

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 214

[Docket No. FR-4798-F-02]

RIN 2502-AH99

Housing Counseling Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes regulations for HUD's Housing Counseling program, as authorized by the Housing and Urban Development Act of 1968, and for which, for the past several years, notices of funding availability have been issued on an annual basis. This final rule follows publication of a December 23, 2004, proposed rule that adopted and augmented the Housing Counseling program requirements with which grantees and housing counseling agencies are already familiar. This final rule takes into consideration the public comments that were received in response to the proposed rule and makes several changes to the proposed regulatory text at this final rule stage.

DATES: *Effective Date:* October 29, 2007.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2004 (69 FR 77118), HUD published a proposed rule that would establish regulations for its Housing Counseling program. HUD's Housing Counseling program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106). Section 106(a) authorizes HUD to provide or contract with organizations to provide "counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of homeownership." Further, section 106 authorizes HUD to provide counseling

directly or to enter into contracts with, or make grants to, and provide other types of assistance to eligible private or public organizations (including grassroots, faith-based, and other community-based organizations) with special competence and knowledge in providing housing counseling to low- and moderate-income families.

HUD's Housing Counseling program offers the counseling services authorized by Section 106 by making grants to, or contracting with, HUD-approved housing counseling agencies to provide this counseling. Housing counseling services offered under HUD's program may include, but are not limited to, the following: Assisting eligible homebuyers to find and purchase homes; helping renters locate and qualify for assisted rental units; helping eligible homebuyers obtain affordable housing; assisting homeowners to avoid foreclosures; assisting renters to avoid evictions; helping the homeless find temporary or permanent shelter; reporting fair housing and discrimination complaints; and addressing housing problems.

In the December 23, 2004, rule, HUD proposed the codification of the requirements of the Housing Counseling program. In addition, HUD proposed additional requirements and procedures to improve and strengthen the Housing Counseling program. The preamble to the proposed rule, at 69 FR 77118-77125, provides a more detailed discussion of the regulations proposed for codification for the Housing Counseling program.

II. This Final Rule

This final rule takes into consideration the public comments received on the December 23, 2004, proposed rule. The following highlights some of the more notable changes made in the final rule.

A. Definitions

In this final rule, HUD has revised definitions for affiliate, branch or branch office, education, HUD-approved housing counseling agency, housing counseling work plan, housing counseling action plan, housing goal, intermediary, local housing counseling agency, and subgrantee, and added definitions of housing counselor, multi-state organization (MSO), and participating agency.

As discussed in more detail in section III of this preamble, HUD created the term "multi-state organization" because of the increasing number of local housing counseling agencies that have expanded beyond the definition of a local agency. The MSOs provide

housing counseling services through a main office and branches, if applicable, in one state and branch offices located in two or more additional states. This definition was necessary because of the emergence of organizations that did not meet the existing definitions.

For clarity, HUD has added the new definition of "participating agency" and used the new term throughout the regulatory text. Participating agencies are all housing counseling and intermediary organizations that participate in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved MSOs, and state housing finance agencies. HUD added this definition because the term "HUD-approved agency" does not adequately describe all organizations that participate in the program.

In this final rule, HUD also included a definition of "reverse mortgage," which means a mortgage that pays a homeowner loan proceeds drawn from accumulated home equity and that requires no repayment until a future time. The increasing demand for reverse mortgages, including Home Equity Conversion Mortgages (HECMs), demonstrates a related need for housing counseling about additional types of reverse mortgages. As a result, the term "reverse mortgage" has been utilized throughout this final rule.

B. Counseling Settings

Although HUD believes that in-person, face-to-face counseling is ideal, HUD has revised the regulations at § 214.300 to allow for alternative counseling settings when it is in the best interests of the client. Several commenters explained that when clients are facing foreclosure or eviction, they often do not have time or resources to meet face-to-face with a housing counselor at the agency's offices. Under these circumstances, the agency must arrange to meet with such persons at an alternative location or through an alternative format.

In addition, agency facilities must meet, when applicable, accessibility requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR parts 8 and 9, as well as Title III of the Americans with Disabilities Act. There may also be circumstances where an agency will have to provide a person with a disability counseling in an alternative format or at an alternative location as a reasonable accommodation to the person's disability. The final rule requires that an agency's housing counseling work plan address

alternative settings for the provision of housing counseling services.

C. Approval Criteria

HUD has revised § 214.103(f)(2) (Staff) of the proposed rule to provide greater flexibility to agencies in hiring staff, and the provision is now located at § 214.103(g)(2). Under this final rule, for agencies seeking HUD approval, to maintain HUD approval, and to participate in HUD's Housing Counseling program, at least one-half of an agency's counselors must have the minimum 6 months counseling experience.

Recognizing the expanding roles of housing counseling agencies, HUD also revised § 214.103(k) of the proposed rule by removing the requirement that housing counseling agency facilities be located in the communities they serve. In this final rule, proposed § 214.103(k) has been redesignated at § 214.103(l). In addition, HUD has revised § 214.103(l) to provide that agencies must make space available to provide housing counseling services, but are not required to limit the use of the space solely for the purpose of providing housing counseling services.

HUD made an additional clarification in the list of ineligible activities at § 214.103(c)(2). The final rule has been revised to provide that offenses that reflect upon the responsibility, integrity, or ability of housing counseling agencies to participate in housing counseling activities refers to a criminal offense that can be prosecuted at the local, state, or federal level. An example of such an offense would be if a member of the board of directors, the executive director, or an employee has been indicted or convicted of embezzling city, state, or federal funds.

D. Inactive Status for Housing Counseling Agencies

This final rule also adds a new status for HUD-approved agencies that, for certain reasons, are temporarily unable to comply with the requirements necessary to be a HUD-approved counseling agency. When an agency is unable to continue to meet the requirements for a HUD-approved counseling agency, HUD will remove an agency from the list of participating agencies until such time as the impediment to compliance is removed. Under current procedures, the HUD-approved agency that fails to meet the program requirements may be terminated and have to reapply for HUD approval. Therefore, this temporary inactive status would be less burdensome for agencies. The new provisions are located in § 214.200 and

are described in additional detail in section III of this final rule.

E. Client Management System

The requirements for a client management system, proposed at § 214.319, were consolidated into the approval criteria in § 214.103. In addition, HUD revised the requirements for a client management system so that participating agencies will utilize such a system for the collection of client-level information including, but not limited to, financial and demographic data, counseling services provided, and outcomes data. The system used must provide the counseling agency with the tools necessary to track and manage all counseling and educational activities associated with each client. Agencies must utilize a system that satisfies HUD's requirements and interfaces with HUD's databases.

F. Agency Workload

Under § 214.303 (Performance Criteria), HUD proposed that an agency's workload would be a minimum of 50 clients annually and also that an agency maintain funding that enables the agency to provide housing counseling to a minimum workload of 50 clients. In reviewing these related provisions, HUD determined that clarification and changes were necessary. First, HUD revised § 214.303(b) to provide that the workload determination would be changed to a minimum of 30 clients annually. Similarly, HUD redesignated and revised § 214.303(i) by restating the 30-client requirement and requiring that the agency maintain a level of funds that enables it to provide housing counseling to at least this required 30-client workload every year, whether or not the agency receives HUD funding.

G. Conflicts of Interest

HUD has revised and redesignated the conflicts-of-interest provision in this final rule at § 214.303(f) to make the provisions easier to understand and provide additional flexibility. The revised regulations prohibit directors, employees, and officers of HUD-approved housing counseling agencies and intermediaries from engaging in activities that create a real or apparent conflict of interest. A conflict, for example, could arise if these individuals or their spouse, child, general partner, or organization in which he or she serves as employee (other than with the HUD-approved counseling agency), or with whom he or she is negotiating future employment, has a direct interest in the client as landlord or creditor, or originates, has a financial interest in,

services, or underwrites a mortgage on the client's property, owns or purchases a property that the client seeks to rent or purchase, or serves as a collection agent for the client's mortgage lender, landlord, or creditor.

Further, the revised regulations prohibit the director, employee, or officer of a HUD-approved housing counseling agency or intermediary from referring clients to mortgage lenders, brokers, builders, or real estate sales agents or brokers in which the individual, his or her spouse, minor child, or general partner has a financial interest.

The provisions require the agency, its staff, or any member of his or her immediate family to avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain, which includes providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients. HUD may investigate agency practices and may take action to suspend or terminate the agency's approval.

H. Housing Counseling Fees

Funding for housing counseling is a major concern among participating agencies. In a change in this final rule, HUD is clarifying that it will allow for participating agencies to accept funding from lenders, as long as the relationship does not create a conflict of interest and that the relationship is disclosed to the client (see §§ 214.303 and 214.313).

In addition, in the final rule, HUD revised the provisions for charging fees to clients. Under this final rule, agencies may charge reasonable fees to clients, as long as the fee does not place a hardship on the client. Acknowledging that a client's ability to pay a fee is based on factors beyond the client's income, HUD revised the requirement that a fee be based solely on the client's income. The housing counseling agency may make a determination about a client's ability to pay based on factors, including, but not limited to, income and debt obligations. Clients should not be turned away because of an inability to pay. Agency fee schedules, as well as determinations of clients' ability to pay, are subject to review by HUD during periodic monitoring conducted in accordance with § 214.307. In another change from the proposed rule, HUD removed the provision that HUD would pre-approve an agency's fee schedule. Instead, HUD will review fee schedules during a review of an agency's application for

approval or a performance review, in order to ensure that the fees are consistent with fees charged by similar agencies providing similar services.

If a housing counseling client believes that he or she has been unreasonably denied access to counseling because of a fee or other dispute, the client should contact the local HUD field office or HUD Headquarters.

I. Recordkeeping

HUD has removed the client and counselor signature requirement from § 214.315. Although the action plan is an important document required under § 214.300(a)(2), it is unnecessary and burdensome to require the plan to be signed by both client and counselor. HUD also removed the intake interview requirements at § 214.315.

In addition, HUD has revised § 214.315(b) to expand the recordkeeping requirements so that the client file can be a paper file, an electronic file, or a combination. HUD believes that as housing counseling agencies increasingly utilize client management systems, client files will be a combination of electronic and paper files. HUD also revised §§ 214.315(e) and (f) to clarify the requirements for client files and education files. Finally, HUD modified § 214.315(d) to include client income data among the client information that agencies collect.

J. Phased-In Implementation of New Regulations for Approved Counseling Agencies

HUD recognizes that HUD-approved housing counseling agencies will be required to modify their procedures or adopt new protocols as a result of the regulatory changes made by this final rule. Although HUD believes the new requirements are necessary to increase the effectiveness of the Housing Counseling program, the Department also wishes to minimize the costs and regulatory burden of complying with the final rule on agencies that have been approved by HUD and are currently in full compliance with existing requirements. Accordingly, this final rule provides that housing counseling agencies approved by HUD on or before the effective date of this final rule have until October 1, 2007, to comply with the requirements of this final rule. Additionally, housing counseling agencies that have submitted applications to HUD as of the publication date of this final rule under the existing requirements and that are subsequently approved, even if the agency is notified of the approval after the effective date of the rule, also will have until October 1, 2007, to comply

with the requirements in this final rule. All other agencies approved after the effective date must comply with the requirements of this part.

K. Other Changes

Finally, in an effort to improve organization, HUD made minor changes in 24 CFR part 214 in this final rule. For example, HUD consolidated proposed subpart E, entitled Grants, into the funding requirements in § 214.311. In addition, HUD clarified that compliance with applicable civil rights laws will be reviewed as part of the performance review under § 214.307. Other minor changes to organization were made in subsections to improve organization of the regulations, but do not effectuate substantive changes.

III. Discussion of Public Comments on the December 23, 2004, Proposed Rule

The public comment period on the proposed rule closed on February 22, 2005. HUD received 16 public comments on the proposed rule. Comments were received from housing counseling agencies, trade associations, and other interested organizations. The following provides a discussion of key issues raised by public commenters, and HUD's responses to these issues.

A. Definitions

Comment: For consistency, HUD should revise the definition of "affiliate" in the final rule to require that an affiliate be "duly organized and existing as a tax exempt, nonprofit, 501(c)(3) organization."

HUD response: HUD agrees with the commenter that the regulatory language concerning definitions and nonprofit status must be consistent. Therefore, HUD revised § 214.3 in this final rule so that the definition of "affiliate" means an organization connected with, but separately incorporated from, a regional or national intermediary, or state housing finance agency (SHFA), for the purposes of its HUD-related Housing Counseling program. An affiliate is defined as: (1) Duly organized and existing as a tax-exempt nonprofit organization, (2) in good standing under the laws of the state of the organization, and (3) authorized to do business in the states where it proposes to provide housing counseling services.

HUD also clarified § 214.103(a), (Nonprofit and Tax-exempt Status), which applies to affiliates, to require that a housing counseling agency must function as a private or public tax-exempt nonprofit organization, or be a unit of local, county, or state government. The agency must submit evidence of nonprofit status and tax-

exempt status under section 501(a), pursuant to section 501(c) of the Internal Revenue Code of 1996 (26 U.S.C. 501). Units of local, county, or state governments must submit proof of their authorization to provide housing counseling services.

Comment: In the final rule, HUD should revise the term "client counseling plan" to "client action plan."

HUD response: HUD agrees with the comment that "action" plan is more descriptive of the type of plan that counseling agencies must produce under these regulations, and has, therefore, replaced the term "Client Counseling Plan" with "Action Plan." The text of the proposed definition remains unchanged; only the label has been revised to "Action Plan."

Comment: The definition of "education" in the proposed rule appears to unintentionally exclude legitimate educational services. In the proposed rule, "education" was defined as "information provided in a group or classroom setting." One commenter suggested removing the phrase "in a group or classroom setting."

HUD response: HUD did not accept this comment. The purpose of this definition is to distinguish between in-person housing counseling services to individuals and members of their household and educational services that are provided to groups of individuals. An education course or workshop differs from counseling in that it is usually conducted in a group setting and it is not tailored to the unique circumstances of the individual. Individualized counseling is more extensive than general education, because it is more rigorous and involves one-on-one and longer-term relationships with a housing counselor.

The commenter requested that the definition be more inclusive of activities such as distance learning and home study programs, which may be the only practical action for people with inflexible schedules or which may be necessary as a reasonable accommodation for persons with disabilities. HUD recognizes that advances in computer technologies allow for the development of distance learning curricula that can potentially reach individuals living in rural areas and individuals with mobility disabilities. HUD believes, however, that the use of distance learning curricula is limited at this time in the housing counseling industry and that the majority of education sessions are held in a group or classroom setting.

Comment: HUD should more narrowly define the term, "housing

goal.” One commenter suggested a revised definition that counselors must fully explain to clients the barriers to achieving their goals and work with clients to identify goals more reasonable to their situation. This commenter further recommended that HUD revise the definition to state that counselors could help clients set short- and long-term goals, which may lead to the achievement of their original objective.

HUD response: HUD agrees with the commenter and has revised the definition in this final rule to state that housing goal means a realistic, short-, or long-term objective set by the client, with advice from a housing counselor. This revised definition takes into account that an agency can work with a client to set short-term and long-term goals to meet a housing objective that may be difficult for the client to meet on a short-term basis.

Comment: To reflect more accurately the meaning of the term, in the final rule, HUD should change the term “work plan” to “housing counseling plan.”

HUD response: HUD believes the term “work plan,” as presented in the proposed rule, accurately describes the function of the document, which describes the proposed housing counseling services of the agency, or the network of agencies associated with an intermediary.

Comment: The rule should provide geographic requirements for maintaining national and regional status. Specifically, the commenter suggested that the definition of national intermediary be revised to indicate that an intermediary serves at least one-half of the states or at least 26 states. The commenter further suggested that the definition of regional intermediary should be revised to indicate that a regional intermediary has a physical office in fewer than 26 states.

HUD response: HUD disagrees with the commenter. HUD believes it is too limiting to define national and regional intermediaries, in this regulation, specifically by the number of states. For example, such a strict definition does not take into account the potential breadth of services a national intermediary may be providing in multiple regions throughout the country. In response to this comment, however, HUD has adopted minor changes to provide clarity in the definition of “intermediary.”

Comment: The final rule should define the expectation of what percentage of an intermediary’s 12-month award should be designated as pass-through funds to intermediary affiliates.

HUD response: HUD did not adopt this revision as recommended. The primary purpose of HUD housing counseling grant funds is to support the direct delivery of housing counseling services. Since administrative needs vary by intermediary, HUD believes that the establishment of a designated pass-through percentage would be unreasonably restrictive for intermediaries. For example, a newly approved intermediary may need to devote more resources to training and technical assistance than an established intermediary would devote to administrative resources.

Comment: HUD should revise the definition of Local Housing Counseling Agency (LHCA) to indicate that an LHCA has only one location or a main office with one or more branch offices within the same state or no more than two contiguous states.

HUD response: HUD agrees with the commenter and has revised the definition of LHCA so that it reflects that an LHCA may have a main office, and one or more branch offices, in no more than two contiguous states. Moreover, a recent trend in the industry is for agencies to merge in order to enjoy economies of scale regarding accounting and other costs. Accordingly, in order to accommodate this new model of agency, and support the cost savings associated with them, HUD added a definition in § 214.3 for “multi-state organizations.”

Comment: In the final rule, HUD should provide additional guidance around acceptable forms of outreach and marketing activities.

HUD response: The final rule now has been revised by adding a definition at § 214.3 of “marketing and outreach” (see also § 214.300(c)(2)). Under this definition, marketing and outreach mean the provision of information to raise awareness about critical housing topics, such as predatory lending or fair housing issues, and the availability of housing counseling and other forms of assistance, including, but not limited to: Distributing materials; presenting at community events; conducting informational campaigns such as public service announcements (PSAs), advertisements, or other forms of media campaigns; and advocating with lenders and other industry partners.

B. Approval Criteria

1. One Year in Operation

Comment: HUD should clarify whether agencies certified by HUD-approved intermediaries are subject to the provision that an agency must have been in operation for at least one year

before it can be considered for HUD certification.

HUD response: To be considered as part of an intermediary’s approval application, and to be eligible to receive HUD housing counseling sub-grant funding from an intermediary, MSO, or SHFA, affiliates and branches must be in operation for at least one year. To clarify this requirement, HUD revised § 214.103 to provide that the criteria for approval apply to all agencies, including, for SHFAs and intermediaries, the branches and affiliates in the HUD portion of their Housing Counseling program. In addition, an intermediary must have operated in an intermediary capacity for at least one year. To be considered part of an intermediary’s approval application, and to participate in the HUD-approved portion of the intermediary’s Housing Counseling program, affiliates and branches must have successfully administered a Housing Counseling program for at least one year. HUD has established this criterion in order to ensure that any entity that is listed on HUD’s Web site has at least one year of experience administering a Housing Counseling program that demonstrates at least a basic level of knowledge, capacity, and experience in providing these services. However, this does not prohibit SHFAs and intermediaries from developing the capacity of new organizations, with the intention of including them in the HUD portion of their program once they meet the experience requirement and other requirements.

2. Ineligible Participants

Comment: In the final rule, HUD should provide an explanation about what constitutes “offenses that reflect upon the responsibility, integrity, or ability of a housing counseling agency to participate in housing counseling activities.”

HUD response: At § 214.103(c)(2), the final rule clarifies that offenses that reflect upon the responsibility, integrity, or ability of housing counseling agencies to participate in housing counseling activities refers to a criminal offense that can be prosecuted at a local, state, or federal level. An example of such an offense would be if a member of the board of directors, the executive director, or an employee has been indicted or convicted of embezzling city, state, or federal funds.

Comment: The provision at § 214.103(c)(3), which prohibits an agency from being “subject to unresolved findings as a result of HUD or other government audit or investigation,” is too broad and should

be narrowed or eliminated in the final rule. One commenter suggested the provision could result in government agencies prolonging their findings and appeals process, resulting in denying a program participant timely due process and effectively eliminating a counseling agency from the program, thus creating harm to the agency and clients. The commenter recommended that HUD provide all audit or investigation findings to all applicable parties within 90 days of initiating the investigation, with the counseling agency having 30 days to respond to HUD and or the government agency filing the findings having 30 days to issue its final ruling.

HUD response: HUD disagrees. HUD undertakes considerable effort to complete an audit or investigation in a timely manner to avoid undue disruption to agency operations or services being provided to clients. However, the length of an audit or an investigation varies because of the nature, complexity, and individual circumstances related to a specific audit or investigation.

Comment: The term “generally-accepted practices of prudent agencies” is ambiguous and could lead to uneven and inconsistent determinations by reviewers of how a counseling agency conducts its operations, even though the agencies are operating within the guidelines of the HUD handbook and regulations.

HUD response: HUD agrees that this provision may elicit confusion and it has been removed.

3. Six Months Experience as a Counselor

Comment: This requirement that a counselor must have at least 6 months of previous experience as a housing counselor should be removed because it is too narrow. Two commenters stated that HUD certification should depend on the agency and not the individual counselor, since it is the agency’s responsibility to hire capable staff. It may be advantageous for an agency to hire staff from other fields, because they bring additional skills to the position.

HUD response: HUD agrees with the commenter that it is the agency’s responsibility to hire capable staff. HUD also agrees that it may be difficult to hire and maintain an entire staff with at least 6 months of experience per person. In response to these comments, HUD has revised the requirement that all housing counseling agency staff must have a minimum of 6 months of experience as a housing counselor. The revised provision at § 214.103(g)(2) requires that one-half of an agency’s

counselors must have the minimum of 6 months of experience.

Comment: The 6-month housing counselor experience requirement should be extended 6 months to one year for agencies that are seeking HUD approval for the first time. This commenter further stated that the counselor experience requirement should be limited to obtaining HUD approval and not be required in order to maintain HUD approval. The commenter suggested that every HUD-approved agency should have experienced staff, but this should not inhibit them from hiring and training staff new to the housing counseling field.

HUD response: HUD agrees with the commenter that every HUD-approved agency should have experienced housing counselors. Agencies are encouraged to hire and train new staff. It is essential, however, for new housing counseling agencies that are seeking HUD approval and for all participating agencies to maintain approval, to have at least half of its housing counselors with at least 6 months of experience.

4. Contracts or Agreements To Provide Eligible Housing Counseling Services

Comment: In the final rule, HUD should allow sub-grantees and affiliates of intermediaries to contract part or all of their counseling services, if there is not another HUD-approved local agency serving the geographic area. This commenter stated that to reach a rural or underserved area, reach particular subpopulations, and contract for services not currently offered by the affiliate, each requires a contract with a sub-grantee to provide part or all of that counseling service.

HUD response: HUD disagrees. The rule as proposed would allow housing counseling agencies or intermediary housing counseling organizations to contract with housing counseling services in geographic areas where a need for housing counseling services is demonstrated and no HUD-approved housing counseling agency or branch, affiliate, or sub-grantee exists.

Comment: One commenter suggested that HUD revise the final rule to provide that, in the event that HUD determines a geographic area of the country is not served or underserved by an LHCA, or a regional or national intermediary, HUD will contract with a national intermediary to provide counseling services through their existing network of branches, affiliates, and sub-grantees. In this case, the commenter suggested it is permissible for a national intermediary to offer housing

counseling services exclusively by telephone or the Internet.

HUD response: HUD agrees. No change in the rule is necessary. The rule as proposed and as adopted in this final rule would allow housing counseling agencies or intermediary housing counseling organizations to contract out housing counseling services in geographic areas where a need for housing counseling services is demonstrated and where no HUD-approved housing counseling agency, or its branches or affiliates, exists.

Comment: HUD should identify which Office of Management and Budget (OMB) Circulars and regulations are applicable.

HUD response: HUD agrees and has revised this provision to refer to 24 CFR parts 84 and 85. Parts 84 and 85 contain the uniform grant requirements for nonprofit organizations and states, respectively, and describe in detail the applicable OMB Circulars.

5. Facilities

Comment: The final rule should include more flexibility than “agencies must be located in communities they serve.” One commenter stated that their agency covers a broad area and the clients and counselors meet “mid-point.”

HUD response: HUD agrees with this commenter that the proposed regulation necessitated additional flexibility and has revised § 214.103(l). The revised regulation recognizes the expansion that has taken place among participating agencies and that the proposed requirement for facilities to be located in the communities they serve may unduly limit an agency’s ability to serve its clients. Therefore, in this final rule, HUD has removed this requirement.

Comment: The final rule should include a provision at § 214.103 that states, “an agency may provide more than housing counseling services in the same office space.” This commenter stated that many HUD-approved housing counseling agencies are multi-purpose agencies operating out of one location. It is an unreasonable burden to require separate facilities or portions of a building when one part-time counselor can easily meet the HUD minimum workload requirement.

HUD response: HUD believes that it is important for agencies to provide office space that is dedicated to the provision of housing counseling to clients. HUD acknowledges, however, that office space may need to be used for multiple purposes. Therefore, HUD has revised § 214.103(l) to provide that agencies must make space available to provide housing counseling services, but is not

requiring them to limit the use of the space solely for the purpose of providing housing counseling services.

Comment: To ensure client privacy, a provision should be added in this final rule stating that housing counselors should have access to private offices or meeting facilities that allow for an uninterrupted and confidential meeting between counselor and client. This commenter stated that hard copies of client files should be kept in locked filing cabinets and that electronic client files should be kept secure and accessible only by authorized employees.

HUD response: It is important for housing counseling agencies to provide an environment that provides privacy for in-person counseling and confidentiality of client records. Section 214.103(l) requires that housing counseling agencies provide such a space. In response to the request to maintain the privacy and confidentiality of electronic files, HUD has revised § 214.103(e) in this final rule to require that HUD-approved agencies maintain the confidentiality of each client's file, both electronic and paper, in accordance with safeguards for client files at § 214.315.

6. Housing Counseling Work Plan

Comment: If an agency does not provide in-person counseling beyond its primary education services, it should only be required to provide referrals to an affiliate or partner that can provide more specialized in-person services.

HUD response: HUD disagrees, because it considers in-person counseling a key component to the work of a HUD-approved counseling agency.

C. Termination of HUD-Approved Status

Comment: The final rule should explain what is meant by "best interests of the Department."

HUD response: HUD believes that "best interests of the Department" may not appropriately describe HUD's actions and has revised the final rule to provide that HUD-approved status, and participating agencies, may be terminated for good cause. The provision is designed to account for unforeseen circumstances or conditions that might warrant termination of HUD approval.

Comment: HUD should create an exception for staff turnover within the agency in the "lack of capacity" provision, as long as new staff is hired within a reasonable time.

HUD response: Agency "inactive status" that HUD has added to the final rule addresses this type of situation. An

agency placed in inactive status because of lack of sufficient and experienced staff would not be listed on HUD's Web site until adequate staffing and capacity is restored. As discussed in section II, HUD has added new provisions in this final rule in response to these comments.

D. Counseling Services

1. Basic Requirements—In-Person Counseling

Comment: In-person counseling is an important aspect of the Housing Counseling program. One commenter recommended that this provision be preserved in the final rule.

Alternatively, four commenters stated that the requirement for "in-person" counseling is outdated and not in the best interest of the client.

HUD response: While in-person counseling between the counselor and the client is the form of counseling preferred by HUD, HUD recognizes that in many cases in-person counseling is not practical due to distance, health, transportation, crisis situations, and other issues. In addition, there may be circumstances where a person with a disability needs to receive counseling in an alternative setting or format as a reasonable accommodation to that person's disability. Therefore, if the one-on-one counseling setting is not practical, the housing counseling work plan should describe the housing counseling agency's plans to provide counseling in alternative settings where needed. Consequently, HUD revised § 214.300(a) and § 214.103(m) to allow for alternatives to in-person counseling where the counseling agency and the client mutually agree to an alternative setting.

Comment: Provisions in the final rule should acknowledge that it is often impossible for housing counselors to follow up with clients, especially when they are homeless.

HUD response: HUD understands that many factors may make it impossible for counselors to reach clients. The regulatory provision, as proposed, required that the agency "follow-up" with clients. HUD believes that agencies should continue to make reasonable efforts to reach clients, when possible, to assure that the client is progressing toward his or her housing goal, to modify or terminate housing counseling, and to learn and report outcomes.

2. Approved Housing Counseling Activities

Comment: The final rule should present a clear distinction between counseling "activities and topics."

HUD response: In this final rule, HUD revised § 214.300 to better clarify housing counseling services. The basic requirement is for agencies to provide counseling to current and potential homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of homeownership or tenancy. Section 214.300(c) has been revised to better illustrate approved housing counseling education and outreach topics.

Comment: The final rule should more broadly define housing counseling activities. Activities limited to single-family houses, condominiums, and cooperatives are too narrow to meet the existing housing opportunities. One commenter suggested that manufactured homes should be added to the list.

HUD response: HUD agrees that the universe of housing opportunities is broad and not exhaustively covered by the examples in the regulations. HUD points out, however, that the list of education and outreach topics is not intended to cover every housing opportunity. Housing counseling agencies are encouraged to tailor housing counseling activities to the needs of the individual client.

E. Performance Criteria

1. Workload

Comment: The final rule should clarify what is meant by the client base as "determined by HUD." One commenter recommended that this provision be revised and published for additional public comment, because the methodology for determining measures of success is crucial to intermediaries' and agencies' ability to compete for funding.

HUD response: Consistent with the requirements for HUD approval, HUD has revised the performance criteria workload requirement at § 214.303(b) to clarify that the minimum workload in order to maintain HUD approval is 30 clients annually.

2. Client Referrals

Comment: Three commenters stated that the requirement that all HUD-approved agencies must accept all referrals from HUD and HUD-approved agencies is too broad. One commenter suggested that agencies can only serve as many clients as possible and that workloads may vary. Another commenter suggested adding a provision that the agency must accept the referral if it has the resources to do so.

In addition, another commenter recommended that the language of the proposed rule could lead to a circle of

inappropriate referrals and discourage use of community-based resources that are not HUD-approved. This commenter suggested the language be modified, as follows: "If an agency does not have the experience or skills to meet the needs of a client, it must refer the client to another appropriate HUD-approved agency or other appropriate nonprofit organization."

HUD response: HUD understands that agencies often have limited resources; however, it is important that all clients are served. In cases where the agency does not offer the unique services requested by the client or does not have sufficient resources, the agency must refer the client to another HUD-approved housing counseling agency, preferably in the area. If a HUD-approved agency is not available in the client's area, the client should be referred to another HUD-approved agency outside the client's area that can help the client meet his or her needs.

3. Conflicts of Interest

Comment: The final rule should be revised to account for unique challenges of providing HECM counseling. One commenter presented a description of its own unique conflict-of-interest challenges that require solutions that may not fit other types of housing counseling. This commenter noted that lenders often provide donations or other monetary compensation to counseling agencies. The commenter cautioned that agencies that accept closing-payments from lenders must choose between serving client interests and serving lender interests (and, by association, the counseling agency's interests).

HUD response: HUD believes that counseling agencies should not have to choose between serving client interests and serving lender interests. Whether the agency is counseling potential HECM borrowers or a homeowner facing foreclosure, the counseling agency must be careful to follow the program regulations, and, in particular, the conflicts-of-interest requirements. These requirements are designed to preserve and protect the relationship between the client and the agency. In response to this and other comments concerning conflicts of interest, HUD has revised § 214.303(f) in order to allow for additional flexibility. See section II.G for a detailed description of the revised conflicts-of-interest requirements.

Comment: Many agencies have sought lender support, because of insufficient funding from HUD, and because such support would create conflicts of interest. One commenter suggested that charging a fee to the client would remove the reliance on lenders for

support and therefore remove a potential conflict of interest.

HUD response: HUD has revised the conflicts-of-interest provision in § 214.303 so that accepting resources from lenders, within certain circumstances, would not create a conflict. Under the revised regulations, individuals who are directors or employees, or their family members, of a housing counseling agency may not accept a fee or any other consideration for referring a client to mortgage lenders, brokers, builders, or real estate sales agents or brokers. Further, the regulations require the agency, its staff, or any member of their immediate family to avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain; providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients. Accordingly, within these parameters, as well as the requirements of § 214.313(e), an agency may accept fees from lenders.

Comment: The definition of a conflict of interest should not prevent housing counseling agencies from providing opportunities in mortgage underwriting, pricing, houses, or services to its clients because those opportunities are provided by the same agency as the housing counseling.

HUD response: The agency must maintain the ability to represent fully the best interests of the client and the conflicts-of-interest requirements are in place to protect both the agency and the client. HUD believes, however, that the conflicts-of-interest requirements should not limit the housing counseling agency from providing additional, related services. Therefore, as discussed above, HUD has revised the conflicts-of-interest provision to allow for additional flexibility in agency activities.

4. Disclosure Requirements

Comment: A commenter stated that agencies receive hundreds of inquiry calls on a daily basis, and that providing full disclosure statements to all clients is an "incredible burden." This commenter added that providing clients with a list of "alternative services, programs, and products" defeats the purpose of being a HUD-approved housing counseling agency.

HUD response: HUD believes that the need for adequate disclosure far outweighs the corresponding burden, but acknowledges the challenges faced by agencies. Accordingly, to minimize

the burden on agencies, HUD has removed from § 214.303(f) the reference to "potential clients."

Comment: HUD's proposed disclosure provision is too broad and vague to make complete compliance possible. The commenter recommended that agencies be required to disclose only relationships that are likely to have a significant impact on the specific client. Disclosing exclusive partnerships not relevant to a particular client or of minimal impact serve no practical purpose and may confuse clients.

HUD response: HUD believes that full disclosure of relationships is good business practice and promotes the highest ethical standards in these agencies supported by federal funds. Because not every potential conflict is foreseeable, the disclosures described in the proposed rule have been preserved in this final rule.

Comment: In the final rule, HUD should address lender fee-for-service relationships with housing counseling agencies. These are common relationships and HUD should address and provide guidance for lender and housing counseling agency fee-for-service relationships.

HUD response: HUD agrees with the commenter. As discussed in section II of this preamble, HUD has revised the funding provisions at § 214.313 to allow for alternative funding sources, including charging fees to clients and accepting fees from lenders.

5. Staff

Comment: HUD should define the monitoring activities expected to be utilized for staff supervision, as well as the basic requirements of how those monitoring activities should be documented.

HUD response: HUD has revised the regulation to provide that housing counseling agencies must monitor their staff on an annual basis. HUD believes that housing counseling agencies should adequately supervise their staff. It is within the individual counseling agency's discretion to determine the manner in which to monitor its staff.

F. Funding

Comment: The final rule should be revised to allow for additional flexibility in the funding provision. This commenter explained that most affiliates in their network have the resources to meet the requirement. This commenter stated, however, that in some cases, a national organization has been involved that allows some outside match of other agencies, which in turn allows participation of other affiliates of national organizations that would not

have otherwise been able to participate because they have no or very limited resources.

HUD response: HUD has revised § 214.303(i) in order to improve clarity and compliance. In the final rule, HUD removed the provision that would have required agencies to maintain a level of funds that enable an agency to serve a minimum of 50 clients each year. HUD recognized that a minimum workload of 50 clients each year raised compliance concerns among small agencies.

Therefore, the revised § 214.303(i) requires that a participating agency maintain a level of funds that enables it to provide housing counseling to at least 30 clients every year, whether or not the agency receives HUD funding. The required workload is consistent with § 214.303(b).

Comment: HUD should provide additional explanation about how the required workload of “fifty clients every year whether or not the agency receives HUD funding” was deemed appropriate.

HUD response: The 50-client workload requirement was originally instituted to help ensure that HUD-approved agencies had sufficient resources to handle referrals through HUD’s Web site and interactive voice response (IVR) system. HUD agrees with the commenter that this provision may disqualify small agencies that provide intensive services to a relatively small number of individuals. Therefore, HUD has revised the funding workload requirement to make it consistent with the workload requirement of § 214.303(b). This provision provides that the minimum workload is 30 clients annually. Previously, the requirement served to help ensure that agencies had the capacity to handle referrals through HUD’s Web site and the IVR system. However, the alternative funding opportunities created by this regulation help ensure that agencies will have the necessary resources, and assuages these concerns.

G. Agency Profile Changes

Comment: One commenter stated that HUD should limit the requirement to report agency changes to include phone number and location. The commenter explained that in a national network, it is difficult to monitor staff changes.

HUD response: HUD disagrees. HUD needs to be notified of staff changes to ensure that agencies have the capacity to adequately serve the individuals that may contact them through HUD’s Web site and the IVR system. The process and systems through which these changes occur are undergoing significant changes. It is imperative that agencies update and verify agency

profile information in a timely manner, whenever this information is posted on HUD’s Web site and communicated through the IVR.

Comment: HUD should require, in the final rule, agencies to update profiles during the biannual submission of form HUD-9902 data. One commenter suggested the omission of “within 15 days” and replacing with “biannually.”

HUD response: HUD disagrees that these changes only be made at the time of HUD-9902 submission, which is quarterly. Since agency profile information is posted on HUD’s Web site of HUD-approved agencies, changes to an agency’s profile must be made by the agency immediately. However, HUD agrees that while submitting the form HUD-9902, and at other times during the year, agencies should periodically verify and validate that their profile information is accurately displayed in the system and on HUD’s Web site.

Comment: Two commenters recommended that the final rule require only changes in management to be reported to HUD. The commenters recommended that agencies not be required to report every staffing change.

HUD response: HUD disagrees. As noted in the response to an earlier comment, HUD needs to be apprised of staff changes to ensure that agencies have the capacity to adequately serve the individuals that may contact them through HUD’s Web site and the IVR system.

H. Performance Review

Comment: HUD should provide meaningful and clear language that all HUD reviewers and monitors use consistent monitoring guidelines. The commenter recommended that when matters of interpretation arise as to whether an agency is in compliance or not, HUD Headquarters provide the final determination.

HUD response: HUD agrees with the commenter that all reviewers should use consistent monitoring guidelines. HUD disagrees that the language in this section be revised as the commenter proposes. HUD will continue to work with field staff so that monitoring procedures are administered consistently across the country. HUD Headquarters makes the final determination when policy-related issues arise.

I. Fees

Comment: Three commenters suggested that HUD-approved fee schedules are unreasonable and unnecessary. One commenter asked how HUD will determine what fee is “reasonable.” Another commenter

recommended removing this provision, because the rule otherwise provides clear guidance for establishing a fee schedule; the approval process is burdensome and would likely cause a delay in implementation; HUD would have an opportunity to review and approve a fee schedule during the performance review; and it is unclear how this procedure would translate to intermediaries. Another commenter suggested that the fee schedule be made part of the housing counseling plan and that any changes should be reported to HUD for review. A different commenter opined that agencies should be required to submit fee schedules to HUD for review, but not for approval.

HUD response: HUD agrees that HUD approval of fee schedules from the rule is unnecessary, and has revised § 214.313 accordingly. As described in section II, HUD removed the requirement that agencies must submit fee schedules for HUD approval. HUD will review fee schedules during a review of an agency’s application for approval or a performance review, in order to ensure that the fees are consistent with fees charged by similar agencies providing similar services.

Comment: The final regulations should be clear that housing counseling agencies are not prohibited from charging fees based on value of their services on a loan-by-loan basis. HUD should add a provision that would allow lenders to cover the client’s fee when the client is unable to pay.

HUD response: HUD encourages housing counseling agencies to seek local funding, including lending or real estate organizations, in addition to units of local government. Agencies must assure that any arrangements do not violate the conflicts-of-interest provisions in § 214.303(e). In addition, HUD has revised § 214.313(e) to allow for lender payments, provided that the relationship with the lender is disclosed to the client and that the arrangement does not violate the provisions regarding conflict of interest.

Comment: To ensure quality, availability, and independence of consumer HECM counseling, agencies should be able to charge a fee to borrowers. One commenter suggested financing the fee by dedicating a small part of the HECM mortgage insurance premium; capping the lender origination fee in a way that frees up an amount equal to a borrower counseling fee; or instituting a separate “stand alone” fee paid at closing out of loan proceeds, if statutory prohibitions bar the first two options.

HUD response: HUD agrees with the commenter that agencies should be able

to charge a fee to HECM borrowers, if the cost does not create a financial hardship. However, the Department is not prepared to institute the financing of the fee by either of the first two methods proposed by the commenter. The first method has financial implications on the Federal Housing Administration's (FHA) capital ratio, and further analysis would be necessary to determine if this is a financially viable option. The second method has broader implications on an FHA-approved lender's fee structure.

However, instituting a separate "stand alone" fee paid at closing out of loan proceeds may provide a solution for clients that choose to move forward and obtain a HECM, but this solution does not cover the costs of counseling for those clients that decide not to obtain a HECM. HUD continues to work in conjunction with industry partners to solve this funding gap and ensure adequate funding for HECM counseling.

Comment: A counseling fee should be instituted only if it is linked to specific steps to improve the quality and independence of HECM counseling.

HUD response: HUD is taking significant steps to improve the quality of reverse mortgage counseling. For example, an existing \$7.75 million training grant is delivering quality reverse mortgage counseling training to many counselors from HUD-approved agencies. HUD will undertake additional measures as it determines is appropriate to improve the effectiveness and quality of counseling provided to homeowners, including HECM borrowers.

Comment: HUD must ensure that agencies will be paid for HECM counseling regardless of whether their clients take out a loan. This commenter suggested that to eliminate any incentive for a counselor to limit, downplay, or omit information, HUD must institute a borrower counseling fee if it also provides a way to pay these agencies for HECM counseling that does not result in a HECM closing. This commenter also stated that HUD should prohibit lenders from paying a counseling fee on behalf of their HECM borrowers.

HUD response: HUD has not revised the rule in response to this comment, but will take the commenter's suggestion under further consideration. For clients who decide not to obtain a HECM, the Department continues to work in conjunction with industry partners to solve this funding gap and ensure adequate funding for HECM counseling.

Comment: One commenter recommended that the provision

concerning approval of agency reimbursement for the cost of credit reports, as long as it is not a hardship to the client, should be preserved in the final rule. In contrast, two commenters stated that the credit report is a service to the client, but that it is not education or housing counseling service, and recommended removing the provision.

HUD response: This final rule adopts the provision in the proposed rule regarding credit reports. HUD believes it is appropriate to address the issue of fees related to the provision of credit reports to clients.

Comment: In setting housing counseling fees, the crucial factors are a client's need and ability to pay, and not merely his or her income.

HUD response: HUD agrees and has revised § 214.313. HUD has removed from the final rule the proposed requirement that agencies charge fees on a sliding scale based on the client's income. Accordingly, agencies may charge fees to clients, as long as the fees do not create a financial hardship for the client, and the agency must provide services at no cost to those clients who cannot afford to pay.

Comment: Charging fees may have unforeseen, negative impacts on client counseling by increasing or decreasing client interest depending on whether an agency charges a fee. One commenter suggested that HUD assess the ability of housing counseling agencies to create additional revenue building services by engaging in fee-generating services, such as allowing agencies to originate loans, including lending incentives.

HUD response: HUD encourages agencies to develop a diversified funding base. To facilitate this, the final rule permits the charging of fees, but also explicitly states that agencies must provide counseling without charge to persons who cannot afford the fees. However, the rule does not require that the agency charge fees. HUD does not oppose counseling agencies getting involved in other revenue-generating activities, including loan origination, provided all requirements regarding conflict of interest and disclosure are adhered to and the agency's activities are in the best interest of the client.

J. Recordkeeping

Comment: Three commenters stated that the Client Action Plan is an important document, but it is unnecessary and expensive to require the plan to be signed by both the client and counselor and maintained on file for 3 years. Two of these commenters explained that a signed copy does not obligate the client to adhere to any counseling suggestions and merely

creates additional paperwork for the file.

HUD response: HUD agrees with the commenters and has removed the client and counselor signature requirement from § 214.315.

Comment: HUD should expand the term "hardship" to allow for "client preference." This commenter stated that, especially with possible foreclosure, a client may seek and prefer help over the telephone. Another commenter stated that this section's use of "hardship" is inconsistent with the provisions proposed at § 214.300.

HUD response: HUD agrees with the commenters. Clients may prefer help by the telephone, particularly in the case of foreclosure prevention counseling when time is a critical factor. In addition, some individuals may request counseling over the telephone as an accommodation to their disabilities. Consequently, HUD removed the in-person counseling requirement from the client file provision at § 214.315(e).

Comment: Two commenters recommended the addition of "unable to contact" to the list of reasons to terminate client services, since clients often change addresses without providing their forwarding information.

HUD response: HUD agrees and has revised § 214.315(g) accordingly.

Comment: The final rule should expand the provision so that the client file can be a paper file, an electronic file, or a combination of the two. Currently, some documents are kept in paper files and others are retained electronically (e.g., credit reports and client logs).

HUD response: As housing counseling agencies increasingly utilize client management systems, HUD expects client files to be a combination of electronic and paper. The regulations have been revised accordingly.

Comment: HUD should not require that the initial intake be in the form of an interview or that the intake has to be at the office of the agency. One commenter described his or her agency's model for initial interviews as including a group intake and educational workshop during which counselors explain homebuying, housing counseling, and dangers of predatory lending. Following that, clients complete forms that include demographics and permission for a credit report. The commenter believes that this model is extremely effective.

HUD response: While in-person counseling is the form of counseling preferred by HUD, HUD recognizes that in many cases in-person counseling is not practical due to distance, health, transportation, crisis situations, and

other issues. HUD has removed the intake requirements from the recordkeeping requirements in § 214.315.

K. Client Management System

Comment: In the final rule or in some other form, HUD should publish criteria for a Client Management System (CMS), rather than requiring costly and difficult transitions from existing systems.

HUD response: HUD has developed the criteria for a CMS to interface with HUD's Client Activity Reporting Systems (CARS), and has shared this information with CMS vendors and is working with them to understand and comply with these requirements. CMS vendors will be required to meet these criteria in order to interface with HUD's system. Housing counseling agencies will have to report required information to HUD through a CMS vendor that meet's HUD's criteria. The criteria are available upon request.

Comment: Will HUD develop a methodology to accept data from Fannie Mae's Home Counselor Online system to avoid duplication of data input?

HUD response: HUD has invited all CMS vendors to develop an interface with HUD's CARS.

L. Other Matters

Comment: The requirement that "all clients must be served" is too broad, because agencies have limited resources and occasionally have to refer clients elsewhere.

HUD response: All clients who contact the agency as a result of referrals must be served. As noted in a response to an earlier comment, in cases where the agency does not offer the unique services requested by the client or does not have sufficient resources, the agency must refer the client to another HUD-approved housing counseling agency. The referral should be made to an agency in the geographic area, or, failing the availability of a HUD-approved agency, to another agency that can help the client meet their needs.

Comment: In the final rule, HUD should include provisions that require counseling about home energy costs and home energy billing. Specifically, one commenter suggested the addition of a new paragraph (8) at § 214.300(c) that would read as follows: "(8) Home energy budget counseling, including providing information to help clients understand the utility costs within a home, controlling utility costs within the home and managing the utility bill within the home." This commenter stated that utility bills can account for 20 to 25 percent of total shelter costs and can be volatile. The commenter

suggested a relationship between an increase in home heating fuel prices and potential mortgage defaults.

HUD response: HUD disagrees that the final rule should require home energy budget counseling. Through its Housing Counseling Notice of Funding Availability (NOFA), HUD encourages and rewards agencies that provide this type of counseling and promote energy-efficient housing and products.

Comment: The proposed rule fails to address certification of housing counselors. This commenter stated that there are no standards in place to guarantee that the counselors employed by HUD-approved agencies have the necessary training to effectively perform the tasks required of them.

HUD response: The proposed rule specified the criteria for the approval of housing counseling agencies. HUD does not certify individual counselors at this time. Regarding training, HUD is taking significant steps to standardize and improve the quality of counseling offered by counselors employed by HUD-approved agencies. An existing \$7.75 million training grant to Neighborworks America is delivering quality counseling training to counselors from HUD-approved agencies. Additionally, HUD is engaged in an evaluative study of the Housing Counseling program. HUD is considering using the results of the study to help formulate standards for housing counselors.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not an economically significant action, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage

insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule establishes regulations for the Department's Housing Counseling program, a voluntary program through which housing counseling agencies may obtain HUD-approved status and become eligible for grant funding on a competitive basis. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0261. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 14.169.

List of Subjects in 24 CFR Part 214

Administrative practice and procedure; Loan program—housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends title 24 of the Code of Federal Regulations, as follows:

■ 1. Add part 214 to read as follows:

PART 214—HOUSING COUNSELING PROGRAM**Subpart A—General Program Requirements**

Sec.

214.1 Purpose.

214.3 Definitions.

Subpart B—Approval and Disapproval of Housing Counseling Agencies

214.100 General.

214.103 Approval criteria.

214.105 Preliminary application process.

214.107 Approval by HUD.

214.109 Disapproval by HUD.

Subpart C—Inactive Status, Termination, and Appeals

214.200 Inactive status.

214.201 Termination of HUD-approved status and grant agreements.

214.203 Re-approval or removal as a result of a performance review.

214.205 Appeals.

Subpart D—Program Administration

214.300 Counseling services.

214.303 Performance criteria.

214.305 Agency profile changes.

214.307 Performance review.

214.309 Reapproval and disapproval based on performance review.

214.311 Funding.

214.313 Housing counseling fees.

214.315 Recordkeeping.

214.317 Reporting.

Subpart E—Other Federal Requirements

214.500 Audit.

214.503 Other requirements.

Authority: 12 U.S.C. 1701(x); 42 U.S.C. 3535(d).

Subpart A—General Program Requirements**§ 214.1 Purpose.**

This part implements the Housing Counseling program authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). Section 106 authorizes HUD to provide, make grants to, or contract with public or private organizations to provide a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling program will be administered. These regulations apply to all agencies participating in HUD's Housing Counseling program.

§ 214.3 Definitions.

The following definitions apply throughout this part:

Action plan. A plan that outlines what the housing counseling agency and the client will do in order to meet the client's housing goals and, when appropriate, addresses the client's housing problem(s).

Affiliate. A nonprofit organization participating in the HUD-related Housing Counseling program of a regional or national intermediary, or state housing finance agency. The affiliate organization is incorporated separately from the regional or national intermediary or state housing finance agency. An affiliate is:

- (1) Duly organized and existing as a tax-exempt nonprofit organization;
- (2) In good standing under the laws of the state of the organization; and
- (3) Authorized to do business in the states where it proposes to provide housing counseling services.

Branch or branch office. An organizational and subordinate unit of a local housing counseling agency, multi-state organization, regional or national intermediary, or state housing finance agency not separately incorporated or organized, that participates in HUD's Housing Counseling program. A branch or branch office must be in good standing under the laws of the state where it proposes to provide housing counseling services. A branch or branch office cannot be a subgrantee or affiliate.

Clients. Individuals or households who seek the assistance of an agency participating in HUD's Housing Counseling program to meet a housing need or resolve a housing problem.

Counseling. Counselor to client assistance that addresses unique

financial circumstances or housing issues and focuses on ways of overcoming specific obstacles to achieving a housing goal such as repairing credit, addressing a rental dispute, purchasing a home, locating cash for a down payment, being informed of fair housing and fair lending requirements of the Fair Housing Act, finding units accessible to persons with disabilities, avoiding foreclosure, or resolving a financial crisis. Except for reverse mortgage counseling, all counseling shall involve the creation of an action plan.

Education. Formal classes, with established curriculum and instructional goals provided in a group or classroom setting, covering topics applicable to groups of people such as, but not limited to:

- (1) Renter rights;
- (2) The homebuying process;
- (3) How to maintain a home;
- (4) Budgeting;
- (5) Fair housing;
- (6) Identifying and reporting predatory lending practices;
- (7) Rights for persons with disabilities; and
- (8) The importance of good credit.

Housing counseling work plan. A participating agency's plan to provide housing counseling activities and services in a specified geographic area to resolve or mitigate identified community needs and problems. The plan will also describe the objectives of the agency and the resources available to meet those objectives. An intermediary's state housing finance agency's (SHFA) or multistate organization's (MSO) plan includes similar information regarding the services they propose to provide to the network of affiliated agencies or branches participating in their HUD-related Housing Counseling program.

Housing goal. A realistic, short- or long-term objective set by the client, with advice from a housing counselor.

HUD-approved housing counseling agencies. Private and public nonprofit organizations that are exempt from taxation under section 501(a), pursuant to section 501(c) of the Internal Revenue Code of 1996, 26 U.S.C. 501(a) and 501(c) and approved by HUD, in accordance with this part, to provide housing counseling services to clients directly, or through their affiliates or branches, and which meet the requirements set forth in this part.

Intermediary. A HUD-approved organization that provides housing counseling services indirectly through its branches or affiliates, for whom it exercises control over the quality and type of housing counseling services

rendered. The Housing Counseling program recognizes two types of intermediaries, which include:

(1) *National intermediary*. A national intermediary provides, in multiple regions of the United States:

(i) Housing counseling services through its branches or affiliates or both; and

(ii) Administrative and supportive services to its network of affiliates or branches, including, but not limited to, pass-through funding, training, and technical assistance.

(2) *Regional intermediary*. A regional intermediary provides in a generally recognized region within the United States, such as the Southwest, Mid-Atlantic, New England:

(i) Housing counseling services through its branches or affiliates or both; and

(ii) Administrative and supportive services to its network of affiliates, or branches, including, but not limited to, pass-through funding, training, and technical assistance.

Local housing counseling agency (LHCA). A housing counseling agency that directly provides housing counseling services. An LHCA may have a main office, and one or more branch offices, in no more than two contiguous states.

Multi-state organization (MSO). A multi-state organization provides housing counseling services through a main office and branches in two or more states.

Participating agency. Participating agencies are all housing counseling and intermediary organizations participating in HUD's Housing Counseling program, including HUD-approved agencies, and affiliates and branches of HUD-approved intermediaries, HUD-approved MSOs, and state housing finance agencies.

Reverse mortgage. A mortgage that pays a homeowner loan proceeds drawn from accumulated home equity and that requires no repayment until a future time.

State housing finance agency (SHFA). Any public body, agency, or instrumentality created by a specific act of a state legislature empowered to finance activities designed to provide housing and related facilities through land acquisition, construction, or rehabilitation throughout an entire state. SHFAs may provide direct counseling services or subgrant housing counseling funds, or both, to affiliated housing counseling agencies within the SHFA's state. "State" includes the several states, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the

Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands.

Subgrantee. An affiliate of a HUD-approved intermediary or SHFA that receives a subgrant of housing counseling funds provided under a HUD grant.

Subpart B—Approval and Disapproval of Housing Counseling Agencies

§ 214.100 General.

An organization may be approved by HUD as a HUD-approved housing counseling agency upon meeting the requirements of § 214.103 and upon completing the application procedures set forth in this subpart B.

(a) The approval of a counseling agency does not create or imply a warranty or endorsement by HUD of the listed agency, or their employees, including counselors, to a prospective client or to any other organization or individual, nor does it represent a warranty of any counseling provided by the agency. Approval means only that the agency has met the qualifications and conditions prescribed by HUD.

(b) *Effective date*. Agencies approved by HUD on or before October 29, 2007 and agencies that have submitted applications to HUD on or before September 28, 2007 and that are subsequently approved, are required to be in full compliance with the requirements in this part on October 1, 2007. Agencies approved after October 29, 2007 must comply with this part.

§ 214.103 Approval criteria.

The following criteria for approval apply to all agencies, MSOs, and intermediaries, including all local housing counseling agencies, branches, and affiliates that are included in one application:

(a) *Nonprofit and tax-exempt status*. A housing counseling agency must function as a private or public nonprofit organization, or be a unit of local, county, or state government. The agency must submit evidence of nonprofit status and tax-exempt status under section 501(a), pursuant to section 501(c) of the Internal Revenue Code of 1996 (26 U.S.C. 501(a) and (c)). Units of local, county, or state government must submit proof of their authorization to provide housing counseling services.

(b) *Experience*. An agency must have successfully administered a Housing Counseling program for at least one year. An intermediary must have operated in an intermediary capacity for at least one year. To be considered part of an LHCA's, MSO's, or intermediary's approval application, and to participate in the HUD-approved portion of the

intermediary's, SHFA's, or MSO's Housing Counseling program, affiliates and branches must have successfully administered a Housing Counseling program for at least one year.

(c) *Ineligible participants*. An agency, including any of the agency's directors, partners, officers, principals, or employees, must not be:

(1) Suspended, debarred, or otherwise restricted under the Department's, or any other federal regulations;

(2) Indicted for, or convicted of, a criminal offense that reflects upon the responsibility, integrity, or ability of the agency to participate in housing counseling activities. These offenses include criminal offenses that can be prosecuted at a local, state, or federal level;

(3) Subject to unresolved findings as a result of HUD or other government audit or investigations.

(d) *Community base*. A housing counseling agency and its HUD Program branches and affiliates must have functioned for at least one year in the geographical area(s) the agency set forth in its housing counseling work plan.

(e) *Recordkeeping and reporting*. The agency must have an established system of recordkeeping so that client files, electronic and paper, can be reviewed and annual activity data for the agency can be verified, reported, and analyzed. Client files, both electronic and paper, must be kept confidential, in accordance with § 214.315. This system must meet the requirements of 24 CFR 1.6, 24 CFR 84.21, and 24 CFR 121 and can be easily accessible to HUD for all monitoring and audit purposes.

(f) *Client management system*. All participating agencies shall utilize an automated housing counseling client management system for the collection and reporting of client-level information, including, but not limited to, financial and demographic data, counseling services provided, and outcomes data. The system used must provide the counseling agency with the tools necessary to track and manage all counseling and educational activities associated with each client. Agencies must utilize a Client Management System that satisfies HUD's requirements and interfaces with HUD's databases.

(g) *Housing counseling resources*. The agency must have the following resources sufficient to implement the proposed housing counseling work plan no later than the date of HUD approval:

(1) *Funding*. The application for approval must provide evidence of funds immediately available, or written commitment for funds to cover the cost of operating the housing counseling

work plan during the initial 12-month period of HUD approval.

(2) *Staff.* The agency must employ staff trained in housing counseling, and at least half the counselors must have at least 6 months of experience in the job they will perform in the agency's Housing Counseling program.

(3) *Language skills.* The agency must have housing counselor(s) who are fluent in the language of the clients they serve, or the housing counseling agency must use the services of an interpreter, or the agency must refer the client to another agency that can meet the client's needs.

(h) *Knowledge of HUD programs and local housing market.* The agency's housing counseling staff must possess a working knowledge of HUD's housing and single-family mortgage insurance programs, other state and local housing programs available in the community, consolidated plans, and the local housing market. The staff should be familiar with housing programs offered by conventional mortgage lenders and other housing or related programs that may assist their clients.

(i) *Contracts or agreements to provide eligible housing counseling services.* An agency and its branches or subgrantees or affiliates must deliver all of the housing counseling activities set forth in the agency's housing counseling work plan. It is not permissible to contract out housing counseling services, except:

(1) In geographic areas where a need for housing counseling services is demonstrated and no HUD-approved housing counseling agency or its branches, affiliates, or subgrantees exists. Under this exception, the contract must delineate the respective Housing Counseling program responsibilities of the contracting parties, the agency providing services (contractor) must meet the HUD approval eligibility standards, and the contracting agency must receive prior written approval from HUD.

(2) Intermediaries and SHFAs may enter into agreements with affiliates to provide housing counseling services. The agreements with affiliates may be in the form of an exchange of letters that delineate the respective Housing Counseling program responsibilities of the parties. Agreements must be sufficiently detailed to establish accountability and allow for adequate monitoring in accordance with 24 CFR part 84 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to

States, Local and Federally Recognized Indian Tribal Governments), as applicable, and with the OMB Circulars described therein.

(3) With prior approval from HUD, and at HUD's discretion, intermediary organizations may operate a Housing Counseling program with a network of affiliated counselors, rather than affiliated counseling agencies, if the structure is designed to meet a special housing counseling need identified by HUD.

(j) *Community resources.* The housing counseling agency must have established working relationships with private and public community resources to which it can refer clients who need help the agency cannot offer, including agencies offering similar or related services to non-English speaking clients.

(k) *State and local requirements.* An agency and its branches and affiliates must meet all state and local requirements for its operation.

(l) *Facilities.* All housing counseling facilities of the agency and its branches, affiliates, and subgrantees must meet the following criteria:

(1) Have a clearly identified office, with space available for the provision of housing counseling services. The office should operate during normal business hours and offer extended hours when necessary;

(2) Provide privacy for in-person counseling and confidentiality of client records;

(3) Provide accessibility features or make alternate accommodations for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

(m) *Housing counseling work plan.* (1) The agency must submit a detailed yet concise housing counseling plan that explains: The needs and problems of the target population; how the agency will address one or more of these needs and problems with its available resources; the type of housing counseling services offered; fee structure, if applicable; the geographic service area to be served; and the anticipated results (outcomes) to be achieved within the period of approval.

(2) The plan must be periodically reviewed and, when changed or amended, the agency must notify and provide a copy to HUD.

(3) The plan must meet the basic requirements described in § 214.300.

(4) An agency's housing counseling work plan must also address, if appropriate, alternative settings and

formats for the provision of housing counseling services.

§ 214.105 Preliminary application process.

(a) *Submission.* All agencies must complete the forms prescribed by HUD and submit the application and all supporting documentation to HUD. Agencies with branches or affiliates for which the parent entity exercises control over the quality and type of housing counseling services rendered must submit a single application for approval.

(b) Notwithstanding paragraph (a), SHFAs are not required to submit an application for HUD approval. However, to participate in HUD's Housing Counseling program, SHFAs must either submit a request and provide HUD with a list of affiliates, if applicable, and assure that they meet all program requirements, or submit a request through such other application procedure as HUD may periodically announce in the **Federal Register** or other informational sources.

§ 214.107 Approval by HUD.

(a) *Notice of approval.* If an application package meets all requirements outlined in § 214.103, HUD will approve an agency for a period of up to 3 years. HUD will advise the agency of its approval in the form of an approval letter to the agency's main office.

(b) *Certificate of Approval.* HUD will issue a "Certificate of Approval" to the approved agency. The certificate will show the period of approval.

(c) *Appearance on list of HUD-approved and participating housing counseling agencies.* For purposes of client referrals, participating agencies that provide housing counseling services directly to clients must provide HUD with the agency name and contact information, which may appear on HUD's Web site. In addition, names and addresses of all participating agencies that provide housing counseling services directly may be made available to the public through HUD's toll-free housing counseling hotline.

§ 214.109 Disapproval by HUD.

If an application package does not meet all requirements in § 214.103, HUD will provide the agency with the reasons for the denial in writing. Within 30 calendar days of the written notice of denial, the agency may submit a revised application, or appeal HUD's decision in writing to HUD, as provided in § 214.205. If an agency decides to submit a revised application, the agency may consult HUD, to determine the

specific actions needed to resolve the deficiencies.

Subpart C—Inactive Status, Termination, and Appeals

§ 214.200 Inactive status.

(a) HUD may change a participating agency's status to inactive, in lieu of terminations of HUD-approved status or removals from the list of HUD-approved agencies, under certain circumstances that may temporarily impair an agency from complying with its housing counseling plan. An agency's status may be changed to inactive on a case-by-case basis for a period not to exceed 6 months, unless an extension is provided by HUD under paragraph (d) of this section. HUD may change an agency's status through either a request submitted to HUD or as a result of information obtained by the Department. Some of the conditions under which inactive status may be considered include, but are not limited to:

- (1) Loss of counselor(s);
- (2) Damage to facilities by natural disasters that renders the agency unable to function properly;
- (3) Loss of funds;
- (4) Relocation;
- (5) Other circumstances caused by reasons beyond the agency's control; or
- (6) Results of performance review.

(b) Agencies that seek temporary inactive status must submit a request to HUD in writing. Documentation or evidence of the condition(s) that rendered the agency incapable of carrying out its housing counseling plan must be submitted along with the request, if possible. Upon receipt of the request, HUD will review and notify the agency of approval or rejection, in writing. If approved, the agency's name and contact information will be temporarily removed from the HUD-approved Web list of agencies and the telephone referral system.

(c) The agency must notify HUD in writing and provide supporting documentation or evidence when it is ready to resume operation, or no later than the end of the inactive period. After review and acceptance by HUD, the agency's contact information may be restored to the Web list of HUD-approved and participating agencies and the telephone referral system.

(d) At HUD's discretion, if the condition(s) still exists, an extension of the inactive period may be considered or the agency may be terminated or removed from the Housing Counseling program. HUD will notify the agency in writing of its decision.

§ 214.201 Termination of HUD-approved status and grant agreements.

(a) *Cause for termination by HUD.* HUD may terminate an agency's approval; remove an SHFA; remove one or more branches or affiliates from the HUD portion of an intermediary's, MSO's, or SHFA's counseling program; and terminate any grant agreements (if applicable) upon confirmation of any of the following reasons:

- (1) Noncompliance with program requirements;
- (2) Failure to implement in whole or in part the agency's approved housing counseling work plan or failure to notify HUD of changes in the agency's housing counseling work plan;
- (3) Lack of the capacity to deliver the housing counseling activities described in its approved housing counseling work plan;
- (4) Failure to achieve outcomes described in the work plan;
- (5) Misuse of grant funds; or
- (6) HUD determines that there is good cause.

(b) *Agency withdrawal.* The participating agency may withdraw from the Housing Counseling program at any time.

(c) *Post-termination, post-withdrawal requirements.* All terminations by HUD, or an agency's withdrawal, must be in writing. When a termination or withdrawal occurs, the agency must return to HUD any unexpired "Certificate of Approval." A terminated or inactive agency cannot continue to display the certificate. If HUD has determined that an agency will be terminated from participating in the Housing Counseling program, and an agency does not voluntarily withdraw, then HUD may follow the provisions found in 24 CFR part 24.

§ 214.203 Re-approval or removal as a result of a performance review.

HUD may conduct a periodic performance review for all agencies participating in the Housing Counseling program. The performance review and the terms of re-approval or removal of a participating agency are described in § 214.307 and § 214.309. At the end of the approval period, and upon completion of a successful performance review, if conducted, HUD will reapprove agencies.

§ 214.205 Appeals.

An agency making an application for approval, or an approved agency seeking reapproval, shall have the right to appeal any adverse decisions rendered by HUD under this part:

- (a) *Appeal must be in writing.* An agency may make a formal written appeal to HUD.

(b) *Timeliness.* HUD must receive an appeal within 30 days of the date of the HUD decision letter to the applicant agency. HUD is not bound to review appeals received after this 30-calendar day period.

(c) *Other action.* Nothing in this section prohibits HUD from taking such other action against an agency as provided in 24 CFR part 24, or from seeking any other remedy against an agency available to HUD by statute or otherwise.

Subpart D—Program Administration

§ 214.300 Counseling services.

(a) *Basic requirements.* (1) Agencies must provide counseling to current and potential homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of homeownership or tenancy.

(2) Except for reverse mortgage counseling, housing counselors and clients must establish an action plan for each counseling client.

(3) Counseling may take place in the office of the housing counseling agency, at an alternate location, or by telephone, as long as mutually acceptable to the housing counselor and client. All agencies participating in HUD's Housing Counseling program that provide services directly to clients must provide in-person counseling to clients that prefer this format.

(4) Regardless of setting or format, counseling activities must be limited to the geographic area specified in the agency's approved housing counseling work plan.

(5) With prior approval from HUD, a network of affiliated counselors or a HUD roster of counselors, designed to meet a special housing counseling need, may be permitted to provide specified types of counseling nationally.

(6) All participating agencies that offer group educational sessions must also offer individual counseling on the same topics covered in the group educational sessions.

(b) *Counseling services.* For each client, all agencies participating in HUD's Housing Counseling program shall offer the following basic services:

- (1) Housing counseling, on at least one of the topics described in paragraph (d) of this section, that enables a client to make informed and reasonable decisions to achieve his or her housing goal.

(2) Referrals to local, state, and federal resources.

(c) *Follow-up.* Make a reasonable effort to have follow-up communication with the client, when possible, to assure

that the client is progressing toward his or her housing goal, to modify or terminate housing counseling, and to learn and report outcomes.

(d) *Agency's housing counseling work plan.* (1) A participating agency shall deliver housing counseling services consistent with the agency's housing counseling work plan. The work plan should identify housing counseling services to be provided in response to one or more of the needs in targeted communities and geographic areas where the agency and its branches and affiliates provide their housing counseling services.

(2) Participating agencies may also conduct marketing and outreach, including, but not limited to, providing general information about housing opportunities, conducting information campaigns, and raising awareness about critical housing topics such as predatory lending and fair housing topics.

(e) *Approved housing counseling, education, and outreach topics.* The following are examples of approved housing counseling, education, and outreach topics that participating agencies may provide to and discuss with clients:

(1) Prepurchase/homebuying, including, but not limited to: Advice regarding readiness and preparation, Federal Housing Administration-insured financing, housing selection and mobility, search assistance, fair housing and predatory lending, budgeting and credit, loan product comparison, purchase procedures, and closing costs;

(2) Resolving or preventing mortgage delinquency, including, but not limited to: Default and foreclosure, loss mitigation, budgeting, and credit;

(3) Home maintenance and financial management for homeowners, including, but not limited to: Escrow funds, budgeting, refinancing, home equity, home improvement, utility costs, energy efficiency, rights and responsibilities of home owners, and reverse mortgages;

(4) Rental topics, including, but not limited to: HUD rental and rent subsidy programs; other federal, state or local assistance; fair housing; housing search assistance; landlord tenant laws; lease terms; rent delinquency; and

(5) Homeless assistance, including, but not limited to: Information regarding emergency shelter, other emergency services, and transitional housing.

§ 214.303 Performance criteria.

To maintain HUD-approved status, a participating agency must meet the following requirements:

(a) *Approval status.* Agencies must continue to comply with approval requirements in § 214.103.

(b) *Workload.* During each 12-month period, the participating agency must provide housing counseling to at least 30 clients. Agencies that offer only housing counseling services limited to reverse mortgages, including home equity conversion mortgages (HECMs), are exempt from this requirement.

(c) *Reporting.* The agency must submit to HUD complete, accurate, and timely activity reports, as described in § 214.317.

(d) *Agency's housing counseling work plan.* The agency must implement the housing counseling work plan and demonstrate reasonable achievement of the outcome objectives approved by HUD, as described in § 214.103(k).

(e) *Client referrals from HUD and other participating agencies.* Except as described in this paragraph, all clients who contact the agency as a result of these referrals must be served. In cases where the agency does not offer the unique services requested by the client or does not have sufficient resources, the agency must refer the client to another participating agency, preferably in the area, or, failing the availability of a participating agency, must make a reasonable effort to refer the client to another agency, that can help the client meet his or her needs.

(f) *Conflicts of interest.* (1) A director, employee, officer, contractor, or agent of a participating agency shall not engage in activities that create a real or apparent conflict of interest. Such a conflict would arise if the director, employee, officer, contractor, agent, his or her spouse, child, general partner, or organization in which he or she serves as employee (other than with the participating counseling agency), or with whom he or she is negotiating future employment, has a direct interest in the client as a landlord, broker, or creditor, or originates, has a financial interest in, services, or underwrites a mortgage on the client's property, owns or purchases a property that the client seeks to rent or purchase, or serves as a collection agent for the client's mortgage lender, landlord, or creditor.

(2) A director, employee, officer, contractor, or agent of a participating agency shall not refer clients to mortgage lenders, brokers, builders, or real estate sales agents or brokers in which the officer, employee, director, his or her spouse, child, or general partner has a financial interest, neither may they acquire the client's property from the trustee in bankruptcy or accept a fee or any other consideration for referring a client to mortgage lenders,

brokers, builders, or real estate sales agents or brokers.

(3) A director, employee, officer, contractor, or agent of a participating agency or any member of his or her immediate family shall avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain; providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients.

(4) HUD may investigate agency practices and may take action to inactivate or terminate the agency's approval or participation in the Housing Counseling program.

(5) Participating agencies must notify HUD of conflicts of interest not later than 15 calendar days after the conflict occurred and report to HUD on the corrective action taken to cure the immediate, and avoid future, conflicts.

(g) *Disclosure requirements.* A participating agency must provide to all clients a disclosure statement that explicitly describes the various types of services provided by the agency and any financial relationships between this agency and any other industry partners. The disclosure must clearly state that the client is not obligated to receive any other services offered by the organization or its exclusive partners. Furthermore, the agency must provide information on alternative services, programs, and products.

(h) *Staff and supervision.* The agency must employ staff trained in housing counseling, and at least half the counselors must have at least 6 months of experience in the job they will perform in the agency's Housing Counseling program. Supervisors of the housing counselors must periodically monitor the work of the housing counselors by reviewing client files with the housing counselor to determine the adequacy and effectiveness of the housing counseling. The agency must document these monitoring activities and make the documentation available to HUD upon request.

(i) *Funding.* The agency must maintain a level of funds that enables it to provide housing counseling to at least the required workload of clients every year, whether or not the agency receives HUD funding.

§ 214.305 Agency profile changes.

Participating agencies must notify HUD within 15 days when any of the following occurs:

(a) The agency loses or changes its tax-exempt, nonprofit status.

(b) The agency no longer complies with local and state requirements.

(c) Changes occur in any of the items below:

(1) Address(es) of the agency's main office and the address(es) of its branches and affiliates;

(2) Staff personnel responsible for the Housing Counseling program, such as the housing counselors and management staff;

(3) Telephone numbers of the main office, affiliates, and branches; or

(4) Any other aspect of the agency's purpose or functions that may impair its ability to comply with these regulations or the applicable grant agreement (e.g., lack of qualified housing counselors).

§ 214.307 Performance review.

(a) HUD may conduct periodic on-site or desk performance reviews of all participating agencies.

(b) The performance review will consist of a review of the participating agency's compliance with all program requirements, including applicable civil rights requirements, and the agency's level of success in delivering counseling services.

§ 214.309 Reapproval and disapproval based on performance review.

Based on the performance review, HUD may determine whether to renew the approval unconditionally or conditionally, temporarily change status to inactive, or terminate approval or participation of the agency.

(a) *Unconditional Reapproval.* If the agency is in full compliance with the performance criteria of this part, HUD may reapprove the agency unconditionally for up to 3 years.

(b) *Conditional Reapproval.* If the agency fails to meet the performance criteria, but the failure does not seriously impair the agency's counseling capability as required in this part, HUD may extend the agency's approval or participation for up to 120 calendar days.

(c) *Inactive status.* HUD may temporarily change an agency's status to inactive, as provided in § 214.200.

(d) *Follow-up Review.* HUD may conduct a follow-up review to determine if the deficiencies have been corrected.

(e) *Termination of HUD Approval.* When HUD determines that the agency's program deficiencies seriously impair the agency's ability to comply with this part, HUD may terminate approval or participation of the agency immediately.

(f) *Appeal.* If HUD does not reinstate the approval, or terminates

participation, the agency may file an appeal, as prescribed under § 214.205.

§ 214.311 Funding.

(a) *HUD funding.* HUD approval or program participation does not guarantee funding from HUD. Funding for the Housing Counseling program depends on appropriations from Congress and are awarded competitively under federal and HUD regulations and policies governing assistance programs, including the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545 *et seq.*). If funds become available that are to be competitively awarded, HUD will notify the public through a Notice of Funding Availability (NOFA) in the **Federal Register** and via the Internet or other electronic media.

(b) *Local funding sources.* HUD recommends that approved agencies seek and secure funding from funding sources that may include local and state governments, private foundations, and lending or real estate organizations. Agencies must assure that such arrangements do not violate the provisions regarding conflicts of interest described in § 214.303(e).

§ 214.313 Housing counseling fees.

(a) Participating agencies may charge reasonable and customary fees for housing education and counseling services, as long as the cost does not create a financial hardship for the client. An agency's fee schedule must be posted in a prominent place that is easily viewed by clients, and be available to HUD for review.

(b) Agencies must inform clients of the fee structure in advance of providing services. Clients cannot be charged for client intake.

(c) If any agency chooses to charge fees, the agency must conform to the following guidelines:

(1) Provide counseling without charge to persons who cannot afford the fees;

(2) Fees must be commensurate with the level of services provided;

(3) Agencies may not impose fees upon clients for the same portion of or for an entire service that is already funded with HUD grant funds.

(d) The agency may also be reimbursed from clients for the direct cost of obtaining copies of clients' credit reports from credit reporting bureaus if this does not cause a hardship for the client. In cases where the participating agency receives a discount for the cost of credit reports, this discount must be passed on to the client.

(e) Lenders may pay agencies for counseling services, through a lump sum or on a case-by-case basis, provided

the level of payment does not exceed a level that is commensurate with the services provided, and is reasonable and customary for the area, and does not violate requirements under the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*). These transactions and relationships must be disclosed to the client as required in § 214.303(g).

§ 214.315 Recordkeeping.

(a) *Recordkeeping system.* Each participating housing counseling agency must maintain a recordkeeping system. The system must permit HUD to easily access all information needed for a performance review. This system must meet the requirements of 24 CFR 1.6, 24 CFR 84.21, and 24 CFR part 121.

(b) *File retention requirements.*

Financial records, supporting documents, statistical records and all other pertinent records, both electronic and on paper, shall be retained for a period of 3 years from the date the case file was terminated for housing counseling. If the housing counseling agency is a recipient of a HUD housing counseling grant, then the client files for the housing counseling grant year must be retained for 3 years from the date the final grant invoice was paid by HUD.

(c) *Grant activities.* Recipients of HUD housing counseling grants are required to report activities under the grant in a format acceptable to HUD and within the designated time frames required by the applicable grant agreement.

(d) *Race, ethnicity, and income data.* Participating agencies must maintain current and accurate data on the race, ethnicity, and income of their counseling clients and education participants.

(e) *Client file.* The housing counseling agency must maintain a separate confidential file for each counseling client to document the action plan and the services provided to the client, as described in § 214.300. For all counseling, except for HECM counseling, the client file must include an action plan. The client file may be for an individual or household or for a group of clients with the same housing need.

(f) *Group education file.* The housing counseling agency must maintain a separate confidential file for each course provided. This file must contain a list of all participants, their race, ethnicity and income data, course title, course outline, instructors, and date of each course.

(g) *Confidentiality.* Participating agencies must ensure the confidentiality of each client's personal and financial information, including credit reports, whether the information is received from the client or from another source.

Failure to maintain the confidentiality of, or improper use of, credit reports may subject the agency to penalties under the Fair Credit Reporting Act (14 U.S.C. 1681 *et seq.*).

(h) *Termination of services.* The housing counseling agency must document in the client's file termination of housing counseling. Termination occurs or may occur under any of these conditions:

(1) The client meets his or her housing need or resolves the housing problem;

(2) The agency determines that further housing counseling will not meet the client's housing need or resolve the client's housing problem;

(3) The agency attempts to, but is unable to, locate the client;

(4) The client does not follow the agreed-upon action plan;

(5) The client otherwise terminates housing counseling; or

(6) The client fails to appear for housing counseling appointments.

§ 214.317 Reporting.

All participating agencies shall submit to HUD activity reports, which may be required up to quarterly. The reports must be submitted in the format, by the deadline, and in the manner prescribed by HUD. Participating agencies that are also recipients of HUD grants or subgrants may be required to submit additional reports, as described in their grant agreements and prescribed by HUD.

Subpart E—Other Federal Requirements

§ 214.500 Audit.

Housing counseling grant recipients and subrecipients shall be subject to the audit requirements contained in 24 CFR parts 84 and 85. HUD must be provided a copy of the audit report within 30 days of completion.

§ 214.503 Other requirements.

In addition to the requirements of this part, the Housing Counseling program is subject to applicable federal requirements in 24 CFR 5.105.

Dated: September 21, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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