Notice of Proposed Rulemaking – Temporary Waiver Requests

Submitted by mlongacre@csbs.org on Mon, 03/14/2022 - 14:48

Appraisal Subcommittee Attn: Lori Schuster
Management and Program Analyst 1325 G Street NW, Suite 500
Washington, DC 20005

Docket No. AS22-01
Submitted electronically via Regulations.gov

Re: Notice of Proposed Rulemaking – Temporary Waiver Requests

Dear Sir or Madam,

The Conference of State Bank Supervisors ("CSBS")[1] appreciates the opportunity to comment on the Notice of Proposed Rulemaking ("NPR") issued by the Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council ("FFIEC"). CSBS supports the stated goals of greater transparency and clarity for the waiver request process.

The ASC's effort is a welcome step toward improving the rules of practice and procedure governing temporary waiver proceedings issued in 1992 pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). However, we have several specific concerns with the ASC proposal that are detailed below. State regulators have long been concerned about the availability of appraisal services, especially in rural areas. Difficulties in securing timely appraisals can suppress credit availability in those areas. In the current interest rate environment appraisal delays can also impose extra costs on consumers and result in lost opportunities. Excessive delays and increasing costs are particularly problematic in rural areas and in any areas experiencing housing shortages. There may be multiple reasons why appraisers are scarce in some areas, but state regulators believe that credentialing and licensing requirements set by the Appraiser Qualifications Board should be revised to ensure new appraisers continue to enter and diversify the profession.

CSBS supported the State of North Dakota in their request for the waiver in 2019 and the further extension of that waiver in 2020. Given the experience of the State of North Dakota during that year-long painstaking process, it is clear the waiver process needs improvement.

CSBS supports a more transparent, objective waiver process under Title XI. CSBS recommends the ASC reconsider the following provisions of the NPR:

- The new requirement for a written determination by the state appraisal agency that there is a scarcity of certified or licensed appraisers leading to significant delays. State regulators believe that there is no justification for this change and are concerned it will restrict, if not eliminate, the ability of applicants to seek waivers.
- New definitions for 'scarcity' and 'significant delay'. The proposed definitions cannot be consistently measured or objectively determined as recommended by the Government Accountability Office (GAO) in

its November 2021 report.

- A new requirement to address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted. This new requirement is unnecessary because state regulators continue to review and process complaints regardless of waiver status.
- The extension of the ASC's timeframe for action from 45 to 90 days and removal of timeframe for FFIEC to concur with ASC's decision to grant a waiver. The ASC provides inadequate justification for extending the review period.

The new requirement for a written determination by the state appraisal agency that there is a scarcity of certified or licensed appraisers leading to significant delays will create unnecessary challenges for waiver applicants and will likely lead to a significant reduction, if not elimination, of waiver requests.

The current regulation does not require a written determination from the state appraisal agency before a state or any other third party can apply for a waiver. There is also no requirement in the underlying statute for such a determination. In the case of North Dakota, the temporary waiver request submitted by the Honorable Doug Burgum, Governor of North Dakota, explained why the shortage of appraisers, coupled with the current constrictive appraisal guidelines, significantly delayed the performance of appraisals in North Dakota.

Members of the state appraisal board opposed the waiver at the public hearing and sent a letter opposing the waiver[2]. If this proposed requirement had been in place at the time of North Dakota's application, it is highly unlikely that the state appraisal board would have issued the required determination. The effect of this proposed requirement would be to make a state less likely to even get a waiver considered. Since the waiver provision has been used successfully just twice in 30 years this requirement is unnecessarily restrictive. This provision would give a state appraisal agency veto power over a third-party request for a waiver – such veto power is inconsistent with the provisions of Title XI.

The new petition process by which the federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a state appraisal agency, may petition the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding adds a superfluous additional layer of bureaucracy to a process that took North Dakota a full year under the existing rule.

New proposed definitions for 'scarcity' and 'significant delay' cannot be consistently measured or objectively determined as recommended by the Government Accountability Office (GAO) in its November 2021 report.

The proposed rule defines 'Scarcity of certified or licensed appraisers' as the number of active certified or licensed appraisers within a state or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain [emphasis added]. Title XI does not include a requirement that appraisers be difficult to retain when considering whether to approve a waiver. The only requirement in Title XI is scarcity leading to significant delay. No explanation is given for how the 'difficult to retain' standard could be objectively determined or measured. The proposed rule defines 'Significant delays in the performance of appraisals' as delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated federally related transactions based on factors such as geographic location (e.g., rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (e.g., inability to access the subject property).

The GAO recommended in its November 2021 report on real estate appraisals that the ASC define both of these critical terms "so that these conditions can be consistently measured, and establish standards to objectively determine whether these conditions exist."3 Neither of these new definitions can be consistently measured or objectively considered as written. The GAO report also includes a map showing that North Dakota had the nation's longest lead time (based on data from the Department of Veterans Affairs, Chase Bank, and Quicken Loans) without commenting on the likelihood of such a map being considered sufficient data to prove the existence of a delay.

When operating under a waiver, state regulators continue to review complaints related to appraisals. There is no need for a new requirement to address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted.

Neither Title XI nor the current regulation include a similar requirement. Even under a waiver, the Uniform Standards of Professional Appraisal Practice ("USPAP") remained in effect for all appraisals of federally related transactions. There is no evidence that North Dakota's recent waiver (or the extension of that waiver) caused any harm to consumers. Complaints about appraisers were handled by state regulators in the normal course of business during the existence of the waiver. The NPR fails to identify any evidence suggesting that complaints about appraisals were not adequately addressed during the waiver in North Dakota.

There is inadequate justification for extending the ASC's timeframe for action from 45 days to 90 days and removing the timeframe for the FFIEC to concur with the ASC's decision to grant a waiver.

In the case of the North Dakota waiver both the ASC and the FFIEC were able to act within the 45-day time limit set out in the current regulation. No evidence has been presented to indicate either body required additional time to consider the request in 2019, or the request for the extension in 2020. Nor has any evidence been presented of a high volume of waiver requests being received by the ASC and the FFIEC. The ASC website lists two requests.

FFIEC members are the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the State Liaison Committee. Only the State Liaison Committee is not also a member of the ASC so the concurrence of the FFIEC should not require substantial additional time to complete. The proposed rule should include a deadline for action by the FFIEC as well as for the ASC to promote clarity and transparency in the process.

Conclusion

CSBS appreciates the ASC's efforts to modernize the appraisal waiver process under Title XI. For that process to be equitable and effective, the ASC must increase the transparency of the process. The proposed rule changes do not accomplish that stated goal for the reasons noted above. We look forward to further engagement with the ASC on this important topic.

Sincerely,

John Ryan President & CEO

Footnotes

1 CSBS is the nationwide organization of state banking and financial regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. CSBS supports the state banking agencies by serving as a forum for policy and supervisory process development, by facilitating regulatory coordination on a state-to-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and examination resource development.

2 NDREAB waiver extension response letter (asc.gov)

3 Real Estate Appraisals: Most Residential Mortgages Received Appraisals, but Waiver Procedures Need to Be Better Defined | U.S. GAO, November 24, 2021.

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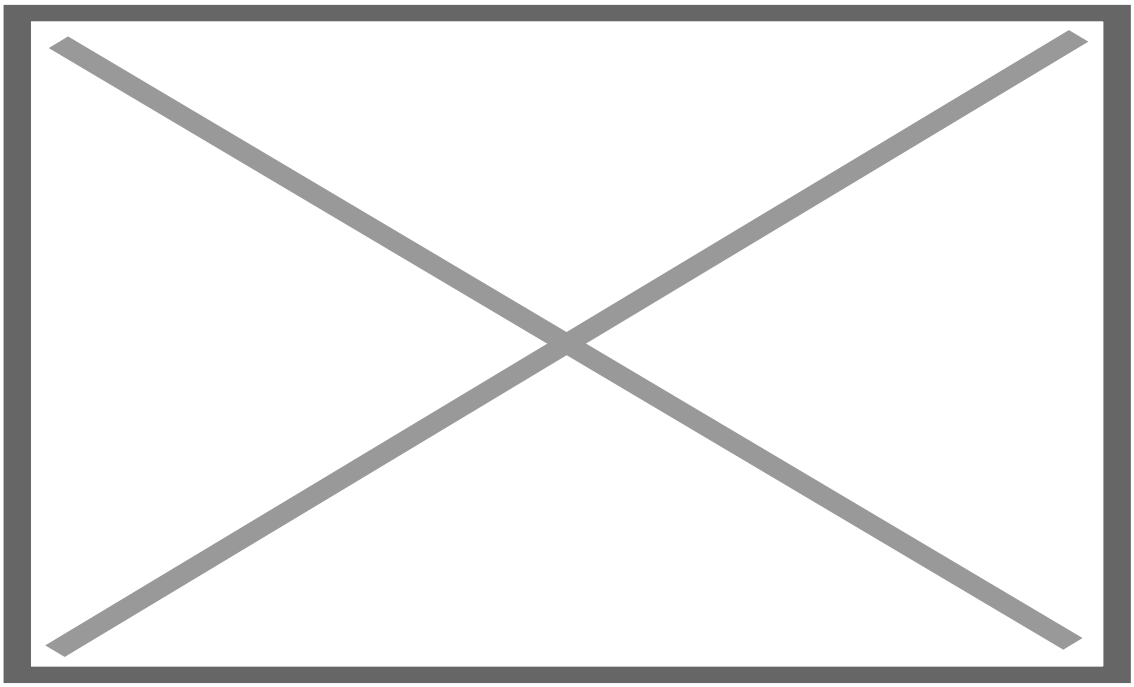

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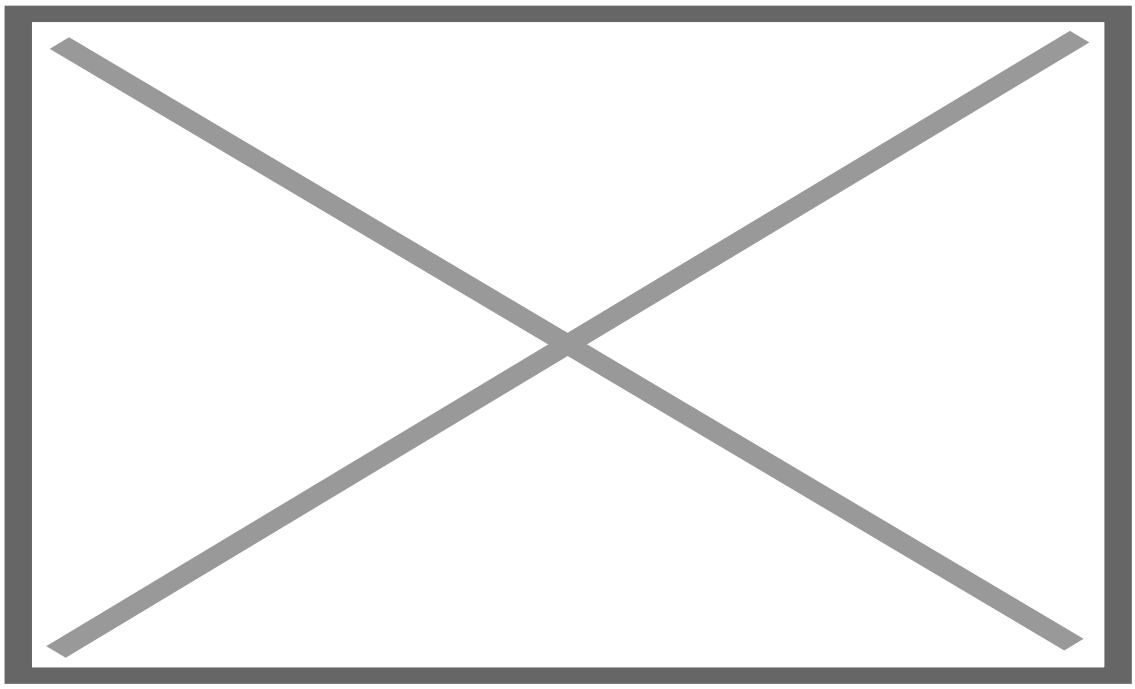

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