

■ ■ ■ ■ ■ ■

Appraisal Subcommittee

Federal Financial Institutions Examination Council

June 7, 2004

Mr. Efrain Picon-Lopez
President, Board of Examiners
of Professional Real Estate Appraisers
Junta Examinadoras
Departamento de Estado
151 Forteleza Street
Office 308
Old San Juan, PR 00936

Dear Mr. Picon-Lopez:

Thank you for your staff's assistance in the March 24-25, 2004 Appraisal Subcommittee ("ASC") review of Puerto Rico's appraiser regulatory program ("Program"), as well as the cooperation of Board of Examiners of Professional Real Estate Appraisers ("Board").

In summary, ASC staff found that Puerto Rico had not taken corrective action to address deficiencies identified in our 1998 and 2001 field reviews. Puerto Rico needs to take immediate action to bring the Program into compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). Otherwise, the ASC will consider initiating a non-recognition proceeding under § 1118 of Title XI, 12 U.S.C. 3347, and 12 C.F.R. part 1102, subpart B, thereunder. ASC staff is available to work with the Board to resolve the deficiencies. We will return for a follow-up visit within six to nine months from the date of this letter to review your efforts. Further, recognizing the seriousness of our findings, we are placing Puerto Rico on an 18-month field review cycle to allow us to better monitor your Program. The remainder of this letter details our findings and recommendations for corrective action.

- **Puerto Rico has not investigated potential deficiencies in [DELETION] appraisal reports when notified of such deficiencies by the Department of Housing and Urban Development ("HUD").**

ASC staff found that Puerto Rico had not taken any action on referrals from HUD of potential [DELETION] wrongdoing. HUD notified Puerto Rico that HUD had imposed educational sanctions against two current [DELETION] who were on the FHA-approved appraiser roster. In its letters, HUD stated that it had issued sanctions against these appraisers for violations of the Uniform Standards of Professional Appraisal Practice ("USPAP"), among other things. While the Board of Examiners Division ("Division") and the Board maintained the letters in a file, ASC staff could not find any evidence that the Board or the Division had taken any action against the [DELETION] sanctioned by HUD. The Board stated that it believed that the HUD letters were simply notifications of appraiser education sanctions by HUD and were not requests for further action.

ASC Policy Statement 1 provides that Board members shall endeavor to avoid any actions creating the appearance of impropriety or that they may have violated the law or engaged in unethical or wrongful conduct or practice. Further, ASC Policy Statement 10E, among other things, requires Puerto Rico to ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well documented manner.

To address this concern, the Board needs to refer to the Office of Legal Affairs, or other appropriate office or entity within the Puerto Rican government, the HUD referrals and any other correspondence pertaining to alleged deficiencies in any current or past [DELETION] appraisals. This office needs to investigate and resolve each case in a timely manner.

- **Puerto Rico has not implemented an effective complaint investigation and resolution program.**

While minutes of Board meetings documented the receipt of several complaints since our 2001 field review, the Division and the Board were unable to provide ASC staff with an accounting for those complaints, the status of those complaints, or an explanation of complaint resolutions. ASC staff found that the Board, on March 9, 2004, adopted a policy requiring that complaints be recorded in a complaint log. However, the log was new at the time of our review and it contained only minimal information regarding recently received complaints.

Our review indicated that the Board had insufficient procedures for resolving complaints. Of six complaints that we identified from Board meeting minutes, Division staff could locate case files for only three. We reviewed those files and could not find adequate documentation regarding investigation and resolution activities.

ASC staff also found that Puerto Rico had not taken any action on referrals from HUD of potential appraiser wrongdoing. HUD notified Puerto Rico that HUD had imposed educational sanctions against five Puerto Rican appraisers (other than the Board members noted previously) who were on the FHA-approved appraiser roster. In its letters, HUD stated that it had issued sanctions against these appraisers for violations of USPAP, among other things. While the Division and Board maintained the letters in a file, ASC staff could not find any evidence that the Board or the Division had taken any action against the appraisers sanctioned by HUD. The Board stated that it believed that the HUD letters were simply notifications of appraiser education sanctions by HUD and were not requests for further action. It is the ASC's position, as provided in Policy Statement 10E, that the Board has a responsibility to investigate all communications that indicate potential appraiser misconduct or provide information indicating potential violations of USPAP.

ASC staff also noted that, when the Board took certain actions, it did not always inform affected appraisers of those actions. When an appraiser applies to upgrade his or her appraiser credential to a higher classification, the Board performs experience reviews on selected appraisals. The Board bases its decision to approve the upgrade application, in part, on the quality of the appraisal reports reviewed. ASC staff did not find any evidence that the current Board maintains documentation supporting an upgrade denial. Also, it does not appear that the Board notifies the appraisers of the reasons for a denial.

To address the identified deficiencies, the Board and Division need to take the following actions:

1. Develop, document, and implement formal procedures for receiving and tracking all activities of the complaint investigation and resolution process;
 2. Open an investigation of each appraiser referred to Puerto Rico by HUD, or any other governmental entity, and investigate and resolve each case in a timely manner;
 3. Adequately document each enforcement file with findings, reasons for decisions, and sanctions to ensure that there is adequate support for all Board actions; and
 4. Implement procedures for maintaining documentation regarding the specific reasons when the Board denies an application to upgrade an appraiser's credential. The Board needs to communicate the reasons for denial to an applicant in writing.
- **Temporary practice is not administered in a manner consistent with Title XI and ASC Policy Statement 5.**

Puerto Rico issues temporary practice permits only to individuals wishing to perform an appraisal in a federally related transaction. Division staff is required by the Board to hold applications until the next regularly scheduled Board meeting for action. ASC staff found that this procedure often results in a delay of up to a month for the Board to take action on an appraiser's temporary practice application. In accordance with ASC Policy Statement 5, States are required to have a temporary practice program that is not burdensome. Policy Statement 5 defines as burdensome a process that takes more than five business days to act on a completed temporary practice application. Therefore, it is the ASC's position that Puerto Rico's temporary practice program is burdensome and, therefore, inconsistent with Title XI.

Further, ASC staff observed that the Board limits to two the number of properties that may be appraised per permit. This appears to be based on Board policy, not statute or regulation. ASC Policy Statement 5 requires temporary practice permits to be issued on an assignment basis. The ASC defines assignment as one or more real estate appraisals that are covered by a single contract for appraisal services. It is the ASC's position that limiting the number of properties that can be appraised under a temporary practice permit is burdensome and inconsistent with Title XI.

To address these deficiencies, the Board needs to amend its temporary practice policies and practices to:

1. Ensure that completed temporary practice applications are acted on within five business days of receipt; and
2. Issue temporary practice permits on an assignment basis.

Further, the ASC suggests that the Board consider delegating to Division staff the authority to grant temporary practice permits to ensure timely issuance of temporary practice permits.

- **Puerto Rico does not always conform to Appraiser Qualifications Board (“AQB”) criteria when upgrading licensed appraisers to certified status.**

In April 2000, the AQB adopted an interpretation stating that successful completion of a State credential examination is valid for a period not to exceed 24 months. The AQB notified the States about this requirement in a letter dated April 28, 2000. This requirement applies both to persons applying to become certified appraisers for the first time and to appraisers seeking to upgrade to certified residential or certified general status. To determine compliance with this AQB criterion, ASC staff reviewed the files of all persons who upgraded their credentials to certified residential or general status since July 1, 2000. ASC staff found that 33 appraisers were issued certifications based on examinations taken more than 24 months prior to issuance of the upgrade. Further, ASC staff was unable to determine the examination dates for several upgrade applications and, therefore, was unable to determine whether these individuals complied with AQB criteria.

To address these deficiencies, the Board needs to take the following actions:

1. Review its records regarding all individuals issued certified credentials since July 1, 2000;
 2. Determine whether the examination used to support the certified credential was passed more than 24 months prior to issuance of the upgraded credential;
 3. Require all certified appraisers whose examinations failed to meet AQB criteria to successfully complete the appropriate examination within 60 days from the Board’s receipt of this letter;
 4. Take the necessary steps to downgrade to licensed level any certified appraiser who fails to successfully complete the appropriate examination within the 60-day period;
 5. Maintain file documentation to support the corrective measures discussed in items 1-4 above for ASC review during our follow-up review later this year; and
 6. Initiate necessary amendments to statutes, regulations, and/or Board policies or procedures to ensure that the Board conforms to the AQB criterion on the examination timeframe.
- **Board regulations have not been amended to implement the 1997 Puerto Rico statutory amendments and current AQB criteria.**

In December 1997, Puerto Rico amended its appraiser statute to conform to Title XI. To implement several key features, the statute specifically instructed the Board to adopt rules and regulations. The Board has not adopted these regulations. The Board last amended its regulations in 1993. Much has changed since that time, including important changes to USPAP and the AQB’s criteria regarding certified residential and certified general appraisers.

During ASC staff’s informal meeting with the Board on March 24th, we understood that new regulations were drafted and in the final stage of adoption. The Board needs to adopt the necessary regulations as soon as possible to implement the December 1997 amendments to your appraiser statute and changes in Federal requirements since that time. We would appreciate receiving a copy of any proposed regulations for our review to ensure that the proposal meets Federal law.

Please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time or the receipt of your response, we consider this field review to be an open matter. After receiving your response or the expiration of the 60-day response period, whichever is earlier, this letter, your response and any other correspondence between you and the ASC regarding this field review become releasable to the public under the Freedom of Information Act and will be made available on our Web site.

Please contact us if you have any questions.

Sincerely,

Virginia M. Gibbs
Chairman

cc: Jose Miguel Izquierdo Encarnacion, Secretary of State
Leyda Batiz-Ruiz, Auxiliary Secretary for Examining Boards
Carmen A. Carreras, Esq., Director, Board of Examiners