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Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 17, 2004

Carlos X. Vélez, President
Gloria Pacheco, Member
Puerto Rico Real Estate Appraiser Examining Board
State Department
151 Forteleza Street
Suite 308
Old San Juan, PR 00902

Dear Mr. Vélez and Ms. Pacheco:

This letter responds to your November 9, 2004 letter concerning Puerto Rico's failure to conform to the Appraiser Qualifications Board's ("AQB") interpretation to its criteria that specifies that the passing score on a State credentialing examination is valid for no more than 24 months after the date the examination was successfully completed. We advised you of this concern in our June 4, 2004 field review letter and have exchanged several letters on this subject since that time.

As we stated in our previous correspondence to you, 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.

In your letter, you notified us that the Puerto Rico Real Estate Appraiser Examining Board ("Board") met in executive session on November 5, 2004, and adopted a resolution stating that the Board "cease and desist of its prior requirement made to the Puerto Rico appraisers affected by this situation to re-take the examination, and reaffirms that the ASC's recommendation for a new examination to applicants whose exam was taken more than 24 months prior to the requested certification will be adopted, but it will only be applicable to appraisers not currently certified and which are seeking a certification based on examinations taken after December 20, 2002." Therefore, the Board apparently has decided not to require the affected appraisers to take the appropriate certification examination, as required by the AQB's interpretation to its criteria. An unsigned and undated copy of the resolution was attached to your letter.

In your letter, you support your action, in part, by referring to a statement in our May 11, 2001 field review letter encouraging the Board "to 'adopt the regulations as written,' without

regard that those regulations did not consider the 24-month validity period of the examination which became in effect on July 2000.” While those proposed regulations never were adopted (notwithstanding the Board’s promise to do so), those proposals, in fact, referred to the AQB’s qualification criteria *and* the interpretations. More specifically, Chapter 5, Article 13, b. of those proposed regulations would have required applicants for certified residential or certified general credentials to meet the education, experience, and examination requirements listed in the AQB’s “*The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria.*” [Emphasis added.] It is important to note that, even if the proposed regulations did not specifically refer to “Interpretations” and only referenced the AQB qualifications criteria, that reference would have included the interpretations because they are an integral part of the criteria.

Your appraiser regulatory statute also appears to require the Board to conform to Title XI’s certification requirements as adopted by the AQB. Section 9(A) of Part 2 of Act No. 277 of July 31, 1974, as amended in 1997, in pertinent part, requires the Board to “issue a federal general or residential certification to practice as a certified appraiser to any person who: (a) has complied with the qualifications for the corresponding certification of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the federal rules adopted thereunder, as implemented by the Board” Title XI requires States to issue certifications only to persons meeting the AQB’s minimum qualifications criteria for certification. As noted above, the AQB’s interpretations to the certification criteria are part of the criteria, and, as such, Title XI jurisdictions must comply with them. We note that, even though the Board failed to adopt implementing regulations as required by the statute, the Board, in practice, has complied with Title XI’s certification requirements – until now.

In your letter and the resolution, you again referred to a May 1997 letter from the ASC as the basis for Puerto Rico using a single examination, inferring that we approved Puerto Rico’s use of one successful examination result at the local license level being used to support subsequent certification credentials. You noted that appraisers seeking to become certified in Puerto Rico cannot begin to accumulate experience hours until they obtain a local license. To obtain that license, the person first must take and pass the certified general examination. You note that, under your law, it is impossible for a locally licensed appraiser to qualify, for example, for the certified general credential because that credential requires the appraiser to have at least 30 months of experience, which exceeds the AQB’s interpretation limiting the validity of examination results to 24 months.

As stated in our previous correspondence, in our 1997 meetings, we and the Board discussed several issues regarding the examinations the Board 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.

It, however, was clear from our discussions in 1997 that, by “single examination,” we only meant that Puerto Rico could use the certified general examination to test at each credential

level. That agreement never meant that a person could rely on a single examination when qualifying for a local license and then rely subsequently on those examination results to qualify for certified residential or certified general status.

Puerto Rico, like all other Title XI jurisdictions, must conform to the AQB certification criteria. The criteria, at a minimum, require applicants for certification to take and pass the uniform certified residential examination or the uniform certified general examination, as the case may be, when applying for that credential level. Because States can impose higher requirements than those set out in Title XI (as long as they are reasonable), we allowed the Board to require persons trying to qualify for each credential level to take and pass the most rigorous examination. We never intended, nor do we have the authority, to waive Puerto Rico's compliance with any of the AQB's certification criteria, including the interpretation at issue.

In summary:

- While our May 11, 2001 field review letter encouraged the Board to adopt and implement its proposed regulations, adoption of those regulations would not have forestalled Puerto Rico's need or ability to conform to AQB criteria;
- Puerto Rico's appraiser regulatory statute appears to require the Board to issue certified appraiser credentials that comply with Title XI and, therefore, with AQB criteria; and
- The agreements we reached with the Board in 1997 regarding examinations were not intended and do not forestall Puerto Rico's need or ability to conform to AQB criteria.

The Board's resolution to apply the AQB's interpretation regarding examination results only to those certified appraisers taking and passing the examination after December 20, 2002, places Puerto Rico's appraiser regulatory program in jeopardy. As you know, the ASC is authorized under Title XI to issue an order not to recognize Puerto Rican-issued licenses and certifications if "the State agency fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to [Title XI]; . . . or decisions concerning . . . appraiser qualifications . . . are not made in a manner that carries out the purposes of [Title XI]." 12 U.S.C. § 3347(b)(1) and (3). If the Board fails to enforce conformance to the AQB's certification criteria, we, as ASC staff, will have no choice but to recommend initiation of such a proceeding to the ASC.

We encourage you to reconsider your most recent actions. Please provide us with your written response no later than 14 days after your receipt of this letter.

Sincerely,

Ben Henson
Executive Director

cc: Hon. Anibel Acevedo Vila, Resident Commissioner, U.S. House of Representatives
Hon. José M. Izquierdo Encarnación, Secretary of State
Francisco Toral, Auxiliary Secretary for Examining Board
Carmen A. Carreras, Esq., Director, Board of Examiners
David Bunton, Executive Vice President, Appraisal Foundation