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Appraisal Subcommittee

Federal Financial Institutions Examination Council

Briefing Agenda

Date: May 26, 2021

Time: 10:00 a.m. ET

Location: Go to the Link below to register for the Briefing

<https://www.zoomgov.com/meeting/register/vJItfumtqjlrHJ6ow7-xQLq4AqMzJkMDQ4Y>

Briefing Topic(s)	
Census/Survey Project	M. Abbott
Temporary Waiver Rule	A. Ritter
Appraisal Foundation Monitoring and Review Policy	J. Park

Subpart A—Temporary Waiver Requests

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

- 1102.1 Authority, purpose and scope.
- 1102.2 Definitions.
- 1102.3 Request for Temporary Waiver.
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- 1102.5 Notice and comment.
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§ 1102.1 Authority, purpose and scope.

(a) *Authority.* This subpart is issued under section 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 Section 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.

§ 1102.2 Definitions.

For purposes of this subpart:

- (a) *Clear and convincing* means that the information presented is highly and substantially more likely to be true than untrue (highly probable).
- (b) *Federally related transaction (FRT)* means any real estate-related financial transaction that: (a) a Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1101, 12 U.S.C. § 3331. (See also 84 *Federal Register* 53579, 53580, citing Title XI § 1121(4), 12 U.S.C.

§ 3350 implemented by the OCC: 12 CFR §§ 34.42(g) and 34.43(a); Board: 12 CFR §§ 225.62(g) and 225.63(a); FDIC: 12 CFR §§ 323.2(g) and 323.3(a); and NCUA: 12 CFR §§ 722.2 and 722.3.)

- (c) *Performance of an appraisal* means the appraisal service requested of an appraiser is provided to the lender or AMC.
- (d) *Petition* means information submitted to the ASC by a federal financial institutions regulatory agency, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State 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.
- (e) *Preponderance of the evidence* means that the information presented is convincing that there is a greater than 50% chance that the information is true.
- (f) *Request for Temporary Waiver* means information submitted to the ASC by a State Agency requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in § 1102.3.
- (g) *Scarcity of certified or licensed appraisers* means:
 - (1) such credentialed appraisers are difficult to retain within a specified geographical political subdivision of, or within a State; and
 - (2) the difficulty to retain such credentialed appraisers is resulting in significant delays in the performance of appraisals for FRTs or a specified class of FRTs (*e.g.*, residential, multi-family, commercial, agricultural).
- (h) *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 geographic location and assignment type, absent intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.*, inability to access the subject property, extended appraisal review process).
- (i) *State Agency* means the State Appraiser Certifying and Licensing Agency.
- (j) *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 USPAP-compliant appraisal.¹

§ 1102.3 Request for Temporary Waiver.

- (a) *Who can file a Request for Temporary Waiver.* The State Agency wherein temporary waiver relief is sought may file a Request for Temporary Waiver.

¹ 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 the Uniform Standards of Professional Appraisal Practice (USPAP). The ASC cannot waive the requirement for an appraisal under the agencies' appraisal regulations. For example, when a waiver is in effect, appraisals that comply with agencies' appraisal regulations would still be required according to the regulation, but could be performed by persons who are not credentialed. (See 12 CFR § 225.64(a) [Board]; 12 CFR § 34.44(a) [OCC]; 12 CFR § 323.4(a) [FDIC]; and 12 CFR § 722.4(a) [NCUA]).

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

- (1) a written duly authorized determination by the State Agency that there is a scarcity of State licensed or certified appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs;
- (2) the requirement(s) of State law from which relief is being sought and why such relief would address the scarcity and service delays;
- (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 State certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (5) how complaints concerning appraisals by uncredentialed persons would be processed in the event a temporary waiver is granted; and
- (6) a specific plan for expeditiously alleviating the scarcity and service delays.

(c) *Standard of ASC review.* A Request for Temporary Waiver must contain information that provides clear and convincing evidence that a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals.

(d) *Grant funding.* A State Agency may seek expedited grant funding from the ASC to support the filing of a Request.

§ 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 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) supporting that there is a scarcity of State licensed or certified appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs;
- (2) the extent of the delays anticipated or experienced in the performance of appraisals by State certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable); and
- (3) meaningful suggestions and recommendations for remedying the situation.

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

(d) *Standard of ASC review.* A petition should contain information that provides by a preponderance of the evidence that a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals.

(e) *Referral of petition to State Agency.* The ASC shall initially refer a petition to the State Agency wherein temporary waiver relief is sought for evaluation and further study to include items that would be addressed in a Request for Temporary Waiver (*see* § 1102.3 (b), *Contents and Receipt of a Request*). In the event the State Agency accepts the referral, the ASC encourages the State Agency to seek grant funding to support its efforts (*see* § 1102.4 (f) below). A State Agency may decline and defer to the ASC for evaluation and further study, in which case, the ASC will exercise its discretion in determining whether to initiate a temporary waiver proceeding.

(f) *Grant funding.* A State Agency may seek expedited grant funding from the ASC to support the evaluation and further study of a petition.

(g) *Recommendation of State Agency.* Based on the results of the State Agency's evaluation and study, which shall include items that would be addressed in a Request for Temporary Waiver (*see* § 1102.3 (b), *Contents and Receipt of a Request*), the State Agency may:

- 1) issue a written duly authorized determination that there is a scarcity of State licensed or certified appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs;
- 2) request that the ASC issue a written duly authorized determination that there is a scarcity of State licensed or certified appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs; or
- 3) recommend that the ASC take no further action.

Deference shall be given to a State Agency recommendation absent extraordinary circumstances.

(h) *Initiation of a temporary waiver proceeding.* A written duly authorized determination issued by a State Agency shall prompt action by the ASC, within 30 calendar days, to vote in open session on an Order to initiate a temporary waiver proceeding. Absent a written duly authorized determination from a State Agency, the ASC will exercise its discretion in determining whether to issue a written duly authorized determination, thereby prompting action by the ASC, within 30 calendar days, to vote in open session on an Order to initiate a temporary waiver proceeding.

§ 1102.5 Notice and comment.

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

- (a) a received Request pursuant to §1102.3; or
- (b) an ASC order initiating a temporary waiver proceeding pursuant to § 1102.4 (g).

The notice 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.

§ 1102.6 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 promptly in the *Federal Register*, which, in the case of an approval order, shall only be published after FFIEC approval (*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 approval Order shall be effective only upon FFIEC approval. FFIEC consideration of an ASC approval Order is anticipated to occur at the earliest convenience of the FFIEC, and is not subject to the ASC's 90-day timeframe for a determination.

(c) *Interim Approval Order by the ASC.* Upon the ASC's determination that an emergency exists, the ASC may issue an Interim Approval Order simultaneously with its action under § 1102.5 of this subpart. An Interim Approval Order shall not be subject to FFIEC approval and shall terminate upon publication of an Order pursuant to § 1102.6 (a).

§ 1102.7 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.5, 1102.6 and 1102.8 of this subpart. A State Agency also may request an extension of temporary waiver relief by forwarding an additional written request to the ASC. A request for an extension from a State Agency shall be subject to all the requirements of this subpart.

§ 1102.8 Waiver termination.

The ASC at any time may terminate a temporary waiver Order on the finding that:

(a) The significant delays in the performance of appraisals by certified or licensed appraisers no longer exist; or

(b) The terms and conditions of the waiver Order are not being satisfied. 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 waiver termination automatically shall become final 21 calendar days after the close of the comment period.

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Appraisal Subcommittee

Federal Financial Institutions Examination Council

TO: Appraisal Subcommittee

FROM: Mark Abbott, Grants Director

DATE: May 19, 2021

RE: Budget Authorization Request for Census/Survey Project

The purpose of this memorandum is to seek initial budget authority of \$150,000 to initiate a comprehensive census/survey of stakeholders in the real property appraisal profession, including appraisers, appraisal management companies (AMC), lenders, State appraisal and AMC regulators, and Fair Housing and Lending authorities to understand demographics and trends in the appraisal industry. This level of funding will allow us to collect available data sets, analyze the data and design a research methodology to conduct the census/survey. A separate budget request to support implementation of the survey will be requested once we have reviewed bids for the project.

Background

ASC staff recently received a request from a group of chief appraisers representing some of the largest banks and financial services providers in the U.S. to conduct a comprehensive survey of the appraisal industry. Very little is currently known about the demographic makeup of the appraisal industry and its stakeholders. This lack of information limits the appraisal industry and its stakeholders from making useful decisions about how to address ongoing problems such as a lack of diversity, reasons for a declining population of appraisers and the future of the profession and its ability to adequately service lenders and others.

The study would include, but not be limited to, answering the following questions:

- Actual number of appraisers in the industry
 - Number of unique or individual appraisers
 - Number and type of credentials held by appraisers
- Demographics of appraisers
 - Age
 - Gender
 - Race
 - Education level
- Years of appraisal experience
- Government entity approval (*e.g.*, FHA or VA)
- Full or Part-Time appraising

- Number of appraisers leaving the profession each year
 - Credentials that lapse
 - Planned retirement year
- Number and type of new appraiser credentials granted each year
- Number and type of appraisers leaving the industry
- Number of registered Supervisory Appraisers
- Number of registered Trainees
- Number of States with and without a Supervisory/Trainee Program
 - Number of credentials issued
- Number of Trainees who have a Supervisory Appraiser
- Lenders use of Trainees
 - Number of Lenders who allow use of Trainees
 - Reason Lenders prohibit use of Trainees
- Primary Role of appraisers
 - Current role (Independent/sole proprietor, staff field appraiser, staff reviewer, administration/management)
 - Primary field of appraisal - Residential, commercial, both, or other (*e.g.*, eminent domain, litigation, etc.)
 - Primary client base – Mortgage Lenders, Commercial Lenders, Litigation, Probate, Quality Control, Tax Assessment, Other
- Quality and availability of appraisal services
 - Reliability or lack thereof
 - Availability of appraisers
 - Primary reasons for reconsiderations of value
- AMCs
 - Number of lenders using AMCs for their appraisal needs
 - Private and governmental oversight
 - Nature and quantity of complaints against AMCs
 - Number of AMCs owned by a federally regulated institution
- Standards and Qualifications
 - Quality of existing USPAP and AQB Criteria
 - Impact/ cost/benefit of two-year USPAP change cycle
 - Impact AQB Criteria has on diversity
 - Confidence in the work of the Appraisal Foundation

- ASC/State Regulatory Programs/Overall Appraiser Oversight
 - Adequacy of oversight of the States and Appraisal Foundation
 - Current State licensing system versus a federal model
 - Confidence in the work of the ASC

Methodology

The ASC has secured a capable partner to manage this project in partnership with the ASC. The Council on Licensure, Enforcement and Regulations, Inc. (CLEAR) has a three-year cooperative agreement with the ASC to, in part, undertake research that includes:

Conducting a needs assessment to determine States' needs for education of licensing staff, administrators, board members and legal staff covering areas such as Statutes, Regulations, Policies and Procedures, Real Property Appraiser Qualification Criteria, Education Course Review, National Registry, and AMC Program Administration. Research, such as demographic studies on the need for additional appraisers or causes of appraiser shortages.

CLEAR is working with ASC under a cost-reimbursement cooperative agreement that specifies the amount awarded based on a budget submitted to and negotiated and approved by the ASC. CLEAR is authorized to spend funds as costs are incurred based on the approved budget during a specified budget period. The ASC may add additional funds to the CLEAR agreement during a given grant year as new, specific tasks, initiatives or needs are identified.

The ASC will work with CLEAR to develop a scope of work and estimated budget. CLEAR will manage the procurement of appropriate experts – both individuals and organizations – that will be invited to submit proposals to conduct the research project developed by CLEAR with the direct input of ASC staff and Board.

Budget

The exact cost of this initiative will be more clearly defined once the project is initiated and stakeholders are engaged to provide input through a Needs Assessment. Additional budget authority to carry out the Census/Survey will be requested once we have more detail. Any unused funds will remain with the ASC at the end of the project.

Timeline

Development of the project can begin immediately with an amendment to the CLEAR cooperative agreement. Timelines for deliverables related to the project will be provided at the next regularly scheduled ASC Board meeting.