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Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 10, 2004

Ms. Alexis Fuentes-Hernández
Charles A. Cuprill, P.S.C.
356 Calle Fortaleza
Segundo Piso
San Juan, PR 00901

Dear Ms. Fuentes-Hernández:

Thank you for your November 1, 2004 letter, which we received by certified mail on November 8, 2004. You are representing several Puerto Rican appraisers who have been required by the Puerto Rico Board of Examiners of Professional Real Estate Appraisers (“Board”) to retake the Board’s appraiser certification examination. The appraisers are being required to retake the examination because their previous examination results were invalid under the Appraiser Qualifications Board’s (“AQB”) 24-month examination validity interpretation in its certification criteria.

Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”), State certified appraisers must conform to AQB criteria to be eligible to perform appraisals in connection with federally related transactions. Part of the AQB criteria, as interpreted by the AQB, is that an examination is valid for not more than 24 months from the date it was successfully completed. Failure to conform to this criterion means that the appraiser failed to meet one of the three basic Federal law requirements to perform appraisals in connection with federally related transactions. (In addition to passing the appropriate examination, certified appraisers must meet the AQB’s minimum education and experience requirements.) This requirement applies both to persons applying to become certified appraisers for the first time and to appraisers seeking to upgrade from a non-certified classification to certified residential or certified general status.

As you know, in our June 7, 2004 field review letter to the Board, the ASC cited Puerto Rico for not conforming to this interpretation. It is important to note that, *four years earlier*, the AQB notified Puerto Rico, and all the other Title XI jurisdictions, about this requirement in an April 28, 2000 letter, prior to the interpretation's July 1, 2000 effective date. Additionally, the interpretation has been included in each issue of the AQB’s Real Property Appraiser Qualifications Criteria and Interpretations of the Criteria since that date. It appears that the Board failed to implement the interpretation and mistakenly certified these appraisers on the basis of invalid examination results.

In our August 30, 2004 letter to the Board, we stated that, “[t]his shortcoming must be remedied for an affected appraiser to retain his or her eligibility to appraise for federally related transactions. It appears that the most expedient remedy would be for the appraiser to take and pass the appropriate examination. Passage of the examination would restore his or her legal eligibility to perform appraisals in connection with federally related transactions. Only if the appraiser refuses to take the examination or fails to pass the examination would additional action

become necessary.” We note that this “additional action” refers to the Board downgrading the credentials of these appraisers from certified residential or certified general status to licensed status. This “additional action” is not, in our view, disciplinary in nature. The action would be taken to correct a fundamental error in the credentialing process.

In your letter, it appears that you interpreted the sentence that reads “Only if the appraiser refuses to take the examination or fails to pass the examination would additional action be necessary.” to indicate that we were instructing the Board to give the appraisers a choice of whether to retake the examination. You stated that, if given a choice, the appraisers would chose not to retake the examination. You misinterpreted the intent of that language. For a certified appraiser to retain his or her eligibility to perform appraisals in connection with federally related transactions, the appraiser must comply with Title XI by conforming to AQB criteria. This requirement includes taking and passing an examination within the two-year time period specified in the AQB’s interpretation to its criteria. If an appraiser refuses to retake the examination, or fails the examination, the appraiser would lose his or her legal eligibility to perform appraisals in connection with federally related transactions.

In your letter, you “request that the ASC [Appraisal Subcommittee] issue within the next 72 hours an order vacating the Board’s prior requirement to retake the examination In the alternative, [you request] that the ASC issue within the next 72 hours a final written notice of its intention not to recognize Puerto Rico’s certified or licensed appraisers, and/or appraisers who complied with all the requirements and whose licenses are currently being held in abeyance by the Board, notifying the same not only to the Board but to all affected parties in order to proceed with the judicial review remedy provided in 12 U.S.C. § 3347.”

For the following reasons, we cannot grant your request. First, under Title XI, State certified appraisers must conform to AQB criteria to be eligible to perform appraisals in connection with federally related transactions. The interpretation regarding examination validity is part of the AQB certification criteria. Failure to conform to this criterion means that the appraiser failed to meet one of the basic Federal requirements to perform appraisals in connection with federally related transactions.

Second, the ASC, under Title XI, is required to ensure that Puerto Rico and the other States and Territories conform to the AQB’s minimum qualifications criteria for certified appraisers. The ASC, however, does not have the legal authority to exempt or otherwise provide relief from of those requirements.

Finally, it would be inappropriate for the ASC to issue a “final written notice of its intention not to recognize” based on the Board mistakenly certifying a relatively small number of appraisers. A non-recognition finding, at a minimum, would affect all certified residential and certified general appraisers in Puerto Rico, all federally insured lending institutions in Puerto Rico, and other entities, such as Fannie Mae, Freddie Mac, and the Department of Housing and Urban Development. Moreover, the ASC in any event could not issue such a “final written notice” within 72 hours of receipt of your letter. A non-recognition proceeding is a formal hearing under CFR part 1102, subpart B, and would take much more than 72 hours to complete.

Please contact us if you have further questions.

Sincerely,

Ben Henson
Executive Director