



November 8, 2013

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410-0500.

Re: Docket Number: FR-5339-N-02 (Docket Number on Extension in Federal Register)
FR-5339-P-01 (Docket Number on Proposed Rule); [HUD-2013-0083](#)
Docket Name: Housing Counseling Program: New Certification Requirements

Dear Sir/Madam:

The Massachusetts Association of Community Development Corporations (MACDC) supports the goals of HUD's Housing Counseling Program, first established in 1968. This Program authorizes HUD, through HUD-approved organizations, to provide housing counseling services, which include assisting eligible homebuyers find and purchase affordable homes; helping renters locate and apply for affordable rental units; helping homeowners avoid foreclosure; helping renters avoid eviction; assisting the homeless in finding shelter; and reporting fair housing complaints and addressing housing problems.

We appreciate the intent of the Dodd-Frank Act, and applaud establishment of an Office of Housing Counseling within HUD specifically devoted to administration and oversight of housing counseling agencies, individual counselors, and the counseling services offered under the program. We also support the Act's ensuring that HUD-approved counselors provide counseling covering the entire process of homeownership, from the purchase of a home to its disposition.

However, we are concerned with several provisions in the Proposed Rule that will negatively, and we believe unnecessarily, impact the ability of proven, capable nonprofit counseling agencies from delivering counseling and other HUD-funded assistance.

MACDC is an association of mission-driven community development organizations dedicated to working together and with others to create places of opportunity where people of diverse incomes and backgrounds access housing that is affordable, benefit from economic opportunities, and fully participate in the civic life of their community. We achieve this by building and supporting a high performing and adaptive community development sector that is supported by private and public investment and sound public policies. Founded in 1982, MACDC currently has 88 members, including 60 CDC members and 28 associate members. Many of our members provide housing counseling, particularly counseling for first-time homebuyers and for homeowners at risk of foreclosure.

Although there are a number of issues with the proposed Rule that create significant challenges to the implementation of a viable certification process for housing counselors and housing

counseling programs, this response focuses on three overarching, fundamental issues, and they are as follows:

- The Rule's uniform approach to homeowner counseling and rental housing counseling fails to adequately recognize and distinguish the specific competencies necessary for these substantively different areas of counseling.
- The ambiguity in the Rule concerning applicability creates unnecessary uncertainty, particularly for HUD funded programs and agencies that engage only tangentially or incidentally in counseling activities.
- The failure to provide a financially and logistically accessible and meaningful, multi-learning style training and certification process for counselors creates a certification system which is overly burdensome and costly, and as a result will drain the resources available for counseling.

1. The Rule should establish different training and certification requirements for homeowner counseling and rental housing counseling.

Homeownership counseling and rental housing counseling target different constituencies and require competency in different areas. The training and examination for each type of counselor should reflect these differences.

The attempt to provide an all-inclusive approach for measuring housing counseling competency does not validly, reliably, or realistically, relative to actual housing counseling practice, measure competency for either homeownership counseling or rental counseling. Currently, most housing counseling agencies specialize and/or utilize housing counselors that specialize in a specific type of housing counseling such as homeownership, which may include foreclosure prevention related issues, or rental counseling, which may include homelessness related issues. There are instances in which housing counseling agencies employ or utilize a generalist counselor, but that model is the exception, and for good reason. The substantive areas of homeownership and rental housing are comprised of substantially different local, state, and federal regulatory requirements as well as related customs and practices. The one commonality between these two different areas of counseling is that they are both highly regulated, which requires an extensive and unique acumen for each type of counseling. Therefore, based on the actual significant substantive differences between homeownership counseling and rental counseling as well as the current well thought out practice of utilizing housing counselor specialists, it would be appropriate to develop separate criteria and related testing modules for homeownership counseling and rental counseling.

This distinction is supported in the statute. While Dodd-Frank left intact the pre-existing requirement that counselor certification be by written examination demonstrating competence in each of six areas, nothing in the statute requires that the examination be identical for rental housing counselors and for homeownership counselors. Separate training, and separate examinations, can be given consistent with the statutory requirements. Thus, 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. Similarly, a homeownership counselor would be expected to demonstrate competency in "mortgage default" and "delinquency", and

a rental housing counselor in “rental” delinquency and “eviction”. Training on property maintenance, financial management etc. should also be different for homeowners and renters, to address their different needs. This approach harmonizes the newer Dodd-Frank language with the existing statutory language.

It could be argued that rental housing counselors must be trained in all facets of homeownership counseling, as Dodd-Frank indicates that rental housing counseling “*may* include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling.” [emphasis added] This can readily be accommodated in the final Rule, by directing a certified rental housing counselor, unless also certified as a homeownership counselor, to make an appropriate referral in order to provide information on homeownership opportunities.

2. The Rule should help delineate what activities constitute covered counseling.

The proposed Rule should be revised to help clarify the reach of the statute. The statute, when read closely, applies only to certain HUD-funded programmatic counseling activities, and not to incidental or ancillary counseling activities. Read less closely, however, the statute could be misunderstood as having much broader reach. This lack of clarity will create harmful uncertainty for organizations.

The statute is intended to ensure the quality of the counseling programs that HUD is authorized to fund. It is not intended to apply to the incidental, but still very useful, information and referral that occur in connection with many activities that are funded both by HUD and by others. The Final Rule should make use of the opportunity to supply additional interpretive guidance, that incidental ‘counseling’ which might be provided by staff administering other HUD-funded programs (such as Section 8 voucher administration) would not create a certification obligation.

This appears to reflect HUD’s view. Section III of the Supplementary Information estimates the nationwide cost of the training and examination. The cost is based on the 8,100 individual counselors in the 2500 HUD-approved counseling agencies. It does not include the tens of thousands of individuals who implement other HUD-related programs – Section 8 voucher assistance, for instance. It would be helpful if this view were directly and clearly stated.

3. The Rule should provide a meaningful path to certification.

The proposed Rule evidences a welcome sensitivity to the potential burdens of these new requirements. In that vein, it identifies a number of potential certification processes that HUD is exploring.

The concept of requiring certification in a manner that truly measures relevant competencies is a worthy goal. We strongly support the professionalization of housing counseling programs. This can best be done by providing a realistic pathway to certification. A web-based, self-paced training program, with an examination component that allows for multiple re-testing would accommodate a number of learning styles, access issues and other potential barriers. At a minimum, counselors who take an exam consisting of multiple components and pass some but not all of the components should be required to retake only those portions of the exam

that s/he failed to pass, not the entire exam. We would urge separate learning and testing modules for homeowner counselors and rental counselors, providing the opportunity to obtain certification in one area or both.

Most unfortunately this new requirement coincides with a time of constricting resources. To further lessen the cost burden, HUD should contract for web-based training materials, and provide them without cost to counseling organizations.

In addition, the one-year time frame for achieving full certification, which is not statutorily mandated, should be modified to ease the transition burden. A more feasible approach would be to require each housing counseling agency to have on staff at least one certified counselor for each of the agency's substantive counseling areas (homeowner or rental) within twelve months of the Final Rule's effective date. Thereafter, a certain percentage of the agency's housing counseling staff would have to meet the certification requirements; we recommend that certification of all of an agency's counseling staff be phased in over 3 to 5 years.

Conclusion:

Finally, we urge a delay in the issuance of the Final Rule sufficient to determine whether the language in the President's budget will be adopted. If so, and if as a result experience can be substituted for examination, and organizations other than HUD can certify competency, the landscape will be changed significantly. Given the potential costs in terms of time and dollars, premature implementation should be avoided.

In the absence of a delay in implementation, it is essential that the Final Rule establishes a process for certification that better matches the certification requirements with skills necessary to serve those counseled. If you have any questions about our comments or would like additional information, please contact me at 617-379-5922, or via e-mail at joek@macdc.org, or MACDC's Senior Policy Advocate Don Bianchi at donb@macdc.org. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Kriesberg". The signature is fluid and cursive, with the first name "Joe" clearly legible.

Joe Kriesberg
President and CEO