

HISTORY:

Federal Register Vol. 64, No. 100/
Tuesday, May 25, 1999 page 21875.
Vol. 70, No. 183/Thursday, September
22, 2005, page 55621.

Dated: August 10, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

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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

¹ “Federally related transaction” (FRT) refers to
any real estate related financial transaction which:

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 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

(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.

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.

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.

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.

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.

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 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.

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:

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.

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.

* * * * *

By the Appraisal Subcommittee, August 7, 2020.

Tim Segerson,
Chairman.

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