



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 93, 214, 570, 574, 576, 578, and 1006

**[Docket No. FR 5339-F-03]
RIN 2502-AI94**

Housing Counseling: New Certification Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD's housing counseling program provides housing counseling to consumers seeking information about financing, maintaining, renting, or owning a home. The housing counseling statute was amended to improve the effectiveness of housing counseling in HUD programs by, among other things: establishing the Office of Housing Counseling and giving this office the authority over the establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by HUD that relate to housing counseling; requiring that organizations providing housing counseling required under or in connection with HUD programs be approved to participate in the Housing Counseling Program (Housing Counseling Agencies, or HCAs) and have all individuals providing such housing counseling certified by HUD as competent to provide such services; prohibiting the distribution of housing counseling grant funds awarded to agencies participating in HUD's Housing Counseling Program that are found in violation of Federal election laws or that have employees found in violation of Federal election laws; and requiring the reimbursement to HUD of housing counseling grant funds that HUD finds were misused. HUD issued a proposed rule on September 13, 2013, to establish in regulation the statutory changes made to the housing counseling program and solicited public comment. This final rule revises

HUD's Housing Counseling Program regulations to adopt the new requirements established in the housing counseling statute. Additionally, this rule amends HUD's general and other program regulations to clarify for grantees the requirement that housing counseling under Other HUD Programs must be provided by HCAs.

HUD will issue a separate Federal Register notice to announce the start of the testing and certification process, and entities and individuals providing housing counseling will have 36 months to be approved or certified by the Office of Housing Counseling.

DATES: Effective Date: [**Insert date 30 days from the date of publication in the Federal Register**].

FOR FURTHER INFORMATION CONTACT: William McKee, Office of Housing Counseling, at housing.counseling@hud.gov. Please include "Housing Counseling Program: New Certification Requirements" in the subject line of the email. Requests can also be sent by mail to William McKee at Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, Santa Ana Federal Building, 34 Civic Center Plaza, Room 7015, Santa Ana, CA 92701; telephone number 702-366-2126 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION

I. Executive Summary

A. Purpose of the Regulatory Action.

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 (Pub. L. 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). Specifically, the Section 106 amendments were enacted for the purpose of improving, by the following, the quality, consistency, and effectiveness of housing counseling delivered to consumers: (1) establishing within HUD the Office of Housing Counseling and vesting in that office responsibility for all activities and matters related to housing counseling under all programs and laws administered by HUD; (2) defining certain terms related to housing counseling for purposes of clarity and consistency; (3) requiring that the 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); (4) requiring that all housing counseling required under or provided in connection with HUD programs (Other HUD Programs) be provided by agencies approved to participate in HUD's Housing Counseling program, referred to as housing counseling agencies (HCAs);¹ and (5) placing new requirements on the distribution and use of housing counseling grant funds awarded to HCAs. This final rule implements the Section 106 amendments by requiring that, within 36 months of the issuance of the certification examination, "housing counseling," as defined in this

¹ The Housing Counseling regulations at 24 CFR part 214 identify agencies approved to participate in HUD's Housing Counseling program as participating agencies. An approved agency must meet HUD's requirements in 24 CFR part 214, and is considered certified for purposes of 12 U.S.C. 1701x. While the preamble for clarity refers to HUD-approved Housing Counseling Agencies as HCAs, the regulatory text maintains the participating agency language, which is defined already in the existing Housing Counseling regulations.

final rule and that is “required by or in connection with” HUD programs, may only be provided by HUD certified housing counselors working for HCAs that are approved to provide such housing counseling by HUD’s Office of Housing Counseling.

This rule codifies the Section 106 amendments in HUD’s General HUD Program Requirements, in 24 CFR part 5, and in HUD’s Housing Counseling Program regulations in 24 CFR part 214. While this rule focuses on updating HUD’s Housing Counseling Program regulations, the rule makes limited conforming regulatory changes to some of the HUD programs covered by these new requirements. HUD program offices administering Other HUD Programs may also issue future conforming regulations or guidance, as applicable, and advise of any procedures unique to their programs,² to ensure that participants in all HUD programs are fully aware of the statutory requirement to use certified housing counselors employed by HCAs.

B. Summary of the Major Provisions of the Regulatory Action.

This final rule adopts the new Section 106 definitions for “homeownership counseling,” and “rental housing counseling,” and incorporates these definitions in the new definition of “housing counseling.” The new definition of “housing counseling” clarifies that homeownership counseling and rental counseling are types of housing counseling and consolidates these definitions with the existing standards of housing counseling under the Housing Counseling Program in terms of both the content of housing counseling and the process used to ensure housing counseling is effective, independent, and helpful to the consumer or household seeking to purchase or rent, or seeking assistance in areas related to effective homeownership or tenancy.

² Regulations for HUD’s Native American Housing programs will be undertaken following consultation pursuant to HUD’s Tribal Consultation Policy.

This preamble clarifies that routine administrative activities (e.g., program eligibility determinations, intake, case management, property management, the payment of rental assistance on behalf of a client, and the collection of rent or loans) have never been categorized as housing counseling and that neither the Section 106 amendments nor HUD's regulations make these activities housing counseling. In addition, the final rule defines a "HUD certified housing counselor" as an individual who works for an HCA and who has passed a certification examination administered by HUD.

This rule implements the requirement that homeownership counseling and rental housing counseling required under or provided in connection with HUD programs be provided only by organizations approved by HUD under HUD's Housing Counseling Program. In addition, this final rule implements the statutory requirement that, for an organization to be approved by HUD to participate in HUD's Housing Counseling Program, all counselors employed by the organization that provide homeownership counseling and rental housing counseling must pass the certification examination and become a HUD certified housing counselor within 36 months of HUD's announcement of the availability of the examination. The certification requires that individuals demonstrate competency by passing a standardized written examination covering six major areas of counseling that are primarily provided to prospective homeowners or tenants or existing homeowners or tenants. These areas include: (1) financial management; (2) property maintenance; (3) responsibilities of homeownership and tenancy; (4) fair housing laws and requirements; (5) housing affordability; and (6) avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default. In addition to passing

the certification examination, HUD requires that individuals must also work for an HCA in order to be a HUD certified housing counselor.

However, if the services provided by the individual are limited to overseeing or administering the provision of housing counseling, but do not include the provision of housing counseling services directly to the consumer, then the individual is not required to become a HUD certified housing counselor and the individual's employer is not required to be an HCA.³ Within 36 months of the date that HUD begins administering the certification examination, entities that offer housing counseling covered by this rule will have to either become HUD-approved housing counseling agencies that employ HUD certified housing counselors, create partnerships with HCAs using certified housing counselors to deliver housing counseling services on their behalf, stop providing housing counseling services, or otherwise modify their program to comply with this rule.

Lastly, this final rule prohibits the distribution of Comprehensive Housing Counseling or Housing Counseling Training funding authorized by Section 106 to any HCA that has been convicted for a violation under Federal law relating to an election for Federal office, or any HCA that employs an individual who has been convicted for a violation under Federal law relating to an election of a Federal office. In addition, this final rule requires an HCA that has been found to have used Housing Counseling Program funds in a material violation of the regulations, statutes or other conditions associated with the Housing Counseling Program funds to reimburse HUD for the misused Housing Counseling Program funds through non-Federal funds and return any

³ An entity that participates in HUD's Housing Counseling Program must comply with 24 CFR part 214 requirements regardless of whether there are individuals performing only administration or oversight.

unused or unobligated grant funds. This final rule prohibits such an agency from receiving housing counseling grant funds in the future.

C. Costs and Benefits.

The compliance cost of the rule will be borne to a large degree by the individual housing counselors who will be required to take and pass the Housing Counseling Certification Examination to be administered by HUD's Office of Housing Counseling. HUD is providing training for the Housing Counseling Certification Examination through its training grantees and also for free at www.hudhousingcounselors.com. The examination is anticipated to cost \$100 for online testing at the examinee's location and \$140 for an on-site proctoring center examination, and an estimated average cost of \$120 per housing counselor to take the certification examination. The cost to individuals would be incurred only once if the individual passes the examination. For those that use HUD's free training materials, the time it takes to review the material will be approximately 11 hours, which is \$396 of lost wages based on the average wage of a housing counselor. With an estimated 8,433 housing counselors that work for HCAs or currently provide housing counseling for or in connection with Other HUD Programs that will need to be certified, the initial nationwide cost of the examination and training would total approximately \$3,936,340.⁴

In addition, some of the entities that are not currently HCAs but deliver housing counseling services now covered by this rule may choose to become HCAs, incurring a cost to the entity to bring their programs into compliance with Housing Counseling Program

⁴ This includes a retest rate of 20 percent for those that do not pass on the first time, and cost of loss wages for hours spent training for 80 percent of test takers

requirements and regulations. These entities may also choose to partner with existing HCAs to deliver services, modify their programs to comply with this rule, or eliminate the activities they perform that would be considered housing counseling from their programs. Because these entities are already delivering housing counseling services, the cost to become an HCA will primarily be in time to develop systems and train staff in HUD Housing Counseling Program requirements. They may choose to become an HCA either by applying directly to HUD, or by affiliating with a HUD-approved intermediary or state housing finance agency that participates in the Housing Counseling Program. Given the options provided to these entities that have been administering housing counseling services in Other HUD Programs and the benefits that these entities would receive if they participate in HUD's Housing Counseling Program, HUD only includes the cost of the certification exam for the employees of these entities that might pursue the certification.

There are significant benefits to implementing the final rule, especially the certification requirement. The benefits to the renter, the prospective homebuyer, or the existing homeowner are increased assurance, as a result of the certification requirements, of a more knowledgeable housing counselor providing more effective housing counseling services to the consumer. HUD expects that more knowledgeable housing counselors will lead to better identification of issues, more knowledgeable referrals, and resolution of barriers. HUD also expects that consumers will recognize the value of housing counseling delivered by certified housing counselors, with greater ability to avoid scams, and HCAs will benefit from the greater visibility that certification and HUD approval is expected to bring to the programs. The certification will be a valuable

credential to housing counselors who are seeking employment from HCAs and will help consumers avoid fraudulent offers to solve housing problems.

Housing counseling helps a borrower make an informed decision when obtaining an affordable purchase loan or an affordable loan modification and avoid foreclosure, and this type of assistance provides a net benefit to the borrower and the market. In 2014, a total of 108,875 homeowners avoided foreclosure after seeking assistance from a HUD Housing Counselor.⁵ Statistically, borrowers who received loan modifications after receiving post-purchase housing counseling had an average savings of \$4,980 annually.⁶ In addition, foreclosures prevented as a result of housing counseling have an estimated social benefit of \$40,730.⁷ Consequently, if 140 loan modifications are made and 125 foreclosures are avoided over a period of 5 years as a result of this rule, the benefits of this rule will exceed the projected compliance costs.

II. Background

HUD's Housing Counseling Program, established pursuant to Section 106, authorizes HUD, through HUD-approved organizations, intermediaries,⁸ multistate organizations, state

⁵ HUD Form 9902 Data for Fiscal Year 2014,

http://portal.hud.gov/hudportal/documents/huddoc?id=OHC_2014Q49902020615.pdf.

⁶ National Foreclosure Mitigation Counseling Program Evaluation, Final Report, Rounds 3 Through 5, Prepared by Kenneth M. Temkin Neil S. Mayer Charles A. Calhoun Peter A. Tatian with Taz George, Prepared for NeighborWorks® America (Urban Institute: September 2014).

⁷ HUD's Office of Policy Development and Research found that the total "deadweight" loss per foreclosure prevention cost is approximately \$40,730. (See http://www.huduser.org/periodicals/cityscpe/vol14num3/Cityscape_Nov2012_impact_lim_sellers.pdf, at page 219.)

⁸ Intermediaries provide housing counseling services through a network of affiliates or branches. See

housing finance agencies, and their branches and affiliates (collectively referred to as Housing Counseling Agencies, or HCAs) to provide housing counseling services to potential homebuyers, homeowners, homeowners at risk of default, renters, and the homeless. Section 106 also authorizes HUD to provide housing counseling directly or to enter into contracts with, or make grants to, eligible private or public organizations with special competence and knowledge in providing housing counseling to low- and moderate-income families. Section 106 was amended to strengthen and improve the effectiveness of HUD's Housing Counseling Program.

Sections 1441, 1442, 1443, 1444, 1445, and 1448 of the Dodd-Frank Act amended Section 106 and revised HUD's Housing Counseling Program by, among other things: (1) defining certain terms in the program; (2) establishing the Office of Housing Counseling and giving it authority over all requirements, standards, and performance measures under programs and laws administered by HUD that relate to housing counseling; (3) ensuring that HUD certified housing counselors provide housing counseling covering the entire process of homeownership, from the purchase of a home to its disposition; (4) ensuring that rental or homeownership counseling, as defined by the Dodd-Frank Act, is administered in accordance with procedures established by HUD; and (5) requiring that all homeownership counseling and rental housing counseling⁹ is delivered through HUD certified housing counselors.

http://portal.hud.gov/hudportal/HUD?src=/ohc_nint.

⁹ Section 1443 of the Dodd-Frank Act amended Section 106(e)(3) and added Section 106(g)(1)(A) to require that homeownership counseling or rental housing counseling provided in connection with any program administered by HUD must be provided only by organizations or counselors certified by the Secretary as competent to provide such counseling.

III. The Proposed Rule

On September 13, 2013 (78 FR 56625), HUD published a proposed rule that set out regulations describing how HUD would implement the changes to Section 106 made by the Dodd-Frank Act. The following presents a brief summary of the key regulatory revisions proposed. A detailed description of the proposed amendments can be found in this preamble to the proposed rule at 78 FR 56625, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-13/pdf/2013-22229.pdf>.

Definitions § 214.3

The September 2013 rule proposed to add and revise existing definitions for consistency with the definitions in Section 106. Of particular note, the proposed rule sought to revise the definitions of “HUD-approved housing counseling agency,” and added new definitions for “homeownership counseling,” “HUD certified housing counselor,” and “rental housing counseling.” Section 1443 of the Dodd-Frank Act amended Section 106(e)(3) and added Section 106(g)(1)(A) to require that homeownership counseling or rental housing counseling provided in connection with any program administered by HUD must be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such housing counseling.

Counseling that Covers the Entire Process of Homeownership § 214.300

The September 2013 rule proposed to amend § 214.300 to reflect the new statutory requirement that homeownership counseling address the entire process of homeownership and

require, as part of the home purchase counseling, that information regarding home inspections be provided to clients considering whether to purchase a home. The entire process of homeownership includes the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default, and foreclosure, and other financial decisions), and the sale or other disposition of a home.

Certification to Provide Counseling § 214.101

The September 2013 rule proposed to amend the approval criteria to require that any individual providing homeownership or rental housing counseling related to HUD programs must be a HUD certified housing counselor. In addition, the rule proposed to add a new paragraph (n) to § 214.103 to provide the certification criteria for housing counselors and HCAs. The proposed paragraph (n) also provided that HCAs and individual counselors must be in compliance with the certification requirements no later than one year after the effective date of the final rule that would follow the proposed rule.

The September 2013 rule also proposed to require that organizations providing housing counseling, and individuals providing housing counseling through such organizations, in connection with any HUD program, be certified by HUD as competent to provide housing counseling. For an organization to participate in HUD's Housing Counseling Program and be eligible for HUD certification under Section 106(e), all individuals through which the organization provides housing counseling under HUD's Housing Counseling Program must be certified to provide such counseling. The proposed rule would require that in order for an individual to become HUD certified, that individual must work for an HCA and must

demonstrate competency by passing a standardized written examination covering six major areas of housing counseling. These areas are included: (1) financial management; (2) property maintenance; (3) responsibilities of homeownership and tenancy; (4) fair housing laws and requirements; (5) housing affordability; and (6) avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default.

Requirements Relating to Housing Grant Funds § 214.311.

The September 2013 proposed rule would prohibit the distribution of grants awarded under HUD's Housing Counseling Program to any agency that has been convicted for a violation under Federal law relating to an election for Federal office, or any agency that employs an "applicable individual" who has been convicted for a violation under Federal law relating to an election of a Federal office. The rule also proposed to require that an HCA that was found by HUD to have used Housing Counseling Program grant funds in a material violation of the regulations, statutes, or other conditions associated with the funds, to reimburse HUD for the misused Housing Counseling Program funds and return any unused or unobligated grant funds, and that such HCA would be ineligible to receive housing counseling grant funds in the future. Lastly, the proposed rule prohibited the distribution of assistance for counseling activities to an HCA unless the agency has been certified by HUD as competent to provide counseling.

IV. Final Rule

This final rule follows publication of the September 2013 proposed rule and takes into consideration the public comments received on the proposed rule. The final rule does not substantively revise the proposed rule; however, in response to public comments, HUD has clarified policies regarding the housing counseling certification examination, amended several

provisions for consistency and clarity, and clarified the application of this rule to Other HUD Programs.

Definitions. This final rule incorporates the statutory definitions “homeownership counseling” and “rental counseling” and adds clarifying definitions for “housing counseling” in HUD’s General part 5 requirements at § 5.100 and cross-references the definitions in § 214.3. The final rule incorporates these definitions in § 5.100, because they apply to all of HUD’s programs, and includes cross-references in some other programs for clarification. The final rule is also adding a definition of “housing counseling grant funds” and the other definitions provided in the Section 106 amendments to § 214.3.

The definition of rental housing counseling is amended from the proposed rule by including a list of items (decision to rent, responsibilities of tenancy, affordability of renting, and eviction prevention) that may be included in rental housing counseling, similar to the homeownership counseling definition.

A new “housing counseling” definition is added at this final rule stage, which consolidates existing statute, regulation and handbook definitions, and incorporates the requirement that the housing counseling activity must meet both the content and process standards that are set by 24 CFR part 214 and by guidance issued by the Office of Housing Counseling. This clarification provides the framework for making clear that homeownership counseling and rental counseling are subsets of housing counseling, and what activities trigger the certification requirements under Section 106.

HUD includes a definition of “required under or provided in connection with any program administered by HUD” in § 5.111 to clarify for grantees whether “housing counseling,”

as defined in this regulation, is subject to the new Section 106 requirements. This requirement is also incorporated by cross-reference, into some HUD programs.

HUD is also adding the definition of “housing counseling grant funds” and adopting the term through the Housing Counseling Program regulations to clarify when the provisions of the rule apply solely to grant funds awarded under HUD’s Housing Counseling Program.

Lastly, HUD is removing “the Trust Territories of the Pacific” from the definition of “State,” given the United States ended its administration over the Trust Territories of the Pacific on October 21, 1986.

- Extension of timeframe for certification. The final rule changes the September 2013 rule’s proposed requirement for Other HUD Programs, HCAs, and individual counselors to be in compliance with the certification requirements to no later than 36 months (rather than 12 months as was stated in the proposed rule) after the date that HUD announces the availability of the certification examination, in order to address concerns raised by commenters. The date that is 36 months after the date that HUD announces the availability of the certification examination is referred to as the final compliance date. The final rule outlines some of the activities that HUD, entities affected by the final rule, and individual housing counselors will undertake during the period between the publication of this rule and the final compliance date.

- Delayed certification examination availability. There are two requirements for housing counselor certification: (1) passing the examination and (2) working for an HCA. Both requirements are necessary to ensure that the consumer receives knowledgeable, independent, and effective housing counseling following standards established by the Office of Housing Counseling. HUD is working to implement a new housing counselor certification structure that

will link several systems—FHA Connection, HUD’s online system for FHA lenders and business partners; the current HUD system for tracking housing counseling program activities (Housing Counseling System); HUD’s list of approved HCAs (also supported by Housing Counseling System); and housing counselor certification examination results—in a new database. The systems’ linkages will validate that the individual works for an HCA and, thus, provide HUD with the evidence required to validate the individual’s eligibility for certification. The system will also maintain the database of HUD certified housing counselors and will allow users to issue certificates that confirm to consumers, lenders, and other stakeholders that homeless, rental, homeownership (prepurchase, post-purchase, and mortgage default), or reverse mortgage housing counseling meeting HUD standards has occurred. To ensure that the counselor certification database will be available when individuals take the certification examination, HUD will first publish a notice in the Federal Register announcing the date when the certification examination will become available and that date will start the 36-month timeframe for individuals to become HUD certified housing counselors.

- Individual HUD Certified Housing Counselor. The certificate that HUD issues to an individual who has passed the certification examination and whom HUD has verified works for an HCA as a housing counselor will be called a “HUD Certified Housing Counselor” certificate. This is a name change from the term “Certification of Competency” that was used in the proposed rule, and the change in terminology was adopted in §§ 214.103 and 214.311. The terminology better aligns with the purpose of the statute to improve the quality, consistency, and effectiveness of housing counseling by providing housing counselors with a credential that confirms a level of expertise and provides consumers and stakeholders with a way to distinguish

the housing counseling services of trustworthy professionals from those who are unqualified or perpetrating scams and fraud.

- Other HUD Programs. The Section 106 amendments require that HUD certify or approve organizations that provide housing counseling required under or provided in connection with HUD programs. Furthermore, all individuals providing housing counseling for an HCA must be certified housing counselors. HUD is implementing the new requirement that all housing counseling required under or provided in connection with HUD programs meet the regulations, requirements, standards, and performance measures set by the Office of Housing Counseling, including requirements relating to the certification of organizations and individuals. To clarify that these requirements apply to all HUD programs under which housing counseling is provided, this rule includes a new provision in § 5.111 that incorporates the statutory language into HUD's General Requirements, and cross-references to the requirements of HUD's Housing Counseling Program in part 214. This section also defines the phrase "required under or provided in connection with any program administered by HUD".

The discussion of the public comments in this final rule preamble adds guidance for Other HUD Programs covered by the rule that are not currently delivering housing counseling through HCAs. Entities covered by the rule will have the opportunity to choose among a number of alternatives to bring their housing counseling services into compliance prior to the Final Compliance Date, including (i) applying to HUD or to a HUD-approved intermediary or state housing finance agency in order to become HCAs and ensuring that their housing counselors become certified prior to the Final Compliance Date; (ii) partnering with an existing HCA to deliver housing counseling, homeownership counseling or rental counseling services; (iii)

modifying the program in order to become compliant with this rule; or (iv) choosing to stop delivering housing counseling services before the Final Compliance Date.

The final rule clarifies that entities that provide funding or otherwise authorize housing counseling that is required under or provided in connection with Other HUD Programs, and that do not provide housing counseling services directly to consumers, do not have to become HCAs, and their employees do not have to become HUD certified housing counselors. These entities will nevertheless have the responsibility to ensure that housing counseling conducted with their funding or provided under their authority through recipients, subrecipients, grantees, or contractors complies with the statutory requirements. They may choose to apply to become HUD-approved housing counseling intermediaries, becoming eligible to participate in the Housing Counseling Grant Program and providing greater programmatic support to the housing counseling delivered under their auspices. However, they may also choose to require that housing counseling under their programs is delivered by HCAs without becoming HUD-approved housing counseling intermediaries themselves.

Many counseling services are provided in HUD-funded programs but every reference to counseling does not automatically make these services “housing counseling” as defined in § 5.100. It is important to note that the Section 106 amendments do not alter the meaning of “counseling” services as has been applied to date in these programs and not all activities that may be labeled as counseling services equate to housing counseling as defined by Section 106 and this final rule. HCAs and certified housing counselors may elect to provide any of the services listed below as part of their housing counseling program. However, entities that provide the services listed below, in the absence of providing housing counseling as defined by § 5.100,

do not have to become HCAs and do not have to use certified housing counselors in order to be compliant with this final rule. The following are examples of counseling that do not constitute housing counseling:

1. Services that provide housing information, or placement or referral services, (for example, mobility-related services for the Housing Choice Voucher (HCV) program), do not constitute housing counseling and would not necessitate an individual providing these services to become a HUD certified housing counselor working for an HCA under this rule.
2. Routine administrative activities (e.g., program eligibility determinations, intake, case management, property management, payment of rental assistance on behalf of a client, and the collection of rent or loans) have never been categorized as housing counseling. Neither the Section 106 amendments nor HUD's Housing Counseling Program regulations make these activities housing counseling.
3. Holistic case management for persons with special needs, for persons undergoing relocation in the course of a HUD program (including relocation and other advisory services provided pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and other Federal laws), or for social services programs that also provide housing services as incidental to a larger case management program, are not housing counseling. Thus, the Housing Opportunities for Persons With HIV/AIDS (HOPWA) program, Emergency Solutions Grants (ESG) program, and Continuum of Care (CoC) program permit various housing and support services as eligible uses of funds. If these housing services are part of a larger set of case management services, they do not trigger the certification requirements of this rule. However, in these programs, there may be instances where housing counseling, as defined in this

rule, is being provided. For example, if a participant in these program is receiving housing counseling, as defined in § 5.100, as a separate specialized service, the housing counseling has to be provided by a certified housing counselor working for an HCA.

4. Fair housing advice and advocacy offered in isolation from housing counseling as defined in § 5.100 (i.e., without providing for an intake); financial and housing affordability analysis; an action plan to address other housing needs or goals; and follow-up.

HUD will maintain, in four categories, a list of “Other HUD Programs” that this rule covers consistent with the definition added to § 5.111 that defines “required under or provided in connection with.” In this rule, HUD used the programs named in Section 106 as a guide to the HUD programs that may be providing housing counseling as defined in this final rule, but removed obsolete programs or those that do not cover “housing counseling.” HUD has included additional programs that provide housing counseling to the list of programs consistent with § 5.111. In the future, the list of HUD programs for which housing counseling must be provided by a HUD certified housing counselor working at an HCA will be posted on HUD’s Housing Counseling website and will be updated as appropriate to add or remove HUD programs.

The following list of programs provide housing counseling as defined in this final rule under the four categories in § 5.111. Therefore, “housing counseling” provided by these programs must be provided by certified individual housing counselors that work for HCAs as of the final compliance date:

1. HUD programs where housing counseling is required by statute, regulation, Notice of Funding Availability (NOFA), or is otherwise required by HUD. The current list of programs that universally require housing counseling or may require housing counseling in part of the

program, as identified by HUD, include the Housing Counseling Program (12 U.S.C. 1701x); Housing Choice Voucher Homeownership Option (42 U.S.C. 1437f(y)); HOME Investment Partnership – Homeownership only (42 U.S.C. 12701 et seq.); Housing Trust Fund – Homeownership Only (12 U.S.C. 4568(c)); FHA Single Family Mortgage Insurance Program (12 U.S.C. 1707 et seq.); and Home Equity Conversion Mortgage Program (12 U.S.C. 1715z-20).

2. HUD programs where housing counseling is funded under the HUD program. The current HUD programs that include “housing counseling” as an eligible funding activity or project cost, include: The Community Development Block Grant Program (42 U.S.C. 5301, et seq.), including Disaster Recovery; Displacement Due to Demolition and Disposition of Public Housing (42 U.S.C. 1437p(a)(4)(D)); Conversion of Distressed Public Housing to Tenant-Based Assistance (42 U.S.C. 1437z-5(d)(2)(B) and 42 U.S.C. 1437t); HOME Investment Partnership Program (42 U.S.C. 12701 et seq.); Housing Trust Fund (12 U.S.C. 4568(c)); Housing Opportunities for Persons With AIDS (42 U.S.C. 12906); Emergency Solutions Grant (42 U.S.C. 11371, et seq.); the Continuum of Care program (42 U.S.C. 11381, et seq.); Indian Housing Block Grants and Native Hawaiian Housing Block Grants (25 U.S.C. 4132(3), 25 U.S.C. 4229(b)(2)(A));¹⁰ Indian Community Development Block Grant program (42 U.S.C. 5301, et seq.)¹¹; Rural Housing Stability Assistance Program (P.L. 111-22); Housing Choice Voucher

¹⁰ Application of Section 106 amendments to the Indian Housing Block Grant program will undergo tribal consultation before applying.

¹¹ Application of Section 106 amendments to the Indian Community Block Grant program will undergo tribal consultation before applying.

program (42 U.S.C. 1437f(o)); and Public Housing Operating Fund (42 U.S.C. 1437g(e)).

3. HUD Programs where housing counseling is required by a grantee or subgrantee of a HUD program as a condition of receiving assistance under the HUD program. Any HUD program where a grantee or subgrantee elects to require housing counseling as a condition of receiving assistance under a HUD program must provide “housing counseling” consistent with § 5.111. An example of such a program would be the Public Housing Resident Homeownership Program (42 U.S.C. 1437z-4), where Public Housing Agencies may elect to require participants in the program to participate in housing counseling as a condition of participating in the Public Housing Resident Homeownership Program. Such housing counseling would be considered “required under or provided in connection with a HUD program” and the “housing counseling” must be provided by a certified individual housing counselors working for HCAs as of the final compliance date of the final rule. Another example of such a program would be a State Housing Finance Agency that has elected to require consumers to obtain “housing counseling” as a condition of eligibility for its downpayment program funded by Community Development Block Grant (CDBG). Because the downpayment program is funded by CDBG funds, the “housing counseling” must be provided by certified individual housing counselors working for HCAs as of the final compliance date of the final rule.

4. HUD programs where housing counseling referrals are made by a grantee or subgrantee of the program for use by a family assisted under the program. Any HUD program where a grantee or subgrantee makes a housing counseling referral to a family assisted under the HUD program must make the referral to an HCA consistent with § 5.111. Examples include the Family Self-Sufficiency Program (FSS); and Resident Opportunity and Self-Sufficiency Program

(ROSS). In these programs, HUD funding provides for the salaries of coordinators who may refer participants to housing counseling services. While these housing counseling services are not funded through the FSS or ROSS programs and are provided by a third party, the third party must be a certified individual housing counselor working for an HCA as of the final compliance date of the final rule.

This final rule also includes language clarifying the application of this rule to a number of programs, including ESG, COC, HOPWA, CDBG, and the Native Hawaiian Housing Block Grant program. HUD program offices administering Other HUD Programs may also issue future conforming regulations or guidance, as applicable, and advise of any procedures unique to their programs to ensure that participants in all HUD programs are fully aware of the statutory requirement to use certified housing counselors employed by HCAs.

- Housing Counseling Agency certification of competency. HUD will not issue a separate agency “Certificate of Competency” as originally stated in the proposed rule. For a housing counseling agency to be HUD-approved or maintain status as an HCA under HUD’s Housing Counseling Program, each individual providing housing counseling for the HCA must be a HUD certified housing counselor. This requirement will be implemented through this final rule by amending existing HUD Housing Counseling Program regulations at 24 CFR part 214 that determine if an entity is eligible to be an HCA.

HUD will notify HCAs on the OHC website, after publication of the final rule, of the timing and process for identifying that the housing counselors who work for them are HUD certified housing counselors. The removal of the agency certification is reflected in amendments to § 214.103(n), and the requirement for HUD certified housing counselors is clarified in §§

214.101, 214.103(n), and 214.311(c)(2).

The discussion of public comments explains the transition process for entities that are providing housing counseling under Other HUD Programs and choose to become HUD-approved HCAs by the final compliance date. Information about the current application process for entity approval under the Housing Counseling Program may be found here:

http://portal.hud.gov/hudportal/documents/huddoc?id=OHC_9900FAQS011415.pdf

- Who must be certified. The final rule applies to the individuals that provide “housing counseling” services to consumers under HUD programs, including Home Equity Conversion Mortgage (HECM) counselors. The certification requirement applies to all HCAs, whether grantees or nongrantees, and whether directly approved by HUD or participating in HUD’s Housing Counseling Program as an affiliate or branch of an intermediary, multi-state organization, or state housing financing agency. Individuals whose roles are limited to overseeing or administering a housing counseling program are not required to become HUD certified housing counselors. The final rule clarifies that an individual providing housing counseling under Other HUD Programs, regardless of employment status (i.e., a contractor, volunteer, part-time employee, etc.), must be certified. (See §§ 5.111, 214.103(g).) In addition, the final rule retains language in the current regulation at § 214.103(g), which required the agency to employ staff trained in housing counseling, and that at least half the agency’s counselors must have at least 6 months of experience from significantly comparable work to the job that the counselor will be performing. A clarification is also made in § 214.103, paragraph (n).

The final rule also clarifies that all individual housing counseling activity reported by

HCA's on form HUD-9902,¹² whether attributed to a HUD Housing Counseling Grant or not, must be performed by HUD certified housing counselors. Lastly, while not all group education presenters are required to be certified, all group education offered by an HCA as part of its Housing Counseling Program must be overseen by a HUD certified housing counselor and all group education reported by HCA's to form HUD-9902, whether attributed to a HUD Housing Counseling Grant or not, must be overseen by a HUD certified housing counselor.

- Housing counseling certification examination training. Section 106 requires that HUD contract with an appropriate entity to provide training and administer the housing counselor certification. HUD's Contracting Office, therefore, published a market research notice in FedBizOpps on June 18, 2013, seeking an entity to administer the housing counselor certification and training. The Office of Housing Counseling identified a qualified certified 8(a) small business entity registered with the Small Business Administration (SBA) to conduct business with the Federal Government and awarded a contract to Bixal Solutions, Inc. (Bixal) on September 30, 2013, to develop the housing counselor certification training, examination, and to host the website. Information on the requisition and award is located on FedBizOpps.gov.

The Housing Counseling Certification Examination training was developed by Bixal, using experienced instructional designer and technology specialists, adult learning specialists, and subject matter experts in housing counseling, lending, and fair housing. Free training has been made available to the public. The training course is currently available online in an interactive format, and is also offered in a portable document format (PDF) format for those who

¹² See <http://portal.hud.gov/hudportal/documents/huddoc?id=9902.pdf>.

prefer text-based instruction. The study guide is available for download onto multiple types of electronic devices. The training website can be accessed at www.hudhousingcounselors.com.

- Housing counseling certification examination. Bixal was also selected to administer the Housing Counseling Certification Examination. A Federal Register notice will be issued announcing when the certification examination will be available and at that time individuals interested in becoming HUD certified housing counselors can register for the examination. The administration of the examination will be made available through video conferencing at an examinee's location or at a commercial proctoring site identified by HUD's contractor. Those choosing to use video conferencing must have equipment available. Additional information on test locations and online proctoring will be available on HUD's Office of Housing Counseling website, www.hudhousingcounselors.com, and also at www.hud.gov/housingcounseling.

HUD originally estimated the training and certification examination would be approximately \$500. Since the issuance of the proposed rule, HUD took into account a number of public comments expressing concern that the cost was too high. With the contractor employed by HUD, HUD has been able to significantly reduce that cost through value engineering the examination, through free training, and by adding flexibility in the administration of the certification exam. HUD has determined the cost of the examination at a commercial proctoring site will be \$140 and online at the examinee's location it will be \$100. This cost is based on the actual cost to administer the examination in Fiscal 2016, and changes to the cost after Fiscal 2016 will be published in the Federal Register.

HUD will also offer the examination in English and Spanish, and will continue to review options to add other languages. For those test takers that need a reasonable accommodation

pursuant to the Americans with Disabilities Act (ADA) and subsequent amendments to the act, HUD's contractor will arrange for accommodations. Individuals who do not pass the examination will receive an email notifying them of results and indicating the subject areas that should be reviewed before retesting, and can re-register for the exam. There is no limit to the number of attempts an individual can make to pass the examination.

- Individual housing counselor certification. A person taking the Housing Counseling Certification Examination who successfully passes the examination will receive notification of passage by email. HUD will track the examination results, and an individual HUD certified Housing Counselor Certificate will be issued for a housing counselor that has passed the examination when HUD verifies that the counselor works for an HCA.

- Content Standards. At the proposed rule stage, HUD provided in paragraph (b) of § 214.300 a requirement that an HCA must offer homeownership counseling, which was more extensive than that required by the Section 106 amendments. Therefore, this final rule removes the requirement that an HCA is required to provide homeownership counseling and instead clarifies in paragraph (a) of § 214.300, which covers the basic requirements for housing counseling, that if an HCA offers homeownership counseling the HCA must do so as defined in § 214.3. This final rule also adds the same requirement for the content of rental housing counseling if an HCA offers rental counseling. This final rule also moves the home inspection requirement from paragraph (b) to paragraph (a) of § 214.300.

V. Discussion of Public Comments and HUD's Responses

This section of the preamble discusses the key issues raised by the comments submitted in response to the September 13, 2013, proposed rule. The public comment period on the

proposed rule closed on December 12, 2013, and 215 public comments were received in response. All public comments can be viewed at the following website, www.regulations.gov, under docket number HUD-2013-0083. (See <http://www.regulations.gov/#!docketDetail;D=HUD-2013-0083>). Comments were submitted by advocacy groups, service providers, state and local government agencies, nonprofit organizations, private companies, and individuals. The following represents the significant issues and questions related to the proposed rule raised by the commenters.

HUD also received comments in support of the proposed rule that do not require a response. These comments expressed support for the certification process, writing that the proposed certification provided a less expensive, clearer, and less cumbersome process than the current process in which housing counselors obtained certifications from multiple agencies. Commenters also supported the introduction of training from HUD to aid counselors in learning the examination topics. A few commenters also stated that this rule will provide additional consumer protection for homebuyers and the public. Lastly, commenters stated that certification will improve the integrity of the housing counseling profession and the quality and value of housing counseling.

Comment: Opposition. Some commenters generally opposed the proposed rule, writing that the certification requirement is unnecessary, redundant, and costly given that housing counselors are already required by HUD (and their agencies) to receive continuing education and training. One commenter added that certification will not supplement housing counselors' experience or improve the services that they provide to clients. A few commenters wrote that certification punishes housing counselors and HCAs by requiring them to pay for and pass the

certification. In addition, a few commenters wrote that this industry did not cause the financial crisis and applying this certification to the industry will compound the problem by causing agencies to leave the field, resulting in fewer agencies to serve clients. Lastly, a few commenters worried about the certification displacing long-standing high quality certification programs.

HUD Response: HUD understands that many housing counselors believe that the current requirements to participate in HUD's Housing Counseling Program are sufficient. Nevertheless, the Section 106 amendments require housing counselors to pass an examination that covers the following six areas of housing counseling: financial management; property maintenance; responsibilities of homeownership and tenancy; fair housing laws and requirements; housing affordability; and avoidance of, and responses to, rental and mortgage delinquency and avoidance of eviction and mortgage default. HUD recognizes that the Housing Counseling Program currently requires counselors to fulfill education and training obligations for successful participation in the program. The intent of the new certification and testing requirements is not redundancy but to establish a single, national baseline certification that covers the broad spectrum of housing issues required under the statute.

As noted, HUD is striving to present the housing counseling certification examination, including training and study materials, in the most cost-efficient way feasible. HUD is using online testing in its Housing Counseling Certification Examination as an economical and convenient approach. Subject to available appropriations HUD intends to allow housing counseling agencies to use HUD's Comprehensive Housing Counseling Program Grant funds to pay for the costs associated with training, testing, and certification of counselors. The housing counseling certification requirements, as were outlined in the proposed rule, are intended to

benefit clients who will be assisted by housing counselors who are tested and certified in six areas of housing counseling. Consumers can, as a result, be further confident in the quality and consistency of the housing counseling services and referrals they receive.

The statutory mandate, as reflected in this final rule, is not placing responsibility for the financial crisis on the counseling agencies or discrediting existing housing counseling training programs. The new certification is designed to assure baseline housing knowledge by housing counselors, consistent service delivery by a network of HCAs, and increased consumer confidence in housing counselors through a single, government-issued national credential.

HUD recognizes that numerous training and certification programs have provided housing counselors with the instruction and information that HUD has long required for participation in HUD's Housing Counseling Program. HUD supports many training and certification programs and, while the final rule does not address existing certification programs, HUD supports and expects that housing counselors will continue to seek training and certification opportunities in areas that will complement the required HUD individual housing counselor certification.

A. New Definitions § 214.3.

Comment: Definition of HUD-Approved Counseling Agency. Several commenters requested confirmation as to whether the definition of "non-profit organizations" found in the proposed rule includes organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code (IRC) of 1996.

HUD Response: Private or public nonprofit organizations described in IRC section 501(c) and exempt from taxation under IRC section 501(a) including section 501(c)(4)

organizations, are eligible to participate in HUD's Housing Counseling Program. To be a HUD-approved housing counseling agency, however, an eligible nonprofit organization must also comply with the approval requirements in § 214.103 and all other eligibility requirements.

Comment: Definition of HUD Certified Housing Counselor, Counseling, Education, and Housing Counseling. Several commenters recommended HUD expand on the definition of a housing counselor to indicate what a housing counselor does and to distinguish counseling activities from education activities. One commenter asked HUD to distinguish between activities that must be performed by HUD certified housing counselors and activities that can be performed by noncertified personnel. In addition, a commenter recommended that only housing counseling reported on the form HUD-9902 be required to be performed by a certified housing counselor. Commenters requested clarification of the definition of housing counseling required under or provided by Other HUD Programs.

HUD Response: The proposed rule added a definition of "HUD certified housing counselor" in § 214.3 as a housing counselor who has passed the requisite examination, provides housing counseling services for an HCA and is certified by HUD as competent to provide housing counseling services pursuant to 24 CFR part 214. HUD clarifies in the final rule that this can include paid workers or volunteers that provide housing counseling on a full or part time basis by removing the word "employed by" and focusing on the provision of housing counseling services. The existing regulations provide a definition of counseling (in contrast to education) under the Housing Counseling Program, and the HUD Handbook 7610.1¹³ also clarifies what

¹³ See

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsg/7610.1.

constitutes housing counseling and what constitutes education activities.

In the final rule at § 5.100 and cross-referenced at § 214.3, HUD has consolidated existing definitions of “housing counseling” in response to comments seeking clarification of activities in Other HUD Programs that are subject to the final rule. HUD believes that the language in § 5.100, as augmented by current descriptions of counseling and education activities in the HUD Handbook, and the new definitions of “housing counseling,” “homeownership counseling” and “rental housing counseling” in the regulations, are sufficient. HUD further clarifies that an activity conducted in connection with administering a program—such as intake, loan application, and eligibility assessment—that is limited in scope and that is not part of process that focuses on ways of overcoming specific obstacles to achieving a housing goal, may not be in and of itself housing counseling, homeownership or rental counseling.

As addressed in Section IV of this preamble, HUD clarifies in this final rule that all individual providing housing counseling under HUD’s Housing Counseling Program must be performed by HUD certified housing counselors, and all individual housing counseling reported by HCAs to the Office of Housing Counseling on Form HUD 9902, whether attributed to a HUD housing counseling grant or not, must be performed by HUD certified housing counselors. HUD recognizes that agencies may use other agency staff and industry professionals such as real estate agents, home inspectors and loan officers as presenters at home buyer education and other group workshops as long as the education is in compliance with HUD requirements. This final rule does not require that all group education presenters obtain individual HUD housing counselor certification. However, HUD believes it is important that housing counselors overseeing group education be tested and certified in the six areas of counseling so they can provide consumers

with consistent quality education. Therefore, HUD is requiring that all group education under the HUD housing counseling program must be overseen by a HUD certified housing counselor. In addition, group education reported by HCAs to the Office of Housing Counseling on Form HUD 9902, whether attributed to a HUD housing counseling grant or not, must be overseen by a HUD certified housing counselor.

B. Counseling that Covers the Entire Process of Homeownership § 214.300.

Comment: Home Inspection Materials. A commenter requested that the requirement to provide home inspection information in § 214.300 should include the specific home inspection requirements in section 1451 of the Dodd-Frank Act. The same commenter requested that HUD issue a mortgagee letter clarifying the section 1451(b) requirement that lenders provide prospective homebuyers, at first contact, the home inspection materials specified in section 1451(a). The commenter suggested HUD include how the information should be delivered and include specific documents to be provided by the agencies as prescribed in the statute in this final rule. The commenter also requested that HUD disclose a timetable for developing the documents required under section 1451(a), noting progress was being made in early 2012 but has since ceased.

HUD Response: The new language in § 214.300 requires housing counseling agencies to address the home inspection process as part of home purchase counseling and provide clients with such materials as HUD may require regarding the availability and importance of obtaining an independent home inspection. In addition, the proposed rule states that HUD may periodically update and revise the home inspection materials, as HUD deems appropriate. In order to maintain flexibility in revising the home inspection materials and training elements,

HUD retains the proposed language in the final rule. HUD is continuing to develop the required publications under section 1451(a) of the Dodd-Frank Act.

C. Certification to Provide Counseling § 214.103.

Comment: Programs Covered. Several commenters had questions concerning the applicability of HUD's rule to agencies, including Tribally Designated Housing Entities, that provide counseling or administrative services incidental to such programs as Family Self Sufficiency, HOME Investment Partnerships, Housing Choice Vouchers (HCV), and Indian Housing Community Development Block Grants, but that are not directly approved by HUD as Housing Counseling Agencies or participating in HUD's Housing Counseling Program through an intermediary or state housing finance agency. One commenter questioned the breadth of the definitions of homeownership counseling and rental housing counseling, to include counseling related to topics pursuant to programs such as the Public Housing Operating Fund and rental assistance under Section 8. The commenters expressed concern that the definition of rental housing counseling goes so far as to include providing referrals for renters and prospective renters to entities providing housing counseling, and that by using broad definitions, their members provide some degree of "counseling" as part and parcel of administering these HUD programs. The commenter requested explicit clarification that the certification requirements apply *only* to agencies receiving housing counseling funds and/or voluntarily seeking HUD approval as a housing counseling agency, and was concerned that the rule could be misconstrued to require that housing authorities must become approved housing counseling agencies, with frontline housing authority staff required to be certified housing counselors, in order to perform basic program functions such as explaining payment standards or rent determinations or even

simply to provide a referral to a HUD-funded housing counseling agency.

HUD Response: As discussed in Section IV of this preamble, the Section 106 amendments added a requirement that all homeownership and rental housing counseling required under or provided in connection with all HUD programs must be provided only by HUD certified organizations and individuals, under Section 106(e). Section 106 also requires that for HUD to certify organizations, all individuals through whom the organization provides housing counseling must be certified. This final rule implements this requirement using the existing service delivery structure that housing counseling be provided by HCAs. Therefore, only HCAs that have HUD certified housing counselors can provide homeownership and rental housing counseling that is required by or provided in connection with Other HUD Programs.

HUD has expanded this preamble to elaborate upon which entities and which activities will require the use of a HUD certified housing counselor working for an HCA. HUD has also provided additional definitions in order to clarify which entities, individuals, and activities will be affected by the final rule, and adopted those definitions in § 5.111. As noted earlier in this preamble, housing counseling includes “Housing Counseling”: (1) required by statute, regulation, NOFA, or otherwise required by HUD; (2) funded under a HUD program; (3) required by a grantee or subgrantee of a HUD program as a condition of receiving assistance under the HUD program; or (4) to which a family assisted under a HUD program is referred, by a grantee or subgrantee of the HUD program.

HUD programs that require or provide for homeownership and rental housing counseling activities will be required to use HUD certified housing counselors that work for an HCA after the final compliance period as defined in this preamble. An activity conducted in connection

with administering a program—such as intake, loan application, and eligibility assessment—that is limited in scope, and that is not customized to the individualized need of the consumer to address his or her housing barriers and achieve housing goals, is not in and of itself homeownership or rental housing counseling. HUD has added cross-references to the new definitions in § 5.100 and new Section 106 requirements in § 5.111 to a number of programs for additional clarity for those grantees, including the ESG program, the CoC program, and CDBG.

As for tribes, however, the application will only apply after HUD undergoes tribal consultation and addresses the participation of tribes in HUD’s Housing Counseling Program in future rulemaking or guidance, as appropriate.

Comment: Section heading. A commenter recommended that HUD change the heading of paragraph (n) of § 214.103 to include the definition of the term “participating agency.” The commenter wrote that inclusion of this term would clarify that the requirement applies to HUD-approved intermediaries, multi-state organizations, and state housing finance agencies.

HUD Response: The definition of “participating agency”, as provided in § 214.3, includes the list the commenter seeks to be added to the heading of paragraph (n). HUD believes amending the heading to include the definition would be confusing. Therefore, HUD in the final rule retains the § 214.103(n) heading as proposed. HUD has added to this preamble the term HCA to represent all HUD-approved and HUD participating agencies, including intermediaries, state housing finance agencies, multi-state organizations, local housing counseling agencies, affiliates and branches.

Comment: Consultation in Development of Housing Counseling Certification Examination. Many commenters recommended that HUD consult with subject matter experts on

all areas covered by the test to provide input on test question development, including leaders and long-term experienced housing counselors, real estate professionals, national housing counselor trainers, and existing training providers such as NeighborWorks America. Several commenters requested that HUD create subject matter expert workgroups that would convene and help manage the test. A commenter recommended that experts represent the diversity of the trade organizations, including National Association of Real Estate Brokers, Inc.; National Association of Realtors®; National Association of Hispanic Real Estate Professionals; and Asian Real Estate Association of America. One commenter recommended that HUD use formal criteria established by national housing counseling training organizations to establish the requirements for credentials as a “HUD certified Housing Counselor.”

Several commenters asked if there will be an opportunity for existing certification programs to provide input on the new examination. Another commenter recommended that leaders and long-term housing counselors be required to administer the test prior to implementation of the final rule to make sure the questions are relevant to real life situations. Other commenters recommended the curriculum and examination should be reviewed by experienced counselors and allow for feedback on format and content to ensure that the examination will accurately gauge a housing counselor’s competency. Commenters also recommended HUD allow for feedback to ensure that training meets the needs of housing counselors. One commenter suggested HUD withhold the examination requirements, material, and other items without notice and fair opportunity for public comment. Another commenter recommended an 18-month timeframe for testing development to evaluate the quality of the questions.

HUD Response: In order to preserve the integrity and fairness of the rulemaking process and testing, HUD was unable to share information with select groups on the certification process, including the training and examination. HUD agrees with commenters that the use of subject matter experts is critical for developing the housing counselor certification training and testing. Therefore, HUD selected a contractor that utilized subject matter experts in adult learning, housing counseling, lending, and fair housing to develop the housing counselor certification training, online study guide, and examination.

HUD does not believe an 18-month timeframe for the development of the test to evaluate the quality of the certification examination questions is necessary. Instead, HUD will welcome feedback from all sources, including the housing counseling and real estate industries, regarding the certification training and examination after publication of the final rule and after implementation of the Housing Counselor Certification examination. The existing training website, www.hudhousingcounselors.com, provides the opportunity for comments and feedback on the content of the training materials. Those taking the examination will be encouraged to provide immediate feedback after completing the test. Anyone interested in submitting comments regarding the training and examination may write to housing.counseling@hud.gov and include *Certification* in the subject line. After the examination is initiated, HUD and the contractor will evaluate test questions quarterly, and both the training and testing will be updated as needed.

Comment: Content of Housing Counselor Certification Examination. Commenters submitted numerous suggestions and questions regarding the content of the Housing Counselor Certification Examination. Commenters asked that HUD be more specific about the six areas to

be tested and more clearly define how competency will be determined in each subject area. A commenter stated that knowing the level of expertise and knowledge required to pass the examination is critical. Another commenter recommended HUD provide more details regarding the test itself as soon as possible, prior to any deadlines beginning to run. Commenters requested HUD provide a sample curriculum so that national education and training providers can adjust the curriculum to provide training to new and experienced counselors.

Commenters also recommended that the test be general enough to allow housing counselors who specialize in certain types of counseling to take an alternative approach to learn the information through training, while being sufficiently stringent and comprehensive. Other commenters suggested that the test focus on general knowledge, and additional professional qualifications should be earned in specialized areas. Commenters stated that testing must be appropriate as a meaningful measurement; that is, that the test should be reasonable and passable and reflect the comprehension of material relevant to housing counseling services.

Commenters recommended specific topics to be included in the Housing Counselor Certification Examination. These topics included testing on knowledge of: qualified mortgage standards; mortgage products, homeownership programs and regulations; financial management; loss mitigation; local, state, and regional programs; laws and conditions including rental laws; State eviction laws; home inspection documents; rental readiness; finding affordable housing; applying for Section 8 vouchers; housing for people with disabilities; finding cooperative housing; downpayment assistance; types of loan programs; foreclosures prevention; budgeting income and expenses; the bankruptcy process; and Social Security disability income. Other recommendations were that the examination should include a state-specific portion, in addition

to a HUD basic portion of the examination; and that there should be optional testing on reverse mortgage counseling areas as a possible component under the financial management subject area. Some commenters asked how a broad set of national standards can be developed in a subject area in which the rules and practices vary by locality. Other commenters asked if the examination will vary from state to state. Commenters also stated that the examination should be tailored to meet only the areas of counseling offered by the HUD-approved housing counseling agency, and recommended that housing counselors be trained to make referrals as appropriate.

Commenters also addressed the current HECM certification examination, recommending that the Housing Counselor Certification Examination mirror HUD's HECM certification test. Other commenters, however, recommended that the new test not be modeled after the original HECM examination as many counselors found it difficult to pass and the stringency and inconsistencies of the HECM examination resulted in a decrease in the availability of reverse mortgage counseling.

Several commenters mentioned existing certifications, and recommended that the certification process align with the standards for existing certification programs such as those offered by NeighborWorks® America.¹⁴ Other commenters recommended that HUD integrate existing third-party counselor-certification exams into HUD's certification examination, and that HUD's housing counselor training not be duplicative of existing trainings or preempt existing specialized trainings.

Several commenters asked whether HUD would allow housing counselors to continue to

¹⁴ See <http://www.neighborworks.org/Training-Services/Training-Professional-Development/Courses-Certifications>.

complete other certifications in addition to the HUD Housing Counselor Certification. A commenter asked if a housing counseling agency should hold off either recertifying using other housing counselor certifications or having housing counselors receive new certifications from other entities before the final rule is published. Another commenter asked how often the examination will be updated to reflect current trends and issues.

HUD Response: To address concerns and questions put forward by commenters, HUD provided access to the online training materials at www.hudhousingcounselors.com prior to releasing the final rule. HUD's training is designed to provide basic knowledge on the six counseling areas, required by Section 106, that are specific to the certification examination. Under the six counseling topics required by Section 106, HUD's contractor developed content information for the training and examination after reviewing HUD's statute, regulations, and handbooks, as well as National Industry Standards for Homeownership Education and Counseling,¹⁵ and training provided by HUD's housing counseling training NOFA grantees. The examination will focus on the knowledge base needed by a housing counselor to address basic issues related to the six areas specified in Section 106. Many of the topics suggested by commenters are addressed in the training and certification examination, such as loss mitigation, mortgages, and budgeting. However, it is HUD's view that other topics suggested by commenters are subjects that do not fall within the scope of a national examination designed to test basic knowledge related to the six counseling topics required by Section 106.

HUD will also continue to require the separate HECM Counselor Roster examination

¹⁵ See <http://www.homeownershipstandards.com/Home/Home.aspx>.

and certification pursuant to the statutory requirements of National Housing Act sections 255(d) and (f) and the HECM Roster regulations at 24 CFR part 206, subpart E. HECM counselors must, however, also pass the certification examination required by Section 106, which is applicable to all counselors. In response to comments regarding the administration of the HUD HECM Roster examination, HUD has taken prior experience with the HECM Roster examination into consideration when developing the Housing Counselor Certification Examination.

HUD intends to evaluate the examination questions quarterly and update where necessary to reflect current regulatory and policy changes. HUD also intends to evaluate the Housing Counselor Certification Examination, utilizing analyses of test results and stakeholder feedback.

The training and examination will not focus on specific state and local laws and regulations but the training will address ways to access local and state information. The training offered by HUD may include topics similar to those found in classes offered by HUD housing counseling training grant recipients such as NeighborWorks® America, National Council of La Raza, and the National Community Reinvestment Coalition. However, HUD's training is specifically designed to prepare housing counselors for the Housing Counselor Certification Examination. The learning objectives identified for each topic may be different than those offered by other entities. HUD's training is not designed to replace other training offered. HUD's training is designed to provide general knowledge on the six topics.

HUD has not changed the existing requirement that an HCA must employ staff trained in housing counseling, and that the HCA's 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. Existing training opportunities may be used to meet HUD's ongoing knowledge requirements and may be helpful to gain mastery of housing counseling related topics or to gain additional credentials. HUD will continue to provide funding for such activities and encourage housing counselors to take continuing education courses. HUD recommends that housing counselors continue to seek other housing counseling certifications.

Comment: Drafting of Housing Counseling Certification Examination, Format and Scoring. Commenters offered recommendations about the format of the exam, including the number of questions; that the examination require no more than 2 hours for successful completion; the possibility of taking components of the examination allowing each component area to be tested separately; and that counselors with five or more years of experience take a shorter examination.

Commenters questioned how the test will be scored, and one recommended a 70 percent passage rate, while others recommended 80 percent, the same as the National Industry Standards. Commenters also questioned whether graders will consider relative knowledge of subjects and if there is a way to compensate for areas where the counselor may test lower in one area but test higher in another. Commenters recommended that HUD require a minimum overall score rather than a minimum score in each subject area, and that the scoring methodology of the examination be transparent, and results be given instantaneously and reveal correct answers for any items that were not answered correctly. Another commenter recommended that the examination have controls or proctors to validate counselors. Another commenter asked whether scoring will

accommodate certification in one or two of the subject areas. A commenter suggested that scoring give partial or full credit for existing certifications and recommended framing the test to housing counselors based on the specialized areas of counseling offered by their agencies.

HUD Response: The Housing Counselor Certification Examination has approximately 90 multiple-choice questions. The test is administered online by a proctor either by web-cam or at a proctoring location, and the proctoring service verifies the identity of individuals taking the examination. The test is designed to be completed in two hours, and accommodations will be made for those with disabilities. Guidance on requesting accommodations will be provided by the certification examination contractor.

The examination score will be scaled based on a range from 200 to 800. The test will not have individual sections. The examination cannot be divided into topic areas, nor taken by topic area. Many examination questions relate to multiple topics, which precludes dividing up the examination "by topic." Further, each examination goes through an industry standard certification review process and is considered as a whole, and scored as a whole. To pass the examination, the individual must achieve a scaled score of 500 or more. The scaled score does not represent the percentage of items correct, but is a numeric score for the overall examination.

Test takers will be notified by email whether they pass or fail the examination. If a test taker does not pass the examination, the email notification will include feedback on the learning objectives that the test taker should review before retaking the examination. The test will not be customized for each individual counselor as that would be inconsistent with the requirement that each counselor pass an examination in all six areas.

Comment: Scope of Certification; Six Testing Areas. One commenter stated it is unclear

whether a housing counselor is required to be certified in all six subject areas. Another commenter recommended framing the test to counselors based on what areas their agencies specialize in.

Some commenters noted that obtaining working knowledge in the six specified areas of expertise, but not specializing in those areas, seems to be in keeping with the intent of Section 106 amendments. Another commenter stated that HUD's certification standard should assess a baseline of skills and knowledge across the range of counseling services covered by the rule, while acknowledging that individual counselors and counseling agencies often focus on specific aspects of the homeownership or rental process.

Several commenters wrote that the proposed testing is unrealistic, impractical, and that specialization is important to the industry. Commenters stated that having different types of housing counselors provides for a greater level of competence in the counselors. A commenter expressed concern about how general knowledge can impact a counselor's effectiveness within a specialized area. Commenters suggested changing the requirement that all six subject areas should be tested, and instead allow for each subject to be tested separately. Several commenters also recommended restructuring a change in the organization of the six competency areas to better reflect the various types of counseling services performed.

Commenters recommended that there be one certification system, either HUD's or the NeighborWorks Center for Homeownership Education and Counseling (NCHEC)¹⁶ certification program, which allows for specialization. Generally, commenters suggested that HUD

¹⁶ See <http://www.nchec.org>.

administer separate tests and certifications based on each subject area.

Commenters wrote that a uniform approach to rental and housing counseling ignores the uniqueness of each area, and requested that the training and examination reflect these differences. The commenters submitted that separate training and examination would be appropriate so that where the statute requires examination in the ‘responsibilities of homeownership and tenancy’ the homeownership counselor could be trained and tested on the former, while the rental housing counselor could be trained and tested on the latter.

HUD Response: Section 106 requires a general knowledge in each of the six competency areas. All counselors are required to take the certification examination on the six competency areas and the test will not be customized based on the specialization of each individual counselor. The intended goal of this requirement is to increase the breadth of individual housing counselors’ knowledge in an effort to better assist clients with varied needs. This broad knowledge will benefit housing counselors and clients, and should not diminish the effectiveness of current specializations. Agencies can continue to determine the areas of specialization for each individual counselor, and for the agency itself, based on the workload of the agency and the needs of its client base. The Housing Counselor Certification Examination is a single comprehensive test that covers all six competency areas. The Section 106 amendments mandate that housing counselors demonstrate competency for both rental and homeownership topics. The statutory requirement reflects a basic principle that housing counselors participating in HUD’s Housing Counseling Program should have general knowledge on both topics to help clients determine whether they are more suited for renting or owning, based on their circumstances, and to prepare for the eventuality that owners may become renters in the future and vice versa.

Comment: Cost; Funding for Cost of Housing Counselor Certification Examination.

Commenters stated that HUD's Housing Counseling Grant Program should continue to include funding for the certification requirements. Commenters also wrote that funding is subject to available appropriations. Recommendations from commenters included: reducing other monitoring and compliance requirements to help small nonprofits using HUD funding; HUD assisting nonprofit organizations through added funding and capacity building to help them achieve maximum results; and providing separate or outside funds (for example, funds received from banks in settlement of certain mortgage-related lawsuits) to assist in certification so that existing annual HUD housing counseling funding does not need to be used to cover these expenses. Another commenter requested that HUD increase scholarship availability specifically for small nonprofits, stating that the current limitation of one scholarship per organization makes it difficult for organizations to afford expensive training and certifications.

Commenters expressed concerns that housing counseling agencies would lack the funds necessary to pay for training to prepare for the examination, and requested more funds for training, travel to training, lodging, and technical upgrades for organizations that do not have technical capacity needed for training.

Commenters stated that as grant funds continue to decrease, small community based nonprofits are unable to cover these new costs while continuing to subsidize general operation costs. A commenter stated that smaller agencies should have input determining the financial support necessary to comply with the final standards, and another commenter claimed that the new requirement is an unfunded mandate.

HUD Response: HUD recognizes that costs will be incurred as a result of the

certification requirement. HUD's Fiscal Years 2014 and 2015 Comprehensive Housing Counseling Grant Program NOFA allowed as eligible expenses costs associated with HUD housing counseling training, testing and certification requirements. In future NOFAs, HUD intends to treat costs associated with certification as an eligible Housing Counseling Comprehensive Grant program expense, subject to statutory authorization and appropriations.

HUD is providing training for the certification examination online at no cost. In addition, HUD has strived to make certification and examination costs as minimal as possible, but cannot provide scholarships for the examination fee.

HUD cannot reduce the program requirements based on the size of an agency to help small agencies reduce costs in other areas. HUD's Housing Counseling Program requirements apply to all HCAs. HUD allows for agencies to develop revenue sources through charitable grants, lender-funded agreements, or client payment sources. HUD encourages agencies to consider these options and others to help offset the costs associated with housing counselor certification.

While several governmental entities have received settlement funds arising from national mortgage servicing settlements, and have designated a portion of those funds for housing counseling services, each entity is authorized to administer its own settlement funds. HUD has no authority over the use or distribution of these funds. Therefore, agencies should consult their State attorney general's office to determine whether settlement funds can be used for the Housing Counselor Certification Examination in their particular state.

This rule is not an unfunded mandate. The new certification does not require individuals, states, tribal governments, and the private sector to undertake any new requirements.

Participation in HUD's housing counseling program and Other HUD Programs is voluntary.

Comment: Cost: Responsibility to Pay for Cost of Certification. Commenters wrote that HUD or another Federal agency should pay for the certification examination. A commenter wrote that HUD should be responsible for paying the costs of certification because certification does not provide one with a business opportunity like a professional degree does. Another recommended that HUD refund the cost of training and testing after successful passage, which will reduce impact on awards consistent, with Executive Order 13563, entitled Improving Regulation and Regulatory Review.¹⁷ Another commenter recommended HUD mitigate the costs of the certification process, especially for agencies with small staff and budgets, by including subsidized trainings and scholarships.

Commenters stated both agencies and housing counselors will bear the cost because they are interconnected. Other commenters, however, wrote that the cost of counseling will fall on the housing counseling agency because: (1) counselors do not control their income and are not paid on commission; (2) they do not make professional salaries; and (3) they lack mobility because of the limited job opportunities, which will cause agencies' costs to dramatically rise. Commenters wrote that the agencies will pay for the cost to maintain their certification, but the result will be that the agency will pay for less specialized training for topics such as foreclosure mitigation or other professional development training that would ultimately benefit the organizations' clients. Another commenter said that although the counseling agency will end up paying for the certification, the counseling agency cannot guarantee that a housing counselor will

¹⁷ Signed by the President on January 18, 2011, and published in the Federal Register on January 21, 2011, at 76 FR §3821.

stay with that agency for any length of time.

Commenters recommended that the final rule be clear that the compliance costs of the rule may be borne by the individual housing counselor or by the individual counselor's sponsoring agency.

HUD Response: Individual housing counselors are responsible for paying for the examination when payment is required. The housing counseling agency, however, has the option of paying for the examination for its counselors. Passing the certification examination serves as a marketable credential for individuals seeking work at an HCA as a housing counselor. HUD recognizes that agencies are concerned about the cost of training for and taking the Housing Counselor Certification Examination and, therefore, is providing free training. HUD has determined that the cost of taking the examination will be significantly less than the cost estimated in the proposed rule. Lastly, while it is true that an agency cannot guarantee that a counselor will remain with the agency if the agency pays for the examination, such a scenario is always a possibility for any employee who receives training paid for by an employer, and employers can create incentives to retain their employees consistent with agency policies and applicable laws.

Comment: Cost: Testing Cost. Some commenters requested that the examination should be administered free of charge stating that a free examination would allow retesting without concern of costs for nonprofit agencies. A commenter proposed that existing counselors have 2 to 3 months to take the test one time for free. Others recommended waiving the cost for existing certified counselors, and having a reasonable cost for new counselors entering the field; allowing approved agencies that do not receive funds to be charged only \$100 for the certification; or

charging a fee for the agency instead of a fee per counselor.

Commenters requested the fee be as low as possible; that HUD keep the cost reasonable, especially for housing counselors who are serving communities of color and other underserved communities. A commenter recommended a low cost for small local practitioners providing a low volume of housing counseling annually. Another commenter wrote that HUD should consider the costs of existing continuing education in determining the cost for training and certification. Another commenter recommended a fee for training and no fee for the examination. Commenters also requested free training, or permitting training to be charged separately so it could be done in house or limited to certain subjects.

Several commenters wrote that \$500 is too high a fee to pay, and requested that HUD provide information on how HUD plans to implement the testing for \$500. Some commenters requested that the cost of the certification be limited to a range of \$100 to \$200. A commenter stated that the estimated cost is reasonable only if it includes the cost of trainings.

HUD Response: The fee charged each time an individual takes the certification examination is based on the cost of administering the examination. The cost of the examination is well below the \$500 estimate. The cost is \$100 for testing online at the examinee's location and \$140 at a proctoring site. Any changes to the cost of the certification examination will be published in the Federal Register.

Comment: Cost: Consequences of Cost, Secondary Costs. Some commenters stated that certification and training are overly burdensome and costly and will take away from client services. Commenters also stated that this would result in fewer low-income people receiving counseling and will result in higher homelessness, and that HUD should seek ways to minimize

costs to ensure that the work of housing counselors in assisting vulnerable households is not inadvertently hurt in the process.

Other commenters wrote that costs associated with certification will result in agencies leaving the business of housing counseling, counselors leaving agencies, or individuals never joining the industry. Commenters stated that the cost is high for a new housing counselor, because an agency would not want to hire someone without the certification and risk losing its agency certification. Another commenter wrote that given many counselors come from other industries and their entry is limited, a housing counseling position will be less financially attractive with the additional compliance cost, and agencies might as a result see a reduction in current staff-to-client ratios. Commenters also wrote that the cost could interfere with other specialized trainings, or that agencies will be unable to afford to send their counselors to training, which will impact passage rates and the number of agencies with HUD-approved status. Commenters also wrote that HUD should consider the cost in the context of the amount of time it will take for counselors to prepare, travel, and take the examination, and some stated that opportunity costs and HUD's cost of monitoring compliance are incurred but not included. Commenters wrote that the cost associated with compliance for entities offering housing counseling programs that are not HCAs should be disaggregated in the cost-benefit analysis.

HUD Response: The certification examination is mandated by statute. As stated previously in this preamble, HUD strived to make certification costs as minimal as feasible by providing free training and allowing for web-based testing which removes the need for individuals to travel. HUD is providing 36 months for individual counselors to become certified so that they have time to budget the cost of taking the examination. In addition, if an

organization decides to help pay for certification the entity also has time to budget for the cost of ensuring their counselors are certified. Entities that are not HCAs may choose among four different options in order to become compliant, and the cost-benefit analysis includes a discussion of the costs of each option.

Comment: Difficulty of Certification for Small Rural Agencies. Commenters requested that HUD consider rule changes that help rural organizations gain certification and meet the stringent reporting requirements. Commenters wrote that requiring individual counselors and agencies to be certified is a significant burden on small rural counseling agencies already facing financial strain. Commenters stated that some agencies in urban areas have many counselors to get through the process and those agencies in rural areas with potentially fewer resources will need more time to allocate the expense of obtaining the certification.

HUD Response: HUD is keenly aware of the vital role of rural agencies in providing housing counseling. However, HUD is responsible for implementing the Section 106 certification requirement in the same manner for all agencies and the statute did not provide an exemption for smaller or rural agencies. HUD recognizes that the examination must be accessible to housing counselors in rural areas. HUD has provided two testing options: online and on-site. On-site testing is an option for those agencies and individuals with limited internet access. HUD has also worked to minimize certification costs for individuals and agencies, and delayed implementation for all entities to become compliant.

Comment: Online Testing. Several commenters requested the test be available online, stating that online testing expedites test delivery, grading, and recordation. These commenters recommended that: the test could be exclusively online which will expedite compliance and

increase efficiency; the testing be offered at the convenience of the agency and a list of examination topics, study materials, and practice examinations all be made available online; and that web-cam equipment be used similar to the HECM exam. Commenters stated an online system will make it easier for HUD or the administering entity to offer re-examinations at a reduced cost, and that almost all certification programs provide for online testing, and stated it is critically important this option is provided for the certification program. A commenter suggested that the test be offered in person, once a month, to supplement online testing, increasing ease of access and the ability for an examinee to choose an examination format of their preference. Another commenter expressed opposition to the idea of on-line testing, except for counselors in more rural areas who may have a hardship getting to a testing facility.

HUD Response: HUD will be providing the Housing Counselor Certification Examination using online testing through video conferencing at the test-taker's location, or at a commercial proctoring site identified by HUD's contractor. Those choosing to use video conferencing must have equipment available at the location where they plan to take the examination. This option offers choices for test takers depending on their circumstances.

Comment: Testing Accommodations. Several commenters requested that HUD offer the certification examination in multiple languages. A few commenters recommended the examination be offered in Spanish in addition to English. Another commenter recommended the language available should be based on languages spoken by the counselors participating in the HUD Housing Counseling Program, which would provide an equal opportunity to the bi-lingual counselors. Other commenters stated that not providing the certification examination in multiple languages, will result in an adverse impact on counselors where English is their second language.

These commenters wrote that it would be unfair for HUD to impose a hardship on those whose second language is English and provide no alternative vendor to provide the examination in Spanish. Other commenters recommended that additional time be provided for non-native English speakers to complete the certification test, and the test accommodate different learning styles and take into consideration cultural and linguistic diversity. Another commenter asked if accommodations would be available for special needs such as learning disabilities. Commenters recommended making materials culturally sensitive.

HUD Response: HUD understands commenters' concerns for test-takers with English as a second language. HUD reviewed data in the HUD Housing Counseling System (HCS) to identify the most frequently offered languages other than English for housing counseling services, and found 1,249 HCAs offered counseling services in Spanish. The next most frequently offered languages were American Sign Language at 78 and French at 78, followed by Creole at 58 and Vietnamese at 55. Based on this data, HUD will offer the study guide and the Housing Counselor Certification Examination in both English and Spanish. HUD, based upon available appropriations, may offer additional translations of the study guide in other languages.

HUD conferred with its contractor concerning how the test could accommodate different learning styles and considered cultural and linguistic diversity when creating the test. The training course has also been designed to accommodate different learning styles. It is presented in an online, interactive format, and is also offered in a PDF format for those who prefer text-based instruction. The certification examination was developed according to professional standards recognized to the testing industry. The examination was designed to be free from bias and measure only approved examination content. Examination writers and reviewers, under the

guidance of a psychometrician,¹⁸ were made aware of potential bias, including cultural and linguistic bias, and ways to avoid it.

The contractor will identify procedures to address reasonable accommodation requests of test-takers with disabilities under applicable sections of the ADA¹⁹ and subsequent amendments to the act. The website will also offer training in a format that is compliant with section 508 of the Rehabilitation Act.²⁰

Comment: Testing Schedule and Sites. There were several comments regarding who HUD should use to administer the certification examination. Commenters recommended the administration and management of the examination by national trainers. Other commenters suggested award of contracts to suppliers with a strong diversity policy. A commenter requested that organizations other than national training organizations like NeighborWorks and National Council of La Raza be afforded opportunity to receive grant funds to administer the certification and training. The commenter stated that HUD should also allow organizations that administer certification programs to serve as examination preparation sites or compete to contract for administering the new certification examination. Conversely another commenter stated concern that a sole training and certification entity that is also a counseling agency would be a clear conflict of interest. Other commenters recommended that HUD use multiple test administrators

¹⁸ The term psychometrics refers to the measurement of an individual's psychological attributes, including the knowledge, skills, and abilities a professional might need to work in a particular job or profession.

¹⁹ 42 U.S.C. 12101 et seq.

²⁰ Section 508 of the Rehabilitation Act (29 U.S.C.794d) requires Federal agencies' electronic and information technology to be accessible to persons with disabilities. See <http://www.section508.gov>.

to facilitate accessibility of taking the examination for thousands of counselors to comply in one year. A commenter expressed concern about whether HUD could handle the volume of test takers registering at the same time. Another commenter recommended the examination be easy to administer. Other commenters asked who will administer the testing.

Commenters offered several suggestions about where the HUD examination should be offered including HUD offices, HUD training grantee locations, offices of state housing finance agencies, or regional testing sites. One commenter suggested that NeighborWorks proctor examinations be at NeighborWorks training institutes or place-based training locations because NeighborWorks offers scholarships to attend such trainings. Other commenters wrote that HUD should provide regional testing sites, which would be closer to the counselors. A commenter suggested testing be available whenever the counseling agency and counselor feel the housing counselor is ready to take the certification examination.

HUD Response: Under Section 106, the Office of Housing Counseling was required to contract with one entity to develop training and certification testing for housing counselors. As discussed in Section IV of this preamble, HUD awarded a contract to Bixal to develop the housing counselor certification training, the housing counselor certification examination, and to host a website for the training and examination. HUD and its certification contractor will select the proctoring service(s) and determine whether offering the training at locations such as a national training institute is a viable option.

Housing counselors will now have 36 months from when HUD begins administering the examination to pass the certification examination. This change should address concerns about access to the examination for the volume of individuals seeking certification after the publication

date of this final rule. Housing counselors may determine when they are ready to take the certification examination. However, testing schedules will depend on the availability of proctors.

Comment: Period Allowed for Passing Housing Counselor Certification Examination.

Commenters indicated that HUD provide a 12-month period in which to pass the test, and that during the period experienced counselors should be allowed to continue counseling as if they were HUD certified, and agencies should be able to provide counseling through experienced counselors who are not HUD certified. Commenters wrote that HUD should tie the start date of the 1-year period allowed for passing the test to the date of the first time the test is administered, to provide time for all entities to take the test. A commenter wrote that if the test is not administered promptly counselors could not become certified and entities could not receive funding. The commenter also wrote that this could take into consideration any potential problems that happen with test administration.

Another commenter wrote that small counseling agencies should be allowed additional time to comply with the certification and to provide input as to how much time should be considered. Several commenters wrote that the National Industry Standards for Homeownership Education and Counseling's current benchmark for training and certification is "as soon as reasonably possible, but not later than 18 months from the start of employment," and HUD should also consider the 18-month period and that would allow HUD time to evaluate and revise the test if first implementation doesn't meet meaningful measurements. Another commenter wrote that timing of the rule should consider the needs of agencies that have to consider quarterly training for NeighborWorks organizations and the burdens of sending counselors out for training

and testing.

Commenters recommended expanding the timeframe to allow for adequate preparation time and ability to take the examination while counselors continue to maintain their workloads – ensuring that clients do not suffer any ill effects from implementation of the ruling. Several commenters recommended that the deadline be extended beyond 12 months to 18 months, 24 months, and other commenters recommended 36 months. A commenter recommended that counselors should have 24 months to be certified, thus allowing agencies to determine when more experienced versus less experienced employees should be certified and continue to provide counseling. The commenter also wrote that 24 months will allow agencies to spread the cost over 24 months to have lesser financial impacts on organizations. Another commenter wrote that extending the period to 36 months would ensure compliance and alleviate administrative burdens and that some agencies in urban areas have many counselors to get through the process and those agencies in rural areas with potentially fewer resources will need more time to allocate the expense of obtaining the certification.

HUD Response: In response to concerns raised by commenters, individuals, and agencies will now have 36 months from when HUD begins administering the examination to be in compliance with the certification requirements. The examination will become available upon publication of a Federal Register notice. Until the 36-month period for becoming certified expires, individuals who have not yet been HUD certified may still continue to provide housing counseling services. However, after the expiration of the 36-month period, only those individuals who have met HUD's certification requirements may provide housing counseling services under HUD programs, including HUD's housing counseling program. In addition, no housing

counseling required by or provided in connection with all HUD programs may be provided after the 36 months unless it is delivered by a HUD certified housing counselor.

The 36-month period will provide sufficient time for housing counselors to study for and pass the examination. Prior to the date of publication of this final rule, the materials specific to the certification examination, including a sample test, will be available. The certification test will become available upon publication of a notice in the Federal Register.

Comment: Grace Period for Agencies with Staffing Changes. Several commenters wrote that the certification requirement will have detrimental impact on agencies when staff changes, especially for smaller agencies with only one or two counselors. The commenters asked that a reasonable grace period be implemented to allow new staff to become certified without agencies losing their approval or their ability to draw down grant funds, and many commenters recommended a 12-month grace period. A few suggested that 6 months would be sufficient to allow uncertified counselors to see clients and perform day-to-day tasks to enhance learning and productivity. Another commenter suggested allowing for a grace period will provide time for agencies to hire HUD certified staff or allow their current counselor time to gain 6 months of experience and pass the examination.

Commenters stated HUD should clarify the process to ensure that agencies can continue to operate and not lose certification status or be placed on probation if counselors do not pass the housing counseling certification examination, and agencies should get at least a 90-day grace period to cure the situation. A commenter recommended a temporary inactive agency list for those that are HUD-approved but do not have a HUD certified housing counselor at the time, so they do not have to go through the difficult work of being approved again.

Commenters recommended that, under proper supervision, new housing counselors should be exempted from the requirement that all staff providing homeownership or rental counseling required under or in connection with Other HUD Programs must be certified by HUD. Alternatively, many commenters stated that the final rule should encourage the entry of potential housing counselors into the field and allow new hires to work as apprentices or trainees under the supervision of a HUD certified housing counselor. A commenter stated that a trial period allows for practical implementation of providing services when faced with staff turnover or expansions given it is unlikely that applicants for positions will already be certified. Commenters recommended HUD provide new housing counselors time to develop knowledge before taking the written examination. Some commenters recommended that this timeframe for new counselors be a minimum of 60 days to 90 days, while others recommended 6 months to 1 year to gain experiential knowledge before requiring them to take the examination without risk of de-certification of the agency. Some commenters believe 12 to 24 months is needed.

Other commenters wrote that the organization may not be able to afford the cost of maintaining an employee during the time it will take for them to become certified. A commenter recommended that the same standards be adopted as the National Industry Standards for Homeownership Education and Counseling (NISHEC), and HUD should allow 18 months for a new counselor to be fully certified.

A few commenters stated that new counselors in their agency need a NeighborWorks® Center for Homeownership Education and Counseling (NCHEC) certification prior to taking the HUD examination to understand housing counseling concepts, but NeighborWorks® Training Institutes are only held every quarter.

HUD Response: HUD is implementing a statutory requirement, which requires that all counselors providing homeownership or rental counseling required under or provided in connection of HUD programs must be certified. New counselors are also subject to this requirement. A non-HUD certified housing counselor may continue to provide counseling services up to 36 months following the start of HUD administering the certification examination. After the expiration of the 36-month period, only those individuals who meet HUD's certification requirements may provide housing counseling services under HUD's Housing Counseling Programs and for HUD's programs. An individual who has not passed the certification examination may work for an HCA and assist certified housing counselors but may not provide housing counseling or oversee the group education sessions.

For an HCA to remain compliant with the HUD Housing Counseling Program, all housing counseling must be provided by a HUD certified housing counselor. If a situation occurs in which an HCA's only certified housing counselor is no longer employed with the agency, HUD will allow the agency to be placed in inactive status, consistent with § 214.200, for a period of up to 6 months or such longer time as may be approved by HUD, to allow the agency to hire a certified housing counselor. This rule does not change HUD's existing requirement that 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. The experience requirement for housing counselors can be met by previous relevant housing counseling employment and experience. If an agency does not meet this requirement, HUD may change the agency's status to inactive, consistent with § 214.200, for a period of time, pursuant to that section, until the agency again meets the requirement that at least half the counselors must have at least 6 months of experience. Placing

an HCA in inactive status will give the HCA an opportunity, while on inactive status, to hire a new housing counselor that meets the certification and experience requirements or to ensure that an existing staff person meets the requirements.

To address the question of an agency's ability to draw down funds if an agency no longer has a HUD certified housing counselor, HUD will allow the agency to submit grant reports that support eligible costs under the applicable grant agreement, incurred during the period of time that housing counseling services were provided by a certified housing counselor, or for other eligible Housing Counseling Program expenses as determined by HUD.

Comment: Agency Certification. Commenters questioned the requirement that the agency itself must be certified, instead of just the counselors being required to be certified. A commenter recommended that the certification for agencies and counselors should be separate, because otherwise an agency's status will change any time a counselor leaves the agency, or alternatively that the rule allow for a dual certification system—a licensure for an agency, and a separate licensure for individual counselors. Another commenter recommended that in place of the "Certification of Competency" to the agency, HUD provide a "Counseling Agency Certification of Competency" when all counselors are certified.

Commenters asked for clarification on whether an agency can only achieve certification once there are counselors on staff who are certified *and* have 6 months of experience.

Commenters questioned whether the definition for being an approved housing counseling agency is limited to agencies that have only HUD certified housing counselors who have at least 6 months experience or if HUD is allowing more flexibility in this definition. Some commenters asked if the 6 months of experience could be waived if a counselor passes the certification

examination. They recommended that a counselor should still be required to follow the 6 month experience requirement because the general information on the test is not necessarily sufficient to train the counselor to do full counseling services. Other commenters asked HUD to clarify that at least 6 months of experience for a counselor can be from another housing counseling agency certified by HUD. Other commenters recommended that such certification should be made as a self-certification by the agency. Commenters suggested that HUD should reconsider the restriction that agencies have a HUD certified housing counselor on staff and at least half of their counseling staff must have 6 months of experience

Commenters also asked if all the counselors employed by the agency had to be certified in order for the agency to be certified, and what would happen if one of their counselors was not certified. Commenters asked for clarification on the proposed rule requirement that all HUD certified agencies employ “at least one” HUD certified housing counselor at all times to maintain organizational certification. A commenter recommended HUD make reasonable allowances for small and existing housing counseling agencies with strong track records to comply with the requirement to employ at least one HUD certified housing counselor at all times.

Commenters expressed concern that HUD certified housing counselors will be much sought after by counseling agencies that find themselves with a vacancy and the laws of supply and demand will result in the poaching of counselors among agencies and that the agencies will have a harder time finding a HUD certified housing counselor to fill a vacancy. Commenters requested that HUD clarify how an independent agency demonstrates that every counselor is certified. A commenter wrote that having to develop a database or report to HUD regularly could be difficult with high counselor turnover.

A commenter recommended a temporary inactive agency list for those that are HUD-approved but do not have a HUD certified housing counselor at the time, so they do not have to go through the difficult work of being approved again. Another commenter stated that any decision regarding recertification should wait until there has been an opportunity to assess the first rounds of individual certification.

Commenters asked if a new agency applying for HUD certification will need to have all housing counseling staff certified at the time of application. An agency commenter asked about opportunities that may be available for new agencies to gain HUD approval. Several commenters asked whether the same standards for HUD approval for an agency will continue to exist so as to ensure that scam artists cannot pass the HUD counselor exam, throw up a shingle and call the entity a HUD-approved or -certified counseling agency in order to prey upon consumers.

A commenter asked whether an agency that does not have its own HUD-approved housing counseling status but is a subgrantee of a HUD Intermediary is considered a HUD-approved housing counseling agency for the purposes of housing counselor certification as long as: (1) the agency remains a subgrantee; and (2) is subject to the same requirements as a HUD-approved housing counseling agency.

Commenters wrote that HUD should further clarify compliance and oversight procedures, and any possible financial penalties for noncompliance. The commenter stated that the current rule only addresses retraction of housing counseling funds, which will not apply to all organizations.

HUD Response: The proposed rule provided that, in order to maintain or obtain HUD

approval, a housing counseling agency must demonstrate that all counselors who provide counseling services for the agency are HUD certified and that upon demonstrating this the housing counseling agency would be issued an agency “Certification of Competency.” HUD carefully reviewed the comments that questioned the separate agency certification. Based on these comments, the final rule will not require that HUD issue a separate agency “Certification of Competency.” However, the final rule still requires that all counseling, including homeownership and rental counseling, performed under all HUD programs, including the Other HUD Programs and HUD’s Housing Counseling Program, must be provided by counselors who are HUD certified and who also work for an HCA, and this requirement must now be met 36 months after the examination becomes available. This final rule also maintains the requirement that, to participate in HUD’s Housing Counseling Program, an agency must meet HUD’s approval requirements at § 214.103, as amended by this rule, as evidenced either by (1) direct approval from HUD as a local housing counseling agency, multi-state organization, state housing finance agency, or national or regional intermediary, or (2) participation as an affiliate, branch, or subgrantee of a local housing counseling agency, multi-state organization, state housing finance agency or national or regional intermediary.

Beginning 36 months after the certification examination becomes available all individuals who provide homeownership and rental housing counseling required under or provided in connection with any HUD program and all individuals providing housing counseling, including homeownership and rental housing counseling, under HUD’s Housing Counseling Program must be HUD certified. Because all housing counselors who provide counseling services for an HCA must be HUD certified, if an HCA no longer has at least one certified housing counselor such

agency will no longer meet HUD requirements. To participate in the HUD Housing Counseling Program, an HCA must meet all of the approval requirements at § 214.103, as amended by this rule. If an entity applies for HUD approval, the individuals providing housing counseling as part of the agency's housing counseling work plan must have passed the certification examination as a condition to HUD approving the agency. If the agency is approved, the housing counselors who have passed the examination would be eligible for a HUD certified Housing Counselor Certificate.

An agency that is a subgrantee or affiliate of a HUD-approved intermediary or state housing finance agency is also an HCA. Any housing counseling provided by an HCA must be performed by a certified housing counselor. Individuals who work for an HCA who pass the examination will be eligible for certification. This rule does not change HUD's existing requirement that 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. The experience requirement for housing counselors can be met by previous relevant housing counseling employment and experience. The experience requirement may have been met by working as a housing counselor or by on-the-job training assisting a housing counselor for an agency that provides housing counseling services.

If an agency no longer has at least one certified housing counselor and therefore cannot meet the requirement that all housing counselors who provide counseling services for an HCA be HUD certified, the agency must notify HUD. HUD may change the agency's status to inactive, consistent with § 214.200, for a period until the agency again meets these requirements. If the agency fails to hire a HUD certified housing counselor within the initial 6 months of inactive

status, HUD may at its discretion extend the period of inactive status, or HUD may move forward with terminating the agency's approval, pursuant to § 214.201.

If an agency needs to hire an individual to conduct housing counseling, the agency need not hire only an individual who was already certified. The agency may hire an individual who has passed the certification examination and, upon being employed by the HCA, can become HUD certified and can conduct housing counseling for the agency. HUD is not restricting individuals who can take the examination to only those counselors who work for an HCA. The absence of such a restriction will allow for agencies to hire individuals who have taken and passed the examination on their own initiative, or individuals that were previously certified at another agency, in addition to those individuals who have never taken the examination. However, an individual who has not yet passed the examination may not conduct housing counseling until he or she has passed the examination and has become HUD certified.

HUD will maintain an internal database of individuals who have passed the examination along with its current HCA list. An HCA will be required to validate employment of their housing counselors who have passed the certification examination.

Comment: Post Examination Tracking and Recognition. Several commenters requested information on how HUD plans to track the certification of individual counselors so that agencies can determine that HCAs are certified agencies. Another commenter suggested HUD use national housing counseling training organizations to track the certification process nationwide.

Several commenters suggested that HUD provide a list of HUD certified housing counselors on its website, and several suggested that the list be available to consumers. Some

commenters recommended that HUD keep a list of HUD certified housing counselors and agencies so consumers can confirm certification, and that each counselor have a unique identification number to track examination results, training, and possible recertification.

Several commenters asked whether intermediaries will be responsible for monitoring certifications of subgrantees.

Commenters asked whether the certification would be portable and how long the certification will last. A commenter recommended that counselors should be able to take their certification with them from one housing counseling agency to another agency. Some commenters requested that HUD certified housing counselors only be considered certified when they are employed by a HUD-approved agency.

HUD Response: If an individual passes the examination, the individual will be notified. HUD will keep track of the individuals who have passed the examination. However, the list of individuals who passed the examination will not be published on HUD's website for access by the general public, as the requirements for certification are that the individual has both passed the examination and works for an HCA. HUD is concerned that if it publishes the names of individuals who have passed the test, but may not work for an HCA, consumers may think that an individual on the website list is certified to provide housing counseling in connection with HUD programs even if the individual is not working for an HCA.

HUD will continue to maintain the list of HCAs on its website, and consumers will still be able to visit the HUD website to verify that the agency is an HCA. HCAs will be notified by HUD, after publication of the final rule, of the process for identifying housing counselors who work for them and have passed the examination, and when such information will be required.

HUD will issue certificates that indicate the name(s) of individual(s) that have passed the examination and that also work for an HCA. The HUD Housing Counselor Certificate will have the name of the housing counselor and the name of the HCA.

The HUD certified Housing Counselor Certificate will be valid only while the counselor works for an HCA. The HCA will verify with HUD that a housing counselor works for the agency, in order for the certificate to be issued. If a HUD certified housing counselor leaves the HCA, the individual will no longer be deemed “Certified,” until the individual once again works for an HCA. HCAs will be responsible for reporting to HUD when counselors have left their employment and when new counselors are hired. HUD anticipates that this reporting will occur electronically and will provide further instructions outside of this final rule as to how such reporting will be implemented.

Although passing the certification examination is a one-time requirement regardless of employment status, a housing counselor will not be considered HUD certified when the counselor is no longer working for an HCA. Intermediaries and state housing finance agencies are responsible for ensuring that their subgrantees and affiliates follow all HUD requirements, including the requirement that all housing counseling required under or provided in connection with HUD programs be conducted by HUD certified housing counselors, as well as the requirement that the subgrantee or affiliate report to HUD if a HUD certified housing counselor is no longer in their employment.

Comment: Retaking the Examination. Several commenters inquired about the course of action to be taken if a housing counselor fails the initial examination, and how many re-examinations will be permitted and the cost associated with the re-examination. Several

commenters recommended that housing counselors who do not pass the examination be allowed to limit re-examination to the area(s) of the examination the housing counselor did not initially pass. A few commenters stated limiting re-examination to the deficient scored examination subject areas will reduce the expense associated with retaking the examination and reduce counselor examination time. Commenters indicated that housing counselors be provided an unlimited number of times to take the examination. One commenter addressed the frequency of the examination, requesting that the examination be offered on a reasonably frequent basis, be easily accessible to provide for more opportunities for certifications, and be offered on a continuous schedule. Commenters requested that housing counselor re-examination be offered within a short time period. Commenters also requested a grace period to permit the continuation of client counseling during that time period.

Commenters recommended that: re-examinations be offered at no fee; there be two and up to a maximum of three re-examinations without additional financial costs; HUD waive the fees or provide a one-time fee reduction for persons who retake the examination a second time; offer training and testing at a fee. A few commenters indicated the need for clarity in determining re-examination fees.

HUD Response: HUD has made provisions for immediate re-examination in the event the housing counselor fails the examination. However, testing schedules will depend on the availability of proctors. HUD has determined that housing counselors will need to retake the entire examination because the examination is not separated into six areas. As noted in a prior response to commenter questions, the examination cannot be divided into topic areas, nor taken by topic area. However, no restrictions or limitations will be placed on the number of times the

examination can be taken or on the frequency of re-examination. If an individual fails the examination, the individual will be notified of general subject deficiencies and topic areas to help focus their studies in preparation for retesting. Results of individual examination questions will not be provided. Because the compliance period has been extended to 36 months, HUD determined that a grace period is not necessary for housing counselors who fail the examination.

HUD is offering free online training, study guides, and practice exams, which HUD encourages individuals to use. While the preparatory training is highly recommended, the training is not mandatory.

HUD must charge a fee to cover the costs of administering the examination, but as noted earlier in this preamble, HUD is providing the study materials for free. The fee charged each time an individual takes the certification examination will be based on the cost of administering the examination. The initial cost of the examination and training is below the proposed rule's \$500 estimate. The cost for taking the examination is \$100 for online testing at the examinee's location and \$140 at a proctoring site, and the training is provided for free. If it is necessary for an individual to retake the examination, a fee of \$100 for online testing at the examinee's location and \$140 at a proctoring site will be required each time the examination is retaken. Any changes to the cost of the certification examination will be published in the Federal Register.

Comment: Retesting after Passing the Test /Continuing Education. Some commenters stated that re-examination should not be required after a housing counselor has passed the test. A commenter stated that adding a recertification component at a later date will create yet another cycle of expense and delays in service delivery. Commenters stated that they already have to track training for state and national certifications, now it would be necessary to employ someone

to just track the certifications and expiration dates. Commenters recommended that a housing counselor could be inactive for a certain amount of time but after that reinstatement would require retesting. Some commenters questioned why retesting is not required and stated that it should become a requirement. Another commenter asked for clarity about recertification after the 3-year period ends.

Commenters suggested that instead of retesting, HUD should implement continuing education requirements consistent with National Industry Standards (NIS). A commenter recommended a specific time frame for certification with additional annual continuing education credits. Another commenter recommended that to maintain the HUD certification a housing counselor should be allowed to complete continuing education and on the job training. One commenter recommended that HUD implement a continuing education requirement to ensure HUD certified housing counselors remain able to serve clients.

Commenters recommended that new requirements incorporate continuing education training for housing counselors with local community colleges and technical training centers; and several versions of continuing education, from a minimum of 30 hours of classroom time every 3 years to 15 hours every 2 years, to every year, as a continuing education requirement for counselor recertification. Another commenter wrote that HUD should require continuing education that is relevant to services identified in the form HUD-9902, while another commenter recommended that continuing education should include ethics.

Commenters stated that agencies should keep track of educational credits, and HUD should develop a portal for tracking purposes and certifying in-house continuing education programs. Commenters stated that HUD should require approved agencies to provide their own

continuing education and that HUD should create a portal to track whether agencies are providing continuing education. Another commenter encouraged HUD to offer continuing education online. Commenters also recommended that HUD wait to require continuing education until the certification has rolled out and can be evaluated, and such requirements should be subject to formal notice and comment.

HUD Response: Section 106 does not require retesting or continuing education as a requirement for a HUD certified housing counselor to maintain certification. Neither concept was included in the proposed rule because the proposed rule was meant to only implement the new Section 106 requirements. Therefore, adding retesting or a continuing education component at this point would be outside the scope of this rulemaking. HUD may take this into consideration for future rulemaking.

HUD has not changed the existing requirement at § 214.103(h) that 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. Existing training opportunities may be used to meet HUD's ongoing knowledge requirements and may be helpful to gain mastery of housing-counseling related topics or to gain additional credentials. HUD intends to continue to provide, subject to available appropriations, funding for such activities and encourages housing counselors to take continuing education courses. HUD does not currently have the resources to create a portal to track housing counselor training and will continue to expect the HCA to ensure

that housing counselor knowledge and training requirements are met.

Comment: Grandfathering Prior Certifications, Experience, or Training as Alternatives to the Examination. Commenters recommended grandfathering currently certified housing counselors who meet certain criteria, such as length of certification and level of knowledge. A commenter stated that many counselors have already attended trainings to develop specific skills (such as those of NeighborWorks® Training Institutes) and requested further guidance on whether credit from previously acquired certifications can be applied toward HUD certifications.

Several commenters asked whether HUD would recognize certifications such as those offered by NeighborWorks Training Institute, National Foundation for Credit Counseling (NFCC), Association of Independent Consumer Credit Counseling Agencies (AICCCA), National Council of La Raza Homeownership Network Learning Alliance (NHNLA), NeighborWorks Center for Homeownership Education and Counseling (NCHEC), HomeFree USA, and National Community Reinvestment Coalition (NCRC). A commenter wrote that NeighborWorks training is so comprehensive and requires continuing education, not recognizing such training, in lieu of certification, is a waste of time and resources. Another requested that HUD recognize the Homebuyer Training certification for meeting the certification requirements because it tests on the same six topics. A commenter wrote that, by HUD not accepting other trainings, HUD is making the new requirement overly burdensome for small rural and poverty stricken areas. A few commenters recommended that HUD should accept existing housing counselor certification in specific areas and only require the counselor to test in areas where they are not already certified, at a reduced cost. Commenters also stated that if grandfathering-in previous certifications is impossible, then have an extended grace period for housing counselors

who have previous, unexpired certifications. In contrast to these commenters, some commenters opposed grandfathering in housing counselors, stating that it would destroy the uniformity that would be provided for the clients the counselors are being certified to serve.

Commenters requested that HUD give experience (2-10 plus years working in a HUD certified agency) some consideration or exempt those with experience from the new requirement. Another wrote that for very experienced housing counselors it would be consistent with the Section 106 requirements to provide a waiver of the testing requirements rather than have the most experienced counselor fail a well-meaning test. A commenter recommended allowing existing, experienced housing counselors to take an examination to demonstrate their current competencies and be certified.

Several commenters asked whether HUD would allow housing counselors to continue to complete other certifications in addition to the HUD Housing Counselor Certification. Another commenter asked if a housing counseling agency should hold off either recertifying other housing counselor certifications or having housing counselors receive new certifications from other entities before the final rule is published.

HUD Response: Under this final rule, HUD defines a HUD certified housing counselor as a housing counselor working for an HCA and certified by HUD as competent to provide housing counseling services pursuant to this part. HUD appreciates the work and training provided by all of the agencies providing training and national certifications. HUD also appreciates the years of experience many housing counselors have. However, Section 106 requirements are clear that HUD provide its own training and a certification examination to certify all housing counselors providing housing counseling for HUD's programs. The statute provides no exemptions or

“grandfathering” of counselors for certification purposes. Thus, every housing counselor must take and pass the written examination in order to be certified. HUD cannot permit non-HUD certified housing counselors to provide counseling that must, by statute, be provided by certified housing counselors.

Housing counselor training and certification in other areas enhances knowledge and skills and improves the quality of counseling. HUD recommends that housing counselors continue to seek other training and certifications. Existing training opportunities may be used to meet HUD’s ongoing knowledge requirements and may be helpful to gain mastery of housing counseling related topics or to gain additional credentials.

Housing counselors are not required to take HUD’s training before taking the certification examination. However, HUD does recommend that all counselors, regardless of experience, complete the training for the examination, as that will contribute to the counselors’ understanding of what is required by the Housing Counselor Certification Examination.

Comment: Test Preparation. A commenter stated there should be early, ongoing online training for housing counseling certification to reduce costs. Commenters wrote that the test preparation should be free, voluntary, easily accessible, and readily available; include practice tests, online study guides, an education track, and e-learning courses, and be offered in a variety of methods and languages, including in-person and online. A few commenters asked for an opportunity to provide public comment on the training materials to ensure the topics are applicable to housing counseling services on the ground. Commenters also requested that HUD provide detailed curriculum and training resources by the effective date so counselors could have the entire year to prepare for the examination. Commenters also wrote that the HECM test guide

is not a good model because the HECM test guide does not reflect the materials on the test nor was it relevant to the current HECM test.

A commenter requested that HUD publish frequently asked questions (FAQs) on the examination and the content. Other commenters recommended HUD provide a space for counselors to share information on topics that will be on the test for those who may not take the training classes to help assist in studying for the examination.

HUD Response: HUD has created extensive training for the Housing Counselor Certification Examination, which is currently available. The training includes a no-cost interactive online training course and a downloadable study guide. A practice test, to help housing counselors prepare for and pass the examination, will be made available prior to the availability of the certification examination. The materials will meet the Rehabilitation Act's Section 508 accessibility guidelines. The study guide is also available for download onto multiple types of electronic devices.

The rulemaking process did not allow for HUD to consult with stakeholders as to the content of the training and the examination prior to publication of the final rule. However, after publication of this rule, HUD welcomes feedback regarding the training and the examination, which may be submitted to the housing counseling certification website or by sending an email to housing.counseling@hud.gov and including *Certification* in the subject line.

HUD plans on providing a list of FAQs on the HUD website and on the examination website.

Comment: Administering Training. Commenters recommended that local trainings be provided, and webinars should not take the place of group training. Commenters asked about

qualifications of trainers and who will provide the training. Several commenters provided recommendations for trainers including housing counselors from across the nation, housing counseling training entities, and training vendors. One commenter recommended utilizing regional and local agencies to help train on different state and local regulations and conditions. Another commenter suggested that the training coincide with national conferences of HUD's approved intermediaries. A commenter recommended that, as with the mortgage lending industry, it is best practice to have more than one approved training provider to help prepare counselors for the test.

A few commenters requested that HUD provide additional funds to state housing finance agencies, major metropolitan cities, or existing training institutes, including NeighborWorks, National Council of La Raza (NCLR), and National Reinvestment Coalition (NCRC), to provide training for certification in the areas identified by HUD.

HUD Response: Under Section 106, the Office of Housing Counseling must contract with one entity to develop training specifically for the housing counseling certification. HUD selected a qualified entity to administer and prepare the training, as described in section IV. HUD has determined that the most effective and accessible option to housing counselors for examination preparation is through a free online, interactive, and self-paced training. For those individuals that prefer a textbook style of learning, HUD is also offering a downloadable study guide. HUD will not be providing in-person training for the examination.

HUD provides funding for housing counselor training through the Housing Counseling Program's training grants. Training grantees used funds in the 2013 and the 2014 and 2015 grant cycles to provide general training on the six topic areas stated in Section 106, in addition to other

training for housing counselors. Subject to need and to available appropriations, HUD may continue to provide funding through training grants for this purpose.

Comments: Who needs to be Certified: Several commenters had questions concerning the applicability of HUD's certification rule to state housing finance agency staff overseeing a Housing Counseling Program or providing direct housing counseling services or both. Additional commenters had questions about who should be taking the housing counseling certification test. A commenter asked if home buyer education must be provided by a HUD certified housing counselor, and another sought clarification on whether educators must be certified to offer group counseling.

Other commenters recommended exempting from the certification requirement agencies whose housing counselors provide only reverse mortgage counseling or another single area of recognized housing counseling. Some commenters sought clarification on whether HECM counselors will need to be tested.

A commenter requested that attorneys with separate standardized certifications be allowed to provide housing counseling services without being required to separately qualify under HUD's rule. One commenter requested that HUD add a limited provision in the certification rule that provides that housing counseling funds may be available for legal services attorneys who meet certain requirements and work with HUD certified housing counselors. Other commenters asked whether applicability of HUD's rule was limited to agencies receiving HUD funding for housing counseling services or only counseling funded by HUD grants. In addition, a commenter recommended that only housing counseling reported on the Housing Counseling Activity Report Form 9902 be required to be performed by a certified housing

counselor.

HUD Response: HUD reiterates that all staff of entities providing housing counseling to clients, including HCAs participating in HUD's Housing Counseling Program and staff of state housing finance agencies, must be certified. Staff of entities who deliver housing counseling services required under or provided in connection with Other HUD Programs, will also have to be certified and as a result their employers will have to become HCAs before the final compliance date. Staff of entities whose roles are limited to funding, overseeing or administering a housing counseling program and who do not provide housing counseling services directly to clients are not required to become HUD certified housing counselors, and these entities are not required to become HCAs.

Section 106 does not authorize HUD to exempt housing counselors who provide a single type of housing counseling, or counselors who provide HECM or other types of reverse mortgage counseling exclusively, from the housing counselor certification requirements of this final rule. As discussed earlier in this preamble, all HECM Roster requirements continue to apply, pursuant to the statutory requirements of sections 255(d) and (f) of the National Housing Act and regulatory requirements at 24 CFR part 206, subpart E. All HECM counselors must meet the certification requirements of this final rule. Housing counselors and housing counseling agencies successfully meeting HUD certification requirements may still limit the counseling they provide to a single type of counseling, such as reverse mortgage counseling or rental counseling.

HUD cannot exempt attorneys who provide housing counseling under HUD's Housing Counseling program from the certification requirements.

Comment: Delay Implementation. Commenters wrote that HUD should delay

implementation to determine whether the language in the President's budget will be enacted so experience can be substituted for the examination and other entities could provide the examination. Commenters wrote that by waiting it would save potential costs in time and dollars.

HUD Response: Section 106, as amended, is the law until changed. HUD cannot delay implementation of this rule based on the possibility that a change to that law could be enacted at a future date.

Comment: New Requirement for Broader Counseling. Other commenters wrote that agencies should have discretion based on capacity and mission to provide services in specific areas rather than have HUD dilute counseling that is currently being provided by masters (i.e., subject matter experts) in a specific area. Another commenter requested that HUD clarify whether the new rule requires counseling agencies to offer all broad-based services if outside their chosen scope of work. The commenter wrote that this requirement could be an undue hardship and force critical smaller nonprofits out of the industry and that such smaller nonprofits offer geographic specific information necessary for foreclosure prevention and rental assistance through in-person counseling, unlike some larger nonprofits that offer only national phone counseling.

Commenters also stated that agencies should and are making referrals to other qualified HUD-approved agencies to address a consumer need that the agency currently does not cover.

HUD Response: This final rule does not require that a housing counseling agency provide services in all areas or that housing counselors change their specializations. The new certification assures baseline housing knowledge through a single, government-issued national credential. The requirement that all housing counselors have this base of knowledge in the six

areas will ensure that counselors that specialize will have the knowledge to make appropriate referrals for clients that have housing issues beyond the scope of the services that a housing counselor is providing.

Comment: What is a Housing Counseling Session. Commenters requested that HUD clarify what constitutes a session with regard to providing counseling, in contrast to education, and emphasized the innovative ways the industry is growing. In addition, the commenters wrote that HUD should take into consideration that the most important aspect to effective housing counseling is a one-on-one engagement.

HUD Response: The existing regulation at § 214.3 defines counseling with a Housing Counseling Program as 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 downpayment, 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 housing counseling shall involve the creation of an action plan. HUD agrees that one-on-one engagement is important, and the definition specifies that it involves counselor-to-client assistance that addresses unique financial circumstances or housing issues.

D. Requirements Relating to Housing Counseling Grant Funds § 214.311.

Comment: Misuse of Housing Counseling Grant Funds. Some commenters requested that HUD define the terms “material violation” or “misuse.” A few commenters requested that HUD define material violation as something intentional and nontrivial. A commenter wrote that adding

a definition would lower the number of violations committed by agencies and provide a clearer understanding for agencies. Another commenter requested HUD clarify the language to require intentional misuse of funds.

Commenters requested that a material violation only be considered where there is purposeful disregard for regulations rather than where inadvertent errors have occurred or where good faith efforts have been made to comply with regulations. Commenters wrote that the misuse of funds provision is too severe a penalty for an unintentional misuse of funds. One commenter provided an example when his agency incorrectly charged the HUD account for providing counseling outside their service area, realized it during an audit, and then reimbursed HUD. The commenter wrote that under the regulations as drafted such an action could prohibit a good housing counseling agency from ever participating in the competitive grant program.

Commenters wrote that if the error was in good faith then under certain conditions the agency should again be eligible for funds.

Some commenters wrote that misuse of funds should not bar an entire agency until an investigation is complete. Commenters also requested that after an agency approval is revoked a process for recertification after the necessary safeguards are in place should be permitted. In addition, commenters recommended that if an individual employee misuses funds there should be a way for the agency to remedy the situation and continue to receive funds and serve its community. Commenters also stated that the process for remedying misuse and having access to funds again is extremely important for rural areas.

Commenters requested that HUD clarify the effect of the violation and the role of HUD certified intermediaries. Specifically, the commenters asked HUD to discuss the role of the

intermediary during an investigation and whether any of its funds will be frozen during this investigation of a subgrantee. Another commenter requested clarification as to whether the intermediary will be responsible for returning the portion of overhead grant funds that the intermediary spent associated with administering the grant and will the intermediary be punished or not eligible for funds. The commenters noted that this clarification will help strengthen the relationship between HUD and intermediaries.

HUD Response: HUD appreciates the commenters concerns regarding intentionality and good faith but will make a determination of whether a violation is material based on individual circumstances using procedures outlined in the relevant grant agreement. The new requirement is consistent with the HUD policy that intermediaries and grantees share responsibility for their subgrantees' use of funds and all HCAs are responsible for their employees.

Comment: Violation of Federal Election Law. Commenters requested clarification on how HUD plans to check for compliance around the new requirement related to a violation of Federal election laws. The commenters recommended that instead of having to create a database HUD should require agencies to sign an annual representation or warranty statement for the process.

HUD Response: Like all other requirements, agencies participating in HUD's Housing Counseling program must ensure that they are in compliance with the requirement related to a violation of Federal election laws. In addition, organizations that are applying for approval to participate in the HUD Housing Counseling Program are reviewed to determine if they are in compliance with the approval requirements at § 214.103, including that they are in compliance with § 214.103(c) related to ineligible participants. Compliance with the requirement related to a

violation of Federal election laws will be enforced in the same manner as existing program requirements. HUD intends to provide further guidance on this provision.

E. Recommendations: Other suggestions for the Housing Counseling Program.

Comment: Require Broader Housing Counseling. A few commenters discussed the need to support more housing counseling services. One commenter suggested HUD require ongoing housing counseling for homebuyers beyond a 1-hour session to help avoid foreclosure. The commenter suggested that each new homeowner be required to attend classes for at least 8–10 sessions and once-a-year counseling after buying a home. The commenter suggested HUD explore incorporating a more comprehensive approach to housing counseling, such as requiring homebuyers to attend prepurchase counseling, prior to purchasing a home with a federally insured mortgage, followed by post-purchase follow-up and continuing education sessions.

HUD Response: This rule is not addressing the protocol for prepurchase homeownership counseling, which is outside of the scope of this final rule.

Comment: Public Education and Outreach. A commenter recommended HUD undertake a public education and outreach campaign to educate consumers about working with a legitimate HUD certified housing counselor who is currently employed by an HCA, in order to avoid misunderstanding and the potential for fraud.

Another commenter requested that HUD provide a webinar explaining the need for the certification, whether it is optional, and a basic overview of the housing counseling certification rule and key pieces to the rule.

HUD Response: HUD agrees that public education and outreach to housing counseling agencies is important. At the time of publication of this final rule, and subject to available

resources, HUD will provide webinars and other guidance for entities and individuals affected by this rule. HUD will also work with housing counselors and HCAs to help educate the public about the dangers of scams and the benefits of working with a HUD-approved housing counseling agency and a HUD-approved housing counselor.

Comment: Background/Credit checks. Some commenters recommended that, in addition to testing, housing counselors pass a criminal background check. Another commenter wrote that often housing counselors have access to sensitive information and it is important that new hires have not engaged in criminal activity in the past that may put clients in jeopardy.

Another commenter recommended that housing counselors be required to have a minimum credit score as a condition of employment, because many people in the industry have not mastered the information themselves.

HUD Response: HUD agrees that it is important that housing counselors not have been convicted of certain offenses relevant to their positions as housing counselors. The existing regulation on ineligible participants at § 214.103(c) already provides that an agency, including any of the agency's directors, partners, officers, principals, or employees, must not be: (1) suspended, debarred, or otherwise restricted under HUD'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); or (3) subject to unresolved findings as a result of HUD or other government audit or investigations. All agencies participating in the HUD Housing Counseling Program are currently responsible for ensuring compliance with this requirement. In addition, agencies that are applying for approval to

participate in the HUD Housing Counseling Program and persons in a position of trust with these agencies are reviewed to determine if they are in violation of Housing Counseling Program regulations and other requirements.

An individual's personal credit score is not an element that is part of the criteria for becoming a HUD housing counselor.

Comment: Social Benefits. A commenter stated that the social benefit cannot be weighed until the examination is available for comment.

HUD Response: The certification examination will ensure that counselors have a comprehensive knowledge of the six areas identified in Section 106. HUD certified housing counselors will have the additional knowledge to provide to those they counsel, and the clients will have the additional information to make better housing decisions. Once examinations have commenced, HUD will, on an ongoing basis, evaluate feedback on the examination and will revise the examination if needed. Additional evaluation of the benefits of this rule can be found in Section VI of this preamble.

Comment: HUD's Housing Counseling Handbook. A commenter recommended that HUD provide an update to the HUD Handbook 7610.1 REV-5 to account for the requirements for the "comprehensive counseling services" since HUD has specified the six defined areas that all housing counselors must be proficient in and added the requirement that housing counselors pass the Housing Counselor Certification Examination. The commenter also recommended that HUD revise the handbook to account for any additional education and/or counseling topics that must be completed in the session with the client.

HUD Response: HUD agrees. HUD will at a later date update the HUD Handbook

7610.1 to reflect the new requirements contained in this final rule. This final rule does not change the types of counseling services that may be offered by HCAs.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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. This rule was determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order, but not an economically significant regulatory action, as provided under section 3(f)(1) of Executive Order 12866.

As discussed in this preamble, this rule revises HUD’s Housing Counseling Program regulations to adopt, through regulatory codification, the new requirements established in Section 106. The Section 106 amendments established the Office of Housing Counseling and gave the office the authority to establish, administer, and coordinate all regulations, requirements, standards, and performance measures related to housing counseling. In addition, the Section 106 amendments require the certification of entities and of individual housing

counselors providing housing counseling services required under or in connection with all HUD Programs. Under Section 106, “certification” means specifically taking and passing an examination, administered by HUD, that tests knowledge on six aspects of housing counseling. While the Section 106 amendments introduced new requirements that a broader group of entities and individual housing counselors must be certified, the Housing Counseling statute has always required that approval or certification by HUD of either counseling agencies or individual counselors must be implemented through regulation. HUD already reviews and approves housing counseling agencies that voluntarily seek participation in the Housing Counseling Program. However, the requirement on Other HUD Programs is incorporated in HUD’s general requirements in part 5, as well as some program specific regulations.

This rule adds the certification of individual counselors and that Other HUD Programs providing homeownership counseling and rental housing counseling, as defined in Section 106, become, partner with, or use an entity participating in HUD’s Housing Counseling Program to deliver housing counseling services. HUD has attempted to minimize the costs of this regulation to individual counselors and entities. The training for the Housing Counseling Certification Examination will be free and the examination will cost \$100 for online testing at the examinee’s location and \$140 for an on-site proctoring center examination. Currently, there are approximately 2,070 HCAs, with an estimated 7,245 individual counselors. At an estimated average cost of \$120 per counselor to take the examination required for certification, the initial cost for housing counselors working for HCAs would total approximately \$869,400. HUD also estimates that 20 percent may not pass the examination the first time, and adds an additional \$252,960 for those that retake the examination. HUD estimates approximately 880 entities

counseling in Other HUD programs will need to either: (1) become HUD-approved housing counseling agencies that employ HUD certified housing counselors, (2) create partnerships with HCAs using certified housing counselors to deliver housing counseling services on their behalf, (3) stop providing housing counseling services, or (4) otherwise modify their program to comply with this rule. Given the options provided to these entities in Other HUD Programs and the benefits of being part of the Housing Counseling Program if chosen by those entities that are not currently HCAs, HUD only includes in its analysis the cost of the certification examination for the employees of these entities that might pursue the certification. HUD estimates that 45 percent of the 880 entities will become a HUD-approved housing counseling agency, or choose to affiliate with an existing intermediary or state housing finance agency or partner with an HCA. HUD estimates three counselors per each of these agencies with an estimated average cost of \$120 per counselor taking the examination required for certification within the compliance period, totaling approximately \$142,560.

As for training for the Housing Counseling Certification Examination, the training is estimated to take approximately 11 hours to complete and HUD estimates that 80 percent of test takers will be housing counselors that take the training and may experience lost wages. The average housing counselor makes on average \$37,000 annually²¹ for 2080 hours worked, which equates to an hourly salary of \$17.79 or a rounded loaded wage of \$36.00 an hour.²² The approximate lost wages for a housing counselor undergoing 11 hours of training would be \$396

²¹ The average salary for a housing counselor comes from http://www.payscale.com/research/US/Job=Housing_Counselor/Salary.

²² Multiplying the average salary times two to arrive at a loaded wage and rounding up from \$35.58.

and for the 6,746 counselors approximately \$2,671,420.

Thus, the total initial compliance cost of the regulation in the 36 months entities have to be in compliance is estimated to be \$3,936,340. Subject to available appropriations, comprehensive Housing Counseling Program grant funds may be used by grantees to help reduce the costs of compliance with standards and of the examination.

Other statutory changes to improve the effectiveness of housing counseling include increasing the breadth of counseling services so that the services are comprehensive with respect to homeownership and rental counseling. As noted earlier, the statutory mandate to provide comprehensive homeownership and rental counseling is not a significant change to HUD's pre-Section 106 Housing Counseling Program. HUD's Housing Counseling Program currently provides comprehensive homeownership and rental counseling.

The compliance costs of the rule are examination costs that primarily must be borne by the individuals becoming certified. There may, however, be indirect impacts on HCAs that decide to pay for the cost of certification. There will also be some costs to those entities that decide, amongst the four alternatives, to become an HCA and an estimate of the costs has been discussed above. The compliance cost in the proposed rule was estimated at \$4 million in the first year and less in succeeding years, for an annualized compliance cost over 5 years of \$1.0 million (\$0.96 million). The compliance cost of the final rule is estimated to be approximately \$3.9 million in the initial compliance period (3 years) plus \$920,620 for year 4 and 5 for new individuals in the housing counseling industry, for an annualized compliance cost over 5 years of \$1,148,250. Most of the cost will be incurred only once.

The rule generates substantial benefits to all parties that entirely or partially offset the

cost. The benefits to the prospective homebuyer or existing homeowner is the more efficient and effective delivery of housing counseling services if, as a result of the certification process, one counselor may be able to assess all questions of the prospective homebuyer or existing homeowner, or make a more effective referral in order to help the client overcome housing barriers. Entities that currently conduct housing counseling but do not meet HUD standards will have the benefits of a better quality program, with access to public and private funding sources that limit eligibility to HCAs. The value of the HUD-approved HCA label is significant, and entities will be able to use their status in marketing their programs to clients and funders. These entities will have unique access to downpayment assistance programs, and public and private mortgage products that are only available to borrowers who work with HUD-approved HCAs. Individual housing counselors will also benefit from the rule. Their professional certification should make them more desirable on the job market, not only for employment with HCAs, but also for employment in other fields where the government certification will be recognized. Finally, the statutory mandate to certify individual counselors may further enhance the performance of agencies and counselors participating in HUD's Housing Counseling Program.²³

The general benefits to the borrower and the market from housing counseling are well documented by research. Consumers who received housing counseling from a HUD-approved HCA have better outcomes, including more savings, better credit, better loan modifications, and fewer foreclosures, than similar consumers who did not receive housing counseling. Some of the

²³ The Obama Administration referred individuals and families to HUD housing counseling agencies and counselors as part of the Making Home Affordable programs. See <http://www.makinghomeaffordable.gov/get-started/housing-expert/Pages/default.aspx>.

studies have quantified the benefit. In 2011, a total of 126,534 loans were modified after seeking assistance from HUD housing counselors. Statistically, borrowers who received loan modifications after receiving post-purchase housing counseling had savings of \$4,980 annually.²⁴ In addition, foreclosures prevented as a result of housing counseling have an estimated social benefit of \$40,730.²⁵ HUD believes that housing counselor certification requirements increase assurance of a more knowledgeable housing counselor for the consumer. Certified housing counselors are expected to lead to better identification of issues, higher quality referrals, and even better resolution of client barriers to stable housing, as well as a greater ability to avoid discrimination and scams. It is not possible to project the actual value to the consumer of a certified counselor compared to the state of current counselor knowledge which is often regulated by State requirements. Consequently, HUD expects the benefits of this rule to equal the projected compliance costs if 140 loan modifications are made and 125 foreclosures are avoided over 5 years as a result of this rule.

Regulatory Flexibility Act

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

²⁴ National Foreclosure Mitigation Counseling Program Evaluation Final Report, Rounds 3 Through 5, Prepared by Kenneth M. Temkin Neil S. Mayer Charles A. Calhoun Peter A. Tatian with Taz George, Prepared for NeighborWorks® America (Urban Institute: September 2014).

²⁵ An analysis HUD's Office of Policy Development and Research found that the total "deadweight" loss per foreclosure prevention cost is approximately \$40,730. (See http://www.huduser.org/periodicals/cityscape/vol14num3/Cityscape_Nov2012_impact_lim_sellers.pdf, at page 219.)

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would revise the regulations governing HUD's Housing Counseling Program to reflect changes to the program made by the Section 106 amendments.

The key changes made to the Housing Counseling Program by this rule are the requirement that individual housing counselors must be certified as skilled to provide counseling in HUD's Housing Counseling Program, and that Other HUD Programs providing homeownership counseling and rental housing counseling, as defined by the Dodd-Frank Act, become part of or use an entity participating in HUD's Housing Counseling Program to deliver housing counseling services.

HUD examined a number of alternatives to minimize the burden of the Dodd-Frank Act and the regulations. In order to minimize costs and administrative burden on entities and individuals, HUD has provided a free website offering training for the examination, structured its testing program to substantially reduce the cost of the examination from the initial proposal of \$500, and made the costs of training for the examination an eligible use of HUD Housing Counseling Grants. This rule also provides for a 36-month period after availability of the certification examination to give time for entities to come into compliance.

Accordingly, given the additional time for individual counselors to be certified and for the funding made available to assist in meeting the core areas specified by statute for certification, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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 or 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 rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

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 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 214

Administrative practice and procedure; Loan program-housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants,

Grant programs-education, Grant programs-housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements

24 CFR Part 578

Community development, Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 1006

Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Hawaiian Natives, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 5, 92, 93, 214, 570, 574, 576, 578, and 1006 as follows:

PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-162, 119 Stat. 3051 (42 USC 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

2. In § 5.100, add alphabetically the definitions for “Homeownership counseling,” “Housing counseling,” and “Rental housing counseling” to read as follows:

§ 5.100 Definitions.

* * * * *

Homeownership counseling means housing counseling related to homeownership and residential mortgage loans when provided in connection with HUD’s Housing Counseling Program, or required by or provided in connection with HUD Programs as defined in § 5.111. Homeownership counseling is housing counseling that covers the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including financing, refinancing, default, and foreclosure, and other financial decisions) and the sale or other disposition of a home.

* * * * *

Housing counseling is independent, expert advice customized to the need of the consumer to address the consumer’s housing barriers and to help achieve their housing goals and must include the following processes: intake; financial and housing affordability analysis; an action plan, except for reverse mortgage counseling; and a reasonable effort to have follow-up communication with the client when possible. The content and process of housing counseling

must meet the standards outlined in 24 CFR part 214. Homeownership counseling and rental counseling are types of housing counseling.

* * * * *

Rental housing counseling means counseling related to the rental of residential property, which may include counseling regarding future homeownership opportunities when provided in connection with HUD's Housing Counseling Program, or required under or provided in connection with HUD Programs as defined in § 5.111. Rental housing counseling may also include the decision to rent, responsibilities of tenancy, affordability of renting and eviction prevention.

* * * * *

3. Add § 5.111 to read as follows:

§ 5.111 Housing counseling.

(a) Any housing counseling, including homeownership counseling or rental housing counseling, as defined in § 5.100, required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 1701x.

(b) For purposes of this section, required under or provided in connection with any program administered by HUD means:

(1) Housing counseling required by statute, regulation, Notice of Funding Availability (NOFA), or otherwise required by HUD;

(2) Housing counseling that is funded under a HUD program;

(3) Housing counseling that is required by a grantee or subgrantee of a HUD program as a condition of receiving assistance under the HUD program; or

(4) Housing counseling to which a family assisted under a HUD program is referred, by a grantee or subgrantee of the HUD program.

PART 92 – HOME INVESTMENT PARTNERSHIPS PROGRAM

4. The authority citation for part 92 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701-12839, 12 U.S.C. 1701x.

5. In § 92.2, add alphabetically the definitions for “Homebuyer counseling” and “Housing counseling” to read as follows:

§ 92.2 Definitions.

* * * * *

Homebuyer counseling has the same meaning as homeownership counseling in 24 CFR 5.100, and is a type of housing counseling.

* * * * *

Housing counseling has the meaning given the term in 24 CFR 5.100.

* * * * *

§ 92.350 [Amended]

6. In § 92.350(a), remove “and drug-free workplace” and add in its place “drug-free work; and housing counseling.”

PART 93 – HOUSING TRUST FUND

7. The authority citation for part 92 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

8. In § 93.2, add alphabetically the definitions for “Homeownership counseling” and “Housing counseling” to read as follows:

§ 93.2 Definitions.

* * * * *

Homeownership counseling has the same meaning given the term in 24 CFR 5.100, and is a type of housing counseling.

* * * * *

Housing counseling has the meaning given the term in 24 CFR 5.100.

* * * * *

§ 93.350 [Amended]

9. In § 93.350(a), remove “and drug-free work” and add in its place “drug-free work; and housing counseling.”

PART 214 -- HOUSING COUNSELING PROGRAM

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

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

11. Section 214.1 is revised to read as follows:

§ 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 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. Section

106 also directs HUD to provide housing counseling services only through agencies or individuals that have been certified by HUD as competent to provide such services. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling Program will be administered, including the process by which agencies are approved and individuals will be certified to provide the homeownership and rental counseling, as defined by section 106. These regulations apply to all agencies participating in HUD's Housing Counseling Program, and to all organizations or entities that deliver housing counseling, including homeownership counseling or rental housing counseling, required under or provided in connection with HUD programs.

12. In § 214.3, remove the definition of “HUD-approved housing counseling agencies” and add alphabetically the definitions of “Homeownership counseling,” “Housing counseling,” “Housing counseling grant funds,” “HUD-approved housing counseling agency,” “HUD certified housing counselor,” “Nonprofit organization,” “Rental housing counseling,” “State,” and “Unit of general local government” to read as follows:

§ 214.3 Definitions.

* * * * *

Homeownership counseling. See definition at 24 CFR 5.100.

Housing counseling. See definition at 24 CFR 5.100.

Housing counseling grant funds. Grants awarded to participating agencies under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x).

* * * * *

HUD-approved housing counseling agency. 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 and 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)), to provide housing counseling services to clients directly, or through their affiliates or branches, and which meet the requirements set forth in this part.

HUD certified housing counselor. A housing counselor who has passed the HUD Certification examination, works for a participating agency, and is certified by HUD as competent to provide housing counseling services pursuant to this part.

* * * * *

Nonprofit organization. Shall have the meaning given in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply.

* * * * *

Rental housing counseling. See definition at 24 CFR 5.100.

* * * * *

State. Each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, or any other possession of the United States.

* * * * *

Unit of general local government. Any city, county, parish, town, township, borough, village, or any other general purpose political subdivision of a State.

7. In § 214.100, revise paragraph (a) to read as follows:

§ 214.100 General.

* * * * *

(a) Approval. The approval of a housing counseling agency and the certification of a HUD certified housing counselor does not create or imply a warranty or endorsement by HUD of the approved agency, or its employees, including counselors, to a prospective client or to any other organization or individual, nor does it represent a warranty of any housing counseling provided by the agency or a HUD certified housing counselor working for an agency. Approval means only that the agency has met the qualifications and conditions prescribed by HUD, and a HUD certified housing counselor only means the housing counselor has successfully passed an examination pursuant to these regulations and works for a participating agency.

* * * * *

8. In § 214.103, revise paragraph (g)(2) and add paragraph (n) to read as follows:

§ 214.103 Approval criteria.

* * * * *

(g) * * *

(2) Staff. The agency must employ staff trained in housing counseling. All staff providing housing counseling, including homeownership counseling or rental housing counseling, must be HUD certified housing counselors, and at least half the agency's counselors must have at least 6 months of experience in the job they will perform in the agency's housing counseling program.

* * * * *

(n) Certification of housing counselors. (1) In order for an agency to participate in HUD's Housing Counseling Program, all individuals who provide counseling, including homeownership and rental housing counseling, must be HUD certified according to requirements in this section.

(2) For an individual to become a HUD certified counselor, an individual must pass a standardized written examination to demonstrate competency in each of the following areas:

- (i) Financial management;
- (ii) Property maintenance;
- (iii) Responsibilities of homeownership and tenancy;
- (iv) Fair housing laws and requirements;
- (v) Housing affordability; and
- (vi) Avoidance of, and response to, rental or mortgage delinquency and avoidance of eviction or mortgage default.

(3) HUD will certify an individual housing counselor who has met the requirements of paragraph (n)(1) of this section upon verification that the individual works for a participating agency.

(4) Participating 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.

9. In § 214.300, add paragraphs (a)(7), (8) and (9) to read as follows:

§ 214.300 Counseling services.

* * * * *

(a) * * *

(7) All participating agencies that provide homeownership counseling, shall address the entire process of homeownership, including, but not limited to, the decision to purchase a home, the selection and purchase of a home, the home inspection process, issues arising during or affecting the period of ownership of a home (including, but not limited to, financing, refinancing, default, and foreclosure, and other financial decisions), and the sale or other disposition of a home.

(8) All participating agencies that provide rental housing counseling shall address issues related to the rental of residential property, which may include counseling regarding future homeownership opportunities, the decision to rent, responsibilities of tenancy, affordability of renting, and eviction prevention.

(9) As part of the homeownership counseling process, participating agencies shall provide clients with such materials as HUD may require regarding the availability and importance of obtaining an independent home inspection.

* * * * *

10. In § 214.311, revise the section heading and paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 214.311 Housing counseling grant funds.

(a) HUD housing counseling grant funds. HUD approval or program participation does not guarantee housing counseling grant funding. 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 housing counseling grant 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 by the Internet or other electronic media.

* * * * *

(c) Limitation on distribution of funds. No housing counseling funds made available under the Housing Counseling Program shall be distributed to:

(1)(i) Any organization that has been convicted for a violation under Federal law relating to an election for Federal office or any organization that employs applicable individuals. For the purposes of this section, applicable individual means an individual who is:

- (A) Employed by the organization in a permanent or temporary capacity;
- (B) Contracted or retained by the organization; or
- (C) Acting on behalf of, or with the express or apparent authority of, the organization;

and

(D) Has been convicted for a violation under Federal law relating to an election for Federal office.

(ii) For the purposes of this paragraph (c)(1), a violation under Federal law relating to an election for Federal office includes, but is not limited to, a violation of one or more of the following statutory provisions related to Federal election fraud, voter intimidation, and voter suppression: 18 U.S.C. 241-242, 245(b)(1)(A), 592-611, and 42 U.S.C. 1973.

(2) A participating agency that provides housing counseling through housing counselors who are not HUD certified housing counselors in accordance with § 214.103(n).

(d) Misuse of housing counseling grant funds. If any participating agency that receives housing counseling grant funds under the Housing Counseling Program is determined by HUD to have used those housing counseling grant funds in a manner that constitutes a material violation of applicable statutes and regulations, or any requirements or conditions under which such funds were provided:

(1) HUD shall require that, within 12 months after the date of the determination of such misuse, the agency shall reimburse HUD for such misused amounts and return to HUD any such amounts that remain unused or unobligated for use; and

(2) Such agency shall be ineligible, at any time after the date of such determination of material misuse, to apply for or receive further funds under the Housing Counseling Program.

(3) The remedies under paragraph (d) of this section are in addition to any other remedies that may be available under law.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

11. The authority citation for part 570 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

§ 570.201 [Amended]

12. In § 570.201:

a. In paragraph (e) introductory text, after the first sentence, add the sentence “If housing counseling, as defined in 24 CFR 5.100, is provided, it must be carried out in accordance with 24 CFR 5.111.”; and

b. At the end of paragraph (k), add the sentence “If housing counseling, as defined in 24 CFR 5.100, is provided, it must be carried out in accordance with 24 CFR 5.111.”

13. In § 570.482, add paragraph (c)(4) to read as follows:

§ 570.482 Eligible activities.

* * * * *

(c) * * *

(4) Housing counseling, as defined in 24 CFR 5.100, that is funded with or provided in connection with CDBG funds must be carried out in accordance with 24 CFR 5.111.

* * * * *

14. Add § 570.615 to read as follows:

§ 570.615 Housing counseling.

Housing counseling, as defined in 24 CFR 5.100, that is funded with or provided in connection with CDBG funds must be carried out in accordance with 24 CFR 5.111.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

15. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

16. In § 574.300, revise paragraph (b)(1) to read as follows:

§ 574.300 Eligible activities.

* * * * *

(b) * * *

(1) Housing information services including, but not limited to, counseling, information, and referral services to assist an eligible person to locate, acquire, finance, and maintain housing. This may also include fair housing guidance for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or

handicap. Housing counseling, as defined in § 5.100, that is funded with or provided in connection with HOPWA funds must be carried out in accordance with § 5.111. When grantees provide housing services to eligible persons (including persons undergoing relocation) that are incidental to a larger set of holistic case management services, these services do not meet the definition of Housing counseling, as defined in § 5.100, and therefore are not required to be carried out in accordance with the certification requirements of § 5.111;

* * * * *

17. Add § 574.600 to read as follows:

§ 574.660 Housing counseling.

Housing counseling, as defined in § 5.100, that is funded with or provided in connection with HOPWA funds must be carried out in accordance with § 5.111. When grantees provide housing services to eligible persons (including persons undergoing relocation) that are incidental to a larger set of holistic case management services, these services do not meet the definition of housing counseling, as defined in § 5.100, and therefore are not required to be carried out in accordance with the certification requirements of § 5.111.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

18. The authority citation for part 576 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

19. In § 576.105, add paragraph (e) to read as follows:

§ 576.105 Housing relocation and stabilization services.

* * * * *

(e) Housing counseling. Housing counseling, as defined in § 5.100, that is funded with or provided in connection with ESG funds must be carried out in accordance with § 5.111. When recipients or subrecipients provide housing services to eligible persons that are incidental to a larger set of holistic case management services, these services do not meet the definition of housing counseling, as defined in § 5.100, and therefore are not required to be carried out in accordance with the certification requirements of § 5.111

§ 576.407 [Amended]

20. In § 576.407, amend paragraph (a) by adding “and the housing counseling requirements at 24 CFR 5.111” at the end of the first sentence.

PART 578—CONTINUUM OF CARE PROGRAM

21. The authority citation for part 578 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11381 *et seq.*, 42 U.S.C. 3535(d).

22. In § 578.53, add paragraph (e)(8)(iii) to read as follows:

§ 578.53 Supportive services.

* * * * *

(e) * * *

(8) * * *

(iii) Housing counseling, as defined in § 5.100, that is funded with or provided in connection with grant funds must be carried out in accordance with § 5.111. When recipients or subrecipients provide housing services to eligible persons that are incidental to a larger set of holistic case management services, these services do not meet the definition of Housing

counseling, as defined in § 5.100, and therefore are not required to be carried out in accordance with the certification requirements of § 5.111

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PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

22. The authority citation for part 1006 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 25 U.S.C. 4221 et seq.; 42 U.S.C. 3535(d).

23. In § 1006.210, revise paragraph (a) to read as follows:

§ 1006.210 Housing services.

* * * * *

(a) Housing counseling, as defined in § 5.100, in connection with rental or homeownership assistance must be carried out in accordance with 24 CFR 5.111;

* * * * *

24. In § 1006.375, add paragraph (e) to read as follows:

§ 1006.375 Other Federal requirements.

* * * * *

(e) Housing counseling. Housing counseling, as defined in § 5.100, that is funded with or provided in connection with NHHBG funds must be carried out in accordance with 24 CFR 5.111.

Dated: December 7, 2016.

Edward L. Golding, Principal Deputy Assistant
Secretary for Housing.

Nani A. Coloretti, Deputy Secretary.

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