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24 CFR Part 214

[Docket No. FR–6215–I–02]

RIN 2502-ZA34

Housing Counseling Program: Revision of the Certification Timeline

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

ACTION: Final rule.

SUMMARY: This final rule follows HUD’s interim final rule (the interim rule) published on August 5, 2020. The interim rule extended the deadline by which participating agencies and counselors must comply with certification requirements in HUD’s Housing Counseling Program from August 1, 2020 to August 1, 2021. The reason for the extension is that due to the COVID-19 national emergency, a large number of housing counselors would have been unable to get certified by the end of the grace period, resulting in a loss of Federal funding for some HUD-approved housing counseling agencies and loss of the ability to provide counseling that is required or provided in numerous HUD programs. HUD considered public comment on the interim rule. This rule makes the interim rule a final rule, without change.

DATES: Effective date: The August interim rule (85 FR 47300) extending the August 1, 2020 counseling certification deadline is confirmed as final on [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Lorraine Griscavage-Frisbee at Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 302 Carson Street, Las Vegas, Nevada 89101, telephone number 702-366-2160 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339. Questions can also be addressed to Lorraine Griscavage-Frisbee, Office of Housing Counseling, at housing.counseling@hud.gov.

Please include “Housing Counseling Program: Date Housing Counseling Agencies Must Comply with Certification Requirements” in the subject line of the email.

I. Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106) was amended by Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, 124 Stat. 1376, approved July 21, 2010) to strengthen and improve the effectiveness of housing counseling that is required under or provided in connection with HUD programs (Section 106 amendments). The Section 106 amendments require that individuals providing housing counseling required under or provided in connection with HUD programs be certified by taking and passing an examination administered by HUD’s Office of Housing Counseling (12 U.S.C. 1701x(e)). On December 14, 2016, HUD published a final rule implementing the Section 106 certification requirements, including the requirement that housing counseling that is required by or in connection with HUD programs may only be provided by HUD certified housing counselors working for HUD-approved housing counseling agencies (HCAs) that are approved to provide such housing counseling by HUD’s Office of Housing Counseling. *See* 81 FR 90632. The 2016 final rule codified the grace period at 24 CFR 214.103(n)(4), which provides that “[p]articipating agencies and housing counselors must be in compliance with requirements of paragraph (n) of this section by 36 months after HUD commences the administration of the certification examination by publication in the Federal Register.” On May 31, 2017, HUD published a notice announcing the availability of the certification examination beginning August 1, 2017, and providing the deadline of August 1, 2020, within which all housing counselors and HCAs must satisfy the certification requirements in the final rule. *See* 82 FR 24988.

On March 13, 2020, the President declared the Coronavirus Disease 2019 (COVID-19) outbreak a national emergency, effective March 1, 2020. HUD housing counselor certification testing centers started to close in mid-March 2020, and by mid-April 2020, all 462 testing centers

had closed. In addition, all 35 HUD in-person place-based housing counselor certification trainings originally scheduled were cancelled, severely impacting the ability of all counselors and counseling agencies to be certified by the deadline. Accordingly, on August 5, 2020, HUD published an interim rule amending 24 CFR 214.103(n)(4) to announce the new compliance date as August 1, 2021 (*See* 85 FR 47300).

II. The Public Comments

The public comment period for the interim rule closed on September 4, 2021. HUD received one comment. This comment was generally supportive of the rule and stated that HUD should consider offering resources and testing beyond English and Spanish. Specifically, the comment read: “Housing Counselors who speak and serve populations who speak a language other than English or Spanish are finding it difficult to achieve certification without appropriate materials. As such, many culturally specific organizations could end up without a certified Counselor.”

HUD Response. The interim rule amended only 24 CFR 214.103(n)(4), leaving the remainder of the rule in place. The rule currently provides, at § 214.103(g)(3), that counseling agencies “must have housing counselor(s) who are fluent in the language of the clients they serve, or the housing counseling agency must use the services of an interpreter, or the agency must refer the client to another agency that can meet the client's needs.” While HUD agrees that counseling agencies should serve clients who may speak languages other than English or Spanish, HUD finds that the current regulation is adequate in this regard. Furthermore, the interim rule concerned a specific issue regarding a date by which counselors would have to be certified, and other aspects of the housing counseling regulations are outside the scope of the interim rule. Therefore, HUD is not making a change regarding its language policy.

III. This Final Rule

This final rule adopts the interim rule, published at 85 FR 47300 (August 5, 2020), without change.

IV. Findings and Certifications.

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome,” and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This final rule was not determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order, and is not expected to impose any burdens or costs, for the reasons stated in the interim rule at 85 FR 47303 (August 5, 2020).

Unfunded Mandates Reform Act

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

Environmental Review

This final rule does not (i) Direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or (ii) Establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under

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

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule allows housing counseling agencies to continue to operate as they currently do during the COVID-19 emergency. Therefore, the undersigned certifies that this final rule will not have a significant 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 and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

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

List of Subjects

24 CFR Part 214

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

requirements.

PART 214 -- HOUSING COUNSELING PROGRAM

Accordingly, for the reasons stated in the preamble, the interim rule amending 24 CFR part 214 that was published at 85 FR 47300 (August 5, 2020) is adopted without change.

Dana T. Wade,
Assistant Secretary for Housing – Federal Housing
Commissioner.

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