

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. FR-4798-P-01; HUD-2004-0020]

RIN 2502-AH99

Housing Counseling Program

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for the Department's housing counseling program, as authorized by the Housing and Urban Development Act of 1968, and for which, the past several years, notices of funding availability have been issued on an annual basis. Codification of these requirements would reflect the permanence of this program. This proposed rule would adopt and augment the housing counseling program requirements with which grantees and housing counseling agencies are already familiar.

DATES: *Comments Due Date:* February 22, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal electronic rulemaking portal at: <http://www.regulations.gov>; or
- The HUD electronic rulemaking website at: <http://www.epa.gov/feddocket>. Follow the link entitled "View Open HUD Dockets."

Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT: Loyd LaMois, Office of Housing, Single Family Program Support Division, Department of Housing and Urban Development, Room 9274, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone, (202) 708-0317. (This

is not a toll-free number.) Individuals with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION

I. Background

HUD's housing counseling program, authorized under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), endeavors to provide housing counseling services, including outreach to potential homebuyers, homeowners, renters, and the homeless. Housing counseling services may include but are not limited to: assisting eligible homebuyers to seek out 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 to find temporary or permanent shelter; reporting fair housing or discrimination complaints or both; and addressing housing problems.

Section 106(a) defines housing counseling services as "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." Under section 106, HUD may provide counseling directly, or may 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 for the purposes of providing counseling and advice to tenants and homeowners.

II. This Proposed Rule

This proposed rule would establish regulations for HUD's housing counseling program, as authorized by the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). To date, the program has been administered through notices of funding availability and related guidance. Establishment of regulations would reflect the permanency of this program. This proposed rule would adopt and augment the housing counseling program requirements with which grantees and housing counseling agencies are already familiar.

This proposed rule is divided into five major subparts under a new part 214.

Subpart A of this proposed rule describes the statutory and program purposes as well as defines major terms used in the housing counseling program. Specifically, this proposed rule would define essential housing counseling terms that are used throughout the program including: "clients," "housing counseling work plan," "intermediary," and "local housing counseling agency."

The process by which housing counseling agencies acquire and maintain HUD-approved status is explained in subpart B. In particular, this subpart delineates the criteria that housing counseling agencies are required to meet in order to become HUD-approved housing counseling agencies. Key qualifying criteria for HUD approval include but are not limited to: nonprofit and tax-exempt status; a minimum of one year successful experience in administering a housing counseling program; at least one year operating in the geographic area in which the agency endeavors to serve; and sufficient resources to implement a proposed counseling plan no later than the date of HUD approval. In addition to approval criteria, this subpart also explains the application process for HUD approval. A housing counseling agency must formally apply for HUD-approved status through an application process. If the agency's application meets the requirements of this subpart, HUD will approve the agency. In the event that an application is not approved by HUD, the agency will have an opportunity to revise and resubmit an application, or send a letter of appeal to the Department.

Subpart C sets forth the procedures for termination of HUD-approved status and agency appeal rights. A termination by HUD would be based on HUD's determination that termination is in the best interests of the Department. Such a determination may be based on an agency's failure to or inadequate capacity to comply with, implement, or achieve the outcomes described in its housing counseling work plan. In addition, failure to comply with the program requirements described in these regulations or misuse of grant funds may result in termination of HUD-approved status.

An agency may appeal an adverse decision by HUD through a formal appeals process. HUD must receive the agency's formal, written appeal within 30 days of the date of HUD's decision letter. In addition, HUD may take other actions as outlined in 24 CFR part 24.

Subpart C describes the procedures for reapproval or removal resulting from a performance review by HUD.

Program administration including performance criteria, recordkeeping and reporting requirements, performance reviews, and housing counseling fees are explained in subpart D. In addition, this subpart describes the basic services that HUD-approved housing counseling agencies may provide to clients beyond preliminary client interviews. Approved housing counseling services include, but are not limited to: home buying education; foreclosure prevention; referrals to rental assistance programs; referrals to community resources and homeless services.

This subpart describes the criteria that approved housing counseling agencies must meet in order to maintain HUD-approved status. In addition to minimum workload, staff, and funding levels, this subpart explains conflict of interest measures with which HUD-approved housing counseling agencies must comply. Housing counseling agencies must provide counseling services to at least the minimum number of clients, as determined by HUD, annually. Agencies that provide only Home Equity Conversion Mortgage (HECM) counseling are exempt from the workload requirement. Compliance with these regulations will be monitored through periodic performance review (PR). The PR may determine whether an agency's HUD-approved status will be approved unconditionally, approved with conditions, or terminated.

Subpart D also describes funding and collection of housing counseling fees. This subpart explains that HUD-approval does not guarantee funding from HUD, but that several sources of funding may be available to HUD-approved housing counseling agencies. Agencies may charge reasonable fees, except as otherwise prohibited, on a sliding scale for individual counseling services as long as the fees do not create a financial hardship for the client.

In addition, subpart D explains the recordkeeping and reporting requirements for HUD-approved agencies. HUD-approved agencies must maintain a system of records that HUD may use as part of the PR, and the agency must ensure the confidentiality of these records. On an annual basis, each agency must submit an activity report. This subpart also requires HUD-approved housing counseling agencies to maintain a client management system that allows the agency to compile client-level demographic, financial, and outcomes data.

Subpart E provides for the announcement of competitive grant

funding availability. When funds are appropriated by Congress, HUD will publish a Notice of Funding Availability (NOFA) in the **Federal Register** and on Grants.gov.

Current law (12 U.S.C. 1701x) extends eligibility of housing counseling services for virtually all defaulting homeowners and tenants. In addition, section 255(d)(2)(B) of the National Housing Act (12 U.S.C. 1715z–20(d)(2)(B)), which authorizes mortgage insurance of home equity conversion mortgages (HECM) for elderly homeowners, requires that a home equity conversion mortgage (HECM) must be executed by a mortgagor who received “adequate counseling by a third party (other than the lender).” Certain other HUD housing programs may require participation in the Housing Counseling Program. Accordingly, the regulations governing individual HUD housing programs should be consulted.

III. Findings and Certifications

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 proposed rule would establish 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. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that the rule is a “significant regulatory action” as defined in section 3(f) of the Order (although not economically significant regulatory action under the Order). Any change made to the rule as a result of that

review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

This proposed rule would codify the existing housing counseling program. This proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment 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.

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 proposed 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 (Pub. L. 104–4; approved March 22, 1995) (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 proposed 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.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget 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 proposes to amend title 24 of the Code of Federal Regulations to add part 214 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—Termination and Appeals

214.200 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.

214.319 Client management system.

Subpart E—Grants

214.400 Grants.

Subpart F—Other Federal Requirements

214.500 Financial reports.

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.

§ 214.3 Definitions.

The following definitions apply, as appropriate, throughout this part:

Affiliate. An organization connected with a regional or national intermediary for purposes of its housing counseling program. 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. An affiliate can be a subgrantee.

Branch or branch office. An organizational and subordinate unit of a local housing counseling agency, regional or national intermediary, or State Housing Finance Agency not separately incorporated or organized. 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.

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 subgrantees, affiliates, or branches and which meet the requirements set forth in these regulations.

Clients. Individuals and families who are homeless, potential renters, renters, potential homebuyers, homebuyers, homeowners who are eligible for and apply for federal, state and local or conventional financed housing or housing assistance, or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to meet a housing need or resolve a housing problem.

Education. Information provided in a group or classroom setting to a number of people and covering topics applicable to groups of people such as, but not

limited to: Renter rights; the homebuying process; how to maintain a home; how to set up a budget; fair housing; identifying and reporting predatory lending practices; rights for persons with disabilities; and the importance of good credit.

Counseling. One-on-one assistance provided to an individual or family that addresses unique financial circumstances and focuses on 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, fair housing, finding units accessible to persons with disabilities, avoiding foreclosure, or resolving a financial crisis.

Housing counseling work plan. A housing counseling 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 plan includes similar information for the network of affiliated agencies or branches.

Client counseling plan. A plan of action 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).

Housing goal. A potential, realistic objective set by the client with advice from the housing counseling agency and with which the agency's housing counselor concurs. Under HUD programs, a HUD-approved housing counseling agency shall not accept as a client a person whose housing objective is unreasonable and is obviously unattainable.

Intermediary. A HUD-approved Housing Counseling Agency that provides housing counseling services through its branches, subgrantees, or affiliates. The term intermediary can be used as follows:

(1) National intermediary. A national intermediary provides housing counseling services through its branches, subgrantees, and affiliates in a number of states as determined by HUD.

(2) Regional Intermediary. A regional intermediary provides housing counseling services through its branches, subgrantees, and affiliates in a generally recognized region within the United States of America, such as the Southwest, Mid-Atlantic, New England.

Local housing counseling agency. A HUD-approved housing counseling agency that is not a State Housing Finance Agency or a Regional or

National Intermediary. A local housing counseling agency may have only one location or a main office with one or more branch offices within the same state or no more than the number of contiguous states as determined by HUD.

State housing finance agency (SHFA). Any public body, agency or instrumentality created by a specific act of a state legislature empowered to finance the activities designed to provide housing and related facilities through land acquisition, construction or rehabilitation throughout an entire state. A SHFA may participate in HUD's housing counseling grant program without prior approval from HUD. SHFAs may provide direct counseling services or subgrant housing counseling funds to local 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 organization that receives a subgrant of housing counseling funds provided under a HUD grant.

Subpart B—HUD Approval

§ 214.100 General.

An organization may be approved by HUD as a HUD-approved housing counseling agency upon meeting the requirements enumerated in 24 CFR 214.103 and upon completing the application procedures set forth in this subpart B.

§ 214.103 Approval criteria.

The following criteria for approval apply to all agencies 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 private or public nonprofit organization. The agency must submit evidence of nonprofit status and tax-exempt status under section 501(a) pursuant to section 501(c)(3) of the Internal Revenue Code of 1996 (26 U.S.C. 501(a) and 501(c)).

(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 and must require its branches and affiliates to have 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:

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

(2) Be indicted for, or convicted of, an offense that reflects upon the responsibility, integrity, or ability of the agency to participate in housing counseling activities;

(3) Be subject to unresolved findings as a result of HUD or other government audit or investigations; and

(4) Be engaged in activities that in HUD's opinion do not conform to generally accepted practices of prudent agencies or that demonstrate irresponsibility.

(d) *Community base.* A housing counseling agency and its individual 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 can be reviewed and annual activity data for the agency can be verified, reported, and analyzed. This system must meet the requirements of 24 CFR 1.6 and 121.

(f) *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 twelve-month period of HUD approval.

(2) *Staff.* The agency must employ staff trained in housing counseling with at least six months experience in the job they will perform in the agency's housing counseling program.

(3) *Language skills.* If the agency intends to serve non-English speaking clients, the housing counselor(s) must be fluent in the language of the clients they serve, 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.

(g) *Knowledge of HUD programs and local housing market.* The agency's housing counseling staff must possess a working knowledge of HUD's housing 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.

(h) *Contracts or agreements to provide eligible housing counseling services.* An agency and its branches, affiliates, and subgrantees 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 may enter into agreements with affiliates and subgrantees to provide housing counseling services. The agreements with affiliates may be an exchange of letters that delineate the respective housing counseling program responsibilities of the parties. Agreements with subgrantees must be sufficiently detailed to establish accountability and allow for adequate monitoring in accordance with applicable OMB Circulars and HUD regulations.

(3) With prior approval from HUD, and at HUD's discretion, national 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.

(i) *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.

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

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

(1) Located in the community of the target population;

(2) Have a clearly identified office, with space available for the provision of housing counseling services, located in a space that is separate and apart from

any other entity, except that an agency may share general reception-type entrances, or lobbies with other business entities. The office should operate during normal business hours and offer extended hours when necessary;

(3) Provide privacy for one-on-one counseling and confidentiality of client records;

(4) Provide accessibility features for persons with disabilities and elderly persons, or the agency must arrange to meet with such persons at an alternative accessible location.

(l) *Housing counseling work plan.* 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 these needs and problems with its available resources, the type of housing counseling services offered, and the results (outcomes) to be achieved within the two-year period of approval. This plan must be periodically reviewed and when changed or amended the agency must notify and provide a copy to HUD. An agency must deliver at least one of the housing counseling components described in § 214.300. If an agency is to offer education through group sessions, it must also offer one-on-one counseling.

§ 214.105 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, may submit a single application for approval to include all offices.

(b) *Approval.* If an application package meets all requirements outlined in § 214.103, HUD will inform the agency of its approval, for a period up to two years, and provide a written certification of HUD-approved status.

(c) *Disapproval.* 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 days of receipt of written notice of denial, the agency may submit a revised application, or appeal HUD's decision in writing to HUD.

§ 214.107 Approval by HUD.

(a) *Notice of approval.* HUD will send notice of 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 or intermediary. The

certificate will show the period of approval.

(c) *Appearance on list of HUD-approved housing counseling agencies.* As a condition of HUD approval, names and contact information for all approved local housing counseling agencies, and affiliates of intermediaries will appear on HUD's Web site for purposes of client referrals. 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, the agency must refer the client to another HUD-approved housing counseling agency in the area. In addition, names and addresses of all HUD-approved housing counseling agencies will be available to the public through HUD's toll-free housing counseling hotline.

§ 214.109 Disapproval by HUD.

HUD will send a letter of disapproval to the agency explaining the application's deficiencies. Within 30 days of the date of a letter of disapproval, the agency may appeal the decision by writing to HUD, as provided in § 214.205, or submit a revised application addressing deficiencies described in the disapproval letter. 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—Termination and Appeals

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

(a) *Cause for termination by HUD.* HUD may terminate an agency's or intermediary's approval, remove the agency and its branches, or an intermediary and its branches and affiliates from the list of HUD-approved agencies, and terminate any grant agreements (if applicable) upon confirmation of any or all of the following reasons:

(1) In the best interest of the Department;

(2) Non-compliance with program requirements, as defined in these regulations;

(3) 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;

(4) Lack of the capacity to deliver the housing counseling activities described in its approved housing counseling work plan;

(5) Failure to achieve outcomes described in the work plan; and

(6) Misuse of grant funds.

(b) *Agency withdrawal.* The 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 this 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 (PR) for all HUD-approved agencies, intermediaries, and SHFAs receiving housing counseling grant funds. The Performance Review and the terms of re-approval or removal of a HUD-approved housing counseling agency are described in § 214.307 of this title.

§ 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-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.* Unless exempted by HUD, all counseling must be in-person. For each client, a HUD-approved housing counseling agency shall offer the following basic services:

(1) Housing counseling 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.

(3) Follow-up communication with the client to assure that the client is

progressing toward his or her housing goal or that the agency should modify or terminate housing counseling.

(b) *Agency's housing counseling work plan.* A HUD-approved housing counseling agency shall deliver housing counseling services consistent with the agency's housing counseling work plan. The work plan should identify housing counseling services needed in targeted communities and geographic areas where the agency and its branches and affiliates provide their housing counseling services. An agency and its branches and affiliates that offer group, educational sessions must also offer one-on-one housing counseling.

(c) *Approved housing counseling activities.* The following are examples of approved areas of housing counseling:

(1) Displacement and relocation;

(2) Homeless services;

(3) Home buying including housing selection/mobility counseling, search assistance, purchase procedures, and closing costs, and homebuyer education programs;

(4) Rental topics including landlord-tenant laws, lease terms, HUD rental programs and rent subsidy programs, qualifying for federal, state, or local governmental assistance, and rent delinquency;

(5) Home financing including budgeting, escrow funds, foreclosure, delinquency and default, FHA-insured financing and other mortgage insurance programs, and the Home Equity Conversion Mortgage Program (HECM);

(6) Marketing and outreach initiatives including providing general information about housing opportunities, conducting informational campaigns, and raising awareness about critical housing topics, such as predatory lending or fair housing issues;

(7) Referrals to community resources;

(8) Rights and responsibilities of persons who own single family housing, including cooperatives and condominiums, as well as housing care and maintenance; and

(9) Any other area of housing counseling that is determined to be appropriate by the agency and approved by the Secretary.

§ 214.303 Performance criteria.

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

(a) *Workload.* During each 12-month period, the agency must provide housing counseling to at least the minimum number of clients, as determined by HUD. Agencies that offer only housing counseling services limited to HECMs, are exempt from this requirement.

(b) *Reporting.* Every fiscal year, the agency must submit to HUD a complete, accurate and timely activity report as described in 24 CFR 214.317.

(c) *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 24 CFR 214.103(k).

(d) *Client referrals from HUD and other HUD-approved agencies.* All HUD-approved agencies must accept all clients referred by HUD and referred by other HUD-approved agencies that do not provide the specific housing counseling service or offer this service within a targeted or geographic area that is covered by a HUD-approved agency to which the referral is made. If an agency does not have the expertise or skills to meet the needs of a client, it must refer the client to another HUD-approved agency.

(e) *Conflicts of interest.* No director, employee, officer, contractor, or agent of a HUD-approved housing counseling agency or intermediary shall engage in activities that would involve a real or apparent conflict of interest. Such a conflict would arise when the director, employee, officer, contractor, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a direct interest in the client as a tenant, serves as a collection agent for the client's mortgage lender, landlord or creditor, originates, holds, or services a mortgage on the client's property, owns or purchases a property that the client seeks to rent, owns or purchases the property that the client seeks to purchase, steers clients to family or business associates such as particular mortgage lenders and brokers, builders, or real estate sales agents or brokers, acquires the client's property from the trustee in bankruptcy, or any financial or other interest in any matter relating to the client. The agency, its staff, 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. HUD may investigate agency practices and may take action to suspend or terminate the agency's approval.

(f) *Disclosure requirements.* A HUD-approved agency must provide to all

clients (and potential clients) a disclosure statement that explicitly describes the various types of services provided by the HUD-approved agency and any exclusive 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 also provide information on alternative services, programs, and products.

(g) *Staff.* The agency must employ experienced or trained housing counselors. 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.

(h) *Funding.* The agency must maintain a level of funds that enables it to provide housing counseling to at least the required workload of fifty (50) clients every year whether or not the agency receives HUD funding. If the agency charges counseling fees to clients, the agency must comply with its HUD-approved fee structure.

§ 214.305 Agency profile changes.

An approved agency should notify HUD in writing within 15 days when any of the following occurs:

(a) The agency loses or changes its non-profit 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 addresses 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;

(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 Performance Reviews (PR) to determine re-approval of the agency. In addition, HUD may conduct on-site or desk reviews of SHFAs that receive housing counseling grant funding, and intermediaries or local housing counseling agencies to include branches, subgrantees, and affiliates.

(b) The performance review will consist of a review of the agency's or intermediary's compliance with the requirements of this part, the requirements of grant agreements, if applicable, and the agency's level of success in delivering counseling services.

§ 214.309 Re-approval and disapproval based on performance review.

Based on the PR, HUD may determine whether to renew the approval unconditionally, conditionally, or withdraw its approval of the agency.

(a) *Unconditional Re-approval.* If the agency is in full compliance with the performance criteria of this part, HUD may re-approve the agency unconditionally for another two years.

(b) *Conditional Re-approval.* 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 for up to ninety (90) days. HUD may grant this conditional extension only if the agency agrees to attempt to correct its program deficiencies within the period of the extension. Otherwise, HUD must withdraw its approval of the agency, notify the agency by letter and specify the deficiencies.

(c) *Termination of HUD Approval.* When HUD determines that the agency's program deficiencies seriously impair the agency's ability to comply with this part, then HUD must terminate its approval of the agency immediately.

(d) *Reinstatement of HUD Approval.* If HUD receives acceptable information indicating the required corrections of deficiencies, HUD may conduct a follow-up review within ninety (90) days and may reinstate the agency's approval if the deficiencies have been corrected.

(e) *Appeal.* If HUD does not reinstate the approval, the agency may file an appeal, as prescribed under § 214.205.

§ 214.311 Funding.

(a) *HUD approval does not guarantee funding from HUD.* Funding depends upon appropriations by Congress and is awarded competitively under federal and HUD regulations and policies governing assistance programs, including Department of Housing and Urban Development Reform Act of 1989.

(b) *Notice of Funding Availability (NOFA).* If funds become available, HUD will publish a Notice of Funding Availability (NOFA) in the **Federal Register** and on Grants.gov.

(d) *Local funding sources.* HUD recommends approved agencies seek funding from all funding sources such

as lending or real estate organizations in addition to units of local government. 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) HUD-approved 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. Agencies must submit fee schedules for HUD approval and post the approved fee schedule in a prominent place, easily viewed by clients.

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

(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) Charge nominal fees consistent with those of similar agencies for similar services; and

(3) Set approved fees on a sliding scale in relation to the client's income and use that scale for all fee clients.

(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 approved agency receives a discount for the cost of credit reports, this discount must be passed on to the client.

§ 214.315 Recordkeeping.

(a) *Recordkeeping system.* Each HUD-approved housing counseling agency must maintain a recordkeeping system. The system must permit HUD to easily access all information needed for monitoring both when it conducts a PR and when it determines that other reviews of the agency's housing counseling activities are needed.

(b) *File retention requirements.*

Financial records, supporting documents, statistical records and all other pertinent records shall be retained for a period of three (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 three 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 and ethnicity data.* HUD-approved housing counseling agencies must maintain current and accurate data on the race and ethnicity of their clients.

(e) *Client file.* The housing counseling agency must maintain a separate confidential file for each client to document the services provided to the client as described in § 214.300 of this title. The agency must hold in strict confidence all client information regardless of the source or sources from which it is received. The client file must include:

(1) Details of an intake or screening interview, conducted by a housing counselor or administrative staff person who is trained in requirements of the Privacy Act of 1974 (5 U.S.C. 552a). The interview must be face-to-face, in the office of the HUD-approved housing counseling agency, unless it would be a hardship on the client. During the intake interview and counseling session sufficient information shall be documented including:

(i) Client name, address, and telephone number;

(ii) Client's file number;

(iii) FHA case number for clients with HUD-insured single-family mortgages or project number for HUD-assisted rental units; or a loan or project number if not a HUD-insured mortgage or HUD project;

(iv) Interviewing housing counselor's name;

(v) Interview date;

(vi) Race and ethnicity information;

(vii) Purpose and results of each visit, clearly identifying client need or problem, type of housing counseling provided, and results of housing counseling;

(viii) Income and financial obligations information;

(ix) Client's housing counseling plan, which outlines what the agency and the client will do in order to meet the client's housing goal(s). The housing counselor and client must sign the housing counseling plan. A copy of the signed housing counseling plan must be given to the client and the original placed in the client's file; and

(x) Documentation of any follow-up with the client, as needed, together with copies of pertinent records and correspondence.

(2) [Reserved]

(f) *Confidentiality.* HUD-approved 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.*).

(g) *Termination of services.* The housing counseling agency must document in the client's file every 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 client does not follow the agreed upon client housing counseling plan.

(4) The client otherwise terminates housing counseling.

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

§ 214.317 Reporting.

All HUD-approved housing counseling agencies shall submit to HUD an activity report during each year of approval. The report must be submitted on a form prescribed by the Secretary, on a date and in a manner

prescribed by the Secretary. HUD-approved agencies that are also recipients of HUD grants may be required to submit additional reports as described in their grant agreements and prescribed by the Secretary.

§ 214.319 Client management system.

All HUD-approved housing counseling agencies shall utilize an automated housing counseling client management 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 meet HUD's standards and must provide the counseling agency with the tools necessary to track and manage all counseling and educational activities associated with each client. HUD may require HUD-approved agencies to use a Departmental Client Management System, based on HUD's determination that such a requirement is in the best interests of the Department.

Subpart E—Grants

§ 214.400 Grants.

When funds are appropriated by Congress, HUD will publish a Notice of Funding Availability (NOFA) in the **Federal Register** and on Grants.gov. HUD will select applications for funding on a competitive basis as provided in the applicable NOFA.

Subpart F—Other Federal Requirements

§ 214.500 Audit.

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

§ 214.503 Other requirements.

The housing counseling program is subject to applicable federal requirements in 24 CFR 5.105.

Dated: November 5, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–28049 Filed 12–22–04; 8:45 am]

BILLING CODE 4210–27–P