notice and comment period on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding.

ASC determination.

Proposed § 1102.7 would expand the existing 45-day deadline, which commences on the date of publication above, for the ASC to make a determination. With respect to recent requests for temporary waivers, or other information submissions requesting the ASC initiate a proceeding,

¹⁷ ~~12 U.S.C. 3348(b).~~

the 45-day turnaround limited the time available to process and evaluate information submitted, including comments received during the notice and comment period.

The ASC believes that the 45-day time period was imposed in 1992 primarily because States were still in the process of setting up State appraiser regulatory programs, and absent a temporary waiver, could have been left without any means to provide appraisals for FRTs. That is not the case today. Even absent a temporary waiver, a State would likely be able to continue to provide appraisals, especially given the use of temporary practice permits and reciprocity.

The ASC proposes to expand the timeframe for an ASC determination, on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding, from 45 calendar days to 90 calendar days from the date of publication ~~to promote~~ in the *Federal Register* to allow sufficient time for thorough processing and consideration ~~of a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding.~~ Proposed § 1102.7 also seeks to clarify that in the event the ASC issues an Order approving a temporary waiver, which is only effective upon FFIEC approval of the waiver, that the FFIEC consideration of the waiver would not be subject to the ASC's proposed 90-day timeframe for a determination.

The existing rules of practice and procedure allow the ASC to issue an interim approval Order simultaneously with a publication for notice and comment, and apply when the ASC determines that an emergency exists. A waiver approved by such an Order also requires approval by the FFIEC. For the reasons stated above, the ASC believes the ~~current~~ existing rules were intended to accommodate nascent State Programs ~~and are, which is~~ not applicable today. States now have options to cope with an emergency that were not available when the existing rules of practice and procedure were finalized. Additionally, the ASC believes that notice and comment is critical to thorough processing of a Request for Temporary Waiver or a Petition.

Therefore, as proposed, § 1102.6 would eliminate the interim Order from the rules of practice and procedure.

Waiver extension.

Proposed § 1102.8 does not vary in substance from the existing rules of practice and procedure, § 1102.6, *Waiver extension*.

Waiver termination.

Proposed § 1102.8 would clarify the distinction between mandatory waiver termination versus discretionary waiver termination. Section 1119(b) of Title XI states, “[t]he waiver terminates when the [ASC] determines that such significant delays have been eliminated.” Therefore, proposed § 1102.8 would require termination in the event of such a finding by the ASC. Proposed § 1102.8 would retain the provision for a discretionary termination in the event the ASC finds that the terms and conditions of the waiver Order are not being satisfied and the procedure for the ASC’s publication in the *Federal Register* for notice and comment in the case of discretionary waiver termination, which does not vary in substance from the existing rules of practice and procedure, § 1102.7, *Waiver termination*. In the absence of further ASC action to the contrary, the finding of a discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

III. Request for Comment

The ASC requests comment on all aspects of the proposed amendments to the existing rules of practice and procedure governing temporary waiver proceedings.

IV. Regulatory Requirements

The ASC has concluded that, if finalized, the proposed amendments to the procedural rule would, like the current rule, constitute a rule of agency organization, procedure, or practice, and

that they would therefore be exempt from the notice-and-comment rulemaking requirements of the APA.¹⁸ For the same reason, the proposed amendments would not be subject to the 30-day delayed effective date for substantive rules under the APA.¹⁹ Moreover, agency interpretations of terms used in their statutory authority are exempt from the notice and comment requirement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²⁰

Paperwork Reduction Act

There is no collection of information that would be required by this proposed rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Paperwork Reduction Act of 1995²¹ (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The ASC has reviewed this notice of proposed rulemaking and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this proposed rule.

Unfunded Mandates Reform Act of 1995 Determination

This proposed rule if finalized would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule would amend the existing rule to provide definitions of terms and greater clarity on the proceedings for a temporary waiver. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

¹⁸ 5 U.S.C. 553(b).

¹⁹ 5 U.S.C. 553(d).

²⁰ 5 U.S.C. 603(a), 604(a).

²¹ 44 U.S.C. 3501–3521.

List of Subjects

12 CFR Part 1102

Administrative practice and procedure, Appraisers, Appraisal Management Company Registry Fees, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the ASC proposes to amend 12 CFR 1102 subpart A as follows:

PART 1102—APPRAISER REGULATION

Authority: 12 U.S.C. 3348(b).

Subpart A—Temporary Waiver Requests

Sec.

- 1102.1 Authority, purpose, and scope.
- 1102.2 Definitions.
- 1102.3 Request for Temporary Waiver.
- 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.
- 1102.5 Order initiating a temporary waiver proceeding.
- 1102.6 Notice and comment.
- 1102.7 ASC determination.
- 1102.8 Waiver extension.
- 1102.9 Waiver termination.

§ 1102.1 Authority, purpose and scope.

(a) *Authority.* This subpart is issued under § 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI; 12 U.S.C. § 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under § 1119(b) of Title XI (12 U.S.C. 3348(b)). These procedures apply whenever a Request for Temporary Waiver is submitted to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) for a temporary waiver of any requirement relating to State certification or licensing (credentialing requirements) of persons eligible to perform appraisals for federally related transactions (FRTs) under Title XI. These procedures also apply in the event the ASC receives a Petition requesting the ASC initiate a temporary waiver proceeding. This subpart also contains the ASC's interpretations of terms used in § 1119(b) of Title XI.

§ 1102.2 Definitions.

For purposes of this subpart:

- (a) *Federally related transaction (FRT)* means 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 under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. § 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].
- (b) *Performance of ~~an appraisal~~ appraisals* means the appraisal service requested of an appraiser is provided to the lender or appraisal management company (AMC).
- (c) *Petition* means information submitted to the ASC by the federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State

Appraisal Agency, asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in § 1102.4.

- (d) *Request for Temporary Waiver* means information submitted to the ASC by a State Appraisal Agency with a written determination requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in § 1102.3.
- (e) *Scarcity of certified or licensed appraisers* means the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.
- (f) *Significant delays in the performance of appraisals* means delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated FRTs based on factors such as geographic location, (e.g., rural versus urban,) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (e.g., inability to access the subject property).
- (g) *State Appraisal Agency* means the State appraiser certifying and licensing agency.²²
- (h) *Temporary waiver* means a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the requirement for a *Uniform Standards of Professional Appraisal Practice (USPAP)*-compliant appraisal.

§ 1102.3 Request for Temporary Waiver.

²² Title XI § 1121(1). See also, 12 U.S.C. 3350(1).

(a) *Who can file a Request for Temporary Waiver.* The State Appraisal Agency for the State in which the temporary waiver relief is sought may file a Request for Temporary Waiver.

(b) *Contents and Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver from a State Appraisal Agency will not be deemed received by the ASC unless it fully and accurately sets out:

- (1) a written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;
- (2) the requirement(s) of State law from which relief is being sought;
- (3) the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (4) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (5) how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and
- (6) meaningful suggestions and recommendations for remedying the situation.

(c) *Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*, to support that a scarcity of appraisers

exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(d) Deny or Refer back. In the event the Request for Temporary Waiver is not deemed received, it may be denied in its entirety or referred back to the State Appraisal Agency for further action. In either case, the ASC shall provide written notice to the State Appraisal Agency providing an explanation for the determination.

§ 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.

(a) *Who can file a Petition requesting the ASC initiate a temporary waiver proceeding.* The federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, may petition the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding.

(b) *Contents of a Petition.* A Petition should include:

- (1) information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and
- (2) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation.

(c) *Copy of Petition to State Appraisal Agency.* In the case of a Petition from a party other than a State Appraisal Agency, the party must promptly provide a copy of its Petition to the State Appraisal Agency.

(d) *ASC review of a Petition.* A Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of § 1102.4(b), *Contents of a Petition*, and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(e) *Deny or Refer back. In the event a Petition does not meet the requirements of § 1102.4(b), Contents of a Petition, it may be denied in its entirety or referred back to the petitioner for further action. In either event, the ASC shall provide written notice to the petitioner providing an explanation for the determination.*

(f) *Further action on a Petition. If the ASC determines that a Petition should be processed for further action,* at its discretion, the ASC may:

- (1) refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for further evaluation and study, to include items that would be addressed in a Request for Temporary Waiver (*see § 1102.3(b), Contents and Receipt of a Request for Temporary Waiver*); or
- (2) take further action without referring the Petition to the State Appraisal Agency.

(g) *State Appraisal Agency Action.*

- (1) In the event the State Appraisal Agency opts to conduct further evaluation and study on a Petition, the State Appraisal Agency may:

- a. issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State (or request that the ASC issue such a written determination), in which case, the procedures and requirements of § 1102.3 and 1102.6(a) shall apply; or
- b. recommend that the ASC take no further action.

(2) In the event the State Appraisal Agency either recommends no further action, or declines to conduct further evaluation and study on a Petition, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding in accordance with § 1102.5(a) below.

§ 1102.5 Order initiating a temporary waiver proceeding.

~~(a) Order in response to a Petition.~~

The ASC may exercise discretion in determining whether to issue an Order initiating a temporary waiver proceeding. ~~Such an Order would require a written determination by in response to a Petition, or alternatively, the ASC that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State. Such a written determination may require further evaluation and study by the ASC to consider subject matter similar to a Request for Temporary Waiver. (See § 1102.3 (b), *Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6 (b).~~

~~(b) Order initiated by the ASC.~~

~~The ASC may exercise discretion to~~ initiate a temporary waiver proceeding on its own initiative without a Petition being submitted ~~by making a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State. Such a written determination would take into.~~ In either event, such an Order would include consideration subject matter similar to of items that would be addressed in a Request for Temporary Waiver. (See § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b).

§ 1102.6 Notice and comment.

The ASC shall publish promptly in the *Federal Register* a notice respecting:

- (a) a received Request for Temporary Waiver ~~pursuant to (see § 1102.3(c));~~ or
- (b) an ASC Order initiating a temporary waiver proceeding ~~(see § 1102.5 (a) or (b)).~~

The notice of a received Request for Temporary Waiver or ASC Order initiating a temporary waiver proceeding shall contain a concise statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views, and arguments.

§ 1102.7 ASC determination.

(a) *Order by the ASC.* Within 90 calendar days of the date of publication of the notice in the *Federal Register*, the ASC, by Order, shall either grant or deny a waiver, in whole or in part, and upon specified terms and conditions, including provisions for waiver termination. The Order shall be published in the *Federal Register*, which in the case of an Order approving a waiver, shall only be published after FFIEC approval of the waiver (see subsection (b) below). Such

Order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding(s).

(b) *Approval by the FFIEC.* Any ASC Order approving a waiver shall be effective only upon FFIEC approval of the waiver. FFIEC consideration of a waiver is not subject to the ASC's 90-day timeframe for a determination.

§ 1102.8 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.6, 1102.7 and 1102.9 of this subpart. A State Appraisal Agency also may ~~request~~seek an extension of temporary waiver relief by forwarding an additional written Request for Temporary Waiver to the ASC. A request for an extension from a State Appraisal Agency shall be subject to all the requirements of this subpart.

§ 1102.9 Waiver termination.

(a) *Mandatory waiver termination.* The ASC shall terminate a temporary waiver Order when the ASC determines that significant delays in the performance of appraisals by certified or licensed appraisers no longer exist.

(b) *Discretionary waiver termination.* The ASC at any time may terminate a waiver Order on the finding that the terms and conditions of the waiver Order are not being satisfied. In the case of a discretionary waiver termination, the ASC shall publish a finding of waiver termination promptly in the *Federal Register*, giving interested persons no less than 30 calendar days from publication in which to submit written data, views, and arguments. In the absence of further ASC action to the contrary, the finding of discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

* * * * *

By the Appraisal Subcommittee,

Tim Segerson
Chairman
Billing Code 6700-01

Date

DRAFT

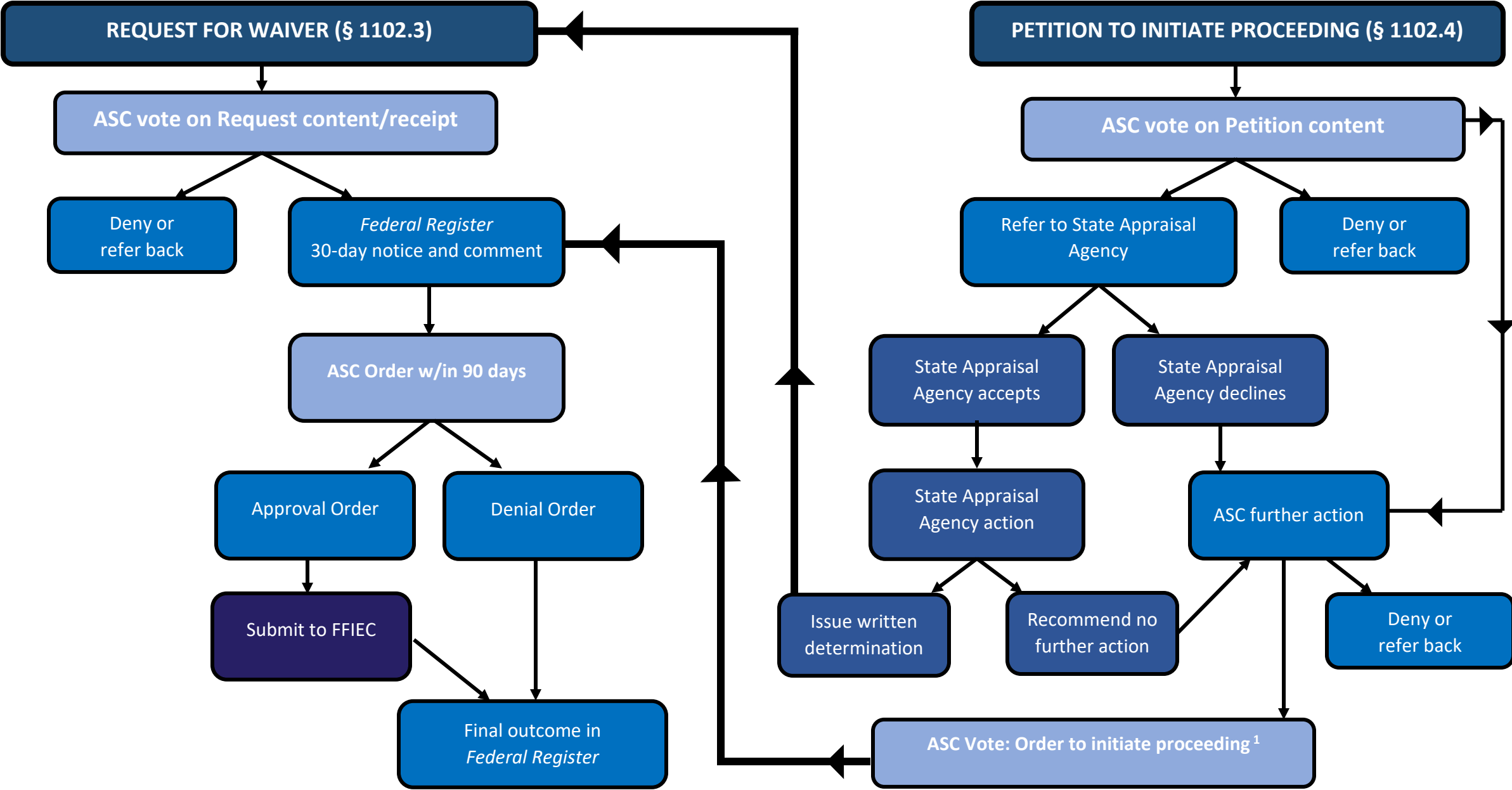


Appraisal Subcommittee

Federal Financial Institutions Examination Council

NPRM - Flowchart

TEMPORARY WAIVER FLOW CHART
[DRAFT]



¹ The ASC may initiate a temporary waiver proceeding without a Petition.

ASC Board action
 ASC Staff action
 State Appraisal Agency action
 FFIEC action