

Housing Counseling Frequently Asked Questions – Conflicts of Interest

Q. Can a HECM lender place a call to a counseling agency while a client is present, and then put the client on the phone to set up an appointment?

A. No. A lender cannot steer, direct, recommend, or otherwise encourage a client to seek the services of any one particular counseling agency for HECM counseling. Placing a call with or on behalf a client to a counseling agency violates this requirement.

Q. Can a housing counselor both originate loans and provide housing counseling services?

A. An individual housing counselor can perform multiple affordable housing activities for an agency, including counseling and originating loans. However, these tasks must be completed as part of that counselor's job duties and cannot command a special commission or fee above his or her salary. The housing counselor must provide the client with a written disclosure which states that the client is under no obligation to use the loan product that the housing counselor is originating. The disclosure must also state that receiving housing counseling services is not contingent on using a particular loan product. And, the counselor must also provide information on at least three other relevant alternative loan products that are available.

In the case of HECM loans, housing counseling agencies are prohibited from both originating HECM loans and providing HECM counseling to clients.

Q. Can a housing counselor refer a client to a particular lender or loan product?

A. Yes. As long as the counselor or their family (or other members of the agency or their families) are not receiving a fee or other compensation for the referral, they may refer a client to a particular lender. If there is any relationship between the counseling agency and the lender, the nature of that relationship must be disclosed to the client. In addition, the counselor must provide a disclosure that clearly states that the client is under no obligation to use that lender or loan product, and that the housing counseling services that they are receiving are not contingent upon using a particular loan product or service. In addition, the counselor must provide information about other relevant alternative lenders or loan products.

Q. Can a housing counseling agency both sell properties and provide housing counseling services?

A. Yes. Housing counseling agencies are permitted to participate in multiple affordable housing services, including loan origination, property sales, and housing counseling services. However, should an agency choose to do this, clients must be provided with a disclosure form stating that these services are available through the agency, or through agency partnerships, and that the client is under no obligation to use these services and is free to seek them from another provider. The client must also be provided with information on at least three other relevant alternative services or products. Employees of the agency cannot be given extra compensation for counseling a client that purchases a home from the agency.

Q. Can a housing counseling agency both provide housing counseling services and hold a lien on a client's property?

A. Yes. However, while the agency may hold a lien on the client's property, no individual members of the agency (employees, officers, directors) or their family members may personally hold the lien. In addition, the client must be provided with a conflict of interest form that reveals the existence and nature of the lien. No employee of the agency may be compensated as a result of the agency holding a lien on the property (other than his or her regular salary with the agency).

Q. Can a counseling agency take part in a promotional agreement with a particular lender, through which the lender will participate in outreach and education efforts with the intention of producing loans?

A. While permitted; an agreement such as this must be carefully orchestrated. Clients must be given a disclosure form informing them of the agreement and stating that they are under no obligation to use that specific lender's products. Clients must be offered at least 3 alternative products and counselors may not receive referral fees for sending clients to the lender. The agency as a whole may receive compensation, but individual members of the agency may not. The compensation to the agency may not be tied to generating a specific number of loans. In addition, if the lender's representatives participate in any portion of homebuyer education sessions, they must sign a written agreement stating that they will educate clients about homeownership, NOT market their own product.

Q. Can a realtor who refers clients to a particular housing counseling agency also be on that agency's board?

A. A realtor who refers clients to a particular housing counseling agency may also be on that agency's board provided that:

The realtor does not refer clients only to the agency with which he or she is affiliated. The realtor must also refer clients to other agencies. In addition, the agency can not give advice that directly promotes the realtor and/or his practices.

The realtor can not receive a referral fee for each client from the agency.

The realtor can not personally serve as both the client's realtor and counselor, and can not receive a real estate commission at closing.

Q. Can a banker be on the board of a housing counseling agency if his or her employer originates and underwrites mortgages?

A. This is permissible as long as the banker does not originate mortgages. He also can not directly refer clients to his or her employer and can not receive a commission from his or her employer if a counselor refers a client to his or her lending institution.

Q. What key language should a disclosure form contain?

A. A disclosure form should disclose any financial relationships or partnerships that the agency has with servicers or other parties, and should inform the client that he or she is not under any obligation to use the products or services of the agency or its partners. It must state that the client is free to choose a product or service or abstain from doing so, and that receiving housing counseling services from the agency is not contingent on the use of any product or service.