

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****[Docket No. FR-4706-N-01]****HUD's Loss Mitigation Default Counseling Demonstration Program****AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.**ACTION:** Notice.

**SUMMARY:** This Notice announces the Department's intent to conduct a limited demonstration program to gauge the demand for and the usefulness of including in the loss mitigation actions the reimbursement to mortgagees for default counseling provided to borrowers by HUD approved Housing Counseling Agencies (HCAs). Such counseling may be of particular assistance to borrowers in certain targeted areas where default rates exceed national averages and/or predatory lending practices have been identified by the Department. This demonstration will also further the concept of mitigating insurance claim losses to the Department by increasing mortgagors' access to counseling.

**DATES:** Comment Due Date: November 25, 2002.

**ADDRESSES:** Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. eastern time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Laurie Anne Maggiano, Director, Single Family Asset Management and Disposition Division, Room 9286, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-8000; telephone (202) 708-1672 (this is not a toll free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Department has operated the Loss Mitigation program since 1996, and has, in working with lenders, steadily increased the number of mortgagors

who successfully avoided foreclosure or, in those instances where the mortgagors did not have the financial means to retain their homes, helped them avoid the stigma of foreclosure through the use of deeds in lieu of foreclosure or pre-foreclosure sales.

The Department is encouraged by the steadily increasing usage of loss mitigation options by mortgagees. However, there remain geographic areas where default and foreclosure rates are significantly higher than national averages for FHA insured loans and where conditions associated with predatory lending practices are observed.

The Department consistently takes appropriate enforcement actions to ensure that mortgagees follow HUD/FHA loss mitigation requirements. Among loss mitigation tools, counseling can be effective in helping mortgagors avoid foreclosure when possible. Additionally, effective counseling minimizes the risk to the mortgage insurance funds.

Because mortgagors who require counseling are already financially stressed, it is necessary to ensure that the counseling will be offered free of charge to mortgagors who want such counseling. HUD/FHA's experience has been that Housing Counseling Agencies (HCAs) are often backlogged with cases in geographic areas where there is a high incidence of default. Counseling agencies receive limited grant funds from HUD and other sources, and thus may not have the capability to hire additional staff to deal with an increased workload. This demonstration program would address this issue by enabling mortgagees to pay for default counseling in targeted areas via a \$200.00 voucher. The mortgagees would then be reimbursed by HUD/FHA from FHA mortgage insurance funds. In order to encourage borrowers to obtain counseling, HUD/FHA will request mortgagees participating in the demonstration project to inform delinquent borrowers in the target area that default counseling is available at no cost through a participating HCA. The borrower will obtain the counseling, and upon completion of the counseling the HCA will make a loss mitigation recommendation to the borrower's mortgage holder. The mortgagee will pay the HCA for the counseling received and will be reimbursed by HUD.

HUD's payment from the insurance fund for Loss Mitigation actions that provides an alternative to foreclosure is authorized by 12 U.S.C 1715u and 24 CFR 203.501. This demonstration adds default counseling as an effective tool in

reducing claims and assisting mortgagors.

**II. This Notice**

The Department has decided to conduct a limited demonstration program to gauge the demand for, and the usefulness of, reimbursement to mortgagees for payments made to HCAs who provide counseling to delinquent mortgagors to avoid foreclosure. This is key in these specific targeted areas where default rates exceed national averages and/or where possible predatory lending practices have been identified. The Department intends to obtain feedback from participating mortgagees, HCAs and other parties so that an assessment of the demonstration can be made and a decision rendered as to whether the program should be continued or expanded. The demonstration should also be helpful in determining appropriate program criteria and procedures if the decision is made to continue the program after the demonstration ends.

Under this demonstration, reimbursement for default counseling as a loss mitigation tool will not be provided on a nationwide basis, but rather offered only in specific targeted areas. HUD/FHA has developed a model for determining areas that have high default and claim rates that may be indicative of predatory lending practices. HUD's proposed procedures will further examine these areas and refine the model.

The demonstration program, which will last 12 months from commencement date, will be conducted in areas that have default rates well above the national average for FHA loans. The demonstration may be extended another 6 months at the discretion of the Assistant Secretary for Housing-Federal Housing Commissioner. The greater Miami, Florida area, including both Dade and Broward counties, are the initial target areas. HUD/FHA may decide to expand the demonstration to include additional areas or may subsequently remove some of the designated areas. Additional areas may be added at the discretion of the Department. HUD/FHA may remove either an HCA or lender from participation if the participant demonstrates sufficient evidence of non-compliance.

**III. Authority for Demonstration**

HUD is promulgating this Notice pursuant to 42 U.S.C 3542 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181), which states that no HUD demonstration program not expressly authorized in law may begin

until a description of the program is published in the **Federal Register**, and that a comment period of 60 calendar days following the date of publication shall be provided, in which HUD shall fully consider any public comments submitted with respect to the program.

Upon publication of this Notice, the public is invited to comment for a 60-day period on policies, procedures, estimated savings and other aspects of the proposed program. At the conclusion of this period, comments received will be reviewed and, if necessary, another Notice will be published setting forth any changes in requirements necessary to conduct this initial demonstration. If no comments are received or the comments received do not indicate that the changes are needed in these initially established criteria and procedures, the demonstration will take effect and begin 60 days from the date of this notice. For purposes of initiating and evaluating this demonstration, certain procedures and eligibility criteria will be adopted, as discussed below.

#### IV. Notification of Program

This demonstration program will be operated by selected mortgagees and HCAs doing business in targeted areas. Four mortgagees will participate in this demonstration program along with all HUD approved HCAs in Dade and Broward Counties who are determined to be qualified to provide default counseling as of the date of the Memorandum of Understanding (MOU). If it is consistent with the goals and objectives of the Demonstration Program, additional mortgagees and/or HCAs may be added during the demonstration program period at the sole discretion of HUD. This action will be done by a modification of the MOU. The participating lenders were selected based upon the size of their portfolios and rate of default in their target area. HUD will develop and submit for signature a MOU between the selected mortgagees, HCAs, and the Department. Mortgagees will be asked to notify mortgagors of the availability of this program in the targeted areas covered by this demonstration program when the mortgagors go into default under the terms of their mortgages. Notification will be by a form letter informing the mortgagor to contact qualified HCAs or their mortgage lenders to obtain advice and assistance in determining options for resolving the delinquency.

The HCAs participating in the demonstration will provide comprehensive default counseling. As part of the counseling process HCAs will use loss mitigation analysis

software, if available, to analyze foreclosure prevention options and recommend a specific course of action to the borrower and the mortgagee. All recommendations shall be in compliance with HUD's loss mitigation requirements as identified in Mortgagee Letter 2000-5. Participating mortgagees will work cooperatively with the HCAs to ensure that the most appropriate loss mitigation option is implemented in each case. Following delivery of counseling services, the HCA will provide a voucher signed by the borrower, certifying that default counseling has been provided. Upon receipt of the voucher, the mortgagee will pay the HCA \$200 per case. HUD will reimburse mortgagees for all qualified counseling vouchers. The MOU will provide detailed information outlining roles and responsibilities of all parties.

#### V. Program Requirements

In order for a participating mortgagee to be eligible to obtain reimbursement for payment for housing default counseling as part of loss mitigation, the following must be present:

(1) There must be a mortgagor who is an owner-occupant in a single-family dwelling unit with a mortgage insured under section 203(b), 235, 234(c), 221(d)2 or 203(k) of the National Housing Act, 12 U.S.C. 1709(b), 12 U.S.C. 1715l (d)(2), or 12 U.S.C. 1715y(c).

(2) The mortgagor must have an account that is in default, *i.e.*, 30 days after the first uncorrected failure to perform any obligation under the mortgage.

(3) The single-family dwelling unit must be located within the designated target area.

(4) The mortgagee must have sent the mortgagor a notice prescribed by HUD informing the mortgagor that housing default counseling is available.

#### VI. Evaluating the Success of the Demonstration

During the demonstration, HUD will track loan performance data against established benchmarks for the subject loans and a control group of loans. At the conclusion of the Demonstration, HUD will utilize this data to assess success and determine whether to implement a default counseling voucher loss mitigation claim option on a permanent basis either throughout the country or in targeted markets. In conducting this evaluation HUD will assess the following factors: (1) Whether default counseling is an effective loss mitigation tool; and (2) whether to establish additional program criteria

and procedures. HUD is also committed to establishing lender incentives for utilization of default counseling vouchers.

The primary objectives of the Housing Counseling Demonstration are to reduce foreclosures and increase use of loss mitigation workouts in the demonstration area. To measure the program's success and to ensure an effective evaluation of the program, HUD intends to establish baseline data for each of the four participating lenders that includes:

1. Monthly and Annual Foreclosure Rates—The monthly rate will be calculated by dividing the number of foreclosures in the target area by the number of loans with FHA insurance in force for the targeted area, for each of the prior 12 months corresponding to the demonstration period. The annual baseline foreclosure rate will be established by averaging the 12 monthly rates.

2. Quarterly Workout Ratio—Using the current formula for our tier ranking system (formal forbearances + loss mitigation claims divided by formal forbearances + loss mitigation claims + foreclosures) HUD intends to calculate a quarterly workout ratio representing only activity in the target area. The most recent quarterly workout ratio will be used as the baseline.

HUD intends to use these indicators to track and report performance of each participating lender within the target area. HUD's anticipated benchmarks for success for each lender are (1) a 10% or greater reduction in their annual foreclosure rate, (2) an improvement each consecutive quarter in their workout ratio, and (3) that each lender attain or maintain an 80% workout to foreclosure ratio for target area activity by the end of the demonstration period.

HUD also intends to establish a control group that will consist of all other FHA loans in the target area. HUD will calculate a foreclosure rate, by dividing target area foreclosures for all lenders except the demonstration participants, by loans with insurance in force for all lenders except demonstration participants. Similarly the workout ratio will exclude demonstration participants but otherwise be computed and tracked as described above.

#### VII. Other Provisions

The Headquarters office of HUD will work together with the National Servicing Center in Oklahoma to evaluate the results of the demonstration and determine whether the program should be expanded.

**VIII. Findings and Certifications****Public Reporting Burden**

The method of providing the documentation to verify the claim for reimbursement will result in information collection requirements. This requirement has been submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520). This is the only new information collection requirement that is being established in conjunction with

this new rule. HUD 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 OMB control number. HUD has obtained an emergency approval from OMB so that the reimbursement for default counseling can proceed until final approval is obtained. That emergency number evidencing approval is 2502–0549. The HCA will be reimbursed each time a completed Loss Mitigation Package is referred to the lender. Each referral must

be documented by the HCA. HUD will reimburse the lender for each paid counseling claim. A single response to the information collection requirement would be required per default counseling referral. HUD estimates that the average time per response would be no more than 30 minutes. Accordingly, the estimated annual burden that would be imposed by the proposed information collection requirement is 4,120 hours.

The burden of the new information collection requirement in this Notice is estimated as follows:

**REPORTING AND RECORDKEEPING BURDEN**

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
IV .....	see below* .....	varies .....	.5	4120

\*The number of parties: 4 lenders have volunteered to participate in this Demonstration and 7 Housing Counseling Agencies. Each will have dedicated staff assigned to work on this Demonstration.

Total Reporting and Recordkeeping Burden (Hours).....4120

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within 60 days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4706-N-01) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503; and Gloria Diggs, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 7th Street SW., Room 9116, Washington, DC 20410.

**Environmental Impact**

This Notice 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 Notice 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 or similar regulatory item that has federalism implications if it 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 demonstration program notice 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.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 demonstration program notice would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Dated: July 11, 2002.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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