Response to Waiver Request

Position:

1) There are no compelling grounds (that have been published or presented by the Nashville area banks that I have seen) that can justify waivers for using certified or licensed appraisers in federally related transactions as described in Title XI of FIRREA.
2) Once a lending institution is chartered and insured for federally related transactions the public interests must be protected from irregular, abusive and/or irresponsible lending practices.
3) There are no provisions (other than decisions regarding specific rural areas of the US) that I am aware off, that can/should override or offset the essential and protective requirements as prescribed by the ASC and the Federal Financial Institutions Examination Council.

Basis:

1) Shortage of appraisers appears to be the only prescribed basis for temporarily granting waivers. OCC Bulletin 2017-19 cites: *These temporary waivers may provide regulated institutions lending in affected areas with access to more individuals eligible to complete the required appraisals, which may help alleviate some of the cost and burden associated with having a shortage of state certified or licensed appraisers in affected areas.*

Commentary:

1) Statically, there are 81 Active licensed residential appraisers listed on the ASC credential list, out of 172 total Active and Inactive – specifically identified in the Nashville region.
2) If Appraisal Management Companies were added to the list wherein their company coverage extends throughout the State of Tennessee (as well as other states), it is difficult to imagine, statistically, that there is a shortage, per se, of appraisers to service the needs of Tennessee lenders or even Nashville regional area lenders.
3) The OCC citation reads: "*...access to more individuals eligible to complete the required appraisals...*" The troubling concern is the vagueness of "eligible." What institution decides who is *eligible* and to what extent they may be trained, experienced and qualified to opine on property values where the public trust in a federally related transaction is at risk? What is the standard for eligible?
4) The OCC citation reads: "*...which may help alleviate some of the cost and burden associated with having a shortage...*" The troubling concern with this comment again is the vague and ambiguous reference to the terms "cost" and "burden." To what extent does cost or burden (to a lending institution, apparently) find relevancy in prescribing a waiver that ostensibly extends the "burden" of risk in the transaction to public taxpayer - supporting insured federally related transactions? What is the standard for cost and burden?

5) Obviously risk management for the lender comes down to deferral of the risk to the insurer in a banking transaction where the confirmation of the loan to value asset ratio is left to a value from an untrained, non-licensed and non-regulated individual (or groups of individuals). Recall the unimaginable that followed a 2008 financial crisis that led to financial institution failures where the FDIC closed 465 failed banks between 2008 and 2012. In contrast to the five previous years before 2008, only 10 banks failed. Does the waiver policy take the public back down the path of irresponsibility due to undefined and unregulated practices? Do we dare look at another 2008?
6) The current waiver policy does not contain sufficient guidance (as published) to be reliable in a comprehensive, cohesive and/or metrically-supported fashion. Once there is a belief in the banking world that waivers are the bill-of-fair, the result will be a hurricane flurry by banks to turn real property lending into nothing more than auto-sales-like financing where every gimmick will be attempted to further corrupt the financial industry.

Consider *The Law of Unintended Consequences*[i]: Imagine for the moment, licensed certified waivers begin to expand or even run rampant. What could and probably will happen is that the appraisal fee structure will further collapse as undercutting of appraisal fees will occur with the oversupply of *non-appraiser*, appraisers. The supply of licensed and competent appraisers will dwindle at a rapid pace as the already depleted appraiser population has no financial incentive to stay active in the appraisal business. Correspondingly, the valuations will likely be highly questionable because there is no regulatory process available to protect consumers, lenders and public at large from self-interest.

Two things should to happen in response to these requests: one is denial of the waivers at this time; two is extensive research and rewriting to establish responsible standards that are enforceable, have meaning and consequences where waivers are requested.

[redacted]

Sacramento, CA

###

---

[i] *The concept of unintended consequences is one of the building blocks of economics. Adam Smith's "invisible hand," the most famous metaphor in social science, is an example of a positive unintended consequence. Smith maintained that each individual, seeking only his own gain, "is led by an invisible hand to promote an end which was no part of his intention," that end being the public interest. "It is not from the benevolence of the butcher, or the baker, that we expect our dinner," Smith wrote, "but from regard to their own self-interest."* Rob Norton – The Concise Encyclopedia of Economics