

April 8, 2016

Ms. Priya Jayachandran  
Deputy Assistant Secretary for Multifamily Housing  
Room 6106  
U.S. Dept. of Housing and Urban Development  
451 7<sup>th</sup> St., SW  
Washington, DC 20515

Dear Deputy Assistant Secretary Jayachandran:

This letter is written in response to the draft of Chapter 9 of the *Section 8 Renewal Policy Guide*, which was posted on February 23, 2016, for stakeholder review and feedback. The Department has proposed to revise Chapter 9 of the *Section 8 Renewal Policy Guide* that describes the process for creating and reviewing a rent comparability study (RCS). According to the Department, the revisions in Chapter 9 include:

- Enhancing the format and layout to include a roadmap that appraisers can use, reorganized appendices, separate concepts from the technical details and an introduction for each section.
- Strengthened standards and criteria and procedures that include: stronger narrative requirements, clearer definition of “nominal”, an updated RCS sample, and communication protocols.
- New tools and techniques that include a mandatory market rent threshold (140% benchmark), revised checklists for reviewers, minimum qualifications for non-appraiser reviewers, and triggers for a second review.

We have reviewed the revised Chapter 9 and have many broad and general concerns. This is the first substantial update of the policy since the late 1990s/early 2000s. At that time, the Appraisal Institute led an effort to educate real estate appraisal professionals on the existing *Renewal Policy Guide*, with more than 200 practitioners completing a course specifically devoted to the subject. Today we look forward to working with the Department to educate appraisers and users of appraisal services, once the newly-revised chapter is finalized.

In recent years, the real estate appraisal profession has seen an explosion of “rules-based” standards and guidelines that attempt to set parameters around the appraisal process. Appraisal methodology has migrated into underlying appraisal standards, and rules and dictates are now frequently imposed on appraisers in all appraisal situations, even though they may have been intended only for particular circumstances.

### **Rules-Based Approaches**

While we recognize that many sections of Chapter 9 were found in the existing policy, as we review the document with a fresh set of eyes, it is striking how prescriptive Chapter 9 has become. Built into the chapter are various procedures, formulas, rules of thumb and benchmarks that seem to dictate the appraisal process, rather than rely on professional judgment or market evidence. We do not believe that is conducive to deriving a market value opinion, nor is it beneficial to the public trust. Based on our more than 80 years of experience with real estate issues, for every rule, there is an exception in real estate and this is particularly true relative to valuation. The circumstances with one assignment may be drastically different from the next. The tendency toward creating a recipe or “cookbook” for completing appraisals must be balanced with the understanding that appraisal reports are professional opinions and that there are many different ways of approaching valuation questions.

Unfortunately, we must report to the Department that we have heard from Designated members about turning down RCS assignments because of the over-emphasis on rules and dictates within the guidelines. We have heard practitioners complain about an apparent understanding that certain appraisal adjustments will not be questioned so long as they are within certain ranges (say 5-10 percent). This is troubling for a number of reasons, but mostly because such rules of thumb may not be deriving market value, even though such assignments should be highly appealing to qualified appraisal professionals.

On this broad point, we urge the Department to reevaluate the revised chapter to remove “rules of thumb” or dictates, and instead, to focus on the competency and experience of the valuation professional. We urge the Department to rely on qualified appraisers’ professional judgment that is based on broad parameters (recognizing that certain standard parameters are necessary when multiple parties are involved). We believe that this approach will produce a credible and well-supported appraisal report.

### **Appraisal Review**

We acknowledge that part of the reason rules of thumb are put in place is to help with the appraisal review process. However, on this point, we continue to hear from Designated members about unqualified or marginally-qualified reviewers who rely too heavily on rules of thumbs, or checklists, to review RCS appraisal reports. This, too, is disappointing because the appraisal profession has developed a robust body of knowledge around appraisal review that includes coursework, exams and professional credentials.

We encourage the Department to do more to require the use of competent appraisal reviewers in the revised chapter, and to avoid driving the review process through a series of checklists.

### **Non-Shelter Services**

An extension of the concerns stated above about a rules-based approach to valuation, we are concerned that HUD apparently is attempting to cap adjustments for non-shelter services within the revised Chapter 9. The revised Chapter 9 includes various adjustment caps in the instructions related to non-shelter service description and analysis. Generally, we believe that such adjustment caps should not be included in the final revised Chapter 9 if it will refer to the work of the appraiser as “market value,” as this likely will result in something different. We believe that the appraiser should be allowed to report results based on market evidence and information. If the appraiser has information that demonstrates that comparable sales warrant “X” dollars more in rent because of the availability of services, this policy, as proposed, would ignore the market, and that is not market value. We urge the removal of this adjustment cap.

### **Mandatory Market Rent Threshold (140% benchmark)**

The Department appears to be using U.S. Census data as a rule of thumb or guide post in the RCS appraisal process. Our initial reaction to this is that U.S. Census data historically is unreliable and often irrelevant to analysis at the property level analyzed by real estate appraisers. We question its use and value here, when the data should be at the property and/or neighborhood level.

Further, under the revised Chapter 9, if the owner’s RCS concludes that the project’s median gross rent, as derived from the RCS, exceeds 140 percent of the “Gross Rent By Zip Code Tabulation Area” as published by the U. S. Census or other comparable source as determined by the Department, a HUD-commissioned RCS would be required.

We are not opposed to HUD establishing criteria for commissioning an RCS appraisal, when it finds the owner RCS is not *credible*. This speaks to the need to insert more substantial appraisal review requirements in the revised Chapter 9 relating to the credibility of the appraisal report.

Further, we understand that the Department has particular needs and concerns, but this must be balanced with due process. Thus, this appears to potentially warrant an investigation of

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arbitration-like infrastructure to resolve disputes. Such programs do exist and even are accepted by some federal agency programs, such as the Internal Revenue Service (IRS)<sup>1</sup>. We would be happy to work with the Department and all other stakeholders to explore the creation of such a program. The IRS has “conferees,” who are inside the IRS, but are deemed to be “neutral.” This is a way for some neutrality to be injected into the process, even though it’s an IRS attorney performing this function. Typically, these “neutral conferees” are from another office or program area within the IRS. Such arbitration-like programs also may be found at the state/local level, relative to valuation issues in ad valorem tax<sup>2</sup>.

Thank you for the opportunity to comment on the revised Chapter 9 of the *Section 8 Renewal Policy Guide*. We look forward to working with the Department to improve the quality of appraisal services provided to stakeholders of the Section 8 program. Should you have any questions or need additional information, please contact Bill Garber, Director of Government and External Relations, at 202-298-5586 or [bgarber@appraisalinstitute.org](mailto:bgarber@appraisalinstitute.org).

Sincerely,

Appraisal Institute

Cc: Mr. Stan Houle, Program Manager, Office of Housing Assistance and Grant Administration  
Ms. Katherine Nzive, Program Administration Director, Field Asset Management and Program Administration

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<sup>1</sup> See <https://www.irs.gov/Individuals/What-Can-You-Expect-from-Appeals%3F>

<sup>2</sup> See <https://www.azdor.gov/Audits/IndividualAudits.aspx>