

Appraisal Subcommittee

Federal Financial Institutions Examination Council

April 12, 2005

Carlos Velez Reyes, President
Puerto Rico Real Estate Appraiser Examining Board
State Department
151 Forteleza Street, Suite 308
Old San Juan, PR 00902

Dear Mr. Velez:

Thank you for your cooperation and your staff's assistance in the February 1-2, 2005 Appraisal Subcommittee ("ASC") follow-up review of Puerto Rico's appraiser regulatory program ("Program"). In our June 7, 2004 field review letter, we notified the Puerto Rico Real Estate Appraiser Examining Board ("Board") that Puerto Rico's Program was not in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). We identified several areas of concern that needed prompt corrective action. During our follow-up review, we focused on these five concerns. In summary, while Puerto Rico has made progress in several areas, much work remains to bring your Program into compliance with Title XI. This letter sets forth the ASC's findings and necessary actions.

Previous Findings, Current Status, and Recommended Action

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

Previous Finding: ASC staff found that Puerto Rico had not taken any action on referrals from HUD of potential Board member wrongdoing. HUD notified Puerto Rico that HUD had imposed educational sanctions against two current Board members 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 Board members 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 a State 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.

Current Status: Following our June 2004 field review letter, the Board referred the HUD complaints concerning the Board members to the State Department's Office of Legal Affairs. Legal Affairs did not take action, contending that the State Department had no authority over the governor-appointed Board members. The Board also assigned the HUD complaints to the one Board member not named in a HUD complaint. That member was tasked to review the complaints. That Board member then requested written statements from the respondent Board members. The reviewing Board member submitted a recommended decision after reviewing the HUD complaints, the original appraisal reports, the reviews prepared by the HUD reviewer, and the statements submitted by the Board members.

Currently, the Board is legally unable to resolve the complaints. The Board consists of five members, requiring three for a quorum. At the time of our review, the Board consisted of only three members. Because the member who is the subject of a complaint must recuse himself, the remaining two members cannot constitute a quorum. The Board is holding the recommended actions resulting from the complaint investigations until the Board is able to achieve a quorum. The Board will take final action regarding the complaints when it can achieve a quorum.

To ensure that the Board can perform its Title XI responsibilities and resolve these complaints, it is critical that one or both of the vacant Board positions be filled as soon as possible. In our discussions with the Board Chairman and Department staff, we learned that Puerto Rico's vetting process for potential Board members contains extensive paperwork and disclosure requirements, financial and otherwise. These requirements have deterred qualified persons from volunteering for Board positions. The Chairman, a State Department representative, a representative from the Governor's office, and the newly installed President of the Senate stated that they would work together to reduce these deterrents.

Action: The Board needs to contact the Governor's Office to begin the process of filling the two Board vacancies and to work with the Governor's office and other appropriate persons to expedite that process without reducing the professional qualifications for Board membership. Please keep ASC staff updated on your success in filling the Board vacancies.

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

Previous Finding: 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 2004 field review revealed 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 denied an application for a credential upgrade, it did not always retain appropriate documentation in the applicant's file supporting the Board's decision. In addition, it did not appear that the Board notified the applicant about the reasons for the denial.

Current Status: Since our March 2004 field review, the Board maintained a handwritten complaint log. However, the log was incomplete because it did not contain information on one consumer complaint and ten HUD referrals. The Board was able to provide information regarding the HUD complaints but not the consumer complaint. The missing complaint was mentioned in Board meeting minutes, but the Board members and staff could not locate it. After ASC staff returned to Washington, DC after the follow-up review, the Board notified us that the missing complaint had been located and that the Board would act on it during its next meeting (March or April, 2005).

All consumer complaint files were adequately documented. The Board appeared to have developed sufficient procedures for resolving consumer complaints. However, the files regarding the ten HUD referrals did not contain all relevant documentation. Therefore, we were able to determine the current status of only three of the ten HUD referrals.

Since our last review, the Board denied one application to upgrade an appraiser's credential. The Board adequately documented the appraiser's file regarding the Board's specific reasons for the denial and notified the appraiser accordingly.

Action: The Board needs to ensure that all complaints and referrals are recorded and tracked in the complaint log, and maintain relevant documentation in all case files, including HUD referrals. We encourage the Board to consider automating its complaint log by using a spreadsheet or other appropriate computerized format.

- **Temporary practice is not administered in a manner consistent with Title XI and ASC Policy Statement 5.**

Previous Finding: 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.

Current Status: Puerto Rico has not improved its temporary practice administration. In 2004, the Board received three temporary practice applications. The Board took 20, 27, and 60 business days to issue the associated permits. One cause of delay is that the application directs applicants to send the completed application to the State Department. It takes several days to weeks for the applications to be transferred from the receiving State Department office to the Board's office. During our follow-up review, the Board and staff stated that the address on the application will be changed to the Board's office. To further speed the temporary practice approval process, we also discussed the Board delegating to its staff authority to approve temporary practice permits. The Board Chairman agreed to consider that option.

There was no evidence that the Board had changed its policy of limiting temporary practice permits to a single property. The three temporary practice applications processed since our 2004 field review were for single properties, so we were unable to review the Board's practice (versus its policy) regarding this issue. While on-site, the Board agreed to amend its temporary practice policy to reflect that temporary practice will be awarded on an assignment basis.

Action: The Board needs to amend its temporary practice policies and practices to ensure that completed temporary practice applications are processed within five business days of receipt, and that temporary practice permits are issued on an assignment basis. As agreed, the Board should revise its temporary practice application to reflect the Board's office address. Also, we encourage the Board to consider delegating to Board staff the authority to grant temporary practice permits, with subsequent review by the Board to ensure that staff are following Board procedures. Please forward a copy of your revised temporary practice policy to the ASC within 90 days of receiving this letter.

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

Previous Finding: 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.

Current Status: The Board reviewed its records and determined that 32 appraisers were issued certifications based on outdated examinations. We confirmed this determination during our follow-up review. Puerto Rico provides for certification examinations only once per year, in December. To assist in addressing the concern regarding outdated examinations, the Board authorized an additional examination for November 2004. Eighteen of the 32 identified appraisers took and passed the certification examination at either the November or December 2004 offering. The Board informed us that it has contacted its testing provider to provide an additional examination as soon as possible, probably in March or April 2005. The Board plans to send letters to the 14 remaining appraisers informing them of the date of the exam, that it will be the last opportunity to retake and pass the exam, and that their certifications will be invalidated and they will be removed from the National Registry, if they do not take and pass the exam on that date.

Action: The Board needs to notify ASC staff of the examination date and, after the final examination is administered, forward to ASC staff a listing of all 32 certified appraisers with notations regarding corrective actions for each appraiser.

- **Board regulations have not been amended to implement the 1997 Puerto Rico statutory amendments and current AQB criteria.**

Previous Finding: 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 did not adopt 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 meeting with the Board during the 2004 field review, we understood that new regulations were drafted and in the final stage of adoption.

Current Status: The Board has had draft regulations for some time, and we submitted our comments on them months ago. The Board currently is seeking comments from the two major Puerto Rican professional appraisal organizations. Once this process is completed, the Board will submit the regulations to the State Department. The regulations then will be published for public comment in the newspaper for 30 days. Barring significant negative comments, the Board estimates that the regulations will be adopted by April 2005. While on-site, the Department staff stated that it would look into ways to ensuring the expedited processing of the regulations.

Action: The Board needs to forward to ASC staff a copy of the final, adopted regulations no later than May 31, 2005.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

cc: Jose F. Feijoo Zorrilla, Governor's Office
Commonwealth of Puerto Rico
P.O. Box 9020082
San Juan, PR 00902-0082

Marisara Pont Marchese, Secretary of State
Commonwealth of Puerto Rico
P.O. Box 9023271
San Juan, PR 00902-3271

Carmen A. Carreras, Esq.
Assistant Secretary for Examining Boards
State Department
151 Forteleza Street, Suite 308
Old San Juan, PR 00902