



1700 G Street NW, Washington, DC 20552

September 10, 2019

Sarah Gerecke  
Deputy Assistant Secretary for Housing Counseling  
United States Department of Housing and Urban Development  
451 7th St SW  
Washington, DC 20410

Dear Ms. Gerecke:

This letter is in response to an application for a No-Action Letter Template, filed with the Bureau of Consumer Financial Protection (Bureau) by the United States Department of Housing and Urban Development (HUD) that could serve as the basis for No-Action Letter applications by mortgage lenders that enter into certain types of funding arrangements with housing counseling agencies that participate in HUD's Housing Counseling Program (Participating Counseling Agencies). The application described how HUD's regulatory and program requirements permit Participating Counseling Agencies to enter into arrangements with mortgage lenders for funding of housing counseling services provided to consumers subject to specified conditions (Housing Counseling Funding Agreements), including that (i) the parties enter into a Memorandum of Understanding (MOU) reflecting the terms of the Housing Counseling Funding Agreement, and (ii) the MOU is compliant with certain HUD requirements to which the parties adhere.<sup>1</sup> The application described how HUD was concurrently applying for a No-Action Letter on behalf of Participating Counseling Agencies with regard to Housing Counseling Funding Agreements. The Bureau has considered and grants the application, and accordingly issues this No-Action Letter Template pursuant to the Bureau's Policy on No-Action Letters (Policy).

The Bureau intends to grant applications from mortgage lenders for a No-Action Letter based on this No-Action Letter Template, under Section E.1.b of the Policy, in appropriate cases. Such applications should include the following certifications:

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<sup>1</sup> See Section II.4 of the application, which cross-references Section I.4 of the application citing 24 CFR § 214.313(e), HUD Handbook 7610.1 rev. 5, and HUD's "Housing Counseling Model Funding Agreement," which is appendix A to the HUD program document "Model Funding Agreements and Fee Structures."

1. Any HUD-Required MOU between [Applicant] and a Participating Counseling Agency pursuant to a Housing Counseling Funding Agreement between the same parties includes the following terms, which will be disclosed to mutual clients:
  - a. The client will choose between comparable products from at least 3 different lenders;
  - b. The funding derived from this agreement is based on services rendered, not on the amount, terms, or conditions of any mortgage loan or related transaction; and
  - c. No endorsement, sponsorship, or other preferential treatment will be conveyed to [Applicant] for entering into this agreement.
2. The payment(s) provided by [Applicant] to a Participating Counseling Agency pursuant to any MOU will not exceed a level that is commensurate with the services actually provided.
3. The payment provided by [Applicant] to a Participating Counseling Agency pursuant to any MOU will be reasonable and customary for the area.
4. Any MOU entered into by [Applicant] and a Participating Counseling Agency contains a certification from the counseling agency that the counseling agency is a Participating Counseling Agency and that the counseling agency will notify [Applicant] of a status change to inactive, terminated, or withdrawn; and
5. [Applicant] will provide a copy of any MOU to the Bureau if requested by the Bureau.

The Bureau anticipates that such a No-Action Letter issued to a mortgage lender based on the No-Action Letter Template would include a statement that: Unless or until terminated by the Bureau as described below, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the mortgage lender under

- (a) its authority to prevent unfair, deceptive, or abusive acts or practices,<sup>2</sup> or
- (b) section 8 of the Real Estate Settlement Procedures Act<sup>3</sup> (RESPA) and section 1024.14 of Regulation X<sup>4</sup>

for including and adhering to a provision in the MOU between the mortgage lender and a Participating Counseling Agency reflecting the terms of the Housing Counseling Funding Agreement that conditions the lender's payment for the housing counseling services on the consumer making contact or closing a loan with the mortgage lender even if that provision or the parties' adherence thereto could be construed as a referral (as such term is used in RESPA section 8(a) and defined in Regulation X, § 1024.14(f)); provided that, the level of payment for the housing counseling services does not exceed a level that is commensurate with the services provided and is reasonable and customary for the area.

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<sup>2</sup> 12 U.S.C. 5531, 5536. Implicit in the statement under clause (a) is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

<sup>3</sup> 12 U.S.C. 2607.

<sup>4</sup> 12 CFR § 1024.14.

A No-Action Letter issued to a mortgage lender based on the No-Action Letter Template would not apply to any other conduct of the mortgage lender, such as other aspects of the Housing Counseling Funding Agreements (including other MOU provisions).

This No-Action Letter Template is based on the factual representations made in the HUD application.

HUD shall apprise the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.

This No-Action Letter Template does not purport to express any legal conclusions regarding the meaning or application of the any laws or regulations referenced herein; and does not constitute the Bureau's endorsement of any services, conduct, agreements, etc. described above.

This No-Action Letter Template is non-operative and non-binding on the Bureau.<sup>5</sup>

This No-Action Letter Template and a copy of the application will be published on the Bureau's web site.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Watkins", written over a horizontal line.

Paul Watkins

Assistant Director, Office of Innovation  
Consumer Financial Protection Bureau

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<sup>5</sup> In particular, the Bureau may modify this No-Action Letter Template in light of the additional information provided in an application for a No-Action Letter based on this No-Action Letter Template, under Section E.1.b of the Policy.