



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

May 6, 2008

MORTGAGEE LETTER 2008-12

**TO: ALL APPROVED MORTGAGEES
ALL HUD-APPROVED HOUSING COUNSELING AGENCIES**

SUBJECT: Home Equity Conversion Mortgage (HECM) Program: Counseling Fee

On September 28, 2007, a Final Rule was published in the Federal Register at 72 FR 55638 and codified at 24 CFR Part 214 establishing regulations for the Department of Housing and Urban Development's Housing Counseling Program. The purpose of this Mortgagee Letter is to provide guidance regarding reasonable Home Equity Conversion Mortgage (HECM) counseling fees that may be charged in light of these regulations.

In accordance with the regulations at 24 CFR 214.313, the Federal Housing Administration (FHA) has determined that agencies participating in HUD's Housing Counseling Program may charge a fee for HECM counseling services as long as the cost is reasonable and customary, does not create a financial hardship for the client, and meets the other requirements of the regulation. The housing counseling agency must make a determination about a client's ability to pay, which should include factors, including, but not limited to, income and debt obligations. HUD recommends that the housing counseling agency have written procedures in place for determining ability to pay. Such procedures should support that a determination is based on objective criteria, and not a subjective determination. The counseling file of each client charged fees should include documentation demonstrating that the cost does not create a financial hardship.

Agencies must inform clients of the fee structure in advance of providing services. A client must not be turned away because of an inability to pay. Moreover, the housing counseling agency may not withhold counseling or the Certificate of HECM Counseling based on failure to pay.

Appropriate Charges

Based on feedback from reverse mortgage counseling providers and cost data collected by HUD, HUD has determined that a HECM counseling fee of \$125 per counseling session constitutes a reasonable and customary fee, and does not exceed a level so as to be generally commensurate with the education and counseling services that are typically provided. As provided in 24 CFR 214.313(c)(3), agencies may not impose fees upon clients for the same portion of or for an entire service that is already funded with HUD Housing Counseling grant funds.

The fee charged may not be excessive and must be commensurate with services actually performed. Should the cost of providing HECM counseling be less than \$125, the maximum amount an agency may charge is the actual cost of counseling. All agencies charging fees for HECM counseling must document, in the client file, the actual cost of providing the counseling.

Related Parties

Agencies participating in HUD's Housing Counseling Program may charge a reasonable and customary fee for HECM counseling to HECM borrowers, and all other related parties including spouses, children, trustees, and trust beneficiaries, that are required to or chose to receive counseling. (Mortgagee Letter 2006-25 provides guidance concerning housing counseling requirements for prospective HECM borrowers, and explains who must receive counseling.) If counseling for related parties takes place separately from the counseling sessions for the HECM borrowers, HUD has determined that a recommended fee of \$125 per session, is usually a reasonable and customary fee that may be charged. Unless agreed to by the HECM borrower, fees to counsel related parties cannot be paid out of the HECM loan proceeds. Mortgagee Letter 2006-25 states that related parties may go to a HUD-approved counseling agency of their choice to receive counseling. However, if the potential HECM borrower and related parties request that they all be counseled during the same session, counseling agencies should make every practical effort to do so.

Payment of Counseling Fee

The HECM counseling charges may be paid in any of three ways:

- (1) The HECM counseling client and related parties can pay counseling fees directly to the agency; or
- (2) Lenders may pay HUD-approved counseling agencies for counseling services, through a lump sum or on a case-by-case basis. The Lender payment may be made directly to the counseling agency or disbursed at closing by the settlement agent, as provided in paragraph (3) below. The Lender payment may be made directly to the counseling agency or disbursed at closing by the settlement agent. As required in §214.303(g), counseling agencies must disclose to their clients any funding or relationships with lenders. Lenders that pay agencies for counseling services may seek reimbursement from clients who proceed with the HECM and become HECM borrowers (see 206.31(a)(2)(vii); or
- (3) The cost of HECM counseling can be paid out of a HECM borrower's loan proceeds. Upon agreement of both the lender and the borrower, the closing agent can assume responsibility for remitting payment to the counseling agency that performed the service.

Payment under any of these methods must be reflected in the 800 series on the HUD-1 settlement statement in accordance with HUD's Real Estate Settlement Procedure regulations at 24 CFR part 3500 (see 24 CFR 3500.8).

Mortgagees are reminded that, as explained in Mortgagee Letter 2004-25, the lender may not steer, direct, recommend, or otherwise encourage a client to seek the services of any one particular counseling agency.

The provisions within this Mortgagee Letter are effective immediately. All other FHA-insured HECM housing counseling guidelines and requirements not superceded by this Mortgagee Letter remain in effect.

If you have any questions regarding this Mortgagee Letter, please call FHA's Resource Center at: 1-800-CALL-FHA (1-800-225-5342), and select "Option 2."

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner