

Briefing Cover Page

August 29, 2018



■ ■ ■ ■ ■ ■ ■

Appraisal Subcommittee

*Federal Financial Institutions Examination
Council*

Briefing Agenda

Date: August 29, 2018
Time: Immediately following the ASC Open Session Meeting
Location: FRB, International Square
1850 K Street, NW
Washington, DC 20006

Briefing Topic(s)

Submission requesting temporary waiver for North Dakota

J. Park



Appraisal Subcommittee

Federal Financial Institutions Examination Council

DRAFT

August 30, 2018

The Honorable Doug Burgum, Governor
State of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0001

Ms. Lise Kruse, Commissioner
North Dakota Department of Financial Institutions
2000 Schafer Street, Suite G
Bismarck, ND 58501-1204

Mr. Rick Clayburgh, President & CEO
North Dakota Bankers Association
122 E. Main Ave, Ste 201
Bismarck ND 58501-3889

Re: Temporary Waiver Request

Dear Governor Burgum, Ms. Commissioner Kruse, and Mr. Clayburgh:

The Appraisal Subcommittee (ASC) is in receipt of your August 1, 2018 submission requesting the ASC “to exercise its discretionary authority to initiate a temporary waiver proceeding, pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI),¹ for a determination of scarcity of licensed or certified appraisers leading to significant delays in obtaining appraisals for federally related ~~transaction[s]~~ transactions (FRTS) throughout the State of North Dakota.” The submission seeks waiver relief for an indefinite duration, or alternatively, for a term of not less than five years, and requests a waiver a waiver so that “North Dakota banks and credit unions can obtain evaluations of real estate from individuals other than licensed and certified appraisers.” “will be able to assess the type of valuation that is appropriate for a given tract of proposed real estate collateral and be able to have that valuation made by any qualified person as determined by the lender.” The submission requests a waiver for FRTs, secured by real estate in North Dakota, that does not exceed \$1 million for mortgagea business or farm loan transactions at a specified threshold level that exceeds the current threshold level established by the Federal financial institutions regulatory agencies or \$500,000 for a residential real estate transaction.

¹ 12 U.S.C. § 3348(b); see also 12 C.F.R. Part 1102 (establishing practices and procedures for waivers).

Pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI), the ASC may waive “any requirement relating to certification or licensing of a person to perform appraisals”² for federally related transactions³ under specified conditions. Those credentialing requirements are established by the Appraiser Qualifications Board (AQB) in the *Real Property Appraiser Qualification Criteria* (the Criteria), and are typically related to minimum requirements for education, examination and experience. The FRTs⁴ if the ASC has no authority to waive any requirements concerning when an appraisal or evaluation determines “there is or is not required. Nor does the ASC have authority to waive credentialing of appraisers. Moreover, the ASC has no authority to establish the threshold level at or below which a scarcity of certified or licensed appraiser is not required appraisers to perform appraisals in connection with federally related transactions. That authority lies [FRTs] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.”⁵ The waiver would terminate when the ASC determines that such significant delays have been eliminated.⁶ An ASC waiver would apply to all national banks, Federal savings associations, and Federal credit unions that make loans within the geography of the waiver.

Under section 1119(b), the ASC may waive any requirement relating to the certification or licensing of a person to perform appraisals for FRTs, but does not have the authority to waive the requirement that an appraisal be conducted for an FRT. Nor does the ASC have the authority to permit the use of an evaluation in lieu of an appraisal for FRTs. These authorities lie solely with the Federal financial institutions institution regulatory agencies. For these reasons, the ASC requests that you revise the submission to reflect the ASC’s statutory authority to waive credentialing requirements. In addition, as outlined below, the ASC requests that you provide additional data to support the submission.

The As provided in ASC adopted regulations governing temporary waiver relief, which you reference in your submission. The regulations, which are in volume a waiver request will not

² Minimum credentialing requirements for appraisers are established by the Appraiser Qualifications Board (AQB) in the *Real Property Appraiser Qualification Criteria* (the Criteria), and are typically related to minimum requirements for education, examination and experience.

³ A federally related transaction 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 OCC: 12 CFR 34.42(f) and 34.43(a); Board: 12 CFR 225.62(f) and 225.63(a); FDIC: 12 CFR 323.2(f) and 323.3(a); and NCUA: 12 CFR 722.2(f) and 722.3(a)]. Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are not subject to the Title XI appraisal regulations. (FFIEC report to Congress, *Economic Growth and Regulatory Paperwork Reduction Act*, 82 FR 15900 (March 30, 2017)).

⁴ A federally related transaction 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 the interagency appraisal rules. 12 U.S.C. § 3350(4)), implemented by the OCC: 12 C.F.R. §§ 34.42(g) and 34.43(a); Board: 12 C.F.R. §§ 225.62(g) and 225.63(a); FDIC: 12 C.F.R. §§ 323.2(g) and 323.3(a); and NCUA: 12 C.F.R. §§ 722.2(e) and 722.3(a). Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are exempted by the agencies’ appraisal regulations from the Title XI appraisal requirements. (FFIEC report to Congress, *Economic Growth and Regulatory Paperwork Reduction Act*, 82 FR 15900 (March 30, 2017)).

⁵ 12 U.S.C. § 3348(b).

⁶ *Id.*

~~be deemed received by the ASC unless the requirements in 12 of the Code of Federal Regulations, part C.F.R. § 1102 (12 CFR, 2 are met. Under section 1102), provide a list of requirements for filing a request in subsection 1102.3. The requirements are summarized as follows. 2, a party requesting a waiver must set out the following:~~

- ~~The requirement or requirements of State law from which relief is being sought;~~
- ~~A description of all significant problems currently being encountered in efforts to comply with Title XI;~~
- ~~The nature of the scarcity of certified or licensed appraisers (including supporting documentation);~~
- ~~The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation); and~~
- ~~The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays.~~

It is also strongly encouraged that the request include meaningful suggestions and recommendations for remedying the situation.

Further information is required in order to allow the ASC to consider publishing notice of a received request. Specifically, ~~further clarification on what the ASC requests that you address the rationale for a statewide waiver relief you are seeking is necessary, keeping rather than a waiver that focuses on geographical subdivisions, given that, in mind the ASC's statutory authority to waive credentialing requirements if general, there is a connection are differences in appraiser availability and appraisal timeliness between the requirement(s) and a scarcity rural and service delays. non-rural areas.~~

The ASC ~~will also need further supporting requests additional~~ documentation ~~linking the described delays in obtaining appraisals to the scarcity of appraisers.~~ The submission provides an overview and draws some conclusions without specifics or sufficiently detailed supporting documentation.

~~As an~~ Your submission states that “North Dakota financial institutions have not been formally tracking appraiser numbers, turnaround times, or transactions thwarted by appraisal problems.” However, the ASC would need quantitative data to support a request for a temporary waiver. ~~For example of,~~ appropriate supporting documentation, ~~your letter states that the availability of appraisers is an issue for the State of North Dakota. Supporting documentation would could~~ include the following information, relative to federally related transactions, for the State ~~of~~ North Dakota for a span of time sufficient to support the conclusions (e.g., past five years):

- ~~The~~ number of appraisals ordered per month;
- The time between ordering of the appraisal and the receipt of the appraisal report;
- The property types being appraised (e.g., office, retail, industrial, residential); and
- The cost of each of those appraisals.

Also, because you have made the request for an indefinite duration, or alternatively, for a term of not less than five years, it would be helpful to provide suggestions and recommendations for remedying the situation and whether you believe the alleged scarcity will be alleviated at the end of such a term and why.

In accordance with 12 [CFRC.F.R. § 1102.3](#), a copy of your submission was forwarded to the North Dakota Real Estate Appraiser Qualifications and Ethics Board (State agency). Any supplemental information should be forwarded to the State agency as well. If any of this information is considered confidential, classified or otherwise not for public release, please indicate what is to be redacted prior to making the supplemental information public.

Once all required information has been received, the ASC Board will meet to take action on whether to publish in the Federal Register a notice of a received request for a 30-day comment period. If published, within 45 days of that publication, the ASC shall either grant or deny upon specified conditions. Any approval is subject to concurrence of the Federal Financial Institutions Examination Council (FFIEC).

Sincerely,

James R. Park
Executive Director

■ ■ ■ ■ ■ ■ ■

Appraisal Subcommittee

Federal Financial Institutions Examination Council

DRAFT
August 30, 2018

The Honorable Doug Burgum, Governor
State of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0001

Ms. Lise Kruse, Commissioner
North Dakota Department of Financial Institutions
2000 Schafer Street, Suite G
Bismarck, ND 58501-1204

Mr. Rick Clayburgh, President & CEO
North Dakota Bankers Association
122 E. Main Ave, Ste 201
Bismarck ND 58501-3889

Re: Temporary Waiver Request

Dear Governor Burgum, Commissioner Kruse, and Mr. Clayburgh:

The Appraisal Subcommittee (ASC) is in receipt of your August 1, 2018 submission requesting the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI),¹ for a determination of scarcity of licensed or certified appraisers leading to significant delays in obtaining appraisals for federally related transactions (FRTS) throughout the State of North Dakota. The submission seeks a waiver so that “North Dakota banks and credit unions will be able to assess the type of valuation that is appropriate for a given tract of proposed real estate collateral and be able to have that valuation made by any qualified person as determined by the lender.” The submission requests a waiver for FRTs, secured by real estate in North Dakota, that does not exceed \$1 million for a business or farm loan or \$500,000 for a residential real estate transaction.

¹ 12 U.S.C. § 3348(b); *see also* 12 C.F.R. Part 1102 (establishing practices and procedures for waivers).

Pursuant to section 1119(b) of Title XI, the ASC may waive “any requirement relating to certification or licensing of a person to perform appraisals”² for FRTs³ if the ASC determines “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.”⁴ The waiver would terminate when the ASC determines that such significant delays have been eliminated.⁵ An ASC waiver would apply to all national banks, Federal savings associations, and Federal credit unions that make loans within the geography of the waiver.

Under section 1119(b), the ASC may waive any requirement relating to the certification or licensing of a person to perform appraisals for FRTs, but does not have the authority to waive the *requirement* that an appraisal be conducted for an FRT. Nor does the ASC have the authority to permit the use of an evaluation in lieu of an appraisal for FRTs. These authorities lie solely with the Federal financial institution regulatory agencies. For these reasons, the ASC requests that you revise the submission to reflect the ASC’s statutory authority to waive credentialing requirements. In addition, as outlined below, the ASC requests that you provide additional data to support the submission.

As provided in ASC regulations governing temporary waiver relief, a waiver request will not be deemed received by the ASC unless the requirements in 12 C.F.R. § 1102.2 are met. Under section 1102.2, a party requesting a waiver must set out the following:

- The requirement or requirements of State law from which relief is being sought;
- A description of all significant problems currently being encountered in efforts to comply with Title XI;
- The nature of the scarcity of certified or licensed appraisers (including supporting documentation);
- The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation); and
- The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays.

It is also strongly encouraged that the request include meaningful suggestions and recommendations for remedying the situation.

² Minimum credentialing requirements for appraisers are established by the Appraiser Qualifications Board (AQB) in the *Real Property Appraiser Qualification Criteria* (the Criteria), and are typically related to minimum requirements for education, examination and experience.

³ A federally related transaction 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 the interagency appraisal rules. 12 U.S.C. § 3350(4)), implemented by the OCC: 12 C.F.R. §§ 34.42(g) and 34.43(a); Board: 12 C.F.R. §§ 225.62(g) and 225.63(a); FDIC: 12 C.F.R. §§ 323.2(g) and 323.3(a); and NCUA: 12 C.F.R. §§ 722.2(e) and 722.3(a). Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are exempted by the agencies’ appraisal regulations from the Title XI appraisal requirements. (FFIEC report to Congress, *Economic Growth and Regulatory Paperwork Reduction Act*, 82 FR 15900 (March 30, 2017)).

⁴ 12 U.S.C. § 3348(b).

⁵ *Id.*

Further information is required in order to allow the ASC to consider publishing notice of a received request. Specifically, the ASC requests that you address the rationale for a statewide waiver rather than a waiver that focuses on geographical subdivisions, given that, in general, there are differences in appraiser availability and appraisal timeliness between rural and non-rural areas.

The ASC also requests additional documentation linking the described delays in obtaining appraisals to the scarcity of appraisers. The submission provides an overview and draws some conclusions without specifics or sufficiently detailed supporting documentation.

Your submission states that “North Dakota financial institutions have not been formally tracking appraiser numbers, turnaround times, or transactions thwarted by appraisal problems.” However, the ASC would need quantitative data to support a request for a temporary waiver. For example, appropriate supporting documentation could include the following for North Dakota for a span of time sufficient to support the conclusions (*e.g.*, past five years):

- The number of appraisals ordered per month;
- The time between ordering of the appraisal and the receipt of the appraisal report;
- The property types being appraised (*e.g.*, office, retail, industrial, residential); and
- The cost of each of those appraisals.

Also, because you have made the request for an indefinite duration, or alternatively, for a term of not less than five years, it would be helpful to provide suggestions and recommendations for remedying the situation and whether you believe the alleged scarcity will be alleviated at the end of such a term and why.

In accordance with 12 C.F.R. § 1102.3, a copy of your submission was forwarded to the North Dakota Real Estate Appraiser Qualifications and Ethics Board (State agency). Any supplemental information should be forwarded to the State agency as well. If any of this information is considered confidential, classified or otherwise not for public release, please indicate what is to be redacted prior to making the supplemental information public.

Once all required information has been received, the ASC Board will meet to take action on whether to publish in the Federal Register a notice of a received request for a 30-day comment period. If published, within 45 days of that publication, the ASC shall either grant or deny upon specified conditions. Any approval is subject to concurrence of the Federal Financial Institutions Examination Council (FFIEC).

Sincerely,

James R. Park
Executive Director