



December 12, 2013

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St. SW., Room 10276
Washington, DC 20410-0500

Re: Housing Counseling Program: New Certification Requirements [Docket No. FR 5339-P-01]

The Department of Housing and Urban Development (HUD) has proposed new certification requirements for organizations and individuals that provide homeownership or rental counseling in connection with any program administered by HUD. As HUD-approved housing counseling agencies that will be subject to these certification requirements, we are uniquely interested in this proposed rule and appreciate the opportunity to respond.

The certification of housing counselors is a watershed moment for the nonprofit housing counseling industry. The industry has been working to bring greater professionalization to the industry and a single, HUD-sponsored certification will be a positive step in this regard. The devil, however, is in the details. If the counselor certification is not well designed and well implemented, it has the potential to do tremendous damage to the nonprofit housing counseling community. We believe the concerns outlined here must be addressed in order to ensure the counselor certification requirement is a positive development for the nonprofit housing counseling industry.

Cost

There is great concern in the nonprofit housing counseling community over the cost of the certification exam. The difficulty of the current fiscal environment in which housing counseling agencies operate cannot be overstated. Federal support for housing counseling has been steadily declining in recent years, even as demand for counseling services has risen, and some agencies have been forced to close their doors as a result. Those that continue to operate are doing so on razor thin margins and many are barely staying afloat.

While the proposal endeavors to make the case that individual counselors will primarily bear the cost of certification, in reality it is the agencies that will. The analogy to lawyers, doctors, and accountants generally paying the cost of their required professional certifications is not apt because, once licensed, these professionals generally have much higher earning potential than housing counselors. It is generally easy to receive, for example, a bar study loan to pay for the cost of training for and becoming licensed to practice law. This is not the case for housing counselors and the cost will be prohibitive for many. Even though paying for counselors to become certified will force agencies to cut from other areas of their already strained budgets, agencies will have no choice when the alternative is having uncertified counselors and losing access to eligibility for HUD funding.

Recommendation #1: Certification training and testing should be free to all HUD-approved agencies and their employees. The housing counseling community is already strained with demands for its services and reduced HUD housing counseling funding. HUD should seek outside funding for the training and testing and should not use existing annual HUD housing counseling funding to cover these expenses.

HUD estimates the cost of the certification examination alone (i.e. without training) will be in the range of \$100-\$200. This estimate is based on the cost of the HECM examination, which is \$100, with a list of examination topics, study materials, and practice exams all available online at no cost, and the speculation that the general certification will be more expensive because it will cover multiple counseling areas and would be a new test. Developing the examination and training materials are primarily one-time costs and should not be passed along to counseling agencies (or individual counselors).

An important factor contributing to the relatively low cost of the HECM examination is that the test is administered online and all training materials are made available online. Among other costs, this cuts down significantly on the costs of certification for agencies because it eliminates the need for travel, lodging, and other incidental expenses.

Recommendation # 2: We believe the certification examination can and should be provided at a lower cost than the estimated \$500 per counselor, including the cost of training and study materials. The certification examination should be administered online, with a list of examination topics, study materials, and practice examinations all made available online, at a cost that is in line with the cost of the HECM examination, i.e. the \$100-\$200 examination administration estimate included in the proposal.

Given the concern agencies' have regarding the cost of the examination, there is a concern over the additional cost that will be associated with re-takes of the exam.

Recommendation #3: If training and testing is not made available for free to HUD-approved agencies and their employees, HUD should consider ways in which costs can be further reduced for examinees who are re-taking the examination. Ideally, re-takes would be available at no additional cost. At a minimum, training materials should be reusable, so there is only a one-time cost for training materials. Even better would be for training materials to be available at no cost. In this case, the only cost for the test or subsequent re-tests should be the cost of administering the examination. Even in this scenario, though, HUD should consider ways in which it can reduce the cost of re-tests even further.

Definitions and the Name Housing Counselor

There has been a building consensus in the nonprofit housing counseling community that the word "counselor" is too closely associated with other forms of counseling, such as counseling for mental health and substance abuse counseling. The implementation of the Dodd-Frank counselor certification presents an excellent opportunity to change the title "housing counselor." A recent online survey conducted by the National Housing Resource Center (NHRC), 63 out of 81 respondents, or 78 percent, agreed that the name should be changed to "HUD-Certified Housing Advisor."

Recommendation #4: HUD should work with the housing counseling community to develop and implement a new job title for housing counselors who have passed the certification examination.

Effective Date

As proposed, the certification requirement would become effective one-year from the date of the Final Rule. To allow the industry adequate time to prepare for the certification requirement, the effective date should be one-year from when HUD makes available a list of examination topics, study materials, and practice tests.

Recommendation #5: *The effective date for the Final Rule should be one year from the date when all training and test materials are made available.*

Implementation of Certification Requirement

The requirement that individual counselors be certified as competent to provide counseling, and that organizations only provide counseling through counselors that have been so certified, represents a landmark change for the nonprofit housing counseling industry. While the industry is generally supportive of this change, it must be implemented cautiously so as to minimize the disruption to the industry. There are three specific areas of concern here: the treatment of experienced counselors who do not pass the examination on their first attempt, the treatment of new counselors, and the requirement that at least half of an agency's counselors have at least six-months experience in duties related to the agency's counseling program.

It is the unfortunate reality that some experienced counselors who provide high-quality counseling but are not good test-takers will not pass the exam on their first attempt, and some may never be able to pass a written examination. While we appreciate that HUD does not have the authority to provide some alternative means of certification for these counselors, the goal should be to minimize to the greatest extent possible the number of quality counselors who are unable to provide counseling as a result of not passing the examination. While this of course requires that the examination itself be a fair and reasonable assessment of a counselor's competency, HUD should take steps to minimize the impact on otherwise well-qualified counselors who are simply not strong test-takers.

Recommendation # 6: *Experienced counselors (those employed by a HUD-approved agency prior to the effective date of the final rule) should be given a 12-month grace period, following the effective date of the final rule, in which to pass the examination and become HUD-certified. During the grace period, experienced counselors should be allowed to continue counseling as if they were HUD-certified and agencies should be able to provide counseling through experienced counselors who are not HUD-certified. This grace period can be implemented by amending the proposed § 214.103(g) (3)-(5).*

Recommendation # 7: *HUD should take appropriate measures to ensure that examinees who do not pass on their first attempt are able to re-take the exam in a timely manner. The exam should be administered online and available to be taken at any time (for example, through an online proctor service such as is used to administer the HECM examination).*

With respect to new counselors, it is important that new counselors have the opportunity to learn by doing, as well as to provide counseling when they are ready to do so. As proposed, § 214.103(g)(2) would be amended to provide that “[a]ll staff providing homeownership counseling or rental counseling pertaining to HUD programs must be certified by HUD ...,” which would prohibit a newly hired counselor from providing any counseling activity pertaining to HUD programs. This prohibition is problematic because

providing actual counseling in a properly supervised setting is one of the most effective tools for training new counselors.

Recommendation # 8: *Under proper supervision, new counselors should be exempted from the requirement that all staff providing homeownership or rental counseling pertaining to HUD programs must be certified by HUD.*

Section 214.103(g)(2) further provides that "... at least half the agency's counselors must have at least 6 months of experience in duties related to the agency's housing counseling program." In light of the new certification requirements, this is problematic. It is very easy to imagine any number of scenarios where an agency would be unduly penalized as a result of this provision. The most obvious would be where a small agency employs only a single counselor. In such a case, the agency would be prohibited from employing a counselor who has passed the examination, and is therefore certified by HUD as competent to provide counseling, but does not have at least 6 months experience. This requirement will disproportionately impact agencies in rural areas, which are both more likely to have smaller counseling staffs and which have a smaller pool of already-experienced counselors and therefore are more reliant on training new counselors. In short, while it may be ideal for counselors to have experience on top of being certified, it is not practical to require both.

Recommendation # 9: *In light of the new requirement that all counselors be HUD-certified, HUD should eliminate the existing requirement that at least half of an agency's counselors must have at least 6 months of experience in duties related to the agency's housing counseling program.*

Recommendation # 10: *HUD certified housing counselors should only be considered certified when they are employed by a HUD approved agency. Their certification will be considered active only when they are working for a HUD approved housing counseling agency. Counselor certification should be deactivated when the counselor is not employed by a HUD approved housing counseling agency and reactivated when the counselor is again working for a HUD approved housing counseling agency.*

Recommendation # 11: *An agency which does not have its own HUD approved housing counseling status but which is a subgrantee of a HUD Intermediary is considered a HUD approved housing counseling agency for the purposes of housing counselor certification as long as 1) the agency remains a subgrantee and 2) is subject to the same requirements as a HUD approved housing counseling agency.*

Content of the Examination and Training Materials

While the content of the examination is not addressed in the proposal, the nonprofit housing counseling community has several general concerns that we would like to see addressed in the appropriate vehicle, whether the final rule, a subsequent rulemaking, or the examination itself.

At the most basic level, the examination must be a reasonable measure of the examinees competence to provide quality counseling. The initial HECM examination process has been raised by many as a cautionary tale. The two primary complaints around the HECM examination are that the examination content did not match well with the content of the training materials and that the content of the examination was so difficult and outside of the normal HECM counseling experience that even some

experienced, well-prepared counselors were not able to pass. These are critical lessons that need to be taken to heart during the development of the examination and its related training materials.

Recommendation #12: *Training materials should be clear, relate directly to the areas covered in the test, standardized, and readily available on line.*

Recommendation #13: *The content of the test should be based on the regular issues counselors encounter in their daily work.*

The training materials and the examination should be developed in close consultation with the nonprofit housing counseling community. The examination should be a good measure of the examinee's competence to provide quality counseling and no one knows what makes for an effective counselor better than other counselors.

Recommendation # 14: *HUD should recruit a panel of skilled, experienced counselors with which to consult as it develops the content of the examination and training materials. As the examination and training materials are developed, HUD should beta-test them with actual counselors to ensure the examination is measuring well actual counselor competence.*

Examination and training materials should be culturally sensitive. The nonprofit housing counseling community is as culturally diverse as the United States and the examination must be sensitive to the many considerations that providing a standardized test to such a diverse population entails. There are many counselors who counsel primarily or even exclusively in a language other than English and these counselors must be able to choose the language in which they are most comfortable taking the examination.

Recommendation # 15: *The examination must be available in multiple languages to support counselors servicing non-English speaking communities who may not be proficient enough in English to do well on the examination.*

Recommendation# 16: *HUD must ensure that counselor certifications and training requirements include a strong emphasis on how to effectively serve limited English proficient, rural, lower income, and other underserved populations. Affirmative efforts should be made to ensure that existing housing counseling capacity in underserved and underrepresented populations is preserved and expanded.*

Recommendation #17: *Counselors should be able to take the certification test whenever the counseling agency and counselor feel they are ready.*

Recommendation #18: *Testing should be conducted online and be available at the convenience of the agency and the counselor, so as to limit the disruption to the office workflow. Online testing would be available at any time, so the agency and the counselor can schedule the exam at their own convenience.*

Examination Scoring

Section 106(e) of the 1968 Housing and Urban Development Act, as amended by Dodd-Frank, requires the Secretary of HUD to establish standards and procedures for testing and certifying counselors that require the counselor to demonstrate, through written examination, competence to provide counseling in six areas:

financial management; property maintenance; responsibilities of homeownership and tenancy; fair housing laws and requirements; housing affordability; and avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default. The requirement that all counselors know all things is not consistent with most counselors' actual practices, which tend to focus on one or perhaps two areas of counseling. There are many counselors, for example, who do only foreclosure counseling. While it may be helpful for these counselors to have a thorough understanding of property maintenance and fair housing laws and requirements, these are hardly central to the needs of the counselor's clients.

If we were starting from scratch, we would recommend not requiring all counselors to demonstrate competence in each of these counseling areas. In light of Dodd-Frank's contrary requirement, though, HUD should structure the examination so as to meet Congress' requirements while at the same time recognizing the reality of counseling. One means of accomplishing this would be to require a certain minimum overall score, rather than requiring minimum scores for each subject area. Should HUD choose to require minimum scores for each subject area, it could require relatively low minimum scores for each subject area, enough to demonstrate competence, and a higher overall minimum score, for example, require 50 points out of 100 for each subject area but require an overall score of 350 out of 500. This would allow counselors to "bank" points in the subjects in which they actually counsel while still meeting the Dodd-Frank requirement of demonstrating competence in all six subject areas.

Recommendation #19: HUD should require a minimum overall score, rather than a minimum score in each subject area. Alternatively, HUD should require a relatively low minimum score on each subject area and a slightly higher combined overall score.

Counseling vs. Education:

We think it is clear that neither Congress nor HUD intends for the counselor certification requirement to apply to individuals who provide housing education (i.e. not personalized, one-on-one services). For the sake of clarity, though, this should be made explicit in the final rule.

Recommendation #20: In the final rule, the definitions of "homeownership counseling," "HUD-approved housing counseling agency," "HUD-certified housing counselor," and "rental counseling" in §214.3 should be amended to distinguish "counseling" from "education" and clarify that the counselor certification requirements do not apply to educators.

Misuse of Funds Provisions

The proposed rule provides penalties for the misuse of funds, including permanent ineligibility to receive HUD Housing Counseling funding for any agency that misuses HUD Housing Counseling funds. An agency is deemed to have misused funds if the agency is determined by HUD "to have used funds in a manner that constitutes a material violation of applicable statutes and regulations, or any requirements or conditions under which such funds were provided" The vagueness of the violation, coupled with the severity of the punishment, have raised a lot of concern in the nonprofit housing counseling community. While we agree that the use of funds in a way that is a material violation of applicable statutes and regulations, or any requirements or conditions under which they were provided should be subject to the specified penalties, it should not be the case that any misuse of funds, however trivial, accidental or otherwise, should be subject to harsh penalties. Such a result can be avoided by including in this provision

a definition of “material violation” that makes clear that a misuse of funds is covered by this section only if it was intentional and non-trivial.

Recommendation #21: *Proposed § 214.311(d) should be amended to include a definition of “material violation” providing that for a misuse of funds to be covered by this section, it must have been intentional and non-trivial.*

Sincerely,

HUD Intermediaries and National Agencies & Organizations

NID-Housing Counseling Agency	Oakland	CA
Rural Community Assistance Corporation	West Sacramento	CA
National Coalition for Asian Pacific American Community Development	Washington	DC
National Council of La Raza	Washington	DC
HomeFree-USA	Hyattsville	MD
National Federation of Community Development Credit Unions	New York	NY
National Urban League	New York	NY
National Housing Resource Center	Philadelphia	PA

Regional, State, and Local Agencies & Organizations

Community Action Human Resources Agency	Eloy	AZ
Arizona Housing Alliance	Phoenix	AZ
NHS Phoenix	Phoenix	AZ
Campeños Sin Fronteras	Somerton	AZ
Newtown Community Development Corporation	Tempe	AZ
Family Housing Resources	Tucson	AZ
Northern AZ Council of Governments	Winslow	AZ
HPP CARES	Long Beach	CA
Korean Churches for Community Development	Los Angeles	CA
Korean Resource Center	Los Angeles	CA
West Angeles CDC	Los Angeles	CA
NeighborWorks Orange County	Orange	CA
Inland Fair Housing and Mediation Board	Rancho Cucamonga	CA
Neighborhood Housing Services of the Inland Empire	San Bernardino	CA
National Asian American Coalition	San Diego	CA
The Housing & Economic Dev Corp	San Diego	CA
CCBHC	Santa Ana	CA
CCCS of Orange County	Santa Ana	CA

Housing Development Fund	Stamford	CT
First State Community Action Agency, Inc.	Georgetown	DE
HOND, INC	Wilmington	DE
We Help Community Development Corporation	Belle Glade	FL
Tampa Bay CDC	Clearwater	FL
Community Training Works, Inc. (CTW) & Young American Conservation Corps (YACC)	Melbourne	FL
SER-Jobs for Progress	Miami	FL
NANAY Community Economic Development Corporation	North Miami	FL
The First Community Christian Pentecostal Church of God, Inc.	Orlando	FL
Real Estate, Education & Community Housing, Inc.	Palm Beach Gardens	FL
CCCS of West Florida, Inc.	Pensacola	FL
Comprehensive Housing Resources, Inc.	Port Charlotte	FL
St. Petersburg Neighborhood Housing Services, Inc. d/b/a Neighborhood Home Solutions	St. Petersburg	FL
Credit Card Management Services, Inc.	West Palm Beach	FL
Home Opportunities Made Easy, Inc.	Des Moines	IA
Joseph Corporation	Aurora	IL
Housing Action Illinois	Chicago	IL
Spanish Coalition for Housing	Chicago	IL
Homestead Consulting Services	Lafayette	IN
Neighborhood Development Foundation	New Orleans	LA
Cambridge Credit Counseling Corp	Agawam	MA
Eastside Community Development Corporation, Inc.	Baltimore	MD
Edmondson Village Collaborative, Inc.	Baltimore	MD
Neighborhood Housing Services of Baltimore	Baltimore	MD
The Development Corporation of Northwest Baltimore	Baltimore	MD
Hagerstown Neighborhood Development Partnership, Inc.	Hagerstown	MD
HIP Services, Inc.	Hyattsville	MD
Housing Options & Planning Enterprises, Inc.	Oxon Hill	MD
Seat Pleasant Community Development Corporation	Seat Pleasant	MD
Legal Services for the Elderly	Augusta	ME
CEI	Wiscasset	ME
4-sight Counseling, Inc.	Cape Girardeau	MO
Credit & Homeownership Empowerment Services, Inc.	Kansas City	MO
Beyond Housing	St Louis	MO
CCCS of Greater Greensboro, A Division of Family Service of the Piedmont Inc.	Greensboro	NC
Centre for Homeownership & EDC, Inc.	Hillsborough	NC

Telamon Corporation	Raleigh	NC
Credit Advisors Foundation	Omaha	NE
Affordable Housing Alliance	Eatontown	NJ
Union County Foreclosure Task Force	Elizabeth	NJ
Community Services of Nevada	North Las Vegas	NV
Neighborhood Housing Service	Bronx	NY
Cypress Hills Local Development Corporation	Brooklyn	NY
Buffalo Urban League	Buffalo	NY
LA FUERZA UNIDA, INC.	Glen Cove	NY
FONC	Keeseville	NY
Neighborhood Housing Services of New York City, Inc.	New York	NY
New York Mortgage Coalition	New York	NY
Albany County Rural Housing Alliance, Inc.	Voorheesville	NY
Consumer Credit Counseling Service of Buffalo, Inc.	West Seneca	NY
Westchester Residential Opportunities	White Plains	NY
Working In Neighborhoods	Cincinnati	OH
Empowering and Strengthening Ohio's People (ESOP)	Cleveland	OH
Neighborhood Housing Services of Greater Cleveland	Cleveland	OH
Homes on the Hill, CDC	Columbus	OH
Affordable Housing Centers of PA	Philadelphia	PA
NKCDC (New Kensington CDC)	Philadelphia	PA
The Urban League of Philadelphia	Philadelphia	PA
Integra Home Counseling, Inc.	Tannersville	PA
Housing Network of Rhode Island	Pawtucket	RI
Binghamton Development Corporation	Memphis	TN
Affordable Homes of South Texas, Inc.	McAllen	TX
Neighborhood Nonprofit Housing Corporation	Logan	UT
Salt Lake Community Action	Salt Lake City	UT
NCCCED	Richmond	VA
Champlain Housing Trust	Burlington	VT
Opportunities Credit Union	Burlington	VT
Vermont Affordable Housing Coalition	Burlington	VT
RuralEdge	Lyndonville	VT
Homestead Solutions, Inc.	Oshkosh	WI
Central Appalachia Empowerment Zone of WV	Clay	WV
Consumer Credit Counseling Service of the Mid-Ohio Valley	Parkersburg	WV