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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

September 3, 2003

Roberto L. Prats Palerm, Chairman  
Government Affairs and Public Safety Committee  
Senate of the Commonwealth of Puerto Rico  
The Capitol Building  
P.O. Box 9023431  
San Juan, PR 00902-3431

Dear Mr. Chairman:

Thank you for your July 31, 2003 letter requesting our comments regarding Senate Bill 1718 (P.C. 1718) (“Bill”), which has been referred to the Government Affairs and Public Safety Committee (“Committee”). This Bill would create a mandatory “Colégio” for all Puerto Rican real estate appraisers, including licensed and certified real estate appraisers who perform appraisals in connection with federally related transactions, Federal Housing Administration (“FHA”) real estate related transactions, and FreddieMac and FannieMae transactions. This marks the fourth time within the last decade that this issue has been presented to us. In each instance, we have explained that the creation of such a Colégio would violate the letter and spirit of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”), and we strongly urged Puerto Rico not to adopt the pending legislation. For the following reasons, we again strongly urge Puerto Rico not to approve this Bill.

In effect, this Bill transfers a substantial portion of the regulation of real estate appraisers and the development and enforcement of appraisal ethical and practice standards from Puerto Rico’s Board of Examiners of Professional Real Estate Appraisers (“Board”) to the private Colégio. While the Bill contains clauses designed to protect the Board’s authority, an adverse membership decision regarding a Board certified or licensed real estate appraiser effectively would appear to render meaningless the Board’s authority to certify, license, and discipline those appraisers within Puerto Rico.

Under the Bill, a Colégio decision to suspend or revoke a member would result in that person no longer being able to practice his or her profession within Puerto Rico. Therefore, that decision would have the effect of law. The affected person could not ignore the Colégio decision without running the risk of being found guilty of a misdemeanor in an action referred by the Colégio to the Secretary of Justice for prosecution. This would be so even if the Colégio were to refer the matter to the Board for action under Article 2, paragraph p of the Bill, and the Board ultimately dismissed the complaint or found the person innocent. In addition, it appears that the Colégio’s independent ability to refer cases for criminal prosecution is extremely broad. We understand that Article 8, paragraph e of the Bill, authorizes the Colégio to refer cases to the Secretary of Justice (and not the Board) in connection with “every professional illegal activity so that pertinent action can be taken.”

Title XI was adopted, in part, because appraisal membership organizations, among other things, failed to educate their members adequately and failed to discipline their members effectively when their behavior warranted discipline. Title XI's legislative history discusses these failures. Indeed, Title XI specifically prohibits federally regulated financial institutions, among others, from using an appraiser's membership or lack of membership in any such organization as the sole criterion when considering the appraiser for an assignment. We note that *Appraisal Subcommittee ["ASC"] Policy Statement 7: Prohibition Against Discrimination* states that, "The ASC has determined that such discrimination also is inappropriate in the establishment and administration of a State's certification and licensing system. The ASC urges States to adopt legislation, regulations or other procedures to prohibit such discriminatory practice." The ASC uses these Policy Statements when evaluating whether a State's appraiser regulatory program is consistent with Title XI.

If Puerto Rico were to adopt the Bill, federally regulated financial institutions in effect would be required to discriminate in the prohibited fashion. Please consider the following scenario. The Colégio has revoked an appraiser from membership because the appraiser failed to comply with a Colégio regulation not relating to appraisal ethics or practices. That appraiser, however, would remain a Board licensed or certified appraiser in good standing and would continue to appear as such on the ASC National Registry of State Certified and Licensed Real Estate Appraisers ("Registry"). A financial institution in Florida is involved in a large commercial real estate transaction in Puerto Rico. It wishes to hire this appraiser to appraise the property or properties. Under Federal law, the appraiser has met all qualification requirements to be hired by the financial institution, yet, under Puerto Rican law, that appraiser would not be legally qualified to take the assignment because of lack of membership in the Colégio, an appraisal organization. It is highly unlikely that a federally regulated financial institution would hire this appraiser knowing that acceptance of that assignment could expose that appraiser to criminal liability.

This is but one of many potential conflicts that could result should this Bill become law. We believe that this is not what Congress intended when it adopted Title XI.

For your information, § 1118 of Title XI, 12 U.S.C. 3347, authorizes the ASC to monitor State appraiser regulatory agencies to determine whether the agency's policies, practices, and procedures are consistent with Title XI. The ASC may order all federally regulated financial institutions, FannieMae, FreddieMac, and, by virtue of other law, FHA and other Federal agencies, not to accept a State's certifications and licenses. The ASC may order "non-recognition" if, after hearing, the ASC determines that: "(1) the State agency fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to [Title XI]; the State agency is not granted authority by the State which is adequate to permit the agency to carry out its functions under [Title XI] or (3) decisions concerning appraisal standards, appraiser qualifications, and supervision of appraiser practices are not made in a manner that carries out the purposes of [Title XI]." Such an ASC order would cripple your real estate markets.

In conclusion, we strongly urge your Committee not to report this Bill favorably. We believe it violates Federal law.

Please contact General Counsel Marc Weinberg if you have further questions.

Sincerely,

Ben Henson  
Executive Director