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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

June 25, 2004

Enrique T. Casado, MSREA  
Value One Appraisal Group  
P.O. Box 195592  
Hato Rey Station, PR 00919-5592

Dear Mr. Casado:

Thank you for your June 24, 2004 letter, which we received via fax. In your letter, you request copies of “any State Field Review and its correspondence since January 2004 to the present.” We are treating your request as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and 12 CFR part 1102, subpart D, the Appraisal Subcommittee’s (“ASC”) FOIA rules. For the reasons discussed below, we must deny your request.

The ASC staff has prepared a field review report regarding the staff’s March 24-25, 2004 on-site review of Puerto Rico’s appraisal regulatory program. In addition, on June 7, 2004, the ASC sent a “field review letter” to Puerto Rico concerning our field review findings and recommendations. The ASC has yet to receive a written response from Puerto Rico.

The ASC routinely requests States to respond to our findings and recommendations within 60 days from the date of our field review letter. Until the expiration of that time or the receipt of a State’s response, we consider the field review to be an open enforcement matter. After receiving the State’s response or the expiration of the 60-day response period, whichever is earlier, the field review letter, the State’s response and any other correspondence between the State and the ASC regarding the field review become releasable to the public under the FOIA and is made available on our Web site. In connection with Puerto Rico’s review, the 60-day period will close on August 6, 2004.

The staff’s field review report is exempt from disclosure under 5 U.S.C. 552(b)(5) and 12 CFR § 1102(f)(5), thereunder. These provisions cover documents that are an “inter-agency or intra-agency memorandum or letter which would not be available by law to a party other than as an agency in litigation with the agency.” This exemption protects from disclosure documents that reflect an agency’s group thinking in the process of working out its policy and determining what its law ought to be. *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). These documents are often referred to as “predecisional.” Field review reports are internal documents containing the staff’s findings and recommendations for subsequent ASC consideration regarding a State’s appraisal regulatory program’s compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”). Field review reports, therefore, are predecisional, and their release would interfere with the ASC’s deliberative process.

The 60-day period is critical to ensuring the integrity and fairness of the field review process and maintaining full cooperation and communication of the States. This time provides the States with sufficient time to digest the ASC’s findings and recommendations and to respond to them.

The ASC could learn of new information from the State through its response that would cause the ASC to modify or even remove one or more of its findings and recommendations. In effect, a field review remains an open deliberative process until the earlier of the end of the 60-day period or when the ASC receives or sends the last piece of correspondence pertaining to the field review. At that time, all deliberations are closed, and the ASC's findings and recommendations, together with the State's responses, become final.

If you consider any of the above to be an improper denial of your request, you may, under 5 U.S.C. 552(a)(6) and 12 CFR part 1102, subpart D (which incorporates 12 CFR § 1101.4(b)(3)(iii)), appeal to the ASC's Chairman, c/o Ben Henson, Executive Director, at the address on this letterhead. Any appeal should be filed with us in writing and should state the circumstances and reasons or arguments in support of the appeal and the date of the original request and the date of this initial ruling. The appeal must be made within 30 days of the date of this letter and should be marked "Freedom of Information Appeal," "FOIA Appeal," or the like on the envelope.

Please contact us if you have further questions.

Sincerely,

Ben Henson  
Executive Director