

MEMORANDUM

BY E-MAIL

TO: Peter Bell
National Reverse Mortgage Lenders Association

FROM: Weiner Brodsky Sidman Kider, PC

DATE: October 26, 2005

RE: HECM Counseling Agency Approval Requirements

You asked for information about: (1) the requirements and the application process to become a HUD-approved Housing Counseling Agency eligible to provide Home Equity Conversion Mortgage (“HECM”) counseling, and (2) state law requirements applicable to such agencies.

Our response follows. In connection with your second request, we considered applicable state law requirements for agencies that provide counseling to reverse mortgage borrowers for loans including HECMs made in the states of California, Colorado, Connecticut, Illinois, Massachusetts, North Carolina, and Pennsylvania. By separate memo, we will provide advice concerning approaches for lenders seeking to locate such counseling agencies.

Background

Section 255(d)(2)(B) of the National Housing Act (12 U.S.C. § 1715z-20(d)(2)(B)) provides that to be eligible for insurance, a HECM must have been executed by a mortgagor who has received appropriate counseling from a third party other than the lender.

Section 106(a)(2) of the National Housing Act (12 U.S.C. § 1701x) provides the legislative authority for HUD to offer housing counseling services directly or through private or public organizations with special competence and knowledge in counseling low and moderate income families. The HUD Housing Counseling Program Handbook 7610.1 (“Handbook”) provides detailed information about the HUD housing counseling program. We also understand that a revision to this Handbook is in Departmental clearance.

A. Qualifying Criteria to Become A HUD-Approved Housing Counseling Agency

The Handbook lists the qualifying criteria that all applicants must meet to receive HUD approval as such a counseling agency. Certain of their branch or affiliate member organizations also require such approval. Among the criteria:

- 1. Nonprofit Status.** An applicant and its branches or affiliates (hereinafter “Applicant”) must function as private or public nonprofit organizations. The Applicant must submit evidence of nonprofit status under Section 501 (c)(3) of the Internal Revenue Code approval, or pending approval.
- 2. Community Base.** The Applicant must have operated for at least one year in the geographical area that the Applicant proposes to serve.
- 3. Experience.** The Applicant must have successfully administered a housing counseling program for at least one year.
- 4. Counseling Resources.** The Applicant must have sufficient resources to implement its proposed counseling plan by no later than the date of HUD approval.
 - a. Funding.** The application for approval must provide evidence of funds on hand or a written commitment for funds to cover the cost of operating the proposed counseling plan during the initial twelve-month period following HUD approval. This includes the availability of funds for branches and affiliates. Applicants that plan to charge counseling fees must comply with the requirements of Chapter 6 of the Handbook. Note that HUD approval neither includes nor guarantees HUD funding to assist the Applicant meeting this requirement.
 - b. Staff.** The Applicant must employ staff trained in housing counseling with at least six months experience in the job they will perform in the counseling program.
 - c. Language Skills.** Counselors must be fluent in the language of the clients they serve, or the counseling agency must use the services of an interpreter.
- 5. Community Resources.** The Applicant must have established working relationships with private and public community resources to which it can refer clients who need help the agency cannot offer.

- 6. State and Local Requirements.** The Applicant must meet all other applicable state and local requirements.
- 7. Facilities.** The counseling facilities of the Applicant must:
 - a. be located in the community of the target population;
 - b. provide privacy for all one-on-one sessions between a counselor and a client;
 - c. be within easy walking distance (15 minutes) from public transportation, except for rural or distant suburban locations;
 - d. have operating hours that include regular work hours and days, and other hours and days when necessary to meet the needs of working clients; and
 - e. provide easy access for disabled and elderly persons, at its primary or alternative accessible location.
- 8. Subcontracting.** The Applicant must deliver all of the counseling activities set forth in the Applicant's counseling plan. Subcontracting with other entities is permitted only in geographical areas where no HUD-approved housing counseling agency exists; however, the subcontractor also must meet HUD counseling agency HUD-approval eligibility standards. This does not prevent an approved agency from referring clients to other community resources for assistance. National, regional, and multi-state entities may enter into subagreements with their branches or affiliates to provide counseling services.

B. Application Process to Become a HUD-Approved Housing Counseling Agency

Applicants must complete the form HUD-9900, Application for Approval as a Housing Counseling Agency, and submit an original with an original signature, and one copy of the completed application form. Applications should be submitted to the appropriate HUD homeownership center as described in Appendix 2 of the Handbook. Local agencies must apply to the homeownership center that serves their states. Applications from national and regional organizations are to be submitted to HUD Headquarters.

The application is to be reviewed by HUD within 45 days of receipt. If, after review of the application, HUD determines that the applicant may qualify as a HUD-approved Housing Counseling Agency, a conference is to be arranged before a final determination letter is issued. Within 60 days, the applicant is to be notified of application approval or denial. If approved, a Letter of Approval will be sent to the applicant. The applicant must sign and date the letter and

return it to HUD. Additional detailed information regarding the application process is provided in the Handbook.

C. Selected State Law Requirements Applicable to HECM Counseling Agencies

California

California law does not appear to require the approval of agencies or individuals providing counseling to reverse mortgage applicants, except to the extent that such agencies are engaged in the business of mortgage brokering or mortgage banking as defined under California law. Accordingly, and for example, it is our understanding that the California Department of Real Estate generally refers such individuals to the National Center for Home Equity Conversion (“NCHCEC”) website¹ and to the HUD website for a list of public or nonprofit organizations that provide reverse mortgage counseling.

Colorado

Colorado law appears to require a senior loan applicant to attest in writing that he or she has either obtained reverse mortgage counseling from an independent counselor or waived such counseling.² It appears to us that Colorado law does not provide for state approval of housing counseling agencies or individual counselors who provide reverse mortgage counseling.

Connecticut

Connecticut law does not appear to require seniors to obtain reverse mortgage counseling. Further, it does not appear to us that Connecticut provides for state approval of housing counseling agencies or individual counselors who provide reverse mortgage counseling.

Illinois

The Illinois Department on Aging requires a lender to provide to a borrower a statement regarding the advisability and availability of independent information and counseling services on reverse mortgages.³ However, it does not appear to us that the Illinois Department on Aging approves individuals or housing counseling agencies that provide such reverse mortgage counseling.⁴

¹ National Center for Home Equity Conversion, <http://www.reverse.org>

² See Colo. Rev. Stat. Ann. § 11-38-111.

³ See 205 Ill. Comp. Stat. 5/6.1(e).

⁴ See Illinois Department on Aging, <http://www.state.il.us/aging/>

Massachusetts

The Massachusetts Executive Office of Elder Affairs (“EOEA”) approves reverse mortgage counseling programs. Massachusetts law requires the EOEA to establish and maintain a list of counseling programs approved by it and to make such list available to all banks and to the public.⁵ It does not appear that such approval requirements are included in regulations of the EOEA. However, the EOEA has written policies and procedures regarding such approvals, as summarized below.

1. Qualifying Criteria to Become An EOEA-Approved Housing Counseling Agency

To be approved as a Reverse Mortgage Counseling Program by the Massachusetts EOEA under Mass. Gen. Laws Ann. ch. 167E, § 7(e)(previously Mass. Gen. Laws Ann. ch. 167E, § 2(B)(14A)), the housing counseling agency applicant must:

- a. be an approved HUD Counseling Agency;
 - b. have a proven track record in financial counseling and a demonstrated interest in serving elder consumers;
 - c. be able to perform counseling in person in the home of the elder whenever necessary;
 - d. be familiar with assistance potentially available to elders in addition to reverse mortgages;
 - e. be able to assist the elder through the application process if it is determined that a reverse mortgage is an appropriate alternative; and
 - f. be able to provide ongoing monitoring of the elderly recipient’s reverse mortgage and maintain a record of all client contacts;
2. Information Required To Be Submitted In The Application Letter to the EOEA

In the application letter to the EOEA, the applicant must submit:

⁵ See Mass. Gen. Laws Ann. ch. 167E, § 7(e)(previously Mass. Gen. Laws Ann. ch. 167E, § 2(B)(14A)). Note that effective March 30, 2005, Mass. Gen. Laws ch. 167E, § 2(B)(14A) has been transferred to Mass. Gen. Laws ch. 167E, § 7.

- a. the applicant's history and current activities, including the types of financial counseling currently undertaken and the volume of each;
- b. the applicant's staff and their qualifications, including resumes of those who will be participating in the reverse mortgage counseling program;
- c. information regarding other activities the applicant is engaged in and how these activities are staffed;
- d. information regarding how the applicant will provide reverse mortgage counseling to interested elders;
- e. a proposal for providing ongoing monitoring of elders who receive a reverse mortgage loan; and
- f. the manner in which counselors in its reverse mortgage counseling program will demonstrate familiarity with the applicable statutory reverse mortgage loan subject matter, and the ability to relate it to the counseled elder.

North Carolina

North Carolina law requires the senior loan applicant to receive reverse mortgage counseling before the reverse mortgage loan may be closed. The North Carolina Housing Finance Agency is required to adopt rules governing the training of reverse mortgage counselors and related standards, including a reasonable training fee. The North Carolina Housing Finance Agency maintains a list of all persons meeting its counselor training requirements.⁶ The North Carolina Housing Finance Agency offers Reverse Mortgage Training Workshops for staff working in qualified non-profit organizations who are interested in becoming certified or recertified as a reverse mortgage counselor.⁷

In addition, for individuals seeking to become an approved reverse mortgage counselor, the North Carolina Association of Housing Counselors ("NCAHC") provides training. The individual must follow the following procedures:⁸ (1) attend NCAHC's Basic Housing Counseling Training: Housing Counseling Training for Housing Professionals (Track A); (2)

⁶ See N.C.Gen.Stat. § 53-269(a)-(c).

⁷ North Carolina Housing Finance Agency's Housing counseling training <http://www.nchfa.com/Nonprofits/RRworkshops.aspx>

⁸ See North Carolina Association of Housing Counselors, <http://www.affordablehousinggroup.org/prod02.htm>

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successfully complete NCAHC's Track A Certification Test. NCAHC members who successfully complete the test receive a Certificate of Completion. In addition, such approved members may: (3) attend and complete NCAHC's Advanced Housing Counseling Training (Track B); and (4) successfully complete the NCAHC Certification test for Track B. Participants who successfully complete both training programs may be recognized as NCAHC Certified Housing Counselors.

Pennsylvania

Pennsylvania law does not appear to require seniors to obtain reverse mortgage counseling. Further, it does not appear to us that Pennsylvania law provides for the approval of housing counseling agencies or individual counselors who provide reverse mortgage counseling.

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The following Memo was prepared by NRMLA's General Counsel for and at the request of NRMLA. It should provide helpful information to NRMLA Members, but please note that only NRMLA may rely upon the Memo and that it is not intended to be relied upon by NRMLA Members as a substitute for legal advice from their own counsel.)