June 22, 2012

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing & Urban Development
451 7th St., SW
Room 10000
Washington, DC 20410

Dear Mr. Secretary:

The undersigned organizations are mindful of the difficulties facing the Department in light of the anticipated funding constraints being discussed on Capitol Hill. However, as HUD attempts to be proactive in addressing funding shortfalls, it must not impose policies that exceed the letter and the intent of the law. We are referring to HUD's recent changes to the Section 8 renewal guidebook that relate to the imposition of an artificial benchmark when reviewing rent comparability analyses.

As you know, when MAHRA was enacted, both the industry and HUD were cognizant that the determination of comparable market rents must be a credible and defensible process. Under your direction as the Deputy Assistant Secretary for Multifamily, the industry, HUD and the Appraisal Institute worked together to devise the rent comparability guidance (Chapter 9 of the Renewal Guidebook), an appraisal course, along with the rent grid. We believe we were successful in formulating a methodology that would lead to reliable results. That guidance has been in effect for twelve years.

However, HUD is now amending Chapter 9 of the renewal guidebook to require additional "justification" in conjunction with rent comparability studies when the subject rents exceed 110 percent of the hypothetical small area Fair Market Rents (SAFMRs) in urban areas and the FMRs in rural areas. Considering that the Fair Market Rents (FMRs) (regardless of whether the listed rent is representing a PSMA, MSA or zip code) are not intended to reflect the comparable market rent, they are not an appropriate benchmark. In fact, there is no appropriate benchmark. The market is the market.

HUD's new guidance imposes additional burdens on appraisers when the subject rent exceeds the artificial benchmark of small area or regular FMRs. Specifically, the appraiser is to provide as part of the rent comparability study (RCS) a statement as to the percentage of properties in an artificial area whose rents exceed 110 percent of the SAFMRs or the FMRs (depending on locality). Such a requirement does not have anything to do with the determination of a comparable market rent and is in violation of MAHRA. Further, how could a review of such irrelevant data be applied to establish the market rent which is based on five comparable rental properties? We question how the standard can be dependent on the result?

Even if we could conclude that there was justification to impose such a benchmark, we do not believe that the above requirement can be met in most markets, assuming there are limits to the amount of time and money that can be expended. Appraisers have no legal right to the kind of information that must to be obtained from market participants and the receipt of such information is solely dependent on the willingness, thoroughness, and credibility of the sources of information. This revised standard would require the appraiser to obtain <u>all</u> rental information in a particular market,

regardless of the fact that most of it is proprietary. Assuming that the information could be obtained there would be no certain way for a reviewer to verify it. It is not reasonable to require appraisers to opine mathematical certainty about the market based on largely inaccessible property data.

USPAP requires the appraiser to provide "sufficient" information regardless of the conclusion reached. "The appraiser must provide sufficient information to enable the client and intended users to understand the rationale for the opinions and conclusions, including reconciliation of data and approaches, in accordance with Standards 1-6" (Comment under Standards 2-2(b)(viii)). If the appraiser does not meet that standard, the report would be unacceptable even if the concluded rent was not above the artificial FMR benchmark.

The revised guidance also provides that HUD staff or its contractors can impose administrative sanctions on appraisers for violations of USPAP. How can HUD expect appraisers to follow USPAP while imposing a new standard that is inconsistent with USPAP? Further, we are not aware that Contract Administrators or Program Center Directors possess sufficient knowledge of USPAP to impose such sanctions.

Both the SAFMRs and the FMRs are in no way related to the "street" rent, in fact the rents are set at the 40th percentile of rents paid by recent movers. It is not defensible for HUD to insert an artificially low rent benchmark to influence the appraiser's estimate of the comparable market rent. Further, HUD's policy revisions are not consistent with MAHRA which requires the determination of comparable market rent when renewing most Section 8 contracts. HUD's revised guidance does not attempt to justify its new policy or articulate how such a policy will result in more accurate rent determinations.

The change to Chapter 9 is not a minor procedural change, and is inconsistent with congressional intent. At a minimum, HUD should have published its proposed policy in the *Federal Register* for review and comment under the Administrative Procedure Act (APA). <u>We request that HUD rescind the guidance to allow formal review or the industry will be forced to pursue alternative remedies.</u>

Sincerely,

Appraisal Institute (AI)
Council for Affordable and Rural Housing (CARH)
Institute for Responsible Housing Preservation (IRHP)
Institute of Real Estate Management (IREM)
Leading Age (formerly AAHSA)
National Apartment Association (NAA)
National Association of Affordable Housing Lenders (NAAHL)
National Association of Homebuilders (NAHB)
National Association of Housing Cooperatives (NAHC)
National Assisted Housing Management Association (NAHMA)
National Leased Housing Association (NLHA)
National Multi Housing Council (NMHC)

Cc: Carol Galante