
CHAPTER 5. PERFORMANCE CRITERIA AND MONITORING

5-1 Performance Criteria. In addition to the application approval criteria set forth in para. 2-1, an approved agency must meet the following performance criteria. For national, regional, and multi-State agencies, each affiliate or branch must also conform to these criteria. If the parent office itself performs housing counseling, its housing counseling program must conform as well.

A. Workload. During every 12-month period, the agency must counsel at least 50 clients. See para. 1-6A for "client" definition. Agencies providing ONLY HECM counseling are exempt from this requirement; however, any agency approved to perform HECM counseling must have received HECM program training from HUD or its agent.

B. Reporting. The agency must submit to HUD a complete, accurate, and timely Form [HUD-9902](#), Housing Counseling Agency Fiscal-Year Activity Report, every fiscal year.

C. Counseling Plan. The agency must implement its housing counseling plan approved by HUD. If the agency wants to modify its counseling plan, the agency must submit the revised plan to HUD for approval.

D. Nondiscriminatory Practices. The agency must administer its counseling activities pursuant to Title VI of the Civil Rights Act of 1964, The Fair Housing Act, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. These laws prohibit discrimination because of race, color, religion, sex, national origin, disability, familial status or age.

A faith-based organization's federal statutory exemption from employment discrimination on the basis of religion is found at Section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(a)) and is not forfeited when the organization receives HUD funding.

E. Conflict of Interest. The agency must represent its clients without any conflict of interest. HUD considers a conflict to exist when the counseling agency

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has any interest in the matter relating to the client, an interest that might compromise the agency's ability to represent fully the best interests of the client. A conflict of interest exists whenever the agency:

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1. Is the client's landlord, manages the property occupied by the client, collects the client's rent on behalf of the owner or manager, holds or

administers the client's lease, or in some other manner has a direct interest in the client as a tenant;

2. Serves as a collection agent for the client's mortgagee, landlord, or creditor;
3. Holds or services the mortgage on the client's property.
4. Has a staff member who serves as the client's attorney, landlord, or creditor;
5. Owns or Purchases a property that the client seeks to rent or chooses to rent, or owns or purchases the property that the client seeks to purchase or chooses to purchase. (Where national, regional and multi-state agencies employ housing counselors as well as staff to rehabilitate and sell housing, and providing there is:
 - o A separate supervisory staff and budget for each operation and;
 - o The agency gives a written disclosure to its counseling program client stating that it owns property, and that the client is under no obligation to purchase or rent a property from the agency;this standard will not be applicable.);
6. Accepts a fee for in any way participating in the sale or rental of the client's property; or
7. Acquires the client's property from the trustee in bankruptcy.
8. Accepts a fee from the lender for referring prospective homebuyers to a specific mortgagee. In this regard, see the Real Estate Settlement Procedures Act, especially Section 8, Prohibition Against Kickbacks and Unearned Fees [Public Law 95-533; 88 Stat. 1724; 12 U.S.C. 2601 et seq.].

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F. Staffing, Counseling Activity Monitoring, and Staff Training

1. Staffing. The agency must employ experienced or trained housing counselors. HUD will neither approve nor retain the approval of a housing counseling agency that uses inexperienced or untrained housing

counselors.

2. Monitoring. Supervisors of the counselors must periodically monitor the work of the counselors. This includes reviewer client files with the

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The agency must document these monitoring activities and make the documentation available to HUD upon request.

3. Training. HUD will accept on-the-job training as long as an experienced or trained counselor conducts the training and provides close day-to-day supervision and review of the person in training.

G. Audit

1. An independent audit of the agency's financial records by a qualified person or organization is required by HUD at least every two years.
2. The agency must send a copy of the audit report to the HUD Field Office within thirty days of the agency's receipt of the audit report.

H. Grant Agreement. Grantees must meet the performance standards in the grant document as well as those within this handbook. The grant document stipulates that the GTR, GTM, staff of HUD's Office of the Inspector General, or their duly authorized representatives, may inspect the grantee's files and other records maintained by the grantee under a grant.

I. Funding

1. The agency must maintain a level of funds that enables it to counsel at least the required work load of a minimum of fifty clients every year.
2. The agency must document that it actively seeks funding from sources other than HUD without compromising the agency's independent status or the objectivity of client referrals. Adherence to this standard will eliminate any possibility of incurring a breach of Real Estate Settlement Practices Act (RESPA) requirements or an appearance of impropriety.

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3. If the agency charges counseling fees to clients, the agency must comply with its HUD-approved fee structure. See paragraph 6-2.

5-2 Desk Monitoring of Counseling Agencies. HUD Field Office staff must monitor the activities of the HUD-approved housing counseling agencies approved by that office. Headquarters will monitor national, regional, and multi-State agencies but may request Field Offices to assist at local sites. This paragraph covers the ways in which HUD staff monitors an agency by means of information available within that office. The following items within each agency's file provide the ground work for desk monitoring of an agency:

- A. Agency's Application for HUD Approval;
- B. Biennial Performance Review documents;
- C. Correspondence from and to the agency;
- D. Written materials--leaflets, brochures, booklets and other publications; intake interview forms; etc.--used by the agency;
- E. Notes on technical assistance provided over the telephone to the agency;
- F. Agency's client files borrowed from the agency for review, and the results of client surveys by HUD (See paragraph 5-3C, A client survey.);
- G. Reports on Form [HUD-9902](#);
- H. Information--negative and positive--furnished about the agency by mortgagees, creditors, real estate agents, landlords, PHAs, and clients; and
- I. For grantees, items such as the grant agreement, reports, and invoices.

5-3 Biennial Performance Review. The Biennial performance Review (BPR) is performed by the appropriate HUD Office to determine if HUD should renew its approval of the agency. Field Offices will review local agencies; Headquarters will review national, regional, and multi-State agencies.

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- A. A HUD biennial performance review is required for every approved agency.
- B. Form [HUD-9910](#), Biennial Performance Review, is completed by the Field Office to record the findings of the review. See Appendix 11. The findings may serve as a basis for determining funding under the grant aspect of the program.
- C. A client survey is performed by the reviewing HUD office. During the BPR the reviewer randomly selects twelve clients of the agency and sends them a copy of Appendix 12, Form HUD-9908, Housing Counseling Client Survey, and a government envelope addressed to the reviewing office.

D. Derogatory findings indicating the possibility of falsified records or fraud are reported by the reviewing office to the appropriate Office of the Inspector General within thirty days of the completion of the review. Also send a copy of the report to the appropriate Field Manager in the Office of the Deputy Assistant Secretary for Single Family Housing.

E. Compliance with Counseling Plan. The reviewer must assure that the agency's program design adequately reflects the counseling plan submitted by the agency as part of its application for approval. Appendix 1B describes the contents of that submission for local agencies, and Appendix 2, Part C, describes it for national, regional, and multi-State agencies.

1. Failure to Implement the Counseling Plan. If the agency does not implement the plan fully or has modified its activities since HUD approved the plan, the reviewer must require the agency to do one of two things as appropriate:

a. Commence full implementation of the plan within sixty days of the reviewer's written notice to the agency to that effect [The agency must notify HUD in writing that it has complied],

OR

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b. Prepare and deliver to HUD a Revised Plan no later than sixty days after the reviewer's written notice to the agency to that effect. HUD expects that over time, plans will be modified to accommodate changing housing market conditions within an agency's target area. The agency uses the appropriate appendix, 1B or 2, Part C, to prepare an amended plan.

NOTE: If the agency has failed to implement fully its counseling plan, you must, provided all other aspects of the review are acceptable, grant a conditional reapproval until the agency complies with either option above.

2. Lack of a Counseling Plan. The Field Office's files or Headquarter's file must contain a copy of the agency's counseling plan based on the appropriate appendix. If the office lacks a copy, they must obtain it from the agency prior to the scheduled biennial performance review and prior to reviewing any future applications for HUD funding.

NOTE: Agencies approved under early versions of this handbook might not have submitted housing counseling plans as part of their application. In such an instance, the agency must be notified in writing that it has sixty days to submit such a plan. If an agency does not submit plan, you must

notify the chief staff person that the agency will no longer be eligible to apply for HUD funds.

F. Confidentiality of Client Records

1. HUD staff conducting the review will protect the confidentiality of all client records maintained by the agency. This means that HUD staff will not disclose any such information to any person or entity outside of HUD unless directed to do so by a duly constituted legal authority such as a court of law. If the reviewer identifies fraud, waste, or mismanagement by the agency, the reviewer must

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report such findings to the appropriate Office of the Inspector General.

2. HUD-approved Housing Counseling Agencies

- a. See paragraph 4-8 regarding confidentiality of client records.
- b. File Review by HUD Staff. HUD staff assigned to review the housing counseling activities of a HUD-approved housing counseling agency will request from the agency specific client files for review. The reviewer decides which files and how many files she or he will review, and determines the method used to identify files.

- (1) Copies of Files for Review. The agency must deliver the files to the reviewer; however, the agency may, at its discretion, provide reproduced copies of the files from which the agency obliterates all information that specifically identifies the client. Specific information includes such items as the name, street address (NOT the city, State or ZIP code), social security number, and telephone number of the client from the file.

The agency must not remove any papers from the file or obliterate any information other than what specifically identifies the client. For example, the agency cannot remove the name of the client's employer or creditor or any notes made by the agency's staff, such as a counselor or receptionist.

- (2) File Identifiers for Reproduced Files. If the agency obliterates information that identifies the client, the agency must mark the original file and the reproduced copy so a match may occur if HUD seeks additional information about services provided to the client during the review or at a

later date.

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- (3) Client Checklists. Part of the review requires HUD staff to send a checklist to a selected group of clients (See para. 5-3C.). The clients may respond anonymously. If the agency provides redacted files (those with obliterated client-identification entries), the agency must still provide HUD staff with a list of names and addresses of all clients who may opt, upon receipt of the survey form in the mail from HUD, to participate in HUD's survey to determine customer satisfaction with the services rendered. These clients may be all or some of those whose files HUD reviewed, a combination of reviewed and non-reviewed files, or totally other files.

5-4 Re-approval and Disapproval Based on BPR Findings. Using the findings of the BPR, the HUD Office determines whether to renew the approval unconditionally or conditionally, or cancel its approval of the agency.

A. Unconditional Re-approval. If the agency is in full compliance with the performance criteria of this handbook, HUD will re-approve the agency unconditionally for another two years. Notify the agency by letter (Appendix 4) and send a new two-year certificate (Appendix 6).

B. Conditional Re-approval

1. 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 handbook, HUD may extend the agency's approval for up to ninety days.
2. HUD may grant this conditional extension only if the agency agrees to attempt to correct its program deficiencies within the period of the extension.

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3. Otherwise, HUD must withdraw its approval of the agency.
4. Notify the agency by letter and specify the deficiencies.

C. Withdrawal of HUD Approval

1. When HUD determines that the agency's program deficiencies seriously impair the agency's ability to comply with this handbook, the office must withdraw its approval of the agency immediately.

2. HUD sends a letter to the agency within thirty days of the determination to withdraw approval. Appendix 13 contains a suggested format for the letter. If you use your own letter format it must include the following information:
 - a. Date of the BPR;
 - b. Statement of the deficiencies that must be corrected;
 - c. A period of time not to exceed ninety days during which the agency may correct the deficiencies;
 - d. Statement that, if the agency chooses to correct the deficiencies, the agency must send to HUD a letter indicating, for each deficiency, the specific corrective action accomplished to eliminate the deficiency and that the deficiency has been eliminated; and
 - e. Effective date of the approval withdrawal.
- D. Reinstatement of HUD Approval. If HUD receives what it considers an acceptable letter indicating the required corrections of deficiencies, HUD may reinstate the agency's approval and send a letter to that effect and a new certificate of approval to the agency; otherwise, HUD will take no further action other than inform the agency in writing of HUD's decision.

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- 5-5 Report of Performance Reviews. This report consists of a copy of Form HUD-9922, HUD-approved Housing Counseling Agency Performance Review Annual Report, and all attachments required in the instructions to complete the form. The Field Offices must report to Headquarters the reviews those offices conduct for the housing counseling agencies approved by each office. Paragraphs 5-3 and 5-4 of this chapter set forth the requirements for these reviews.
 - A. Significance of the Reporting Requirement. The Department's housing counseling program continues to receive increasing attention from within as well as outside of HUD. It behooves the Department to assure that its approved housing counseling agencies deliver counseling services in a professional and effective manner.

Headquarters will use the Field Office Summary Reports to inform the Deputy Assistant Secretary for Single Family Housing of the quality of the counseling services, the extent to which the field fulfills its monitoring responsibilities, and to support budgetary and appropriations requests. Data from these reports will also be used in HUD's Annual Report to Congress.
 - B. Report Format. Use Form HUD-9922, HUD-Approved Housing Counseling Agency Performance Review Report. The form contains instructions for its completion. See Appendix 16.
 - C. Report Submission. Field Offices submit their reports to the

appropriate Field Manager in the office of the Deputy Assistant Secretary for Single Family Housing no later than January 31 for the previous calendar year.

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