

# National Foreclosure Prevention and Neighborhood Stabilization Task Force

December 4, 2013

Regulations Division  
Office of the General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Room 10276  
Washington, DC 20410-0500

**Docket No. FR-5339-P-01 and FR-5339-N-02**

**RIN 2502-A194**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.**  
**Housing Counseling Program: New Certification Requirements**

*Re: Comments on housing counseling certification proposed rule*

To Whom It May Concern:

We, the members of the National Foreclosure Prevention and Neighborhood Stabilization Task Force, appreciate the opportunity to comment on the proposed rule to revise the Department of Housing and Urban Development (HUD) Housing Counseling Program regulations to adopt new requirements applicable to counseling agencies and individual counselors as established by the Dodd-Frank Act.

In the wake of the foreclosure crisis the housing counseling industry provided, and continues to provide, a stabilizing influence for homeowners, renters, and hard hit communities. Research has shown housing counseling has been an effective intervention in helping distressed homeowners avoid foreclosure, in helping individuals determine if they are ready for homeownership, and connecting homebuyers with safer and more affordable mortgage products.<sup>1</sup> Housing counseling is also an important resource for individuals seeking affordable rental options and for assisting the homeless in finding shelter. We commend HUD for recognizing the immense benefits of housing counseling and appreciate your acknowledgment of the skill and knowledge that counselors bring to their work.

The overall framework of the proposed rule begins to define this new certification process, but significant clarification is still needed. Given the potentially broad reach of this proposed rule and the diverse nature of organizations providing housing counseling, we ask for additional information and suggest a revised approach in several areas. In summary:

- 1. Minimize costs to agencies and counselors.** This includes setting the testing fee at no more than \$100, recognizing that housing counseling agencies have very limited funds with which to serve a large need.
- 2. Clarify the intent and focus of the core competency areas.** We urge HUD to develop a certification process that acknowledges and complements the existing specialties that already exist in the housing counseling industry.
- 3. Develop a clear training and testing protocol.** Before moving to a final rule we urge HUD to release more detailed guidelines on testing and certification expectations.
- 4. Clarify the rule's applicability to organizations that provide housing counseling related to HUD programs but do not receive housing counseling funds.** If HUD intends the new certification process to apply to agencies not primarily involved in housing counseling or funded through housing counseling programs, it should reissue a new proposed rule for comment that directly addresses the many issues involved.
- 5. Allow rollout of counselor certification process before deciding whether to institute a continuing education requirement.** We urge HUD to give the initial implementation and evaluation of proposed certification changes time for to roll out before mandating any further requirements.

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<sup>1</sup> Williams, Laura, "The Role of Housing Counseling in Reducing Mortgage Delinquency," Center for Housing Policy, June 2011, [http://www.nhc.org/media/files/Role\\_of\\_Housing\\_Counseling\\_in\\_Preventing\\_Foreclosure.pdf](http://www.nhc.org/media/files/Role_of_Housing_Counseling_in_Preventing_Foreclosure.pdf)

## About the National Foreclosure Prevention and Neighborhood Stabilization Task Force

Convened in November 2007, the National Foreclosure Prevention and Neighborhood Stabilization Task Force is a cross-industry group of local and national organizations working to address the impacts of the foreclosure crisis on communities. Our mission is to bring together advocates, practitioners, and other experts from across the country around foreclosure prevention and neighborhood stabilization efforts, to exchange critical information and to help craft policy, legislative, and programmatic initiatives that primarily support low and moderate-income individuals and families.

### Benefits of the proposed certification framework

The proposed housing counseling rule formalizes some important changes made under the Dodd-Frank Law. These changes offer some potential improvements beyond the essential step of formalizing requirements mandated under law. Among the improvements we endorse are:

- *Setting a baseline.* The benefits of housing counseling result from the work of dedicated and informed agencies and counselors. The certification process allows HUD to ensure a baseline level of information related to homeownership and rental options across individuals and housing counseling agencies.
- *Addressing the full continuum of housing options.* The proposed rule stresses the entire process of homeownership, which is essential to a successful counseling approach. We urge an even more comprehensive approach. An effective housing counselor can help households navigate complicated rental and homeownership decisions by assessing needs, preferences and financial constraints regardless of tenure.
- *Flexibility in preparation choices.* The proposed rule allows agencies and individuals to decide the appropriate course of training prior to the certification exam. It is our expectation that experienced counselors can pass with little to no special test preparation, but it is unrealistic to expect new counselors to pass the exam without some preparation. Thus we hope HUD provides access to low or no cost training materials to fulfill these needs.

### Areas for clarification and improvement

1. **Minimize costs to agencies and counselors.** Housing counseling agencies have very limited funds with which to serve a large need. Setting a high cost to meet HUD's new certification process risks restricting the supply of qualified housing counselors and undermining an agencies' ability to serve clients. Simply put, funds spent on additional certification trade off against serving clients. We have several suggestions to address this:
  - *Testing fee should not exceed \$100.* The proposed rule estimates that the certification exam will cost between \$100 and \$200. HUD should strive to set the exam cost as low as possible. Currently HUD certifies Home Equity Conversion Mortgage (HECM) counselors for a fee of \$100 per test and we see no reason for the general certification to exceed this price. For a further comparison: the SAT exam costs individuals only \$51. It seems reasonable to expect that HUD can set an exam fee that mirrors other testing industry standards.
  - *Estimated total cost of \$500 for training and testing seems unrealistic.* This cost will vary widely depending on the exam's content and level of difficulty. HUD's recent experience certifying counselors through the HECM program left many experienced counselors feeling unprepared and in need of supplemental training outside of HUD's provided training materials. External HECM training provided by NeighborWorks America costs \$1,250 per counselor and occurs over the course of 5 days. If this type of training is needed in conjunction with this new certification than we expect costs to exceed the estimated \$500. We ask HUD to release more information about testing and training materials in order to better gauge expected cost.
  - *Continue to allow HUD housing counseling training funds for HUD-certification requirements.* The FY13 Housing Counseling Training NOFA allowed for the use of funds to fulfill statutory certification requirements. We support this inclusion and advocate that it be included in future NOFAs. HUD funds are the primary source of revenue most agencies rely on to support operations.

- *Avoid duplication of existing training.* Currently many HUD-certified agencies already pay to send counselors to outside trainings and certifications, usually ones specific to a given agency's focus and mission. HUD should not attempt to subsume all specialized trainings into its baseline exam, nor should it set the cost of testing and preparation so high as to interfere with the ability to complete specialized training.

**2. Clarify the intent and focus of core competency areas.** The language of the proposed rule provides little detail on what is expected of counselors taking the certification exam outside of competency in six broad areas, covering both homeownership and rental. As specified by HUD, these are: (1) financial management; (2) property maintenance; (3) responsibilities of homeownership and tenancy; (4) fair housing laws and requirements; (5) housing affordability; and (6) avoidance of, and response to, rental and mortgage delinquency and avoidance of eviction and mortgage default. This list is extensive when considering the wide variety of topics that fall within each of these six categories. While we commend HUD for wanting increase standardization of knowledge across all HUD-certified agencies, it seems unrealistic and unnecessary given the current state of the industry. A 2008 report released by HUD showed that just over 75 percent of HUD-approved agencies specialized in one of the following areas: pre-purchase, post-purchase, pre-purchase and post-purchase, or rental or homeless counseling.<sup>2</sup> Requiring all counselors regardless of agency specialization to pass a certification in all six areas across tenures is an unnecessary burden that may cause the field to lose experienced counselors with specialized expertise. Funding constraints could further exacerbate this problem as agencies may be forced to make tradeoffs between paying for certified training and HUD's certification exam. In addition to keeping training and testing costs low, HUD can help to address this issue by:

- *Focusing on setting a baseline.* We assume it is not HUD's intent with this rule to turn all HUD-certified counseling agencies into generally focused organizations. We urge HUD to develop a certification process that acknowledges and complements the diverse counseling specialties that exist in the housing counseling industry. The majority of housing counselors provide services focused on either rental/homelessness or homeownership. HUD should recognize that not all counselors need a detailed knowledge of rental **and** homeownership programs, processes, and regulations. Expecting, for example, counselors providing services to homeless individuals to know the intricacies of foreclosure processes for homeowners seems unreasonable. Rather, in setting a baseline, HUD can expect all certified counselors, regardless of tenure focus, to have a basic understanding of fair housing, affordability, and financial management in order to assess a client's needs and provide referrals if needed. If a more detailed test is desired HUD should consider designing a certification process that focuses on specific tenure, with some overlap in the areas mentioned above. This would allow HUD to test on more specific processes while allowing counselors to build on existing skills and knowledge that will be most beneficial in their day-to-day work with clients.
- *Defining expectations within core competency areas.* It is important for individuals to understand what will be expected of them as they prepare for the certification. To this end HUD should clarify how the exam will address differences in state laws, such as landlord/tenant laws and foreclosure laws and procedures, all of which vary widely. For counselors helping individuals preparing for homeownership, HUD could consider using training materials and certification process as a way to help counselors better understand the recently finalized Ability to Repay and Qualified Mortgage Standards.
- *Designing a test that complements rather than replaces existing certifications.* HUD need not think of itself as the sole provider of training and certification to housing counselors, nor develop a certification that encompasses all specialized counseling focus areas. Existing specialized certifications provided by national intermediaries and other organizations will continue to be an important resource for the industry. These certifications help counselors develop specialized, job-specific, knowledge and are an important resources on-going skill development and continuing education.

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<sup>2</sup> U.S. Department of Housing and Urban Development and U.S. Department of the Treasury. "The State of the Housing Counseling Industry, September 2008." Available at: <http://www.hud.gov/offices/hsg/sfh/hcc/hudhrpt121508.pdf>

- 3. Develop clear training, testing, and enforcement protocols.** Before moving to a final rule we urge HUD to release more detailed guidelines on its testing and certification expectations, as timing, staffing, compliance, and enforcement issues could greatly affect the implementation of the new certification requirements. Ongoing communication with counseling agencies will be essential as HUD develops the rule and the follow-on guidance. At this stage we ask HUD to:
- *Link the initial compliance period to final testing materials.* We urge HUD to set the initial compliance deadline to one year from the finalization of training and testing materials rather than one year from the final rule. The clock should not start ticking on agencies and individuals until HUD has finalized all necessary materials needed to successfully complete the certification process. Thus any delay in the creation of the test or training materials would not cut into the compliance period.
  - *Allow new counselors flexible certification options.* The housing counseling industry has high turnover, so it is important to design a system that allows staff to seamlessly move in and out of an agency and for agencies to bring on new staff in a timely basis. We recommend that HUD allow counselors the flexibility to be certified inside or outside of a HUD-certificated agency. Allowing individuals to certify prior to being hired by an agency creates a ready pool of qualified counselors. While we recognize this places a higher burden on an individual, the level of burden depends on an individual's prior background and preparation and the rigor of the exam. HUD should also develop guidelines that allow for an agency to hire new counselors without prior certification on the expectation that they will become certified after a period of supervised work. Additionally, HUD should clarify whether new and yet to be certified counselors are allowed to see clients prior to certification. We recommend that new counselors be allowed to see clients under the supervision of a more senior counselor until they can obtain certification. HUD should draw on the expertise of housing counseling organizations that have been successfully hiring and training new housing counselors prior to this new certification requirement.
  - *Allow for a grace period for individuals and agencies.* We ask that HUD allow for a grace period so that an agency can remain HUD certified if there are short lapses with no housing counselor on staff. This is especially important to small agencies with only one housing counselor on staff who could conceivably have short gaps between when a counselor leaves the position and when a new individual is hired. As long as the agency is showing a good faith effort to fill the open position HUD should continue to designate the agency as HUD certified.
  - *Clarify who within a HUD-certified housing counseling organization needs to be certified.* Within HUD-certified agencies many different individuals with many different job titles are involved in the counseling process. HUD should make it clear which individuals within an organization need to be certified. One way to do this is to base it on number of hours seeing clients versus administrative hours. Regardless of the metric, HUD should clearly define these procedures, as it will affect agencies in different ways depending on its size, scope, and structure.
  - *Develop a clear process for testing and retesting.* A clear understanding of testing benchmarks—what is required to pass and how a failure can be remedied—is important. We recommend HUD adopt similar testing and retesting protocol to what is used to certify HECM counselors. This means adopting online training and testing and allowing individual counselors to retake the exam as many times as necessary in order to pass. HUD should think of developing a protocol that allows for counselors who fail certain parts of the test to only retake those sections rather than retake the test in its entirety.
  - *Make testing and training materials broadly accessible.* This means addressing potential language and geographic barriers. One way to do this is through online training and testing, which is especially important for rural communities that may be distant from a testing center. HUD should also provide all training and testing materials in multiple languages.
- 4. Clarify the rule's applicability to organizations that provide housing counseling related to HUD programs but do not receive housing counseling funds.** As established in statute and footnoted in the proposed rule, all housing counseling programs, both rental and homeownership, provided in connection with any HUD program must be

administered by a HUD-approved counselor in an HUD-approved counseling agency.<sup>3</sup> This broad wording implies that this new certification requirement now applies to a wide variety of organizations that span the housing spectrum, many of which may not fully understand how and if the rule applies to them. Potential organizations affected by this new requirement include small community development organizations, community action agencies, Habitat for Humanity Affiliates, public housing agencies, and other state and local housing development groups, many of which would not have otherwise sought to become HUD-certified counseling organizations. If HUD intends the new certification process to apply to agencies not primarily involved in housing counseling or funded through housing counseling programs, it should reissue a new proposed rule for comment that directly addresses the many issues involved. In doing so HUD should consider the following issues:

- *New certification requirements could disrupt existing contracts.* This is especially true for HUD-funded organizations, such as those administering public and assisted housing and homelessness programs, who may be currently contracting with organizations that are not HUD-approved to provide counseling for residents. It is essential that HUD design a certification process that does not cause disruptions or lapses in counseling services that could potentially undermine the health and wellbeing of the intended service recipients.
- *Agencies and individuals will likely need to be certified for the first time.* These new certification requirements create a complicated and potentially expensive mandate for organizations, especially those that must undergo the certification process both at the organizational and individual level for the first time. HUD should be mindful of the disproportionate burden on small organizations that provide a low volume of counseling annually and seek a more streamlined process that can apply to these agencies. The inclusion of potentially thousands of new organizations going through the housing counseling certification process is also likely to create an administrative burden for HUD. Given HUD's current staffing and funding constraints, it should consider alternative ways to certify these additional organizations, perhaps relying on existing oversight processes, should such certifications be necessary.
- *Compliance and oversight procedures unclear.* Further clarification is needed to better understand compliance and oversight procedures, and any possible financial penalties for noncompliance. The current rule only addresses retraction of housing counseling funds, which will not apply to these organizations.

**5. Allow rollout of counselor certification process before deciding whether to institute a continuing education requirement.** The rule states that HUD is not ruling out the possibility of requiring individual counselors to undergo continuing education training. Given the changing regulatory and programmatic environment, continuing education is valuable. However, this certification process is a new and significant challenge for housing counseling agencies. We urge HUD to give the initial implementation and evaluation of proposed certification changes time to roll out before mandating any further requirements. Any additional certification requirements, such as continuing education, should be subject to public review and comment.

## Conclusion

This proposed rule is an important first step in defining HUD's responsibility to certify housing counselors. We hope HUD will continue to refine the rule's language and provide more detail and clarity, especially in the areas highlighted above. Further clarification will help stakeholders better assess the rule's implications and provide more robust suggestions before moving into a final implementation stage.

Once again, we appreciate the opportunity to offer comment on the proposed rule. To discuss any of these comments in further detail, please contact Liza Getsinger, Policy Associate, National Housing Conference, (202) 466-2121 x248, [lgetsinger@nhc.org](mailto:lgetsinger@nhc.org).

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<sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009, Pub. L. No. 111-203, Section 1445 paragraph 5. "Housing Counseling Program: New Certification Requirements; Notice of proposed rulemaking," 78 Federal Register 178 (13 September 2013), pp. 56626, footnote 2.

Sincerely,

The undersigned organizations and localities of the National Foreclosure Prevention and Neighborhood Stabilization Task Force:

Atlanta Neighborhood Development Partnership, Inc  
Avesta Housing  
Center for NYC Neighborhoods  
City of St Paul, Dept of PED, Mortgage Foreclosure Prevention Program  
Cleveland Housing Network  
Enterprise Community Partners  
Family Housing Fund  
Greater Metropolitan Housing Corporation  
Habitat for Humanity International  
Habitat for Humanity of the Chesapeake  
Healthy Neighborhoods, Inc.  
Homeport  
HOPE NOW Alliance  
Housing Partnership Network  
Kingdom Community Inc  
Local Initiatives Support Corporation (LISC)  
Metro St. Louis Coalition for Inclusion and Equity, M-SLICE  
Metropolitan Consortium of Community Developers  
Minnesota Homeownership Center  
National Association for County Community and Economic Development  
National Association of Affordable Housing Lenders  
National Association of Housing and Redevelopment Officials  
National Association of Local Housing Finance Agencies  
National Association of Realtors  
National Coalition for Asian Pacific American Community Development  
National Community Development Association  
National Community Stabilization Trust  
National Council of State Housing Agencies  
National Housing Conference  
National Housing Institute  
National Low Income Housing Coalition  
NCB Capital Impact  
Neighborhood Housing Services of South Florida  
Neighborhood Housing Services of Silicon Valley  
New York Housing Conference  
Rebuilding Together  
Restored Homes HDfC  
Wisconsin Partnership for Housing Development