



FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS20-08]

Appraisal Subcommittee; Order Extending Commercial Real Estate Transaction

Temporary Waiver Relief

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Order extending, with specified terms and conditions, commercial real estate transaction temporary waiver relief.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC), with approval of the FFIEC, is issuing an Order pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI) and the rules promulgated thereunder, extending temporary waiver relief of appraiser credentialing requirements for appraisals of federally related transactions (FRTs) under \$1,000,000 for commercial real estate transactions throughout the State of North Dakota for an additional one-year period and subject to specified terms and conditions.

DATES: Applicable August 7, 2020

FOR FURTHER INFORMATION CONTACT:

James R. Park, Executive Director, at (202) 595-7575, or Alice M. Ritter, General Counsel, at (202) 595-7577, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis and subject to the approval of the FFIEC, “any requirement relating to certification or licensing of a person to perform appraisals under [Title XI]” upon “a written determination that there is a scarcity of certified or

licensed appraisers to perform appraisals in connection with [FRTs]¹ in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.”² The ASC has promulgated regulations that set forth procedures³ that govern the processing of temporary waiver requests.

On August 1, 2018, the Governor of North Dakota, the North Dakota Department of Financial Institutions, and the North Dakota Bankers Association (Requesters) submitted a temporary waiver request to the ASC. The Requesters sought a temporary waiver of not less than five years of appraiser credentialing requirements for appraisals for 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.⁴

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, the ASC issued an Order (2019 Order) approving a limited version of the waiver request.⁵ The 2019 Order

¹ “Federally related transaction” (FRT) refers to any real estate related financial transaction which: (a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1121 (4), 12 U.S.C. § 3350.)

² 12 U.S.C. § 3348(b).

³ 12 CFR part 1102, subpart A.

⁴ On September 7, 2018, ASC staff responded with a request for clarification and additional information, and on April 10, 2019, the Requesters submitted an additional letter with a clarification of the request and additional information.

⁵ An approval of a temporary waiver by the ASC is subject to the approval of the FFIEC. (See 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.

was published in the *Federal Register*,⁶ and in pertinent part⁷ included 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. The 2019 Order also provided that, among other things, the parties requesting the waiver should submit certain information to the ASC at least 30 days prior to the expiration of the one-year period and the ASC would consider the information submitted and by vote in open session may extend the temporary waiver for an additional one-year period.

On July 6, 2020, Requesters submitted certain information and as amended on July 8, 2020, sought extension of the commercial real estate transaction temporary waiver relief for an additional one-year period.⁸ On July 29, 2020, the ASC convened a Special Meeting via teleconference to consider the information as presented by the Requesters and voted to extend the commercial real estate transaction temporary waiver relief in North Dakota for an additional one-year period, subject to specified terms and conditions, and subject to FFIEC approval. The FFIEC met on August 7, 2020, via WebEx, and a quorum of the Council being present, took the following action: pursuant to § 1119(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, the Council approved the attached waiver extension that was approved by the ASC on July 29, 2020.

⁶ 84 FR 38630 (August 7, 2019).

⁷ The Order also included 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, subject to earlier termination in the event the federal banking agencies issued a rule increasing appraisal exemption threshold limits for residential real estate transactions, in which case the residential waiver would terminate 60 days after the effective date of that threshold increase. The federal banking agencies issued a final rule increasing the appraisal exemption threshold for residential real estate transactions with an effective date of October 9, 2019. 83 FR 63110 (December 7, 2018). The temporary waiver for residential real estate transactions terminated by its own terms 60 days after the effective date of that rule on December 8, 2019.

⁸ Requesters were joined in their July 6 submission by the Credit Union Association of the Dakotas and the Independent Community Banks of North Dakota.

ASC DISCUSSION

In order to extend the commercial real estate transaction temporary waiver relief in North Dakota for an additional one-year period, the 2019 Order set forth the following specified terms and conditions:

1. During the one-year period, the Requester is expected to develop a plan through continued dialogue with North Dakota stakeholders, including the Appraiser Board, to identify potential solutions to address appraiser scarcity and appraisal delay.
2. At least 30 days prior to the expiration of the one-year period, the Requester should provide (1) a status report to the ASC on the plan that was developed in collaboration with stakeholders and any implementation progress made on that plan toward identifying meaningful solutions to resolve appraiser scarcity and delay issues faced in North Dakota; and (2) supporting data showing that appraiser scarcity leading to significant delays continues to exist, which may include information to identify specific localities affected by appraiser scarcity. The ASC will consider the information as presented by the Requester, and by vote in open session, may extend the temporary waiver for an additional one-year period.

In their July 6 submission, Requesters reported that a November 6, 2019 meeting had been held with North Dakota stakeholders, including appraisers.⁹ Requesters provided a list of 25 “ideas and potential solutions” identified by the meeting’s 58 attendees as potential steps to address appraiser scarcity or appraisal delays. Requesters stated that a follow-up meeting was planned for the spring of 2020, but that “due to the challenges presented by the COVID-19

⁹ In its submission, the Appraiser Board advised that appraisers in attendance at this meeting were not affiliated with the Appraiser Board.

pandemic, all in-person meetings and conventions were canceled when travel became restricted and everyone responded to the crisis.” Requesters further stated that “[a]lthough our collaboration efforts have been disrupted for the time being, we are anticipating future collaboration to do as much as we can locally.”

In support of their assertion that a scarcity of appraisers persists in North Dakota, Requesters cited data from the Appraiser Board indicating that the number of certified general appraisers (needed to appraise commercial and agricultural properties) has fallen from 67 as of September 17, 2018, to 65 as of April 30, 2020. Requesters reported that a May 2020 survey by the North Dakota Department of Financial Institutions found that turnaround times for commercial appraisals have improved over the past year (which Requesters attributed to the current waiver and the increased appraisal threshold for credit unions for commercial real estate transactions) but 23 percent of respondents still report delays more than 50 percent of the time and 23 percent of respondents reported 5 or more delays in the past 12 months.

The ASC also considered information received from the Appraiser Board. The Appraiser Board stated that a July 2020 survey found that at least 80 percent of commercial appraisers responding reported appraisal turn times of five weeks or less in each of North Dakota’s six regions. According to the same survey, 90 percent of agricultural appraisers responding reported appraisal turn times of six weeks or less in five of North Dakota’s six regions.

In considering this request to extend commercial real estate transaction temporary waiver relief in North Dakota, the ASC found the information submitted by the Requesters to be less robust than the ASC had expected to support a one-year extension under the terms of the 2019 Order. The ASC also acknowledges extenuating and unprecedented circumstances. The United States has been operating under a presidentially declared emergency since March 13, 2020. The

ASC acknowledges challenges posed by Coronavirus Disease 2019 (COVID-19). As stated in the *Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus*¹⁰, “COVID-19 has significantly affected financial institutions and their customers.” It is reasonable to conclude that the Requesters’ intentions to further collaborate with financial institutions as well as other North Dakota stakeholders were negatively impacted by the disruption resulting from COVID-19. Further, the disruption resulting from COVID-19 impacted the ASC’s expectations of what steps the Requesters could be expected to take to further collaborate with financial institutions as well as other North Dakota stakeholders. Given the impediments resulting from COVID-19, the State has sufficiently fulfilled the requirements of the 2019 Order to meet the ASC’s altered expectations.

Specifically, in order to extend the temporary waiver, the ASC must make a determination that a scarcity of credentialed appraisers leading to significant delays in obtaining appraisals for FRTs continues to exist. In considering whether to extend the current waiver, the ASC has examined both evidence of scarcity of appraisers in North Dakota, and the evidence of scarcity leading to significant delays. The ASC considered the challenges the current pandemic has posed in gathering data about turnaround times. After reviewing all the facts of record, a majority of the ASC members have determined that a scarcity of appraisers continues to exist in North Dakota and that the scarcity is leading to significant delays in appraisal services for FRTs under \$1,000,000 for commercial real estate transactions in North Dakota.

¹⁰ *Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus* was issued April 14, 2020, by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Consumer Financial Protection Bureau, National Credit Union Administration.

Therefore, for the reasons described above and after considering all the facts of record, by majority vote, the ASC determined to extend commercial real estate transaction temporary waiver relief for an additional one-year period, subject to specified terms and conditions, and subject to FFIEC approval, as follows:

1. 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 is extended for an additional one-year period, expiring August 7, 2021.
2. During the additional one-year period, Requesters are expected to continue efforts to develop, through continued dialogue with the Appraiser Board and other North Dakota stakeholders, a plan to identify potential solutions to address appraiser scarcity and appraisal delays.
3. The ASC pursuant to 12 CFR 1102.7 may terminate this waiver order on a finding that significant delays in the receipt of appraisals for FRTs no longer exists, or that the terms and conditions of the order are not being satisfied.

ORDER

After reviewing all the facts of record, including submissions by the Requesters and by the Appraiser Board, the ASC has determined that a scarcity of appraisers continues to exist in North Dakota and that the scarcity is leading to a significant delays in appraisal services for FRTs under \$1,000,000 for commercial real estate transactions in North Dakota.

Accordingly, and for the reasons stated in the “ASC Discussion” section above, and pursuant to section 1119(b) of Title XI and 12 CFR part 1102, subpart A, the ASC is extending the commercial real estate transaction temporary waiver relief for North Dakota for an additional

one-year period, subject to the following specified terms and conditions, and subject to FFIEC approval:

1. 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 is extended for an additional one-year period, expiring August 7, 2021.
2. During the additional one-year period, Requesters are expected to continue efforts to develop, through continued dialogue with the Appraiser Board and other North Dakota stakeholders, a plan to identify potential solutions to address appraiser scarcity and appraisal delays.
3. The ASC pursuant to 12 CFR 1102.7 may terminate this waiver order on a finding that significant delays in the receipt of appraisals for FRTs no longer exists, or that the terms and conditions of the order are not being satisfied.

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By the Appraisal Subcommittee,

August 7, 2020.

Tim Segerson,
Chairman.
Billing Code 6700-01

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