

■ ■ ■ ■ ■ ■ ■

Appraisal Subcommittee

Federal Financial Institutions Examination Council

September 7, 2018

Via email to L. Kruse; hard copy to follow to all addressees

The Honorable Doug Burgum, Governor
State of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0001

Ms. Lise Kruse, Commissioner
North Dakota Department of Financial Institutions
2000 Schafer Street, Suite G
Bismarck, ND 58501-1204

Mr. Rick Clayburgh, President & CEO
North Dakota Bankers Association
122 E. Main Avenue, Suite 201
Bismarck ND 58501-3889

Re: Temporary Waiver Request

Dear Governor Burgum, Commissioner Kruse, and Mr. Clayburgh:

The Appraisal Subcommittee (ASC) is in receipt of your August 1, 2018 submission requesting the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI),¹ for a determination that there is a scarcity of licensed or certified appraisers leading to significant delays in performing appraisals for federally related transactions (FRTs)² throughout the State of North Dakota. The submission seeks a waiver so that “North Dakota banks and credit unions will be able to assess the type of valuation that is appropriate for a given tract of proposed real estate collateral and be able to have that valuation made by any qualified person as determined by the lender” The submission

¹ 12 U.S.C. § 3348(b); *see also* 12 C.F.R. Part 1102 (establishing practices and procedures for waivers).

² An FRT is 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 Title XI, as implemented by the appraisal rules of the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). *See* 12 U.S.C. § 3350(4), implemented by the OCC: 12 C.F.R. §§ 34.42(g) and 34.43(a); Board: 12 C.F.R. §§ 225.62(g) and 225.63(a); FDIC: 12 C.F.R. §§ 323.2(g) and 323.3(a); and NCUA: 12 C.F.R. §§ 722.2(e) and 722.3(a). Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are exempted by the agencies’ appraisal regulations from the Title XI appraisal requirements. (FFIEC report to Congress, *Economic Growth and Regulatory Paperwork Reduction Act*, 82 FR 15900 (March 30, 2017)).

requests a waiver of requirements for FRTs, secured by real estate in North Dakota, that do not exceed \$1 million for a business or farm loan or \$500,000 for a residential loan.

Pursuant to section 1119(b) of Title XI, the ASC, subject to the approval by the Federal Financial Institutions Examination Council, may waive “any requirement relating to certification or licensing of a person to perform appraisals”³ for FRTs if the ASC determines “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, leading to significant delays in the performance of such appraisals.”⁴ An ASC waiver would apply to all insured depository institutions and insured credit unions, bank holding companies, and nonbank subsidiaries of bank holding companies that make loans within the geography of the waiver.

Under section 1119(b) of Title XI, the ASC may waive any requirement relating to the *certification* or *licensing* of a person to perform appraisals for FRTs, but the ASC does not have the authority to waive the statutory *requirement* that a USPAP-compliant appraisal be conducted for an FRT. Nor does the ASC have the authority to permit the use of an evaluation in lieu of an appraisal for an FRT. These authorities lie solely with the Federal financial institution regulatory agencies, pursuant to Title XI. For these reasons, the ASC requests that you confirm that the relief being sought is within the ASC’s statutory authority to waive credentialing requirements.

If the relief being sought is a waiver of appraiser credentialing requirements and not a waiver of the requirement to obtain a USPAP-compliant appraisal, the ASC will need additional information to consider your request. As provided in ASC regulations governing temporary waiver relief, a waiver request will not be deemed received by the ASC unless the requirements in 12 C.F.R. § 1102.2 are met. Under section 1102.2, a party requesting a waiver must set out the following:

- The requirement or requirements from which relief is being sought;
- A description of all significant problems currently being encountered in efforts to comply with Title XI;
- The nature of the scarcity of certified or licensed appraisers (including supporting documentation);
- The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation); and
- The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays.

Further information is required in order to allow the ASC to consider publishing notice of a received request. The ASC requests additional documentation of the scarcity of appraisers in markets throughout the State. Further, the ASC requests documentation supporting that significant delays are caused by this scarcity. The submission provides an overview and uses

³ Minimum credentialing requirements for appraisers are established by the Appraiser Qualifications Board (AQB) in the *Real Property Appraiser Qualification Criteria* (the Criteria), and are typically related to minimum requirements for education, examination and experience.

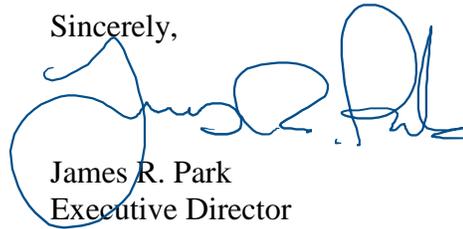
⁴ 12 U.S.C. § 3348(b).

examples to draw conclusions, but the submission does not contain sufficiently detailed supporting documentation.

In accordance with ASC regulations (12 C.F.R. § 1102.3), a copy of your submission was forwarded to the North Dakota Real Estate Appraiser Qualifications and Ethics Board (State agency). Any supplemental information should be forwarded to the State agency as well. If any of this information is considered confidential, classified or otherwise not for public release, please indicate what is to be redacted prior to making the supplemental information public.

Once all required information has been received, the ASC Board will meet to take action on whether to publish in the Federal Register a notice of a received request for a 30-day comment period. If published, the ASC shall act upon the request within 45 days of publication, in accordance with Title XI and ASC regulations. In making this determination, the ASC will consider all comments, information, and data it receives regarding the waiver request. Any approval is subject to concurrence of the Federal Financial Institutions Examination Council.

Sincerely,

A handwritten signature in blue ink, appearing to read "James R. Park", is written over a circular blue stamp. The signature is fluid and cursive.

James R. Park
Executive Director

Cc: Art Lindo, ASC Chair