

to be in accordance with sound actuarial and accounting practice. In determining net income or loss, the Commissioner shall take into consideration all income received from fees, premiums, and earnings on investments of the Fund, operating expenses, and provision for losses of the Fund.

§ 213.277 Right and liability under the Cooperative Management Housing Insurance Fund.

No mortgagor or mortgagee shall have any vested right in a credit balance in either the General Surplus Account or the Participating Reserve Account. No mortgagor or mortgagee shall be subject to any liability arising under the mutuality of the Cooperative Management Housing Insurance Fund.

§ 213.278 Distribution of distributive share.

When the contract of insurance is terminated by reason of payment in full of the mortgage or by voluntary termination approved by the Commissioner, and at such time or times prior to such termination as the Commissioner may approve, the Commissioner may distribute to a mortgagor under a mortgage that is the obligation of the Cooperative Management Housing Insurance Fund a share of the Participating Reserve Account in such manner and amount as he shall determine to be equitable and in accordance with sound actuarial and accounting practice.

§ 213.279 Maximum amount of distributive share.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate paid scheduled annual premiums of the mortgagor paid to the year of termination of the insurance or to the year of payment of the share, if paid prior to termination.

§ 213.280 Finality of determination.

The determination of the Commissioner as to the amount to be paid to any mortgagor from the Cooperative Management Housing Insurance Fund shall be final and conclusive.

Subpart C—Individual Properties Released From Project Mortgage; Expiring Program

§ 213.501 Savings clause.

No new loans are being insured under the Cooperative Housing Mortgage Insurance Program for individual properties released from a project mortgage. Any existing insured loans on individual properties released from a project mortgage under this program will continue to be governed by the regulations on eligibility requirements, contract rights and obligations, and servicing responsibilities in effect as they existed immediately before December 26, 1996.

[61 FR 60160, Nov. 26, 1996]

PART 214—HOUSING COUNSELING PROGRAM

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

SOURCE: 72 FR 55648, Sept. 28, 2007, unless otherwise noted.

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 coun-

seling 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.

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(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,

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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

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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

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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 de-

scribed 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

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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).

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§ 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

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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

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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.

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

Sec.

219.1 Program operations.

219.2 Savings provision.

AUTHORITY: 12 U.S.C. 1715z-1a; 42 U.S.C. 3535(d).

SOURCE: 61 FR 14405, Apr. 1, 1996, unless otherwise noted.

§219.1 Program operations.

Effective May 1, 1996, the Flexible Subsidy Program for Troubled Projects will be governed and operate under the statutory provisions codified at 12 U.S.C. 1715z-1a, under the administrative policies and procedures contained in any applicable HUD Handbooks, and other administrative bulletins and notices as the Department may issue from time to time.

§219.2 Savings provision.

Part 219, as it existed immediately before May 1, 1996, (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219) will continue to govern the rights and obligations of housing owners, tenants, and the Department of Housing and Urban Development with respect to units and projects assisted under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996. A list of any amendments to this part published after the CFR revision date is available from the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.