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Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 4, 2019

The Honorable Sherrod Brown
United States Senate
Washington, DC 20510

The Honorable Maxine Waters
United States House of Representatives
Washington, DC 20515

Dear Ranking Member Brown and Chairwoman Waters:

Thank you for the opportunity to respond to your request for additional information on the Appraisal Subcommittee's (ASC) recent temporary waiver of appraiser certification and licensing requirements (credentialing requirements) in the State of North Dakota. Before addressing your specific questions, I will provide some background information.

Background

On August 1, 2018, the Governor of North Dakota, the North Dakota Department of Financial Institutions, and the North Dakota Bankers Association (Requester) submitted a temporary waiver request to the ASC. The Requester sought a temporary waiver of not less than five years of the appraiser credentialing requirements for appraisals of federally related transactions (FRTs) under \$500,000 for 1-to-4 family residential real estate transactions and under \$1,000,000 for agricultural and commercial real estate transactions throughout the State of North Dakota. On September 7, 2018, the ASC responded with a request for clarification and additional information. On April 10, 2019, the Requester submitted a second letter with a clarification of the request, additional data and information pertaining to the scarcity of appraisers leading to significant delays in appraisal services for FRTs, the cost of appraisals, representations regarding safety and soundness, and additional supporting documentation. This request was the fourth request received by the ASC for a temporary waiver of appraiser credentialing requirements under Title XI of FIRREA.

On July 9, 2019, the ASC convened a Special Meeting to consider the request. Based on the information provided by the Requester, the North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board), and by the public through comment letter submissions, as well as additional research and analysis conducted by the ASC, the ASC issued an Order

approving a modified and more limited version of the temporary waiver request.¹ In general, the modified temporary waiver includes the following terms and conditions:

- A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under \$500,000 for 1-to-4 family residential real estate transactions throughout the State of North Dakota for a period of one year. The Order, however, provides for an early termination of the temporary waiver on residential transactions if the federal banking agencies issued a rule increasing the appraisal exemption threshold limits for residential real estate transactions. (The ASC was aware that the federal banking agencies had proposed a rulemaking to increase the appraisal exemption threshold limits for residential real estate transactions. The related provisions of the banking agencies' final rule were published and became effective on October 9, 2019,² thereby triggering the early termination of the temporary waiver with respect to residential transactions.)
- A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under \$1,000,000 for commercial real estate transactions throughout the State of North Dakota for a period of one year.
- An expectation that the Requester will work to develop a plan, through continued dialogue with other stakeholders, to identify potential solutions to address the scarcity and delays.
- An expectation that the Requester provide a status report and supporting information as described in the Order not less than 30 days before the one-year expiration of the temporary waiver if the Requester would like the ASC to consider providing a one-year extension.
- A statement that the ASC may terminate the waiver at any time if the ASC finds that the terms and conditions of the Order are not being satisfied, or that significant delays in the receipt of appraisals for FRTs no longer exists.

Response to Specific Questions

With that background, below are the ASC's responses to your specific questions.

- 1. What types of data does the ASC consider when granting a waiver under Title XI? Has the ASC established a policy to determine minimum standards for reliability for any data submitted to be considered as part of the ASC's waiver consideration? If not, should the ASC establish such standards?**

¹ An approval of a temporary waiver by the ASC is subject to the approval of the Federal Financial Institutions Examination Council (FFIEC). 12 U.S.C. § 3348(b); 12 CFR § 1102.5. On July 12, 2019, the FFIEC approved the temporary waiver granted by the ASC on July 9, 2019.

² 84 FR 53579.

In considering whether to grant a temporary waiver under Title XI, the ASC will consider all relevant information provided by a party or parties requesting the waiver, a State Appraisal Regulatory Agency, or by other persons or entities that submit information during the comment period. For example, the ASC has considered such data as turnaround times for ordered appraisals, trends in those turnaround times, average appraisal turnaround times, and survey responses submitted by the requesting party or parties.

While the ASC does not have a formal policy regarding the minimum standards for data reliability, the ASC's process for requesting additional information, as needed, enables the ASC to seek clarifications and solicit information that would be most helpful to its deliberations regarding the unique facts relative to each specific temporary waiver request. For example, the ASC's request for additional information and clarification with respect to the North Dakota waiver request was useful in assessing the data in making a determination. The ASC's process of soliciting public comment on temporary waiver proceedings also enables the ASC to benefit from data and views from a variety of relevant stakeholders.

2. In the event that there is a conflict between data sets submitted in official comments on a waiver request, how does the ASC resolve such conflicts?

The ASC carefully considers all information submitted by the requesters, as well as comments received in response to the temporary waiver proceeding public notice process. The ASC recognizes that the sources of information and presentation methods provided during the temporary waiver process may present conflicts in the information relating to shortages of appraisers and delays in the appraisal process. If there is conflicting data, the ASC attempts to assess these differences through independent research and analysis. The ASC will also request clarification from the parties where necessary, and hold public meetings to seek further views and information from relevant stakeholders.

3. Do any of the ASC member agencies have access to data that could inform deliberations about granting a waiver under Title XI? If so, did any agencies supply such data? If not, should any of the ASC member agencies maintain such data?

The ASC member agencies have limited data on appraisers and appraiser availability; however, the ASC has and will continue to consider any information provided by the member agencies that might assist in temporary waiver deliberations, such as information about the volume of FRTs engaged in by regulated institutions.

4. The median sales price of a single-family home was \$238,800 in the Bismarck, North Dakota market, the most expensive market in North Dakota reported by the National Association of Realtors. The approved waiver would impact single-family home transaction below \$500,000, more than twice the median home value. What percentage of North Dakota federally-related single-family transactions do you expect to be eligible for the waiver? Did the ASC consider market prices and the percentage of exempt transactions when setting the waiver terms?

Given factors such as the existing thresholds for the federal banking agencies' appraisal requirements at the time the waiver was granted, and that real estate prices in North Dakota are generally lower than the national average, it is probable that there may be a small number of residential real estate transactions in North Dakota that would be FRTs requiring an appraisal, resulting in a smaller number of residential transactions that would benefit from the waiver.

The ASC considered market prices and the percentage of exempt transactions in processing the waiver request.

As noted above, the ASC also was aware that the federal banking agencies had proposed a rulemaking to increase the appraisal exemption threshold limits for residential real estate transactions. The related provisions of the banking agencies' final rule were published and became effective on October 9, 2019. The ASC's Order specifies that the temporary waiver for residential real estate transactions will terminate 60 days after the effective date of that rule.³

5. What percentage of North Dakota federally-related commercial transactions do you expect to be eligible for the waiver? Did the ASC consider market prices and the percentage of exempt transactions when setting the waiver terms?

Because of limitations in available data, the ASC does not have a precise estimate of the percentage of commercial real estate transactions that will be eligible for the waiver. However, the ASC did consider market price estimates in setting the terms and conditions in the Order granting the temporary waiver for a much shorter period than requested.

6. Does the ASC expect that appraisals performed by individuals who are not licensed, or certified appraisers will still be USPAP compliant and meet any other standards established by regulators?

Yes. Pursuant to statutory authority, the ASC may only waive credentialing requirements and cannot waive the requirement for appraisals. Any appraisals for FRTs must still meet the other regulatory requirements for FRTs, such as compliance with USPAP.

Title XI requires appraisals for FRTs to comply with USPAP, which is reflected in the Order. It is the responsibility of the lender to acquire a USPAP-compliant appraisal for FRTs. The temporary waiver allows the appraisal to be completed by any qualified individual who is not credentialed in the State of North Dakota. To that end, any lender who obtains an appraisal that does not comply with USPAP standards would not be in compliance with applicable regulations issued by their respective supervisory agencies.

³ See <https://www.federalregister.gov/documents/2019/08/07/2019-16908/appraisal-subcommittee-final-order-granting-in-part-temporary-waiver-relief>.

7. **Will consumers, financial institutions, and regulators have the same oversight and recourse available if their appraisal is performed by an individual who is not a certified or licensed appraiser as they would have if their appraisal were performed by a certified or licensed appraiser? If not, how will any oversight or recourse differ?**

Consumers or others wishing to submit a complaint regarding an appraisal performed by an individual who is not a licensed or certified appraiser may follow existing processes for submitting complaints with a State or federal regulatory agency with jurisdiction over the transaction.

As noted above, financial institutions and lenders will still be responsible for ensuring that appraisals for FRTs meet USPAP standards and other regulatory requirements for FRTs.

From a policy perspective, the ASC's decision to grant a limited one-year waiver reflects the recognition that while waivers are an available statutory tool designed to provide temporary relief, all interested stakeholders should work together to find long-term solutions that will help resolve a shortage of appraisers. To provide some additional clarity and transparency for all stakeholders, the ASC is in the process of drafting a *Frequently Asked Questions* document to clarify the ASC's process for considering temporary waiver requests. We appreciate the opportunity to address your questions.

Sincerely,



Arthur Lindo
Chairman

cc: ASC Members