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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 30, 2004

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:

This letter responds to Mr. Picon-Lopez's July 28, 2004 letter and your August 10, 2004 letter. Those letters responded to our June 7, 2004 field review letter regarding the March 2004 Appraisal Subcommittee ("ASC") review of Puerto Rico's appraiser regulatory program ("Program"). In our field review letter, we notified the Puerto Rico Real Estate Appraiser Examining 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.

We appreciate the Board's responsiveness to our letter and your willingness to address each of our concerns. We will respond to each of the issues addressed in the Board's letters.

- **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").**

Our concern relates to two referrals from HUD regarding appraisers who were [DELETION]. In each case, HUD determined that the [DELETION] appraiser violated the Uniform Standards of Professional Appraisal Practice ("USPAP"). HUD required each appraiser to obtain remedial education. Our review of the Board's files indicated that the Board did not independently review or take any action regarding the [DELETION] apparent USPAP violations.

In situations of this type, the Board has two responsibilities. First, the Board must ensure that every referral indicating possible USPAP violations is investigated by the Board or other appropriate agency. The fact that HUD had issued educational sanctions against the two appraisers does not remove the Board's responsibilities under Title XI to investigate the allegations in the referrals and to take appropriate disciplinary action. These responsibilities are discussed in more detail in ASC Policy Statement 10, *Enforcement*.

Second, because the referrals involved [DELETION], the Board had the additional responsibility of ensuring that the referrals were not given preferential treatment. This responsibility is discussed in more detail in the last section of ASC Policy Statement 1, *State Regulatory Structure and Independence of Functions*.

Past Board President Picon-Lopez stated in his letter that he personally had read both HUD referrals and reviewed the noted appraisal deficiencies. While he did not disagree with HUD's findings, he stated that he did not believe the deficiencies warranted taking action against the [DELETION]. He stated further that similar notices regarding appraisers, [DELETION] or otherwise, were placed in the appraiser's file for future reference, and that the Board "has yet to see any case that merits further action." We are troubled by these statements because they indicate that Mr. Picon-Lopez, speaking on behalf of the Board, fails to understand the Board's responsibilities under Title XI.

The Board must investigate all complaints, referrals, and indications of appraiser wrongdoing, particularly potential violations of USPAP. If the Board cannot impartially investigate complaints against individual [DELETION], the Board needs to refer those cases to another governmental entity that can perform that function. That entity needs to investigate each complaint or referral promptly and report its findings to the Board. Once that investigation is complete, the Board must determine whether USPAP violations exist and the seriousness of those violations, the Board can determine what disciplinary action, if any, is appropriate. The Board needs to fully document the investigation and decision-making process respecting each complaint or referral.

We appreciate that the Board has referred these cases to the Legal Division of the State Department for a determination of which agency has the authority to review them. We look forward to their timely investigation and report back to the Board.

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

Mr. Picon-Lopez stated in his letter that the Board constantly receives complaints, but that most relate to a person disagreeing with the appraiser's value opinion. He stated that the Board does not review these cases. Generally, we agree with the Board's approach regarding "value-related" complaints. The Board, however, should review these complaints for substantial value differences. Large differences in value opinions could indicate appraiser misconduct and should be investigated.

Mr. Picon-Lopez stated that all complaints are recorded and maintained in computerized records or by the Board secretaries, and that complainants are notified of final complaint dispositions. Our review findings do not support this statement. Both the Board and the Division were unable to locate or provide information regarding several complaints that were discussed in Board meeting minutes. When we return for our follow-up visit, you will have an opportunity to demonstrate that all complaints are being tracked, and that all complaint files can be located.

Mr. Picon-Lopez stated that "[c]losed cases are disposed of as any other Board correspondence. This Board sees no purpose in the bookkeeping as a permanent record of complaints files received that were found to be without merit." Puerto Rico must maintain adequate documentation to support to the ASC that Puerto Rico is in compliance with Title XI. To accomplish this, Puerto Rico must maintain records of all complaints until such time as the ASC has reviewed those records during a regularly scheduled field review. Please review ASC Policy Statement 10, *Enforcement*, for further information regarding Puerto Rico's responsibilities.

Mr. Picon-Lopez further stated that the Board does not have the necessary resources to “further investigate complaint matters, nor to expand in revision of appraisals or of educational matters....” To comply with Title XI, Puerto Rico needs to provide the necessary resources to meet its Title XI responsibilities. If the Board can document specific shortcomings caused by the lack of resources, we will contact the governor’s office regarding the Board’s resource need.

As detailed in our June 7th field review letter, the Board and Division need to:

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 for an appraiser’s credential. The Board needs to communicate the reasons for denial to an applicant in writing.

Mr. Picon-Lopez stated that he would dedicate his future efforts to develop and structure a “Colegio” type association as a method of raising funds to address the Board’s lack of resources. Please be aware that any mandatory Colegio-type association would violate the letter and spirit of Title XI. Please refer to our previous correspondence regarding this issue.

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

Mr. Picon-Lopez effectively stated in his letter that the Board cannot comply with ASC Policy Statement 5, *Temporary Practice*, regarding acting on a temporary practice application within five business days. He referred us to the Governor for action. Our understanding of Puerto Rico’s appraiser statute indicates that the statute does not restrict the Board’s ability to meet Title XI requirements as specified in Policy Statement 5. The Board needs to determine, within the allowance of Puerto Rico statute, how to fulfill its responsibilities. As noted in our June 7th field review letter, the Board needs to determine how to act on temporary practice applications within five business days of receipt, and needs to approve temporary practice permits on an “assignment” basis without limiting the assignment to not more than two properties. In your response to this letter, please explain the Board’s plans to accomplish these goals.

Contrary to Mr. Picon-Lopez’s comment, the ASC did not object to Puerto Rico’s “federal funds” requirement. Therefore, no action is needed regarding this issue.

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

In your letters, both you and Mr. Picon-Lopez requested the ASC to reconsider its position regarding the re-examination of certified appraisers who were issued credentials based on examinations that failed to conform to AQB criteria. This concern revolves around an April 2000 interpretation by the AQB that an examination is valid for obtaining a specific credential for not more than two years from the date the examination is successfully completed. You referenced a May 1997 letter from the ASC as the basis for Puerto Rico using a single examination.

In early 1997, ASC General Counsel Marc Weinberg and I met with the Board and representatives of the Department of State to discuss long-standing, serious failures in Puerto Rico’s appraiser regulatory program. Following those meetings, I wrote a letter dated May 7, 1997, documenting the agreements that were reached. You are referencing the last bullet on the second page of that letter, but it appears that you misinterpret the substance of the related agreement.

During our 1997 meetings, the Board expressed several concerns regarding the examinations it required of applicants for Puerto Rico appraiser credentials. To resolve several issues, the Board expressed its desire to move to a single examination that all applicants would take, regardless of the appraiser credential being sought. The Board asked if such an approach would be acceptable under Title XI. Because applicants could seek either a Puerto Rico “local license” (without Federally related transaction authority) or a certified residential or certified general credential (with Federally related transaction authority), we advised the Board that if a single examination were used, it would need to be the certified general examination to ensure that results were acceptable for issuing a certified general credential. Our guidance and the subsequent agreement did not extend beyond that issue. As a result, that 1997 agreement does not obviate the Board’s need to conform to the AQB criterion specifying that examination results are valid for no more than 24 months.

Under 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 basic Federal requirements to perform appraisals in connection with federally related transactions.

This 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. Because the 60-day deadline contained in our June 7th letter is fast approaching and Puerto Rico’s next scheduled appraiser examination is in December, we will extend that deadline to December 31, 2004.

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

We appreciate the Board's efforts in amending the appraiser regulations. We look forward to receiving a copy of the proposed regulations for our review to ensure that the proposal does not conflict with Title XI.

ASC staff is available to assist the Board in resolving its deficiencies. We will return for a follow-up visit between January and March 2005, to review the Board's progress. We hope to see substantial progress toward resolving our concerns. Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

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