

**APPRAISAL SUBCOMMITTEE
OPEN SESSION SPECIAL MEETING MINUTES
JULY 9, 2019**

LOCATION: Partnership for Public Service
1100 New York Avenue NW, Suite 200 East, Washington, DC 20005

ATTENDEES

ASC MEMBERS: FRB – Art Lindo (Chair)
CFPB – Philip Neary
FDIC – Marianne Hatheway
FHFA – Robert Witt
HUD – Bobbi Borland
NCUA – Tim Segerson
OCC – Richard Taft

ASC STAFF: Executive Director – Jim Park
Deputy Executive Director – Denise Graves
General Counsel – Alice Ritter
Financial Manager – Girard Hull
Attorney-Advisor – Ada Bohorfoush
Policy Manager – Claire Brooks
Policy Manager – Vicki Ledbetter-Metcalf
Management and Program Analyst – Lori Schuster
Administrative Officer – Brian Kelly

OBSERVERS: See Attachment

The Special Meeting was called to order at 10:10 a.m. by A. Lindo.

ACTION ITEM

- **State of North Dakota Temporary Waiver Request**

A. Lindo welcomed observers to the Meeting. The ASC is considering a Temporary Waiver Request (Request) from the North Dakota Governor's Office, the North Dakota Department of Financial Institutions and the North Dakota Bankers Association (collectively, the Requester). [Procedural status: On August 1, 2018, a letter requesting a temporary waiver was submitted to the ASC by the Requester. On September 7, 2018, ASC staff replied to the Requester by letter, in which ASC staff described the information required to file a completed waiver request pursuant to 12 CFR §§ 1102.2 and 1102.3. The Requester submitted additional information in a letter dated April 10, 2019, in response to the ASC's September 7, 2018 letter. On April 15, 2019, the ASC convened a Special Meeting and determined to publish a notice for comment on the request for temporary waiver in the *Federal Register*. The notice for comment was published on May 30th with comments due

on July 1st. Regulations.GOV shows 109 comments received in total with 105 viewable comments due to duplicates and 2 withdrawals.]

J. Park provided some background on temporary waiver requests and requirements. He said the Requester seeks a waiver of appraiser credentialing requirements for 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 for a period of not less than five years. He noted that most comments in response to the *Federal Register* notice were from North Dakota appraisers who were against approval of the Request. There were four responses from lending institutions in North Dakota that were in support of the Request.

A. Lindo invited the Requesters to speak. L. Kruse of the North Dakota Department of Financial Institutions (DFI) stated DFI's mission and the reasons for the Request. She emphasized that a scarcity of appraisers in the State was leading to a delay in turnaround times on appraisal reports which was affecting the closing of loans. She said population is not the only indicator of scarcity and that in North Dakota there is scarcity by reason of geography. She said the high cost of appraisals is paid by the customer which causes harm. DFI does not feel the waiver would cause safety and soundness issues. She commented on the Interagency Advisory on the Availability of Appraisers issued in May of 2017 and stated that in a meeting with Federal agency representatives, she was told that waivers could be used to address scarcity. She said the request was submitted and provided evidence in good faith to provide relief to consumers.

M. Foss spoke next representing the North Dakota Bankers Association (NDBA). She was the General Counsel for the NDBA when the Request was submitted in August 2018. She said that NDBA reached out to the North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board) to express concerns about an appraiser shortage in the State, and that NDBA also participated in various committees to address the scarcity issue which has caused lenders delays in assigning and receiving appraisal reports. She said the shortage does cause delay and lost loans because reports cannot be completed. She noted that since the request was submitted, the North Dakota Attorney General released an opinion on June 26th stating that permits are required to perform appraisals in North Dakota, but that existing exceptions in the law provide the foundation needed to implement any waiver that the ASC would grant. She does not feel that safety and soundness of the financial system would be affected as lenders located in North Dakota have shown their ability to evaluate for safety and soundness of a loan. She added that if approved, the waiver would be more available to agricultural and commercial loans.

C. Kost, Appraiser Member of the Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board), spoke on behalf of the Board. He asked the ASC to deny the Request as the Appraiser Board feels that scarcity was not adequately addressed by the Requesters. Approval of the Request would also supersede the Appraiser Board's authority. He referred to comments in response to the *Federal Register* notice by the Association of Appraiser Regulatory Officials (AARO) and the Appraiser Board and other comments from in-State appraisers who have been turned away from lender appraiser panels. He said the

AARO comment requested great deference be granted to the Appraiser Board as being in the best position to evaluate any scarcity. He noted that lenders have not attended any recent Appraiser Board Meetings and refuted the claim that either NDBA or DFI met with State appraisers to address the perceived shortage. He added that appraisers are eager to work with lenders but need to be given that opportunity. He stated that in 3 years, there has been no attempt to resolve differences. He commented that it is a well-supported conclusion that the number of appraisers in North Dakota is on par with other rural States and that timeliness in providing appraisals is improving. He said that lenders supporting a waiver are not interested in adding more appraisers to panel. He questioned how using uncredentialed appraisers would protect consumers; would appraisers with revoked credentials be allowed to appraise; how enforcement against an uncredentialed appraiser would be handled since the Appraiser Board would have no jurisdiction; what consequences would exist for lenders who participate in fraudulent appraisals; would users of appraisal services be made aware of an uncredentialed appraiser's background and would the use outweigh the risk. He suggested there are alternatives to granting a waiver stating that Licensed or apprentice appraisers are under-utilized, that SB2155 (now Title XI § 1127. *Exemption From Appraisals of Real Estate Located in Rural Areas* [12 U.S.C. 3356]) covers 90% of ND FRTs. He added that increased data availability would shorten the appraiser's turnaround time, citing the example of assessor records not being available online in the State. He also noted there are limitations to MLS and extreme weather slows everything down in the State. He noted a comment in response to the *Federal Register* notice that there is a lack of communication between lenders and appraisers.

R. Taft asked L. Kruse why geography and not population was the basis used to determine scarcity. L. Kruse responded that appraisers in North Dakota may cover multiple counties because of the rural geography of the State. The Requester also reviewed commercial and residential growth in North Dakota over the past few years. While the North Dakota economy did experience a slowdown in 2014, there was still growth. R. Taft asked how a temporary waiver would provide relief. L. Kruse responded that the scarcity issue has been ongoing, and the appraiser profession can be difficult to enter. She commented that while there has been some relief in the form of loosened Appraiser Qualifications Board Criteria, and the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), it will take time for those changes to be realized. R. Witt asked what the State has done to provide relief to procure timely appraisals to address delays. He added that if lenders are not utilizing Licensed appraisers on their panels that would not determine a scarcity. L. Kruse responded that transactions valued at or higher than \$1,000,000 must be appraised by Certified appraisers; lenders selling in the secondary market also want to utilize only Certified appraisers. R. Witt said that appraisers may serve multiple counties, not just the county they reside in. L. Kruse responded that North Dakota lenders are using all available appraisers, even out-of-State appraisers, but local appraisers are more knowledgeable of the area. She added that the cost of a report can increase if an out-of-State appraiser has to be used; weather, geography and long distances are also reasons for delay. She added that approximately 40% of appraisers in North Dakota limit their work to metropolitan areas of the State. M. Foss added that an employee within a lending institution does not need to be credentialed if they are only providing an estimate of value to their

employer. R. Witt asked if mostly smaller, rural lenders would use the temporary waiver. M. Foss responded “yes,” and added that some small lenders have ceased making residential loans because of the delay in receiving a completed appraisal report and federal requirements; larger lenders have marketing and mortgage origination programs and she does not think that they will alter their programs. R. Clayburgh, the President of the NDBA, said that not all in-State appraisers are available to all lenders as some appraisers limit their work to specific lenders or appraisal types. He said legislative leadership brought lenders and appraisers together to address education requirements and that there is a potential for State educational institutions to set up a program to assist those who want to enter the appraisal profession. He added that lending has slowed due to the difficulty in finding comparables which delays lenders from receiving completed appraisal reports. He feels that the information provided by the Requesters supported the Request. M. Hatheway asked M. Foss if there have been discussions with the Appraiser Board to discuss scarcity. M. Foss said this has been a longstanding issue. In her opinion, the problem is known to the Appraiser Board but no solutions have been put forth. She stated that in May 2017, the FDIC published FIL-19-2017 which inspired the State to act on the issues of scarcity and delay. She added that the Request is temporary and could be terminated once other solutions were put into place. T. Segerson asked what transactions would be covered under this temporary waiver, if granted, and also asked about the effect of Title XI § 1127. *Exemption From Appraisals of Real Estate Located in Rural Areas* (Section 1127) on scarcity. L. Kruse responded that few lenders have used the rural waiver authority under Section 1127 as they are awaiting the regulatory agencies to finalize rules since the law was vague on what constitutes good effort in contacting appraisers. She said they are also hopeful there will be a decision to raise the residential threshold. The Request, if approved, would mostly apply to commercial loans as lenders want to support the community and support small commercial loans. R. Taft asked how many commercial transactions in rural areas are FRTs. L. Kruse said there are not many but added that delays can hinder opportunities for rural areas. A. Lindo asked C. Kost why delivery times in North Dakota are longer than those in neighboring rural States. C. Kost responded that Minnesota has a higher number of appraisers from larger metropolitan areas, such as Minneapolis, who are willing to do rural appraisals. He did not feel that delivery times in North Dakota varied that much with turnaround times in Montana. He added other rural States may have better automated systems in which to obtain data and that the State could potentially help counties and municipalities develop more robust data systems. L. Kruse added that South Dakota and Minnesota also have issues with shortages and delays. C. Kost noted that turnaround times in North Dakota have improved over the past few years. A. Lindo asked ASC members for their opinions on approving the Request and if there are other possible solutions. M. Hatheway suggested a middle ground, noting the ASC cannot approve a waiver of USPAP-compliant appraisals. She proposed granting a temporary waiver for 1-2 years and added there should also be increased dialog between lenders and appraisers, similar to what we have seen in Tennessee. She commented that geography resulting in longer travel does contribute to delay. She stated she is supportive of approving a waiver for a shorter period of time while coming up with other solutions. P. Neary agreed with M. Hatheway’s suggestions. R. Taft acknowledged that delays could be occurring and added the State could address some of the issues such as lack of available data. He also supported short-term relief while the State and appraisers work towards other solutions. He

added if the regulatory agencies do approve raising the residential threshold, that could alleviate part of the problem, and that the length of any temporary waiver for residential appraisals should be correlated with when the regulatory agencies make a decision on the residential threshold. He commented that commercial real estate loans are more troublesome, in that there is less data. He noted the State and appraisers need to work together to understand each other's issues and that extending the temporary waiver beyond two years would not resolve the problems. He added that Section 1127 was self-enabling and lenders can decide now if they wish to use it. B. Borland stated that appraiser scarcity has not been proven by the Requesters and that commenters to the *Federal Register* notice also did not feel there was a delay in turnaround times. She would not vote for a temporary waiver to cover the entire State. R. Witt noted that a more robust data system would decrease turnaround time and could also help with the ability to do remote appraising along with using non-appraisers to gather data. He agreed with B. Borland that there was not a scarcity leading to a delay and would vote no on a temporary waiver as the current request is too general. He added that the Requesters could submit a narrowed temporary waiver request with better data. He also indicated that research back 10 years shows loans have declined. T. Segerson stated he has concerns with the scarcity justification. He noted both sides made strong cases for their positions. He added he would be more comfortable with a targeted temporary waiver for a shorter period than M. Hatheway suggested. He commented that the data provided on turnaround times did not show if it varies across the State. He would like to see conditions imposed on any temporary waiver such as collaboration between appraisers and lenders to determine where the challenges lie and joint research and hard data on where the challenges are. He affirmed that Section 1127 is self-enabling. He indicated he would not approve a temporary waiver to the request as submitted, but would consider alternatives. A. Lindo suggested providing a temporary waiver for residential lending but for less than five years with conditions. R. Witt stated that FHFA research did not show scarcity or delay. He noted that in rural areas, appraisals will take longer and that is customary for the market. A. Lindo questioned if such areas have been underserved, is that acceptable. R. Taft commented because these seem to be long-term issues, we should be looking to keep the waiver short term and require action by stakeholders to address the longer-term challenges. R. Witt responded that could be addressed by setting up a more robust MLS or data statewide, or by using remote appraisals, or property data collection by a non-appraiser. A. Lindo noted that most ASC members did not want to approve the Request as submitted, adding a temporary waiver could be targeted to specific areas and items. R. Witt questioned whether the ASC's decision will have any effect on helping the State address the issue. A. Lindo responded that the ASC can approve a recommendation today and work with the State and appraisers to find solutions and to also implement those solutions. R. Taft noted the Request was broad and the ASC could limit approval to rural areas. R. Taft asked L. Kruse if she knows of specific rural areas where there are issues. L. Kruse responded that while the ASC could note specific lenders or counties, she did not want to appear as if the Requester had geographical preferences. She is open to dialogue to find appropriate rural areas and she felt that Fargo could be considered a rural area since it is surrounded by rural counties. R. Witt asked L. Kruse if she is aware of the challenges that lenders are facing finding appraisers. L. Kruse responded that smaller lenders have fewer appraisers on their rosters while other small lenders are unable to find any appraisers, so the exemption provided by

Section 1127 is not helpful. L. Kruse noted that any recommendations by the ASC concerning automation of data would need legislative action by the State and the legislature does not meet until 2021. R. Witt suggested the National Association of Realtors may have MLS coverage in North Dakota. C. Kost responded that realtors in North Dakota are exploring that option. R. Witt asked whether commercial data is easily available. C. Kost responded that it varies and researching for commercial data can increase the turnaround time. B. Borland asked if the ASC did approve a temporary waiver that allowed an appraiser to take the exam and gain the education and experience within a specified timeframe, would that be helpful. C. Kost said it may and noted that the AQB Criteria lowered the education and experience requirements in 2018. He added that online education is readily available; gaining experience is more difficult as a trainee must locate and work under a supervisory appraiser. He added the Appraisal Foundation's proposed Practical Applications of Real Estate Appraisal (PAREA) may be helpful once it is developed. C. Kost said that consumers should be made aware that an appraiser has not attained all of the education and experience. A. Lindo responded that if an exam is taken and passed, why should consumers be notified about the appraiser's lack of education. C. Kost said that a single exam cannot cover everything learned through education and experience. R. Taft noted that lenders will still be required to obtain an appraisal that is USPAP compliant. If appraisals are non-USPAP compliant, the regulator could cite that during an examination. T. Segerson felt that small lenders would use a credentialed appraiser in most circumstances but allowing transitional appraisers could provide relief. C. Kost said the issue of oversight of uncredentialed appraisers needs to be clarified since the Appraiser Board would not have enforcement authority. J. Park noted that transitional licensing was used when State appraiser programs were first developed and allowing that category in this instance could be revisited. B. Borland asked if data was available regarding the number of residential loans below \$250,000 and commercial loans below \$500,000. L. Kruse responded that lenders would need to provide that information. B. Borland noted that increasing the limit to \$500,000 may not have much impact in rural areas. L. Kruse said that may be true for small towns but there are larger, more expensive homes now. M. Hatheway amended her proposal to offer a two-year waiver for residential and commercial appraisals subject to the condition that if the regulatory agencies were to increase the residential threshold, the temporary waiver for residential appraisals would expire 30-60 days after the effective date of that increase. A temporary waiver for commercial appraisals would be effective for two years. She added a lender could be cited by a regulator for appraisals that are not USPAP compliant and the ASC would encourage lenders and appraisers to communicate to find solutions within that two-year period. R. Taft suggested instead a one-year waiver with a one-year option; lenders and appraisers would need to communicate and recommend solutions; both the State and Appraiser Board would need to provide a status update to the ASC before the option year would be approved. R. Taft also agreed that if the regulatory agencies raise the residential threshold, the temporary waiver for residential loans could expire 60 days after the effective date of the increase. A. Lindo agreed with R. Taft's proposal. C. Kost noted that the Appraiser Board has had no communications with the lenders since the initial request was filed in August 2018. He is not optimistic about the two sides working together. He added a Statewide waiver is not appropriate as the metropolitan areas do not have a scarcity of appraisers; nor did the Requesters prove there is a scarcity. He said if there is a scarcity in a

geographical area of the State, and it can be proven, those areas should be considered for a temporary waiver. He stated the Appraiser Board has not heard of concerns about scarcity and that this is not a systematic statewide issue. He said the Appraiser Board expressed willingness to work with the Requesters on compiling data but did not receive a response. R. Clayburgh stated that the Requesters met with appraisers after the initial letter was sent in August 2018. The Appraiser Board members are appointed by the Governor and should work with the Requesters to find solutions, and there is an incentive for both sides to work together; otherwise the temporary waiver would expire after one year. He added lenders can lobby the State legislature to enact legislation to develop a database. M. Hatheway said that the Final Order should include wording regarding the option to extend for one year; otherwise the Requesters would need to resubmit a Request. She said the Requester should provide an update to the ASC in advance of the one-year expiration as to what both sides have discussed so that the ASC can determine whether or not to enact the option year. A. Ritter said the ASC would need to vote in open session to approve the option year. T. Segerson said it is important that if the ASC approves the option year, there should be clear and convincing evidence from the Requester, including data on loan activity, that scarcity and delay exists. He added data for metropolitan and rural areas needs to be provided and there should be ample time for both sides to obtain information. M. Hatheway questioned how much data would be available after one year and added communication between the lenders and appraisers would be of value. T. Segerson said he would hope to see numbers improve regarding the state of scarcity and timeliness of appraisals; that should be part of deliberations when deciding whether or not to extend. He added ASC should not automatically renew and stated he would not be inclined to do so with data available now. He reiterated the need for data for metropolitan and rural areas, and said there is plenty of time for parties to get information, including geographical data. B. Borland asked the Requesters who will do appraisals and how will those persons be trained. L. Kruse responded the lender would be responsible for training those persons. A. Lindo added that the regulator will evaluate bank performance and compliance with USPAP. A. Lindo confirmed the vote to be on granting a waiver in part for both residential and commercial for one year; ASC having option to extend for one year on showing of scarcity and delay, and showing progress made based on a status update to the ASC, with progress toward solutions and understanding challenges on both sides, with data to support extending the waiver, with a termination of the residential waiver 60 days after passage if the residential threshold is increased.

A. Lindo took a roll call vote:

M. Hatheway – yes; R. Taft – yes; T. Segerson – yes; B. Borland – no; R. Witt – no;

P. Neary – yes; A. Lindo – yes.

R. Taft reiterated the importance of the parties working together and that a waiver is not a permanent solution. A. Lindo confirmed that the FFIEC must concur before an Order can become effective. A. Ritter said the draft Final Order will be sent to ASC members for review and comment before it is sent to the FFIEC.

The Open Session adjourned at 12:55 p.m. The next ASC Meeting will be August 28, 2019.

Attachments: Observer List

ASC Special Meeting Observers

July 9, 2019

Affiliation	Name
Allterra Group	Joan Trice
American Society of Appraisers	John Russell
American Society of Farm Managers & Rural Appraisers	Stephen Frerichs
Appraisal Foundation	Dave Bunton
Appraisal Institute	Bill Garber
Appraisal Institute	Brian Rodgers
Conference of State Bank Supervisors	Susanna Barnett
Conference of State Bank Supervisors	Daniel Berkland
Conference of State Bank Supervisors	Mary Beth Quist
Conference of State Bank Supervisors	Alisha Sears
Consumer Financial Protection Bureau	Paul Sanford
Federal Deposit Insurance Corporation	Michael Briggs
Federal Deposit Insurance Corporation	Suzy Gardner
Federal Financial Institutions Exam. Council	Judith Dupre
Federal Housing Finance Agency	Ming-Yuen Meyer-Fong
Federal Reserve Board	Carmen Holly
Federal Reserve Board	Matt Suntag
National Credit Union Administration	Rachel Ackman
North Dakota Appraiser Board	Dave Campbell
North Dakota Appraiser Board	Corey Kost
North Dakota Appraiser Board	Tim Timian
North Dakota Appraisers Association	Joe Ibach
North Dakota Bankers Association	Rick Clayburgh
North Dakota Bankers Association	Marilyn Foss
North Dakota Dept. of Financial Institutions	Lise Kruse
North Dakota Senator Cramer's Office	Jason Stverak
Office of the Comptroller of the Currency	Joanne Phillips
Office of the Comptroller of the Currency	James Rives