



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, filed with the Bureau of Consumer Financial Protection (Bureau) by the United States Department of Housing and Urban Development (HUD) on behalf of the housing counseling agencies that participate in HUD's Housing Counseling Program (Participating Counseling Agencies) to the extent they are in compliance with all the program requirements (Recipients).<sup>1</sup> 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>2</sup> The Bureau has considered and grants the application, and accordingly issues this No-Action Letter pursuant to the Bureau's Policy on No-Action Letters (Policy).

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 any Recipient under

---

<sup>1</sup> HUD maintains the list of Participating Counseling Agencies on its website at: <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

<sup>2</sup> See 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." This No-Action Letter applies to these HUD regulatory and program requirements and other program documents as they exist as of the date of this No-Action Letter.

- (a) its authority to prevent unfair, deceptive, or abusive acts or practices,<sup>3</sup> or
- (b) section 8 of the Real Estate Settlement Procedures Act<sup>4</sup> (RESPA) and section 1024.14 of Regulation X<sup>5</sup>

for including and adhering to a provision in the MOU between the Recipient and the mortgage lender 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.

The Recipients may reasonably rely on the preceding Bureau commitment.<sup>6</sup>

The Bureau may terminate this No-Action Letter as to one or more Recipients if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where one or more Recipients fail to substantially comply in good faith with the terms and conditions of the No-Action Letter; the Housing Counseling Funding Agreements do not perform as anticipated in HUD's application;<sup>7</sup> or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter.<sup>8</sup> In the event of such termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by this No-Action Letter, except where a failure to substantially comply in good faith with the terms and conditions of the No-Action Letter caused Dodd-Frank Act actionable substantial injury.<sup>9</sup>

---

<sup>3</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>4</sup> 12 U.S.C. 2607.

<sup>5</sup> 12 CFR § 1024.14.

<sup>6</sup> The Bureau maintains the authority to obtain information relating to the consumer financial products and services covered by this No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to any consumer financial products or services not subject to a No-Action Letter.

<sup>7</sup> Such ground includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

<sup>8</sup> If a Circuit Court of Appeals decision clearly prohibits conduct covered by the letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

<sup>9</sup> "Dodd-Frank Act actionable substantial injury" means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or competition. *See* 12 U.S.C. 5531(c); *see also* 12 U.S.C. 5536(a)(1)(B). Such a retroactive action would be particularly likely where conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 of the Policy to inform 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.

HUD and/or one or more Recipients 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.<sup>10</sup>

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

This No-Action Letter is limited to the Recipients, and does not apply to any other persons or entities. This No-Action Letter is limited to the Recipients' conduct in connection with Housing Counseling Funding Agreements (including the HUD-required MOUs reflecting the terms of the Housing Counseling Funding Agreements) and only to the extent such conduct relates to the inclusion of and adherence to the MOU provision described in the second paragraph of this No-Action Letter. This No-Action Letter does not apply to any other conduct of the Recipients, such as other aspects of the Housing Counseling Funding Agreements (including other MOU provisions).

This No-Action Letter does not purport to express any legal conclusions regarding the meaning or application of the above-referenced laws and regulations; and does not constitute the Bureau's endorsement of any services, conduct, agreements, etc. described above or in the application, or any other product or service offered or provided by the Recipients.

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

Sincerely,



Paul Watkins  
Assistant Director, Office of Innovation  
Consumer Financial Protection Bureau

---

<sup>10</sup> "Not performing as anticipated" includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.