



24 CFR Part 214

[Docket No. FR-6388-P-01]

RIN 2502-AJ70

Modernizing the Delivery of Housing Counseling Services

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This proposed rule would update HUD’s regulations that require participating agencies to provide in-person counseling to clients that prefer this format to reflect advances in technology, align with client engagement preferences, and preserve consumer protections. The proposed rule would amend HUD’s regulations to allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that choose not to provide in-person services would be required to refer clients to local providers that provide such services, when requested.

DATES: Comment Due Date: **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested

members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

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

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: David Valdez, Senior Housing Program Specialist, Department of Housing and Urban Development, 1331 Lamar St. Suite 550, Houston, TX 77002, telephone 713-718-3178 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106) authorizes HUD’s Housing Counseling program. Section 106(a)(1)(iii) authorizes HUD to provide or contract with organizations to provide “counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of homeownership.” Section 106(a)(2) authorizes HUD to provide counseling directly or to enter into contracts with, or make grants to, and provide other types of assistance to eligible private or public organizations (including grassroots, faith-based, and other community-based organizations) with special competence and knowledge in providing housing counseling to low- and moderate-income families.

On September 28, 2007, HUD published a final rule titled, “Housing Counseling Program,” at 72 FR 55637, which established regulations for HUD’s Housing Counseling program, including 24 CFR 214.103(l), which governs requirements for housing counseling facilities, and 24 CFR 214.300, which governs basic requirements for counseling services including the setting and format for their provision. HUD’s Housing Counseling program regulations have not been amended since they were established in the 2007 final rule.

Section 214.300(a)(3) requires agencies that provide housing counseling services to provide in-person counseling services at one of the agency’s facilities or an alternate location to clients that prefer that format. When this requirement was adopted, housing counseling and education were primarily conducted locally, and the conventional wisdom was that in-person service was the most effective service delivery method. In 2020, due to ongoing public health concerns around the spread of Coronavirus Disease 2019 (COVID-19), a Temporary Partial Waiver of 24 CFR 214.300(a)(3), *In-Person Housing Counseling Requirement*, was issued and remains in effect through December 31, 2023. The waiver allows housing counseling agencies to

utilize alternative methods to conduct housing counseling and education with clients in lieu of meeting in-person. Based on feedback received during meetings with stakeholders such as the Housing Counseling Federal Advisory Committee, HUD has determined that these alternative methods are more practical, cost-effective, and accessible, and have not led to adverse compliance issues or negative financial impacts. When the waiver expires, absent rulemaking to amend HUD's regulations, participating agencies will continue to be required to provide in-person counseling services to clients.

Today, fewer clients choose in-person counseling. Consumer preference has shifted toward alternative, virtual methods of service delivery as clients often view in-person delivery as inconvenient and more burdensome when considering costs like childcare and transportation necessary to attend.¹ Almost two-thirds of research participants in a recent study conducted by HUD chose online education and telephonic counseling over in-person delivery.² Even when clients express a preference for in-person services, they initiate those services at a lower rate than do people who prefer and subsequently take up remote services.³ Increasing virtual methods of delivery can increase accessibility for those who have difficulty accessing in-person services due to linguistic, physical, or other logistical barriers.⁴ Moreover, participating agencies that maintain multiple facilities incur greater burdens and costs even as demand for in-person counseling continues to decline.

This proposed rule aims to modernize the current regulations to reflect advances in technology, to align with client engagement preferences, and to preserve consumer protections. The existing regulations also contain guardrails that will continue to mitigate the risk that some participating agencies may want to use virtual tools to expand their geographic scope but be

¹ Long Term Impact Report: The HUD First Time Homebuyer Education and Counseling Demonstration, June 2021, p. 64, available at: <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Long-Term-Impact-Report-HUD-First-Time-Homebuyer-Education-Counseling-Demonstration.pdf>.

²Id. at p. 16.

³ Id. at p. 86, footnote 86.

⁴ Id. at p. 66.

unfamiliar with an area and its resources, thereby failing to provide quality counseling and services. Regulations will continue to require that participating agencies must have functioned for at least a year in the geographical area set forth in the work plan. Further, housing counselors must possess a working knowledge of state and local housing programs available in the community. These provisions ensure that participating agencies demonstrate knowledge and a connection to the community they serve, whether they choose to do so by providing virtual, in-person, or hybrid services.

II. This Proposed Rule

Currently, 24 CFR 214.300(a)(3) requires, among other things, participating agencies to provide in-person counseling to clients that prefer this format. HUD's proposed rule would allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that choose not to provide in-person services will be required to refer clients to local providers that provide such services, when requested.

HUD's existing regulations at § 214.103(l) require participating agencies to maintain facilities (i.e., physical office space) that have a clearly identified office, with space available for the provision of housing counseling services, and provide privacy for in-person counseling. The proposed rule would provide that the participating agencies may maintain one facility and may not provide in-person housing counseling. This would help to reduce the costs of providing in-person housing counseling, but would not modify the existing requirements that participating agencies possess knowledge of the local housing market, establish working relationships with private and public community resources, and have functioned for at least a year in the geographical areas set forth in the participating agencies' work plans, all of which serve to demonstrate the agency maintains a sufficient community base.

A paragraph-by-paragraph summarized explanation and description of the proposed changes to 24 CFR part 214 are outlined immediately below.

Proposed 24 CFR 214.103(l)

HUD proposes to revise the language of paragraph (l), to modernize the requirements for maintaining a facility. HUD's proposed paragraph (l) would provide that a participating agency maintain one or more facilities. All facilities must have an identified, private space available for the provision of counseling services, whether those services are in-person or virtual.

Proposed 24 CFR 214.300(a)(3)

HUD proposes to revise the language of § 214.300(a)(3) to modernize the way housing counseling agencies provide housing counseling services. Rather than requiring that counseling services take place in-person, under this proposal, they could take place at a facility or at an alternate location or could be done via telephone, or via collaborative online software. Paragraph (3) would specify that all housing counseling agencies that do not provide in-person counseling services must refer clients to agencies that provide in-person counseling services upon a client's request.

Proposed 24 CFR 214.300(a)(4)

HUD proposes to add a new § 214.300(a)(4) that provides cross-references emphasizing that all housing counseling agencies must continue to meet requirements for approval as a counseling agency regardless of the setting or format of housing counseling services, including having functioned for at least one year in the geographical area(s) the agency identified in its housing counseling work plan, having sufficient resources to implement that proposed work plan, and being able to demonstrate knowledge of local housing markets and community resources.

III. Findings and Certifications

Regulatory Review – Executive Orders 12866, 13563, and 14094

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.

Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

The proposed rule allows counseling agencies to provide services through virtual methods of service delivery and to refer clients who prefer in-person counseling to other agencies that offer that service. HUD is not changing other requirements, for example the requirement that participating agencies demonstrate knowledge and a connection to the community they serve, and comply with state and local laws in each geographic area in which the participating agency operates. This rule was not subject to OMB review. This rule is not a “significant regulatory action” as defined in Section 3(f) of Executive Order 12866, and is not an economically significant regulatory action.

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 rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The changes described in this proposed rule would modernize the regulations governing HUD’s Housing Counseling Program to allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that do not provide in-person services would be required to refer clients to local providers that provide such services,

when requested. The proposed rule would help reduce the costs of maintaining multiple physical locations, instead shifting emphasis to demonstrating knowledge of the local housing market and community resources and whether a housing counseling agency has established a sufficient community base to operate in the area covered by its work plan. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

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

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).

Executive Order 13132, Federalism

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (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 proposed rule will not impose any Federal mandates on any State, local, or Tribal Governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control numbers 2502-0574 and 2502-0614.

List of Subjects in 24 CFR Part 214

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

For the reasons stated above, HUD proposes to amend 24 CFR part 214 as follows:

PART 214—HOUSING COUNSELING PROGRAM

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

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

2. Revise § 214.103(l) to read as follows:

§ 214.103 Approval Criteria.

* * * * *

(l) *Facilities.* All participating agencies must maintain at least one facility. All facilities must meet the following criteria:

(1) Have a clearly identified space available for the provision of housing counseling services;

(2) Provide privacy for counseling services and confidentiality of client records; and

(3) Provide accessibility features or make alternative accommodations for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

3. In § 214.300:

a. Revise paragraph (a)(3);

b. Redesignate paragraphs (a)(4) through (9) as paragraphs (5) through (10); and

c. Add new paragraph (a)(4).

The additions and revisions to read as follows:

§ 214.300 Counseling Services.

(a) * * *

(3) Counseling may take place at the housing counseling agency facility or at an alternate location, and may be conducted by telephone, or via collaborative online software. Agencies must ensure that any telephonic or collaborative online software, or any form of counseling, is accessible for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) All agencies participating in HUD's Housing Counseling program must, upon a client's request, refer clients to participating agencies that provide in-person counseling services in accordance with 24 CFR 214.303(e).

(4) Regardless of setting or format, all participating agencies must continue to meet the requirements of 24 CFR 214.103(d), 214.103(g), and 214.103(h).

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Assistant Secretary for Housing—

Federal Housing Commissioner.

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