



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Housing Counseling
451 7th St., SW, Room 9224
Washington, D.C. 20410

December 18, 2020

SUBJECT: Tribal Consultation for Housing Counselor Certification Requirements

Dear Tribal Leader:

In 2010, Section 106 of the Housing and Urban Development Act of 1968¹ (Section 106) was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act)² to require, in part, that any homeownership counseling or rental housing counseling required under, or provided in connection with, any HUD program must be provided only by organizations or counselors certified by the U.S. Department of Housing and Urban Development (HUD) as competent to provide such counseling.³

We believe that these statutory changes have implications for certain HUD Native American programs. HUD is committed to the government-to-government relationship between the Federal government and tribes and engaging tribal leaders through consultation on such matters. Accordingly, HUD is conducting tribal consultation to determine how to best implement the Section 106 statutory requirements as applied to the Indian Housing Block Grant (IHBG) program and the Indian Community Development Block Grant (ICDBG) program, and is soliciting Tribal feedback to determine how best to apply the housing counseling program and certification requirements in Section 106 to these programs.

BACKGROUND

HUD Counseling Program

HUD's Housing Counseling Program (HCP) has been active for over 50 years. Pursuant to section 4(g) of the Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3533(g)), the Office of Housing Counseling (OHC) sets standards and oversees a network of approximately 1750 housing counseling agencies. OHC also monitors HUD-approved Housing Counseling Agencies for compliance with program requirements and the quality of housing counseling services. Additionally, pursuant to Section 106, OHC administers a grant program through a Departmental Notice of Funding Availability (NOFA) where eligible housing counseling agencies may apply for funding. HCP regulations are codified at 24 C.F.R. part 214.

¹ 12 U.S.C. 1701x.

² Pub. L. 111-203.

³ See section 1445 of the Dodd Frank Act; see also sections 106(e), (f) and (g) of the Housing and Urban Development Act of 1968.

On December 14, 2016, HUD published a final rule in the *Federal Register* entitled “Housing Counseling: New Certification Requirements.”⁴ The rule implemented, in part, the Section 106 counselor certification amendments by requiring that within 36 months of the availability of a certification examination, housing counseling (as required by or provided in connection with HUD programs) could only be provided by HUD-certified housing counselors working for a Participating Agency.⁵

The original compliance date for counselor certification was August 1, 2020.⁶ However, on July 31, 2020, HUD published an interim final rule on its website to announce a new compliance date of August 1, 2021, followed by publication of this interim rule in the *Federal Register* on August 5, 2020.⁷ HUD expects that these certification requirements will lead to better identification of housing issues, more knowledgeable referrals, resolution of barriers, and a greater ability to counsel homeowners and renters on avoiding scams. Thus, renters, prospective homebuyers, and existing homeowners will benefit from more knowledgeable housing counselors and effective housing counseling services due to these certification requirements.

While the interim final rule established the August 1, 2021, deadline for HUD programs, the rule will only apply to the IHBG and the ICDBG programs after completion of tribal consultation and rulemaking. In future rulemaking, informed by this tribal consultation and other public comment, HUD will codify how the certification requirements will be applicable to the IHBG and ICDBG programs, and eligibility requirements for tribes to participate in the HCP.

Tribal Consultation

In accordance with HUD’s Tribal Consultation Policy,⁸ HUD is now reaching out to tribal leaders to solicit feedback. Specifically, HUD seeks comments on the following points:

1. Whether the housing counseling certification requirements included in the final rule would be practical and effective in your community;
2. What impact the housing counseling certification requirements would have on providing culturally relevant housing counseling and other programming in Indian Country and your community;
3. What changes to the housing counseling certification requirements included in 24 C.F.R. part 214 would you recommend to ensure that these certification requirements (a) are not administratively burdensome, (b) enable appropriate access to housing counseling services in your community – particularly in very remote areas – and (c) help tribal members address their housing issues;

⁴ 81 FR 90632.

⁵ 24 C.F.R. 214.103(n); *see also* 206.3 for the meaning of Participating Agency.

⁶ 82 FR 24988.

⁷ *See*

<https://www.hud.gov/sites/dfiles/ENF/documents/621502%20Housing%20Counseling%20Interim%20Rule%20with%20Cover.pdf>; and 85 FR 47300.

⁸ *See* https://www.hud.gov/program_offices/public_indian_housing/ih/regs/govtogo tcp.

4. Any other ideas on how HUD can ensure that the counselor certification requirements applicable to HUD's Native American programs are effective in Indian Country; and
5. Do you anticipate challenges if the qualification process that HUD currently uses for approving units of State or local government included in 24 C.F.R. part 214 were applied to tribes or Tribally Designated Housing Entities (TDHEs)?

Due to the ongoing COVID-19 National Emergency, HUD plans to host virtual tribal consultation via webinar on January 26, 2021 and February 4, 2021 to provide tribal leaders the opportunity to provide comments to HUD. HUD will publish and disseminate webinar details soon. Tribal leaders and tribal housing practitioners are highly encouraged to participate.

We would also like to note that the interim rule and other summary materials are available for your review at: <https://www.hudexchange.info/programs/housing-counseling/tribal-consultation/>

In addition to participating in the virtual tribal consultation session, we also encourage tribal leaders to submit written comments to tribalconsult@hudexchange.info. Enter "Tribal Consultation" in the subject line of the email.

Input from tribal leaders and tribal housing practitioners is essential to the development of HUD's programs. Thank you for your continued participation in HUD programs.

Sincerely,

David Berenbaum

David L. Berenbaum
Deputy Assistant Secretary
Office of Housing Counseling