

HUD PUBLISHES INTERIM FINAL RULE TO DELAY HOUSING COUNSELOR CERTIFICATION DEADLINE TO ENSURE VITAL COUNSELING SERVICES REMAIN AVAILABLE DURING COVID-19 EMERGENCY:

On July 31, 2020, the U.S. Department of Housing and Urban Development (HUD) published this Interim Final Rule on its website to announce a delay in the deadline for housing counselors to become HUD certified. The pause is meant to ensure that vital housing counseling services remain available to the nation's homebuyers and renters, particularly those who need housing and mortgage assistance to recover financially from the effects of the COVID-19 emergency. The Interim Final Rule will be subsequently published for comment in the Federal Register.

THIS FINAL RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER WITH A REQUEST FOR IMMEDIATE PUBLIC DISPLAY. COMMENTS WILL NOT BE ACCEPTED UNTIL PUBLICATION IN THE FEDERAL REGISTER

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. FR-6215-I-02]

RIN 2502-ZA34

Housing Counseling Program: Revision of the Certification Timeline

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

ACTION: Interim final rule

SUMMARY: HUD’s current rule states that participating agencies and counselors must comply with certification requirements by 36 months after HUD commences the administration of the certification examination. That 36-month grace period ends on August 1, 2020. Due to the COVID-19 national emergency, which has caused the shutdown of the testing centers where housing counselors take the certification examination, a large number of housing counselors will be unable to get certified by the end of the grace period, resulting in a loss of Federal funding for some HUD-approved housing counseling agencies and loss of the ability to provide counseling that is required or provided in numerous HUD programs. Therefore, this interim rule amends the time period in which to become certified to a new deadline of August 1, 2021.

DATES: Effective date: Effective immediately upon publication.

Comment due date: **[INSERT DATE THAT IS 30 DAYS FROM THE DATE OF PUBLICATION OF THIS RULE]**

ADDRESSES: Interested persons are invited to submit comments regarding this interim final rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov Website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Public Comments. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov. In addition, all properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Lorraine Griscavage-Frisbee at Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 302 Carson Street, Las Vegas, Nevada 89101, telephone number 702-3662160 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800877-8339. Questions can also be addressed to Lorraine Griscavage-Frisbee, Office of Housing Counseling, at housing.counseling@hud.gov. Please include “Housing Counseling Program: Date Housing Counseling Agencies Must Comply with Certification Requirements” in the subject line of the email.

I. Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106) was amended by Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203, 124 Stat. 1376, approved July 21, 2010) to strengthen and improve the effectiveness of housing counseling that is required under or provided in connection with HUD programs (Section 106 amendments). The Section 106 amendments require that individuals providing housing counseling required under or provided in connection with HUD programs be certified by taking and passing an examination administered by HUD’s Office of Housing Counseling (HUD certified housing counselors) (12 U.S.C. 1701x(e)). On December 14, 2016, HUD published a final rule implementing the Section 106 certification requirements, including the requirement that, as explained in the rule preamble, “housing counseling, that is “required by or in connection with” HUD programs may only be provided by HUD certified housing counselors working for HUD-approved housing counseling agencies (HCAs) that are approved to provide such housing counseling by HUD’s Office of Housing Counseling”. *See* 81 FR 90632. The final rule codifies the grace

period at 24 CFR 214.103(n)(4), which provides that “[p]articipating agencies and housing counselors “must be in compliance with requirements of paragraph (n) of this section by 36 months after HUD commences the administration of the certification examination by publication in the Federal Register.” On May 31, 2017, HUD published a notice announcing the availability of the certification examination beginning August 1, 2017, and providing the deadline of August 1, 2020, within which all housing counselors and HCAs must satisfy the certification requirements in the final rule. *See* 82 FR 24988.

On March 13, 2020, the President declared the Coronavirus Disease 2019 (COVID-19) outbreak a national emergency, effective March 1, 2020. The Centers for Disease Control and Prevention (CDC) has issued guidelines on slowing the spread of COVID-19 by practicing social distancing and staying home, if one is sick. In addition, many municipal and state governments issued shelter-in-place orders requesting their residents to stay indoors. HUD housing counselor certification testing centers started to close in mid-March 2020, and by mid-April 2020, all 462 testing centers had closed. In addition, all 35 HUD in-person place-based housing counselor certification trainings originally scheduled were cancelled.

Without suspending the requirement that participating agencies and housing counselors must be certified by of August 1, 2020, housing counselors who had not yet passed the certification exam would be unable to provide housing counseling required by or in connection with HUD programs, including those who were unable to attend the cancelled in-person place-based housing counselor certification trainings, who were unable take the examination due to closed testing centers, or who did not have access to the appropriate technology to be able to take the exam online. HUD also recognizes that there will be a demand for housing counseling

services by those experiencing economic hardship caused by previous compliance with guidelines to slow the spread of COVID-19.

As of June 29, 2020, approximately 45 percent of housing counselors participating in HUD programs affected by the certification were still required to be certified by August 1, 2020. In anticipation of the impending final compliance date, and with HUD's substantial promotion of the certification, the average number of counselors passing the examination and becoming certified began to increase in early 2020. However, the COVID-19 national emergency and the resulting state stay-at-home orders have severely affected the increasing momentum seen prior to the start of the National Emergency.

Preparing for the exam and becoming certified can take several months. Preparation activities may include studying the examination topics with the knowledge assessment tool and taking the practice examination; studying through online or in-person training; taking the examination and retaking it, if needed; registering in FHA Connection; and requesting employment verification. HUD advises agencies to plan on at least a five-month timeline to complete the process from start to finish. Often, counselors must complete these activities over a longer period of time, as agencies must continue to provide services to clients; in fact, more than 20 percent of agencies have only one counselor on staff. In these cases, preparing for the examination is especially challenging under time constraints.

As a result of the National Emergency, HUD's housing counseling training partners cancelled all 35 in-person certification trainings scheduled through May 2020. Additionally, test centers began to close on March 13, 2020. By mid-April, all 462 test centers closed, significantly impairing the ability of counselors to take the exam. As of July 6, 2020, 60 percent of the test centers remained closed. While counselors can take the exam online, this may

require purchasing additional equipment, which may not be possible for many housing counselors. HUD's data demonstrate that 90 percent of certification candidates take the exam at a testing center. With the impending certification deadline ahead, the elimination of in-person preparation courses and the closing of testing centers has resulted in counselors losing the option for an in-person examination to become certified at a critical point. Given that the stay-at-home orders and the nature and scope of banned activities differs from state to state, it is difficult to say when in-person examination prep and full testing center capacity will be reestablished across the country. Further, testing centers will likely reopen on a state-by-state basis; this, too, makes it impossible to determine when there will be sufficient capacity to begin testing a large number of counselors.

At the same time, the housing counseling industry is experiencing an increase in the need for rental, foreclosure, and Home Equity Conversion Mortgage (HECM) counseling services during the crisis by families experiencing financial hardship due to the impacts of COVID-19. This increased demand for client services is causing counselors to shift away from preparing for and completing the exam. COVID-19 is also increasing the intensity and duration of services clients require. Agencies will need to accommodate more counseling requests, and counselors will spend more time counseling their clients, communicating with loan servicers, and maintaining proper documentation due to the services associated with loss mitigation counseling. Counselors and clients are experiencing long wait times when contacting servicers and state-wide foreclosure task forces are being reactivated—all to deal with the significant increase in request for loss mitigation services.

In addition to the Housing Counseling Program, 25 other HUD programs are affected by the certification deadline since the requirements apply to any housing counseling required by or

in connection with any program administered by HUD. HUD also estimates that over 2,500 Community Planning and Development program participants and public housing authorities will be affected by the certification requirement. Clients participating in housing counseling services provided by other HUD programs may lose access to counseling services, if implementation of the certification requirements reduces industry capacity.

A lack of certified counselors could also affect the recovery activities funded directly by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136). The CARES Act allocated more than \$2 billion to supplement the conventional Community Development Block Grant (CDBG) program. Housing counseling services is an eligible activity under CDBG, and grantees may use this funding to provide services to aid in the recovery.

A lack of certified counselors may also make a housing counseling agency ineligible for grant funds, further crippling the industry at a critical time. In addition, no direct statutory relief has been provided by Congress for this program. Therefore, rulemaking to extend the grace period during which counselors and counseling agencies can become certified is necessary.

II. This Interim Final Rule

This interim rule is intended to allow existing housing counselors and agencies to continue to operate during the period of the national emergency caused by the COVID-19 pandemic, and also to provide sufficient time for those counselors who have not become certified to take the necessary classes. Therefore, this interim rule will amend 24 CFR 214.103(n)(4) to provide that participating agencies and housing counselors must be in compliance with requirements of paragraph (n) of this section by August 1, 2021. Thereby

giving an additional year for participating agencies and housing counselors to come into compliance with the certification requirement.

III. Justification for Interim Rulemaking and Effective Date

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.”

Prior public procedure in this case is impracticable and contrary to the public interest. A majority of housing counselors operating in HUD’s programs, including programs in which housing counseling is a requirement, will become ineligible on August 1, 2020. Due to the COVID-19 emergency, these counselors are not able to become certified by that time. This will result in a loss of grant funding for HUD counseling agencies, and a curtailment of HUD programs dependent on housing counseling being available. On August 1, 2020, housing counseling agencies that are not staffed with certified counselors will become ineligible for HUD grant funding, resulting in possible penalties. Proposed and final rulemaking would extend this problem far beyond the August 1, 2020 deadline, which would cripple the counseling program that many HUD program participants rely on. Therefore, the Department finds that good cause exists to publish this interim rule without an opportunity for prior public comment. For the same reasons, the Department finds that there is good cause to waive the delay in effective date.

While section 553(d) of the Administrative Procedure Act and HUD’s rule at 24 CFR 10.1 generally require publication in the Federal Register 30 days in advance of the effective date, these authorities contain exceptions for rules that (1) grant or recognize an exemption or relieve a

restriction, and (2) for rules where there is otherwise good cause found and published with the rule. Because this rule provides relief from the impending August 1 deadline that would detrimentally limit the availability of housing counseling, this rule meets both criteria for immediate effectiveness.

Although HUD is issuing this rule to take effect immediately, HUD is inviting the interested public to submit comments for a 30-day period following publication. HUD will take any comments received into consideration and determine whether any further changes should be made.

IV. Justification for Shortened Comment Period

In accordance with HUD's regulations on rulemaking at 24 CFR part 10, it is HUD's policy that the public comment period for proposed rules should be 60 days. In the past, HUD has generally provided for 60 days for public comment in the case of interim rules as well. However, HUD's policy does not require 60 days for public comment in the case of interim rules.

In this case, the regulatory change being made is straightforward and addresses a single issue. Due to the COVID-19 national emergency, the certification deadline in the current rule simply cannot be met, for reasons stated in this preamble. The length of time the emergency will last is unknown. Therefore, the rule must be changed to conform to these facts.

HUD does not believe that 60 days is needed for public consideration of the straightforward and necessary change being made in this interim rule. On the other hand, if HUD determines to adopt any suggestions that may be made in the public comments in the final rule, HUD would like to be able to do so as quickly as possible so that housing counseling

organizations and individual housing counselors will have certainty about their obligations at the earliest possible date.

For these reasons, HUD has determined that in this case a 30-day public comment period is appropriate.

V. Notification to Congress Under 42 U.S.C. 3535(o)(4)

Under 42 U.S.C. 3535(o)(1), HUD is generally required to transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives an agenda of all rules or regulations which are under development or review by the Department. Under 42 U.S.C. 3535(o)(2)(B), any rule or regulation which does not appear on an agenda submitted under section 3535(o)(1) must be submitted to both such Committees at least 15 calendar days prior to its being published for comment, and under 42 U.S.C. 3535(o)(3), no rule or regulation may become effective until after the expiration of the 30-calendar day period beginning on the day after the day on which such rule or regulation is published as final. Pursuant to 42 U.S.C. 3535(o)(4), however, the requirements of sections 3535(o)(2) and (3) may be waived upon notification to and agreement with the Chairmen and Ranking Members of the committees designated under section 3535(o)(1). Accordingly, the Department has followed such steps.

VI. Findings and Certifications.

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to

analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome,” and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was not determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order.

This rule, by extending the grace period for counselors to become certified, will allow HUD’s housing counseling program and other programs to continue to operate during the COVID-19 emergency. It will not impose any additional requirements or burdens. It will relieve housing counselors of a difficult burden of compliance during the pandemic. Additionally, the testing centers themselves may be under a variety of shutdown or social distancing orders or recommendations depending on their location, making it fundamentally impossible for all counselors to be certified by the deadline.

The final rule estimated the nationwide cost of the examination and training would total approximately \$3,936,340 over 5 years with costs decreasing over time as more housing counselors were certified. 81 FR 90633. The final rule also estimated that if 140 loan modifications are made and 125 foreclosures are avoided over a period of 5 years the benefits of final rule would exceed the projected compliance costs. *Id.* HUD concluded that the benefits of the rule would be outweighed given the reduction of foreclosures and loan modifications as a result of trained housing counselors helping borrowers make an informed decision when obtaining an affordable purchase loan or an affordable loan modification.

Given the current conditions under COVID-19, HUD believes that extending the deadline of compliance is necessary for housing counselors to become certified. HUD does not believe this extension will increase the costs, but instead, will spread the costs over a longer period of time. HUD also notes that the initial estimate was based on the cost of testing being \$100 for online testing and \$140 for proctored testing but those costs were subsequently reduced by HUD to \$60 for online testing and \$100 for proctored testing. 82 FR 24989. In addition, HUD notes that in both the proposed and final rule, grant funding could be used to assist with testing and training. In FY 2019, HUD provided over \$42 million in grant funding to HUD-approved Housing Counseling agencies.¹ HUD still believes that the benefits will outweigh the costs especially given the reduction in testing costs and total HUD funds going to HUD-approved Housing Counseling agencies.

Therefore, this interim rule is not expected to impose any burdens or costs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim final rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

This interim final rule does not (i) Direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing,

¹ <https://www.hudexchange.info/programs/housing-counseling/nofa/#:~:text=On%20October%202019%20HUD,to%20help%20them%20avoid%20foreclosure.>

rehabilitation, alteration, demolition, or new construction; or (ii) Establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

Accordingly, under 24 CFR 50.19(c)(1), this interim final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

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 interim final rule allows housing counseling agencies to continue to operate as they currently do during the COVID-19 emergency. Therefore, the undersigned certifies that this interim final rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this interim final rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this interim final rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications and does not impose

substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for the Housing Counseling Program is 14.169.

List of Subjects

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 stated in the preamble, HUD amends 24 CFR part 214 as follows:

PART 214—HOUSING COUNSELING PROGRAM

1. The authority citation for part 214 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x-1; 42 U.S.C. 3535(d).

2. Amend § 214.103(n)(4) to read as follows:

§ 214.103 Approval criteria.

* * * * *

(n) * * *

(4) Participating agencies and housing counselors must be in compliance with requirements of paragraph (n) of this section as of August 1, 2021.

DATED: July, 30, 2020

_____/s/_____
Len Wolfson
Acting FHA Commissioner—Assistant Secretary
for Housing

[Billing code 4210-67]