

# Final Order Denying Temporary Waiver Relief

A Notice by the [Federal Financial Institutions Examination Council](#) on 05/03/2018

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## DOCUMENT DETAILS

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## DOCUMENT DETAILS

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## PUBLISHED DOCUMENT

**AGENCY:**

Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:**

Final Order denying temporary waiver relief.

**SUMMARY:**

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) is issuing a final order denying temporary waiver relief pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended. This order denies a request for temporary waiver relief received from TriStar Bank, notice of which was published in the **Federal Register** on March 9, 2018.

**DATES:**

Applicable May 3, 2018.

## FOR FURTHER INFORMATION CONTACT:

James R. Park, Executive Director, at (202) 595-7575, or Alice M. Ritter, General Counsel, at (202) 595-7577, ASC, 1401 H Street NW, Suite 760, Washington, DC 20005.

## SUPPLEMENTARY INFORMATION:

### I. Background

#### A. Relevant statutory provisions and regulations

Title XI established the ASC.<sup>[1]</sup> The purpose of Title XI is “to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”<sup>[2]</sup> Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis and with 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 federally related transactions<sup>[3]</sup> in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.”<sup>[4]</sup> Congress intended that the ASC exercise this waiver authority “cautiously.”<sup>[5]</sup>

The ASC has issued procedures<sup>[6]</sup> governing the processing of temporary waiver requests. After receiving a waiver request, the ASC is required to issue a public notice in the **Federal Register** requesting comment on the request for a proposed temporary waiver. Within 15 days of the close of the 30-day comment period, the ASC, by order, must grant or deny a waiver, in whole or in part, and upon specified terms or conditions, including provisions for waiver termination. The ASC's order must respond to comments received, provide reasons for its finding, and be published promptly in the **Federal Register**.

#### B. Procedural Status

On November 20, 2017, the ASC received a letter requesting consideration of a temporary waiver from TriStar Bank, a state-chartered bank located in Dickson, Tennessee (Requester). On November 30, 2017, ASC staff replied by letter to the Requester, in which ASC staff described the information required to file a completed waiver request pursuant to 12 CFR §§ 1102.2 and 1102.3. On January 22, 2018, the Requester submitted additional information (dated January 10, 2018) in response to the ASC's November 30, 2017 letter. On March 9, 2018, the ASC published a Notice of Received Request for a Temporary Waiver giving interested persons 30 days to submit comments, including submission of written data, views and arguments.<sup>[7]</sup> On April 3, 2018, the Requester submitted correspondence with additional information in response to a comment letter submitted by the Tennessee Real Estate Appraiser Commission (discussed *infra*). The comment period closed on April 9, 2018. A discussion of the public comments received by the ASC concerning the request for temporary waiver relief follows in Section III below.

The ASC called a special meeting to consider this matter on April 23, 2018, and voted to approve the issuance of this final order denying temporary waiver relief.

## II. Request for a Temporary Waiver

The request submitted by the Requester sought temporary waiver relief “to receive a one-year waiver of the appraisal regulation's requirements to utilize a certified appraiser. . . . for appraisals completed within the Nashville MSA. . . . mostly in Dickson, Maury, Williamson and Davidson □ counties.”<sup>[8]</sup> The Requester stated that the shortage of appraisers, time delay and added cost is negatively impacting clients.

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The Requester submitted data to support the request alleging a scarcity of certified general appraisers and delays experienced in receiving commercial appraisals/evaluations. The Requester stated, “[w]e reviewed our appraisal logs in 2013 and in 2017 to determine the trend of pricing and timeliness of appraisals/evaluations during each year. Since 2013, the logs reflect an average increase of 82% in wait time to receive commercial appraisals/evaluations. During that time, the average cost to our clients for commercial appraisals/evaluations has increased 23%. The cost of time and money is putting pressure on our clients' ability to find value in our work.”<sup>[9]</sup> The Requester further stated concern that “the new requirements to become a certified general appraiser are not producing enough qualified appraisers in the market. A current appraiser has little motivation to train someone that he or she will have to compete against in the future or the time to commit to train an apprentice during this time of tremendous growth.”<sup>[10]</sup>

The Requester stated there is only one certified general appraiser in the county of Dickson, and the demand is so great in the Nashville MSA area that the Requester is having a difficult time receiving appraisals in a reasonable amount of time. The Requester expressed concern that “current regulation and requirements are not allowing a healthy marketplace to obtain independent values.”<sup>[11]</sup>

### III. Summary of Comments

The ASC received 166 comment letters in response to the published notice of received request for a temporary waiver and request for comment. These comment letters were received from State appraiser certifying and licensing agencies, appraiser and real estate trade associations, professional associations, AMCs, appraisal firms and appraisers. The majority of comments received were from appraisers opposing the granting of a temporary waiver. Several comments were also received from appraisal trade organizations opposing the granting of a temporary waiver.<sup>[12]</sup> Several appraisers credentialed in Tennessee responded to the ASC's request for comments by stating they have contacted TriStar offering to perform appraisals for the bank, but have not been assigned any appraisals or evaluations to date. A few commenters did not oppose or support the granting of a temporary waiver in response to this request, but requested the ASC exercise such waiver authority with caution. A few commenters supported the request for a waiver, but expressed support of a waiver of the requirement for an appraisal, which is beyond the scope of authority set forth in the statute authorizing the ASC to waive, on a temporary basis and with approval of the FFIEC, credentialing requirements.

One commenter who had provided appraisal and evaluation services for the Requester since 2012 provided data that in some cases contradicted data provided by the Requester. For example, the commenter claimed to have completed a number of commercial appraisals that were not included in the data submitted by the Requester. In addition, the commenter provided an explanation for lengthy turn-around times on two of the commercial properties listed in the Requester's data.

The Tennessee Real Estate Appraiser Commission (TN REAC) provided comment on this request, stating that it “disagrees that there is a shortage of appraisers in those cited counties.”<sup>[13]</sup> TN REAC also provided data showing that 174 Certified General appraisers and 491 total credentialed appraisers are available in the four counties and the directly surrounding area. This information is supported by the National Registry.<sup>[14]</sup>

## IV. ASC Discussion

In order to grant a temporary waiver, the ASC must make a determination that a scarcity of credentialed appraisers is leading to significant delays in obtaining appraisals for FRTs in the geographic area <sup>[15]</sup> specified in the request. In considering this request, the ASC examined both evidence of a scarcity of appraisers in the area, and evidence of significant delay, taking into account the comments received.

Regarding the scarcity of appraisers, the Requester's comments focused on Dickson County. The Requester provided little discussion of scarcity in Maury, Davidson, and Williamson counties and no discussion of other counties in the Nashville MSA. As noted, TN REAC disagreed that a scarcity exists, and submitted more comprehensive information concerning the number of appraisers in this area.

Regarding the delay in obtaining appraisals, the Requester submitted data to show that the delivery time for the appraisals and evaluations it has ordered and received increased between 2013 and 2017. Because the request for a temporary waiver applies only to appraisals, the ASC focused on data related to delivery time for appraisals. Delivery times for appraisals alone have increased by a smaller percentage than the aggregated delivery times. In addition, the ASC believes it is useful to look at the median appraisal delivery times, especially in light of the small sample size presented by the Requester. Using the median time also results in an analysis that is more resistant to the influence of outliers in the data. The data provided by the Requester indicates that the delivery time for a commercial appraisal it ordered in the subject counties in 2013 was 21 days. In 2017, the delivery time was 27 days. Comparing the median numbers yields a six-day increase in the appraisal time between 2013 and 2017, based on the data provided by TriStar. But it appears the Requester's data may be incomplete. One commenter asserted that he completed additional commercial appraisals for the Requester in 2017 that were not reported. If these appraisals are considered in calculating the median, the delivery time for the Requester's commercial appraisals in 2017 was 24 days. This an increase of only three days.

In order to grant a temporary waiver request, the ASC must find both that there is a scarcity of appraisers in the relevant geographic area and that this scarcity has caused significant delays in appraisal services for FRTs. In this case, the information submitted to the ASC does not support a finding that there is a scarcity of appraisers that has resulted in a significant delay in the delivery times for appraisals. Thus, this request is denied.

## VI. Order

For the reasons stated above, and pursuant to section 1119(b) of Title XI and 12 CFR part 1102 (/select-citation/2018/05/03/12-CFR-1102), subpart A, the □ ASC denies the request for temporary waiver relief from the State certification requirements for certified general appraisers to perform commercial appraisals for FRTs in the Tennessee counties of Dickson, Maury, Williamson and Davidson.

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By the Appraisal Subcommittee.

Dated April 27, 2018.

Arthur Lindo,

Chairman.

## Footnotes

1. The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [Bureau], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

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2. Title XI § 1101, 12 U.S.C. 3331 (<https://api.fdsys.gov/link?collection=uscode&title=12&year=mostrecent&section=3331&type=usc&link-type=html>).

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3. “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 (<https://api.fdsys.gov/link?collection=uscode&title=12&year=mostrecent&section=3350&type=usc&link-type=html>)).

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4. 12 U.S.C. 3348 (<https://api.fdsys.gov/link?collection=uscode&title=12&year=mostrecent&section=3348&type=usc&link-type=html>)(b).

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5. House Comm. on Banking, Finance and Urban Affairs, Report Together with Additional, Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101-54 Part 1, 101st Cong., 1st Sess., at 482-83.

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6. 12 CFR part 1102 (</select-citation/2018/05/03/12-CFR-1102>), subpart A.

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7. 83 FR 10480 (</citation/83-FR-10480>) (March 9, 2018).

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8. Letter from Requester to the ASC requesting a temporary waiver (Nov. 20, 2017).

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9. *Id.*

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10. *Id.*

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11. Letter from Requester to the ASC providing additional information on the request for a temporary waiver (Jan. 10, 2018).

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12. A number of commenters indicated that granting the waiver would erode the public trust, and a number of other commenters cautioned that granting of the waiver would result in the same conditions that led to the financial crisis in 2008.

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13. Letter from TN REAC to the ASC responding to request for comments on the temporary waiver request. (Jan. 23, 2018).

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14. *Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in FRTs. (Title XI § 1109(b)1), 12 U.S.C. 3338 ([\(https://api.fdsys.gov/link?collection=uscode&title=12&year=mostrecent&section=3338&type=usc&link-type=html\)](https://api.fdsys.gov/link?collection=uscode&title=12&year=mostrecent&section=3338&type=usc&link-type=html))(b)(1).)*

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15. *The ASC's section 1119(b) temporary waiver authority is with respect to a State or any geographical political subdivision of a State.*

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