November 25, 2013

The Regulations Division
The Honorable Helen R. Kanovsky
Office of the General Counsel
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Department of Housing and Urban Development  www.regulations.gov
24 CFR Part 214  Docket No. FR 5339-P-01
RIN 2502-AI94

Dear Ms. Kanovsky:

On behalf of NeighborWorks® America (also known as the Neighborhood Reinvestment Corporation) I want to thank the Department of Housing and Urban Development for the opportunity to provide comment regarding the “Housing Counseling Program: New Certification Requirements” published in the Federal Register on Friday, September 13, 2013.

Given that the rule is currently pending before a NeighborWorks America’s board agency, these comments have not been submitted to or approved by NeighborWorks America’s board. These comments reflect the view of NeighborWorks America management and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed in consultation with a number of NeighborWorks America’s more than 240 local and regional nonprofit affiliated NeighborWorks organizations, and, with the insight and experience garnered from others participating in NeighborWorks Center for Homeownership Education and Counseling (NCHEC) and the National Foreclosure Mitigation Counseling (NFMC) program.

 NeighborWorks America and its network are extremely effective in helping low and moderate-income families and communities. Together, NeighborWorks and its network assisted almost 305,000 families with their housing needs in FY 2012 alone, including creating 15,000 new homeowners, owning and managing 102,200 units of affordable rental housing, and providing counseling and education to 121,900 families on home-buying and homeownership preservation.
NeighborWorks America is a respected leader in housing and community development training, with 35 years of experience in the field. NeighborWorks provides professional training and certification to staff and board members of nonprofits, housing finance agencies, public housing authorities, and various municipal and state agencies. In FY 2013, NeighborWorks America awarded over 20,000 training certificates to professionals from more than 3,400 organizations and municipalities at four NeighborWorks Training Institutes, through e-learning, and at over 170 Place Based Trainings. Included in this total are 3,200 e-learning training certificates.

The NeighborWorks Center for Homeownership Education and Counseling (NCHEC) provides training and certification and continuing education for housing counseling practitioners throughout the country, as well as delivering an array of other professional tools and resources. NCHEC also develops and provides all of the training to foreclosure intervention counselors under the National Foreclosure Mitigation Counseling (NFMC) program. Further, NCHEC provides courses and online resources to promote the effective use of Home Equity Conversion Mortgages (HECM), supported by a cooperative agreement with HUD. In total, NCHEC awarded more than 10,000 training certificates to housing counseling nonprofit practitioners from more than 2,500 organizations in FY 2013.

Making sure that American families and individuals obtain sustainable lending products for homeownership is a priority issue for NeighborWorks America. Of our network NeighborWorks organizations (NWOs) 92%, or 224, help people become homeowners. The vast majority of the 224 organizations (99%) also provide homebuyer education and counseling services.

Peer-reviewed, third-party research released in March 2013 by Neil Meyer and Associates and Experian shows that working with a NeighborWorks organization when purchasing a home reduces by one-third the likelihood that homebuyers will fall seriously delinquent on their mortgages within two years of origination. Another example of independent evaluation of the positive impact of housing counseling relates to NeighborWorks America’s National Foreclosure Mitigation Counseling (NFMC) program. As of the end of October 2013, NFMC had counseled more than 1.687 million homeowners facing foreclosure since its inception in December 2007. An evaluation of the NFMC program by the Urban Institute has shown that homeowners receiving NFMC assistance are more likely to receive a loan modification, have loan modifications that result in monthly payments that are $176 less, on average, than non-counseled homeowners, and, are at least 67% more likely to remain current on their mortgage nine months after receiving a loan modification cure.
HOUSING COUNSELING PROGRAM: NEW CERTIFICATION REQUIREMENTS

The proposed rule modifies the current HUD housing counseling program by implementing the changes mandated by the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act). The Dodd Frank Act amended the program by requiring that entities and individuals providing counseling be certified by HUD as competent.

New Definitions

The rule begins by defining “HUD-approved counseling agency,” “HUD-certified housing counselor,” and “Homeownership counseling” among other terms. Some definitions have raised questions. For example, the new definition of HUD-approved counseling agency would include any nonprofit organization that is exempt from taxation under 501(c) of the IRS code. Does this definition then allow the approval of 501(c)(4)s as counseling agencies? Would that be a change to an existing definition?

We would also seek to clarify the HUD-certified counselor definition. As written, a certified counselor must be employed by a certified agency. We assume that the same standards for HUD approval for an agency will continue to exist. The final rule should strongly make this point in order 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 list of all HUD-approved/certified counseling agencies should continue to be available on the HUD website and elsewhere so that consumers can ensure they are at a legitimate agency.

Although the rule uses the term “nonprofit agency” throughout, are State Housing Finance Agencies included for the purposes of the rule? Specifically, do the rules apply to the fullest extent to State Housing Finance Agencies that employ counselors? It appears that State HFAs who apply for HUD Housing Counseling funds are subject to this rule, but it may be helpful to clarify that all entities that apply should be subject to the same certification requirements.

The rule throughout notes that the Dodd Frank Act prohibits HUD from distributing assistance for counseling activities to an agency unless the agency, or the individuals through which the agency provides counseling, have been certified by HUD as competent to provide counseling. In contrast to the statute, the proposed rule has made it a requisite that in order to be a certified agency, all counselors have to be certified, making the statute’s ‘or’ effectively an ‘and.’ As long as there is a grace period for new employees, this provision in the rule should be continued. However, if no grace period is allowed it may lead to on-going administrative and implementation problems going forward as will be outlined in other sections of this comment letter.
Counseling That Covers the Entire Process of Homeownership

The rule and underlying statute clearly state that individual counselors must be competent in all six areas listed (financial management, property maintenance, responsibilities of homeownership and tenancy, fair housing laws, housing affordability and avoidance of, and responses to, delinquency, default and eviction). Understanding the various counseling and education needs of consumers is important. The comprehensive nature, however, raises the question of whether this requirement will dilute the competency of the counselors, bringing less qualified counselors into the system and weakening the specialization skills of counselors. For example, foreclosure intervention counselors must know the same general content as pre-purchase counselors. To be an effective foreclosure intervention counselor, however, a counselor would need to build substantial expertise on mortgage modification, state law and foreclosure alternatives to serve the homeowner trying to save his or her home or to advise the homeowner on the best courses of action.

On the other hand, if certification requirements were to presume detailed, specialized knowledge in all six areas, it would be a significant amount of information for an individual counselor to know and cost-prohibitive for many agencies unless spread over a longer period of time. NeighborWorks recommends that the exam tests general knowledge in these areas, so that all qualified counselors are able to earn a general certification. Additional professional qualifications may then be earned so that counselors could specialize in areas such as pre-purchase, post-purchase, rental, financial capability or foreclosure counseling. We encourage HUD to consider requiring all counselors to obtain at least one specialization certification in addition to the core requirement as proposed in this rule. In addition, HUD could consider the specialization certifications earned when awarding grant funds under the Housing Counseling grant program.

By way of example, we note that the NeighborWorks Center for Homeownership Education and Counseling (NCHEC) offers a seven-day Homeownership Counselor training certification which involves two comprehensive courses focusing primarily on pre-purchase counseling, coupled with baseline foreclosure basics and a final exam. While these courses and exam cover some basic information on foreclosure counseling, this certification is designed to prepare individuals to be pre-purchase counselors. NCHEC also offers a separate comprehensive certification for foreclosure intervention counseling which likewise requires seven full days of foreclosure-specific training and a separate exam. The final rule could recognize different specializations such as these.

The issue of specialization also applies to agencies. The rule notes that HUD’s Housing Counseling program has always supported counseling in a comprehensive array of areas (e.g., rental, pre- and post-purchase homeownership, HECM, and foreclosure intervention). While this is true, individual agencies have not had to always offer every
kind of counseling because some offer specialized services. Although having counselors with general knowledge will be an asset and may allow agencies to pivot more easily in the future, the final rules should allow agencies to continue to specialize in certain types of counseling and not offer all types of housing counseling.

Certification to Provide Counseling

The rule requires agencies and individuals to become certified in order to provide counseling. As the counseling profession begins to comply with the final rule, there will be initial compliance issues for agencies and individuals. For example:

- If a new agency is making application to HUD for certification, will all of its counseling staff need to be exam certified at the time of application?
- If a new, not yet certified counselor joins a certified agency staff, will that impact agency certification status?
- Will there be a provisional time period for counseling staff to meet the initial certification requirement? If so, what would be the length of the provisional period?
- Can agencies only hire counselors that are already certified?
- Is the certification portable for individual counselors?
- Would the certification become invalid if the counselor worked for a non HUD-certified agency? If that is the case and the counselor returned to the HUD-certified agency, would that counselor still be considered certified? If so, should there be a time limit for the certification to remain valid between the non HUD-certified agency and the HUD-certified agency?
- How will HUD monitor counselor certification on an on-going basis?
- Will it be an Intermediary’s responsibility to monitor the certification of its sub-grantees (some of which may be Local Housing Counseling Agencies (LHCAs))?

Guidance on these questions will be very important as the counseling industry moves rapidly to comply with a final rule. Given factors such as pay scale of counselors, staff turnover and the opportunity and actual costs of training and testing, providing certainty in advance on these parameters will be imperative.

While we understand the housing counseling statute, as amended by the Dodd Frank Act, requires that all individuals providing counseling for HUD programs must be HUD certified, NeighborWorks urges HUD to provide a limited grace period to allow for full counselor certification at a HUD-approved agency, whether that is upon the initial promulgation of this rule or as new staff join or are promoted at a HUD-approved agency. This will allow uncertified new hires to shadow certified counselors prior to taking their...
own examination without jeopardizing the status of the counseling agency. NeighborWorks would also urge HUD to recognize the specialized experience certifications as outlined above.

Housing counselors that pass the exam or a possible equivalent will be certified and will receive the “Certification of Competency” from HUD. According to the proposed rule, each agency will also be issued a “Certification of Competency” to indicate that all counselors are HUD-Certified. NeighborWorks recommends using a different designation for the agency, such as “Counseling Agency Certification of Competency.”

As we recommend above, it would be helpful if HUD kept a list on the HUD website of all certified counselors and agencies so that consumers can confirm independently the legitimacy of the counseling provider. NeighborWorks also suggests that each certified counselor have a unique identification number to track his or her exam results, training and possible recertification in the future. A unique identification number may also be helpful on third party authorizations and other mechanisms and reports.

Currently, HECM-certified counselors have to register with FHA Connection, which validates the counselor and the agency. However, when a consumer searches for a HECM counselor on the HUD website, only the agency appears. For HUD-certification verification on the HUD website, it would be useful if search results returned a list of both the individual certified counselors along with the agencies with which they are affiliated. Each search could also include a note to consumers that these counselors are only considered HUD-certified when they are employed by a HUD-certified agency. This system must be kept current to accommodate the need for consumers to know which agencies and counselors are no longer certified by HUD due to non-compliance or other issues.

Another issue that raises concerns regarding employee experience is the continued requirement that “all staff….must be certified by HUD, and at least half of the agency’s counselors must have at least 6 months of experience in duties related to the agency’s housing counseling program.” Given that counselors could have worked at other agencies, this should be clarified so that experience at that agency or another housing counseling agency certified by HUD would count. In order to ensure that is the case, and given the complexity of confirming such individual experiences, it may be useful to have agencies self-certify the work experience of their counselors. Additionally, HUD should consider exceptions for small agencies, where there may be a very limited number of counselors. It is not clear if an agency will lose their certification if less than half of an agency’s counselors have six months’ experience at a given point in time. Greater clarity and certainty on the consequences of failure should be in the final rule.
Examination

The rule requires HUD to develop a meaningful test to determine the competency and knowledge of individual counselors. The exam itself raises a number of questions:

- Will there be an opportunity for existing certification programs to provide comprehensive input on what should be included in the counselor exam?
- It is important to prepare training for the exam as far in advance as possible. Existing counselors may need refresher courses, especially on topics that they have not counseled on in the past year, or perhaps ever, and agencies will have to prioritize exam prep training for new hires. How soon does HUD expect to have general content identified for the exam?
- How will the curriculum and training support counselors in preparing for and successfully passing the exam?
- Will there be a limit to the number of times a counselor is allowed to take the exam within a certain time frame?
- Will the cost be the same for retaking the exam?
- Will the counselor certification test be offered in multiple languages for bi-lingual counselors?

The proposed rule notes that HUD envisions working with existing certification programs to coordinate content, avoid duplication and increase efficiency. Allowing other substantive certifications to qualify as if they were HUD certification would be one option to strongly consider. A process for sharing information among counselors on topics that will be on the test, especially for those that may not take the training classes initially, would be helpful in assisting counselors in studying for the exam. To minimize costs to counselors and the agency, we recommend that there be an on-line option for study (e.g. webinars or other e-learning) and taking the examination. Further, HUD should consider using some counseling grant funds for scholarships or other cost saving measures to ensure the counseling training and certification test is affordable for those for whom the cost of the test may be prohibitively expensive. Finally, we would recommend that there be multiple options for test administration and multiple administrators or subcontractors if that were to facilitate the accessibility of taking the exam for the thousands of counselors seeking to comply with the final rule.

We would like to reemphasize that to the degree the Department can give a sense of what will be covered on the exam, NeighborWorks America and other education and training providers can begin to adjust courses offered as refreshers for experienced counselors or to revise their course curricula for new counselors. Sample tests or other curriculum guidance would be very useful. Understanding if the test will be uniform nationally or will differ from state to state will also be important. Given the large number of counselors to be tested, courses could begin prior to the publication of the final rule.
Continuing Education

The proposed rule notes that HUD “may consider at future point” requirements for counselors to maintain their skills and to keep up to date with housing market issues. NeighborWorks America strongly supports the inclusion of continuing education in the final rule, even if it does not take effect for three to five years. We recommend a minimum of 30 hours of classroom time (in person or online) every three years as a continuing education requirement for counselor recertification. This is aligned with NCHEC certifications and with the National Industry Standards (NIS) for Homeownership Education and Counseling.

In an industry where new or modified programs and regulations are frequent in the many specialty areas referenced in the statute, it will be critical for counselors to remain informed and current. We want to be clear, however, that we are recommending continuing education and a recertification process, not a re-examination regime.

Requirements Related to Housing Counseling Grant Funds

The rule is clear that an agency will no longer be eligible to receive funding if an agency or individual employed by an agency misuses funds. If found to be misusing the funds, the agency will have to reimburse for any misused funds; return ANY unobligated grant funds; and, be ineligible to receive housing counseling funds in the future. The rule is not clear, however, on how “misuse” is defined. It may make sense to suspend payment until an investigation of possible misuse is complete. HUD could also consider banning individuals, if, for example, a single employee misused funds. If such an employee has been terminated and the agency has added proper safeguards to ensure misuse does not happen again, we recommend that there be a process by which the agency can continue to receive funds and serve their community. This kind of process could be very important in areas with only one counseling agency such as a rural area. An option for repeated problems in one agency would be to revoke the agency’s certification and require the agency to go through approval process again once new safeguards are in place or once a third party has confirmed the proper safeguards are in place. In any case, it can be difficult for an agency to totally prevent the misuse of funds by a very sophisticated perpetrator. The important issue is what internal controls does an agency have in place to uncover the activity and what does it do once it is identified.

Violation of Federal Election Law

Given the large volume of certification-seeking counselors and agencies, it is not clear how HUD will check for compliance with provisions around federal law related to an election for federal office. It may be difficult or expensive to create a single database to check for this. NeighborWorks America suggests that agencies sign an annual...
reps/warranties statement for this process, similar to the NeighborWorks America process for the National Foreclosure Mitigation Counseling program.

**Compliance and Costs**

As many of our comments suggest, NeighborWorks America is concerned about providing adequate time for compliance with this important rule. Having a clear process and capacity in training and examinations is key to effective and successful implementation of the new certification requirements. It is not clear that one year from publication of the final rule will be enough time to certify some 2,500 HUD-approved housing counseling agencies and 8,100 individual counselors. Again, the ability to front-load relevant education and training is imperative.

The proposed rule is very clear that the costs of certification are to be primarily borne by the individuals, not the agencies. Although HUD draws comparisons to other licensed professionals, the examples may not be entirely analogous to lawyers, doctors and accountants, who by and large have a much greater earnings potential than many, if not all counselors. It seems onerous to expect counselors, who typically earn very modest salaries, to pay the cost for certification, especially if the certification is required prior to employment by an agency seeking to maintain its own certification status. By way of example, NeighborWorks America collects salary information regarding counselors in our network organizations. The median salary for network counselors is $38,000. The final rule should be clear that the compliance costs of the rule are costs that may be borne by the individual housing counselor or his or her sponsoring agency.

Those full costs of certification will vary based on training required and the number of times a counselor has to sit for the exam before passing. Additionally, there will be opportunity costs for agencies when counselor time is spent on training and testing. There will be costs for developing and adjusting training courses to accommodate both refresher content and comprehensive housing counseling training geared towards assisting counselors in passing the examinations.

The proposed rule estimates a cost of approximately $500 per counselor. This includes the cost of training, study materials and testing, and assumes web-administered certification training and testing. The rule further states that the cost will be in the lower half of the $100 to $1,200 range based on the review of five current training programs – including one at NeighborWorks America. An additional example of the HECM exam, which is available at a cost of $100 per exam attempt, is used. However, as we understand it, at least some of these training programs and the HECM exam have been subsidized by HUD to be made available at little or no cost to the counselor. It is important that this subsidy be continued in order to keep costs low for individual counselors/agencies. The rule notes that HUD has awarded $13 million in training grants since FY 2009 supporting over 12,600 counselors. That averages $1,032 per counselor.
It is likely that a continued, if not increased, level of support from HUD will be necessary to keep the costs of training and examination at $500 per counselor.

The proposed rule indicates that HUD-approved agencies may utilize some of their comprehensive grant funds to defray costs for training and certification of individual counselors. NeighborWorks America believes that allowing grant funds to be used for certification activities of counseling agencies or counselors would be desirable given the high relative costs to the individual counselors, especially during the initial compliance period.

**Background Information Regarding NeighborWorks America**

NeighborWorks America was established by Congress in 1978 as the Neighborhood Reinvestment Corporation. The Corporation receives a direct annual federal appropriation. The corporation’s Board of Directors is made up of senior representatives of the federal financial regulatory agencies (the Federal Reserve; the Federal Deposit Insurance Corporation; the Comptroller of the Currency; the National Credit Union Administration) and the U.S. Department of Housing and Urban Development.

The primary mission of NeighborWorks America is to expand affordable rental and homeownership opportunities and to strengthen communities across the United States. NeighborWorks America provides support to more than 240 local and regional community-based NeighborWorks organizations, as well as training and service to the broader community development field. NeighborWorks organizations serve urban, suburban and rural communities in all 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

**Closing Comment**

In closing, NeighborWorks America would like to thank the Department of Housing and Urban Development for issuing this proposed rule that will benefit counseling agencies, counselors and most importantly the consumers/borrowers in need of comprehensive housing counseling services and education.

Sincerely,

Eileen M. Fitzgerald
Chief Executive Officer