

Briefing Cover Page

August 28, 2019

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Appraisal Subcommittee
*Federal Financial Institutions Examination
Council*

Briefing Agenda

Date: August 28, 2019
Time: Immediately following the ASC Open Session Meeting
Location: Partnership for Public Service
1100 New York Avenue NW
Suite 200 East, Room 2D
Washington, DC 20005
Metro Stop: Metro Center – 11th and G Street Exit

Briefing Topic(s)

Temporary Waiver Procedures

J. Park

Grants Manual Outline

M. Abbott

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Appraisal Subcommittee
Federal Financial Institutions Examination Council

**Appraisal
Subcommittee**

August 2019
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Grants Handbook

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Appraisal Subcommittee

Federal Financial Institutions Examination Council

CHAPTER 1: Introduction	1
CHAPTER 2: Grants to The Appraisal Foundation	4
CHAPTER 3: Grants to State Regulatory Bodies	7
CHAPTER 4: Other Grants/Cooperative Agreements	11
CHAPTER 5: Requirements for Grantee Administration of ASC Funds	23
CHAPTER 6: Grantee Reporting Requirements	26
CHAPTER 7: ASC Audits of Grants	28
CHAPTER 8: Resolution of Single Audits of States and State Agencies	33
CHAPTER 9: Indirect Costs	36
CHAPTER 10: ASC Grant Closeout	39
CHAPTER 11: Oversight of ASC Funds	42
EXHIBIT 1: Checklist for ASC Review of Grant applications	45
EXHIBIT 2: SF 424, Application and Instructions for Federal Assistance	50
EXHIBIT 3: SF 424A, Budget Information, Non-Federal Programs and Instructions	53
EXHIBIT 4: SF 424B, Assurances - Non-Construction Programs	58
EXHIBIT 5: ASC Form 1 - Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; and Lobbying	60
EXHIBIT 6: ASC Form 2 - Federal Assistance Agreement	64
EXHIBIT 7: SF 270, Instructions for Advance or Reimbursement	66
EXHIBIT 8: SF 3881 - ACH Vendor/Miscellaneous Payment Enrollment Form and Instructions	68
EXHIBIT 9: Request for Prior Approval of Capital Expenditures Over \$5,000	70

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Appraisal Subcommittee

Federal Financial Institutions Examination Council

EXHIBIT 10: Federal Financial Report	76
EXHIBIT 11: ASC Form X - Check List for Comprehensive Review of Recipient Financial Status Report	82

ASC Waiver Request Management Process

Challenges:

- 1) Waiver approval process timeline is too short for thoughtful investigation, consideration, publication, ASC vote and FFIEC vote in the case of an approval vote by the ASC.
- 2) Information provided is too variable, lacks objectivity and relevant metrics to assure a waiver is not approved erroneously.
- 3) There is a lack of structure to the evaluation and analysis process.
- 4) Scarcity and Significant Delays are not defined and make it very difficult to reach a consistent and appropriate conclusion.
- 5) The lack of transparency around the process results in significant turmoil, confusion and delays in analyzing the request in entirety. All applications have required more than one submission because there are not objective standards around the process.

Proposals to Improve the Process

- 1) Develop a policy that can be published as guidance to provide sufficient detail on waiver request support to ensure a requestor has all information needed to prepare a request.
 - a) Define Scarcity, Significant Delay and Scarcity leading to Significant Delay.
 - i) Seek public comment on definitions.
 - b) Establish objective metrics that can be used interchangeably or universally regardless of geographic type or location.
 - i) Examples would be a standard deviation multiple (2 or 3) from a national or state average. Another example could be a statistical outlier measure or test. Such as $\text{outcome} > 3^{\text{rd}} \text{ quartile value} + 1.5 \times \text{IQR} = \text{statistical outlier}$.
 - ii) Seek public comment on objective measures.
- 2) Develop procedures for the ASC Board to adopt that includes:
 - a) a consideration period where ASC members can enter any supporting or refuting information to the record (such as during the comment period) but also establishes a blackout period that prevents unverified or last-minute submissions that cannot be fully evaluated by Board members.
 - b) Minimum information required to consider a waiver request (auto denial if request does not meet minimum standards.) This includes data and locale related information.
 - c) An ASC Professional Staff investigation of the waiver resulting in a report to the ASC Board:
 - i) Data analysis
 - ii) Interviews with state Appraisal Board, and requestor
 - iii) Evaluation of current or past efforts to alleviate the perceived scarcity and delays
 - iv) Identification of any impediments where waiver would not provide intended benefit

- 3) Make changes to the waiver regulation to include:
 - a) Extended consideration period
 - i) ASC Professional Investigation period
 - ii) Comment Period not less than 30 days
 - iii) Board Review period not less than 45 days after close of comment period
 - iv) FFIEC concur period of not less than 60 days after ASC Board vote

Outline

- 1) ASC Outreach/investigation
 - a) ASC Discusses Situation
 - b) ASC evaluated efforts to alleviate the alleged problem
 - c) Temp Practice permits (*e.g.*, out of state appraisers in bordering states permitted to practice in State where delay is claimed)
 - d) S2155 implementation
 - e) What data has the Respondent collected
 - f) What outreach has occurred between applicant and appraisal profession
- 2) ASC reports to Board on efforts and results – if no effort, we should automatically deny until they have taken proper steps in their power to alleviate
- 3) Upon concluding reasonable efforts without satisfactory resolution Respondent may submit a request with sufficient supporting data:
 - i. Full or unbiased sample of recent activity 3 – 5 years demonstrating turn around by locality
 - ii. S2155 implementation stats
 - iii. Data on types and amounts of loans by geo
 - iv. Comparable data
 - v. State and National Average data
- 4) Does the data pass an objective initial test?
 - i. Scarcity can be proven by say 100-mile radius # appraisers/deal is more than two standard deviations from the national median
 - ii. If Scarcity Exists – Significant delay would be outlier range of 1.5 Std Dev +/- IQR (statistical outlier formula)
 - iii. If Yes, data and app is considered complete and legitimate for board consideration
 - iv. Publish
- 5) Schedule Briefing and Vote
 - i. Briefing ASC staff reviews all relevant data and comments
 - ii. ASC staff summarizes and makes observation and recommendation
 - iii. Board hold hearing allowing public comment
 - iv. Board votes

Outline of Revised Procedures for ASC Temporary Waiver Requests

Step One – Outreach to the ASC: 30 days before submitting a written request, the ASC should have a meeting with the potential requester to discuss the proposed temporary waiver request. The discussion should include data collected by the requester. If no data has been collected, the requester should discuss its efforts to collect data, for example, has the State Appraiser Regulatory Agency issued temporary practice permits. At this preliminary stage, the request should also discuss the reasonable means within its control that the requester has undertaken to alleviate the scarcity or delay. A request should not be submitted, absent demonstrated action from requester to alleviate the scarcity or delay. Any member of the ASC may conduct its own investigation of scarcity and delay prior to the close of the comment period. If a member conducts its own investigation, its results should be presented to the ASC at the close of the comment period.

Step Two – Written Request: The process begins when ASC receives from a State appraiser regulatory agency requests a waiver of any requirement relating to certification or licensing of a person to perform Title XI appraisals. The process also begins when the ASC, based on sufficient, credible information or requests received from other persons or entities, initiates a temporary waiver proceeding.

Step Three – Deeming a Request Received: The ASC must determine that the request is received.

Requester is a State Appraiser Regulatory Agency:

A written determination by the State Appraiser Regulatory Agency that there is a scarcity of appraisers leading to significant delays is required. Or, a State Appraiser Regulatory Agency must ask the ASC for such a determination. The following additional information is required: 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); the reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays; and a specific plan for expeditiously alleviating the scarcity and the service delays. Supporting documentation should include (or a discussion on why the data is unavailable): (i) three to five years of sample data on the turnaround time of appraisals by locality; (ii) to what extent institutions have been utilizing the flexibility found in recent legislative and regulatory threshold changes; (iii) information on the types and amounts of loans originated by geographic region; and, if possible, (iv) comparable data for similar geographic regions on state and national averages. If the request extends to a large and economically diverse locality, such as an entire State, the data should be refined to include information by smaller geographical or political subdivisions.

An application should not be considered complete unless it meets certain objective standards. For example, scarcity can be shown if the number of appraisers per deal is more than two standard deviations from the national average. If scarcity is found, then a significant delay could be something such as a delay that is 1.5 standard deviations from an IQR [not sure what that is]. If the data shows a scarcity causing delay, then the application should be complete.

Other requesters:

The banking agencies, their regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, may ask the ASC for a determination that there is a scarcity of appraisers leading to significant delays, and may ask that the ASC exercise its discretionary authority to initiate a temporary waiver proceeding. The request must include all things required from a State Appraiser Regulatory Agency except a specific plan for expeditiously alleviating the scarcity and the service delays. A copy of the request or informational submission shall be forwarded promptly to the State Appraiser Regulatory Agency. Requests from entities other than a State Appraiser Regulatory Agency should discuss outreach efforts between the requester and the State Appraiser Regulatory Agency.

Step Four – Publication in the Federal Register: The ASC shall publish promptly in the Federal Register a notice detailing the received request or the ASC order initiating a temporary waiver proceeding. The notice or initiation order shall contain a concise general 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.

Step Five – Subcommittee Determination: minimum 45 days after close of comment, the ASC must either grant or deny a waiver in whole, in part, and upon specified terms and conditions, including provisions for waiver termination.

Option Step Six - Extension: The ASC may initiate an extension of a waiver. An extension should follow the preceding procedures established by this regulation. The State Regulatory Agency may also request an extension. Such a request also must follow the procedures outlined by the regulation.

