

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR-4989-P-01]

RIN 2502-A134

Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's HECM regulations to establish testing standards to qualify individuals as HECM counselors eligible to provide HECM counseling to prospective HECM borrowers. The rule also would establish a roster of eligible HECM counselors and provide for their removal for cause. HUD believes that this proposed rule would contribute to improving the quality of HECM counseling. HECM counseling helps to enable elderly homeowners to make more informed decisions when considering whether to pursue a HECM loan.

DATES: *Comment Due Date:* March 9, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Meg Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410-8000; telephone (202) 708-2121 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-(800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 255 of the National Housing Act (12 U.S.C. 1715z-20) authorizes HUD to insure HECMs to enable elderly homeowners to convert the equity in their homes to streams of income. For purposes of this proposed rule, the pertinent sections of the National Housing Act are: Sections 255(d)(2)(B), which requires that a mortgagor receive adequate counseling by a third party (other than the lender); Section 255(e)(1), which requires that each mortgagee make available to a homeowner, at the time of the loan application, a written list of the names and addresses of third-party information sources who are approved by HUD as responsible and able to provide the information required by subsection 255(f); and Section 255(f), which lists the type of information that must be provided to a mortgagor by a counselor. Section 255(f) requires the provision of consumer education and information to HECM mortgagors by entities other than the lender. Such information must include options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the prospective HECM borrower may request. HUD's regulations implementing the HECM program are codified at 24 CFR part 206.

II. This Proposed Rule

This proposed rule would establish regulations to ensure that "third-party information sources" (Section 255(e)(1)) are properly trained and qualified to provide "adequate counseling" (Section 255(d)(2)(B)) to elderly homeowners applying for a HECM loan.

Section 206.302 of the rule would provide for the establishment of the HECM counselor roster. This section provides that HUD will maintain the roster and requires an applicant for a HECM loan to use a counselor registered on the roster. In addition, this section explains that the inclusion of a counselor on the HECM counselor roster means only that a listed counselor has met the qualifications and conditions,

prescribed by HUD, for inclusion on the roster.

The eligibility requirements for a HECM counselor to be placed on the HECM roster are proposed at § 206.304. Paragraph (a) of § 206.304 requires a HECM counselor to apply to HUD to be considered for placement on the HECM roster. Proposed § 206.304(b) sets forth the eligibility requirements for placement of a counselor on the roster. Among the requirements is that a counselor must be employed by a HUD-approved housing counseling agency. Additionally, a counselor must pass a standardized HECM test that assesses minimum competencies. To remain eligible to counsel applicants seeking a HECM loan insured by HUD, approved HECM counselors must continue to receive training and education.

The causes for the removal of a HECM counselor from the HECM counselor roster are described at § 206.306. Causes for removal include, among other things, failure to comply with the eligibility requirements, civil rights requirements, applicable statutes, regulations, or other written instructions or standards issued by HUD; and failure to maintain any registration or certification requirements of a state or local authority. A counselor may also be removed from the roster for steering clients to a particular lender. Further, the proposed rule sets forth in § 206.306(c) the procedure for removal of a HECM counselor from the HECM roster, including the detailed notice requirements that HUD will observe. Proposed § 206.306(d) describes how a HECM counselor who has been removed from the HECM counselor roster may be restored to the roster. At any time, a HECM counselor may make a request to HUD, in writing, that he or she be removed from the roster. Paragraph (f) of proposed § 206.306 states that nothing in the rule would prohibit HUD from seeking other remedies beyond those in the rule against an errant HECM counselor. This proposed rule would also make conforming changes to § 206.3 and § 206.41.

III. Request for Public Comments

In addition to soliciting comments generally, the Department is seeking specific comments on two areas of interest. First, the Department is seeking input from housing counseling agencies and counselors concerning the implementation of the HECM roster for HECM counselors who have already passed the HECM counseling exam. Specifically, should HUD adopt a delayed implementation for those counselors that have already passed the exam, or alternatively, should those

counselors automatically be included in the roster for a period of time before they must repeat the exam? Second, HUD invites comments that address whether a counselor should be required to take the exam on a regular basis, for example, every 2 years, in order to remain on the roster, and, if so, how often should housing counselors take the exam to remain on the roster.

Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act,

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's estimate of the total reporting and recordkeeping burden that will result from the collection of information is as follows:

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
Standardized test	200	1	2.00	400
Application	200	1	0.25	50
Continuing education and recordkeeping	200	1	2.00	400
Request to be removed from roster	5	1	0.25	1.25

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; and

(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 responses to be submitted electronically.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must be received within 30 days from the date of this rule. Comments must refer to the rule by name and docket number (FR-4989) and be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, FAX (202) 395-6974;

and

Kathleen McDermott, Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7232, Washington, DC 20410-7000.

Environmental Impact

This proposed 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, review, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

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 rule would not impose a federal mandate on any state, local, or tribal government, nor on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

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. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. The rule would require that HECM

counselors be trained and qualified to perform their functions. This may require a financial outlay, but the expense should be relatively small. As such, any new expense to small entities caused by this rule would be negligible. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments, nor does it preempt state law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the

Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Divisions at (202) 708-3055 (this is not a toll-free number).

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.183.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 206 to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-1720; 42 U.S.C. 3535(d).

2. Amend § 206.3 by adding, alphabetically, a definition of “Home Equity Conversion Mortgage (HECM) counselor” to read as follows:

§ 206.3 Definitions.

* * * * *

Home Equity Conversion Mortgage (HECM) counselor means an individual who provides statutorily required counseling to individuals and their families who may be eligible for or interested in obtaining an FHA-insured HECM. This counseling assists elderly homeowners who seek to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

* * * * *

3. Revise § 206.41(a) to read as follows:

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names, addresses, and telephone numbers of housing counselors, which have been approved by the Secretary in accordance with subpart E of this part, as qualified and

able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling.

* * * * *

4. Add a new subpart E to read as follows:

Subpart E—HECM Counselor Roster

Sec.

206.300 General.

206.302 Establishment of the HECM counselor roster.

206.304 Eligibility for placement on the HECM counselor roster.

206.306 Removal from the HECM counselor roster.

Subpart E—HECM Roster

§ 206.300 General.

This subpart provides for the establishment of a roster of HECM counselors and sets forth the requirements for the operation of the HECM counseling program.

§ 206.302 Establishment of the HECM counselor roster.

(a) HUD maintains a roster of HECM counselors. Only counselors listed on the roster are approved to provide HECM counseling. A homeowner applying for a HECM loan to be insured by HUD must receive the required HECM counseling from one of the counselors on the roster. The inclusion of a HECM counselor on the HECM counselor roster does not create or imply a warranty or endorsement by HUD of the listed counselor to a prospective HECM borrower or to any other organization or individual, nor does it represent a warranty of any counseling provided by the listed HECM counselor. The inclusion of a counselor on the HECM counselor roster means that a listed counselor has met the HUD-prescribed qualifications and conditions for inclusion on the roster and that the counselor is approved to provide HECM counseling by telephone or face-to-face.

(b) *Effective date.* (1) HECM counselors who have already taken and passed the HECM counseling exam on or before the date when the requirement for the examination described in this section becomes effective have until 6 months following this date to apply for placement on the roster.

(2) Establishment of the HECM counselor roster will take place 6 months following the effective date of this subpart.

§ 206.304 Eligibility for placement on the HECM counselor roster.

(a) *Application.* To be considered for placement on the roster, a HECM counselor must apply to HUD in a form and in a manner prescribed by HUD.

The application must show proof of eligibility.

(b) *Eligibility.* To be eligible for placement on the HECM roster and to be maintained on the roster, an applicant must show proof satisfactory to HUD that the applicant:

(1) Is employed by a HUD-approved housing counseling agency or affiliate of a HUD-approved intermediary or state housing finance agency;

(2) Successfully passed a standardized HECM exam administered by HUD or a party selected by HUD;

(3) Received or is receiving, on a continuing basis, training, education, and technical assistance related to HECMs, and maintains evidence or verification thereof, which must be made available to HUD upon request. For purposes of this paragraph, HUD will consider a HECM counselor's enrollment in and successful completion of a HECM course no less than once every 2 years as proof of a HECM counselor's continuing training and education;

(4) Has access to and is supported by technology that enables HUD to track the results of the counseling offered to each loan applicant, e.g., what action(s), if any, did the client take after receiving the HECM counseling.

§ 206.306 Removal from the HECM counselor roster.

(a) *General.* HUD reserves the right to remove any HECM counselor from the HECM roster for any cause that HUD determines to be harmful to HUD or its programs.

(b) *Cause for removal.* Cause for removal of a HECM counselor from the HECM roster includes, but is not limited to:

(1) Failure to follow the eligibility requirements described in § 206.304(b)(3) and (4);

(2) Failure to respond within a reasonable time to HUD inquiries or requests for documentation;

(3) Misrepresentation or fraudulent statements;

(4) Promotion, representation, or recommendation of any specific lender;

(5) Failure to comply with applicable civil rights requirements;

(6) Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

(7) Failure to comply with applicable statutory counseling requirements found at section 255(f) of the National Housing Act, which include but are not limited to providing information about: Options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the applicant may request.

(8) Failure to maintain any registration or certification requirements of a state or local authority;

(9) Unsatisfactory performance in providing counseling to HECM loan applicants. HUD may determine that a HECM counselor's performance is unsatisfactory if the counselor fails to employ the minimum competencies, as measured by the HUD-administered HECM counseling exam; or

(10) For any other reason HUD determines to be so serious as to justify an administrative sanction.

(c) *Procedure for removal from the HECM counselor roster.* A HECM counselor who is required to maintain a state or local registration or certification whose registration or certification is revoked, suspended, or surrendered will be automatically suspended from the HECM counselor roster until HUD receives evidence demonstrating that the local- or state-imposed sanction has been lifted. In all other cases, the following procedures apply to removal of a HECM counselor from the roster;

(1) HUD will give the HECM counselor written notice of the proposed removal. The notice will state the

reasons for and the duration of the proposed removal.

(2) The HECM counselor will have 20 days from the date of receipt of the notice (or such time as described in the notice, but in no event less than a period of 20 days) to submit a written appeal of the proposed removal along with a written request for a conference.

(3) A HUD official will review the appeal and render a response affirming, modifying, or canceling the removal. The HUD official will not be a person who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days after the date of receiving the appeal or, if the counselor has requested a conference, within 30 days after the conference was held. HUD may extend the 30-day period by providing written notice to the counselor.

(4) If the counselor does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after the period provided in the notice, if longer than 20 days). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of

HUD's notice affirming or modifying the initial removal decision.

(d) *Placement on the roster after removal.* A counselor who has been removed from the roster may apply for reinstatement on the roster (in accordance with § 206.304) after the period of the counselor's removal from the roster has expired. An application from a counselor for reinstatement on the roster will be rejected if the period of the counselor's removal from the roster has not expired.

(e) *Voluntary removal.* A HECM counselor may submit a written request to HUD to remove the HECM counselor from the roster.

(f) *Other action.* Nothing in this section prohibits HUD from taking such other action against a counselor or from seeking any other remedy against a counselor available to HUD by statute or other authority.

Dated: December 5, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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