

***Frequently Asked Questions (FAQs):
Temporary Waiver Authority***

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Question #1 – What is a temporary waiver?

Response – The Appraisal Subcommittee (ASC) may waive by order, on a temporary basis and with concurrence of the Federal Financial Institutions Examination Council (FFIEC), any requirement relating to certification or licensing (credentialing requirements) of persons eligible to perform appraisals for federally related transactions (FRTs). Such an order requires the ASC’s written determination that 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, that has led to significant delays in the performance of such appraisals. Congress provided this authority to the ASC as part of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The ASC has promulgated regulations that set forth procedures governing the processing of temporary waiver requests. (See 12 CFR part 1102.) The temporary waiver proceeding provides opportunity for public input.

Temporary waivers of credentialing requirements are meant to be a temporary measure to address scarcity of appraisers in an area. A temporary waiver may be helpful in allowing markets, governments, and appraiser regulatory agencies to address appraiser scarcity.

Question #2 – What are the credentialing requirements that the ASC can temporarily waive?

Response – Credentialing requirements include any requirement for certification or licensing of appraisers to perform appraisals for FRTs.

Question #3 – What transactions are included within the scope of a temporary waiver?

Response – A temporary waiver order covers FRTs as defined in the appraisal regulations of the Federal financial institutions regulatory agencies (agencies’ appraisal regulations). An FRT includes 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 under the agencies’ appraisal regulations. (See, e.g., 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.)

Question #4 – If a temporary waiver is granted, can it be limited to a specific area within a State?

Response – Yes. A temporary waiver may apply to a State or any geographical political subdivision of a State depending on the scope of the ASC’s final order.

Question #5 – Does a temporary waiver eliminate the requirement for an appraisal for FRTs?

Response – No. The ASC may only waive credentialing requirements for persons eligible to perform appraisals for FRTs. However, the ASC cannot waive the requirement for an appraisal under 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. The 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). (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]).

Question #6 – What is the history of this temporary waiver authority?

Response – Congress first provided temporary waiver authority to the ASC as part of Title XI in 1989. The ASC published rules of practice and procedure governing temporary waiver proceedings in 1992 to address the initial State implementation of the Title XI appraiser regulatory framework, stating in the preamble that the temporary waiver authority “provides the ASC and the States with a degree of flexibility in dealing with extraordinary circumstances.” Congress intended that the ASC exercise this waiver authority “cautiously.” (See 57 Federal Register 10979.)

The ASC has ordered temporary waiver relief on two occasions. The first was for the Commonwealth of the Northern Mariana Islands in February 1993 (preceded by an interim order for relief issued in December 1992). The second was in August 2019 for the State of North Dakota.

Question #7 – Who can request a temporary waiver?

Response – A State Appraiser Regulatory Agency may request a temporary waiver. Additionally, Federal financial institution regulatory agencies, their federally regulated institutions, and other persons or institutions with a demonstrable interest in appraiser regulation may request a temporary waiver. The ASC has promulgated regulations that set forth procedures governing the processing of temporary waiver requests. (See 12 CFR part 1102.)

Question #8 – What information should be provided to request a temporary waiver?

Response – A request should include clear and specific data to support a requestor's claim that there is a scarcity of appraisers leading to significant delays in the performance of covered appraisals. The data supporting such a claim may vary from location to location and situation to situation.

The information required for a temporary waiver request from a State Appraiser Regulatory Agency is provided in 12 CFR § 1102.2, which includes the requirement for “[a] specific plan for expeditiously alleviating the scarcity and the service delays.” (See 12 CFR § 1102.2(g)).

The information required for a temporary waiver request from any other party is provided in 12 CFR § 1102.3, which “strongly encourage[s] . . . meaningful suggestions and recommendations for remedying the situation.”

Regardless of the party making the waiver request, and while not required, information about the following can assist the ASC in its review of a temporary waiver request:

1. Geography – location(s) of the scarcity leading to significant delay.
2. Transactions – types of FRTs impacted (*i.e.*, property type(s) and transaction amount(s)).
3. Time – length of waiver requested.

Question #9 – How long does the temporary waiver process take?

Response – When the ASC receives a request from a State Appraiser Regulatory Agency that meets the requirements set forth in 12 CFR § 1102.2, including a written duly authorized determination that there is a scarcity of certified or licensed appraisers leading to significant delays in obtaining appraisals in FRTs, the request will be published promptly in the *Federal Register* for comment. In the absence of such a written determination, the State Appraiser Regulatory Agency must ask the ASC for such a determination.

When the ASC receives a submission from any other party pursuant to 12 CFR § 1102.3, the ASC has the discretion to determine whether or not to initiate a temporary waiver proceeding. If the ASC makes a determination to initiate a temporary waiver proceeding, the ASC will promptly publish notice of the proceeding in the *Federal Register*.

Various factors can affect the time needed for the ASC to make a determination, either when requested by a State Appraiser Regulatory Agency, or when exercising its discretion whether or not to initiate a proceeding. Such factors may include the need for supporting documentation and/or verification of information received, whether or not the ASC seeks further clarification from the requesting party, engaging interested stakeholders, and general due diligence required in order to make such a determination or not.

Within 45 calendar days of the date of publication in the *Federal Register*, the ASC shall grant or deny a waiver, in whole or in part, by order. The ASC must seek FFIEC approval if the waiver is granted and the waiver cannot take effect unless approved by the FFIEC.

Question #10 – If a temporary waiver is granted, how long does it last?

Response – The specific duration of a temporary waiver may vary and is determined by the ASC based on the specific circumstances. The ASC may, at any time, terminate a temporary waiver order upon the finding that: (a) the significant delays in obtaining the services of certified or licensed appraisers no longer exist; or (b) the terms and conditions of the waiver order are not being satisfied. (*See* 12 CFR § 1102.7.)

Question #11 – If a request is denied, do the ASC’s regulations provide for an administrative appeals process?

Response – No. However, while there is no administrative appeal process, the ASC will continue to work with the interested parties to help them identify alternative solutions.

Question #12 – Can I reapply if my temporary waiver request is denied?

Response – Yes.

Question #13 – How is “scarcity” of appraisers defined?

Response – There is no statutory or regulatory definition of what constitutes a scarcity of appraisers. Requestors should provide sufficient information demonstrating that a scarcity exists. The information could include, for example, the number and type of licensed and credentialed appraisers and the volume and type of FRTs in the geographic area specified in the waiver request. Other information could include comparative data on trends in appraiser availability.

Question #14 – How is “significant delay” in the performance of appraisals defined?

Response – There is no statutory or regulatory definition of what constitutes significant delay in the performance of appraisals. Requestors should provide sufficient information demonstrating that a significant delay exists and that a scarcity of appraisers is leading to such a delay. Such information could include, for example, data on the appraisal turnaround time for FRTs involving commercial and residential properties across the various geographic areas specified in the waiver request. Other examples could include information on the cause(s) and attributes of the delays.

Question #15 – Would evidence of a longer than average turnaround time be sufficient for the ASC to grant a temporary waiver?

Response – Title XI authorizes the ASC to grant a temporary waiver only when the ASC or a State Appraiser Regulatory Agency has made the statutorily required written determination that: (1) 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; and (2) such scarcity is leading to significant delays in the performance of such appraisals for FRTs. Therefore, evidence of a longer than average turnaround time alone is not sufficient to support granting a temporary waiver.

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