Model Funding Agreements and Fee Structures

U.S. Department of Housing and Urban Development

Office of Housing Counseling

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Introduction

Housing counseling agencies (HCAs) acquire funding in numerous ways, including being paid a fee for the services they provide. The fees can be paid by clients (with the exception of Foreclosure Prevention and Homeless counseling clients), non-profit partner agencies, and private sector partners. The fees provided to the HCA can vary depending on the services being provided. This guide provides information about the basic components in a funding agreement.

IMPORTANT: There is no client paid fees related to foreclosure prevention or homeless counseling and there are no lender paid fees related to reverse mortgage counseling.

1. Foreclosure Counseling Fee Structures

Investor Paid

The client is not the only person who benefits from a mortgage being modified or a foreclosure being avoided. When considering whether to approach mortgage investors for a contract for housing counseling services, it is important to remember that foreclosure counseling is a direct benefit provided by a non-profit agency to a mortgage investor. A mortgage investor can view an HCA almost as an extension of their loss mitigation efforts.

> The mortgage investor who invests in housing counseling will see a more steady payment history from those homeowners who engage with a housing counselor.

While this relationship must be structured to avoid conflicts of interest, stay congruent with fair debt collection laws, and to protect the interests of the client, there are ways to make a mutually beneficial relationship between an HCA and a mortgage investment entity. A mortgage investment agency can be a mortgage insurance company (i.e. United Guaranty), a mortgage investor (i.e. Bank of New York Mellon), or a government sponsored entity (i.e. Freddie Mac). The structure of this relationship can be setup up in a variety of ways.

Investor Philanthropy

The most traditional funding relationship between HCAs and mortgage investors has been through the philanthropic arm of the investor. This funding is seen as a charitable contribution to a non-profit entity. Benefits for the mortgage investor include Community Reinvestment Act credit, community goodwill, tax benefits and limited administrative effort.

Subcontracting

The next most common funding models are focused within the sub-contracting model of funding. This funding model involves an HCA subcontracting with a mortgage investor to complete a statement of work including provision of counseling services to the investor's portfolio of borrowers. This funding model is based on a fee for service model, wherein the HCA receives either a payment for services rendered or payment based on a set of prescribed outcomes. In many cases a base fee for service is provided with an incentive payment for a borrower's resumed steady payment history. This fee structure is generally designed to provide the housing counseling agency with a payment between $300 and $1,000 per client to complete work related to resolving the mortgage delinquency on behalf of the mortgage investor.

Working with Multiple Fee Structures

Whether this fee for service model is designed to pay for a specific service, or it is designed to cover all costs associated with the counseling service, determines the manner in which these funding dollars interact and mingle with other funding mechanisms. For example, if a mortgage investor is willing to pay a fee for the complete submission of a loss mitigation packet, this fee does not intend to pay for housing counseling services provided to a client. There are some services that will be defined as a direct benefit to the mortgage investor, and other services that will be defined as direct benefit to the borrower. Depending on the scope of work and the contract terms, it may be important to find other funding to cover activities not supported by these agreements.

When blending other funding elements in concert with these agreements it is important to ensure that no double dipping occurs with any federal funding sources.

Mortgage Servicer Paid

A mortgage lender or mortgage servicer is a direct beneficiary of the provision of housing counseling services. Every time a borrower avoids a foreclosure because he or she is counseled by a housing counselor, a mortgage lender makes money. The provision of housing counseling services is a value added resource for any mortgage lender. In many mortgage servicer shops, there are dedicated teams to focus on those borrowers who have engaged with an HCA.

Client Paid

HUD Handbook 7610.1 Rev. 5 prohibits a HUD approved HCA from charging any fee for foreclosure counseling or foreclosure education services. This provision separates nonprofit HCAs from for-profit loan modification firms. While for-profit firms can charge for services, the Federal Trade Commission recently provided a ruling on when and how these agencies can charge for services:

- No client fee paid for the provision of Foreclosure Prevention services can be collected or charged up front by any third party for-profit mortgage relief entity such as a Loan Modification Firm.
- Mortgage relief companies may not collect any fees until they have provided consumers with a written offer from their lender or servicer that the consumer decides is acceptable and a written document from the lender or servicer describing the key changes to the mortgage that would result if the consumer accepts the offer.
- The companies also must remind consumers of their right to reject the offer without any charge.

One of the largest obstacles non-profit HCAs face from a foreclosure prevention client is the misconception that by paying for foreclosure counseling services, the client will receive a greater benefit than from those services offered free of charge. This can sometimes be a difficult challenge to overcome. Tips to overcome this objection include:

✓ Have a former client write a testimonial explaining that when services are free, the client knows that the HCA is solely focused on a positive outcome for the client and not on any sort of payment from the client. Make sure to protect the confidentiality of the former client in any testimonial.

✓ Advise the client that if they want to pay someone to help them avoid foreclosure, to avoid remote and/or external payment methods (e.g. on-line, check-by-phone, etc.).

✓ Develop a marketing campaign communicating the dangers of loan modification scams. Visit www.loanscamalert.org/ for more information.

Credit Report Fee

While the payment for services related to foreclosure counseling services is prohibited by non-profit HCAs, it is permissible for an HCA to collect a nominal fee for the pulling a credit report on behalf of a client. This fee should never be greater than the exact cost associated with pulling this credit report from the credit reporting agency.

Non-Profit Agency Paid

Depending on an HCA'Ss relationship or sub-grantee status, a fee for service arrangement can be established with another non-profit HCA for services rendered. This relationship can take several forms.

The most common form of relationship between agencies is the traditional grantee-sub grantee relationship wherein an HCA receives payments on a per client basis for housing counseling services. This fee structure is generally based on a funding source such as National Foreclosure Mitigation Counseling program or the Emergency Homeowner's Loan Program. Depending on the source of funds for these types of agreements they can be leveraged against other funding sources or may need to remain separate from other funding to comply with the specific grant agreement.

IMPORTANT: Carefully calculate the total cost of counseling and determine if the funding amount will cover the cost of providing counseling. This is more important in this manner of funding that in most other fee structures, as with most grant funding, it may be difficult to blend and leverage funding across various grants.

2. Pre-Purchase Counseling Fee Structures

Lender Paid

Pre-purchase counseling provides mortgage lenders with educated and confident customers, which can make the application process proceed more smoothly, with fewer surprises and a higher chance for high performance across the life of the mortgage loan. The investment into pre-purchase housing counseling is likely to return a greater profit margin than those who choose to not promote and invest into pre-purchase counseling.

Homeownership Counseling

The most common form of fee for service within pre-purchase counseling is the payment of a fee by a mortgage lender to an HCA for counseling prospective borrowers about the pro and cons of homeownership. In many cases this payment is irrespective of whether the client chooses to proceed with a loan closing.

Pre-purchase Counseling

In other cases the mortgage lender has defined pre-purchase counseling as an underwriting requirement that must be completed prior to a loan closing. The fees paid by a mortgage lender can range from $25 for a customer's attendance at a homeownership education workshop, to a payment of $500 for a combination of pre-purchase counseling and post-purchase education. In some cases a mortgage insurance company or other party with a financial interest in the transaction will invest in this service.

Down Payment Assistance Counseling

Many down payment assistance programs have a pre-purchase counseling/ education requirement. In many cases a down payment assistance program will pay for the cost of pre-purchase counseling services.

Fees for pre-purchase counseling paid by a mortgage lender to an HCA may not comply with the Real Estate Settlement Procedures Act (RESPA). An agency can consult with the HUD GTR and legal counsel regarding RESPA concerns.

The Real Estate Settlement Procedures Act (RESPA) is administered and enforced by the Consumer Financial Protection Bureau (CFPB).

If you have a question or complaint related to a mortgage or mortgage servicer, you can also contact the CFPB's Consumer Response team at 855-411-2372 (855-729-2372 TTY/TDD) 8am - 8pm EST.

If you are a settlement service provider with questions about RESPA, please email the CFPB at CFPB_RESPAInquiries@cfpb.gov

For more information go to the Consumer Financial Protection Bureau website at http://www.consumerfinance.gov/

In any funding model, it is important to define strict conflict of interest statements and disclosures to avoid even the appearance of a conflict of interest. When developing a fee structure for a pre-purchase counseling program, it is very important to avoid a fee structure where an HCA's compensation is based on the terms, conditions, or size of a mortgage loan transaction. See the HUD Housing Counseling Handbook for both conflict of interest guidance as well as steps to avoid lender steering issues. Once an HCA decides to enter into a relationship with a lender, HUD requires that the HCA enter into a Memorandum of Understanding (MOU), signed by both parties, to formalize the relationship. This MOU must state that:

1. The client will choose between comparable products from at least three different lenders.
2. The fee income is based on services rendered, NOT on the amount of the loan.

Client Paid

Charging a client for pre-purchase counseling is an effective manner in which to engage the client in the counseling process. By charging a fee for pre-purchase counseling a client is more invested in the process of learning. While HUD requires any client based fees to allow for a hardship waiver, it is acceptable and commonly practiced to charge clients for pre-purchase counseling. When setting fees for pre-purchase counseling, ensure the fee is reasonable and accurately reflects the costs associated with the counseling activity. See Section 5 for information on calculating client counseling costs. When charging a client for counseling services, delineate any ancillary charges or fees associated with the counseling activity, such as costs for a credit report, faxes, and copies.

TIP The National Industry Standards for Homeownership Education and Counseling states that when setting fees, homeownership educators or counselors will ensure that the fees are fair, reasonable, and commensurate with the services performed. Clients will be informed of any applicable fees prior to the delivery of any services.

3. Homeownership Education Fee Structures

A homeownership education course or workshop is a common element within many pre-purchase counseling programs. A workshop is a cost effective way to provide prospective homeowners with the knowledge necessary to make smart home buying decisions. The costs associated with conducting these courses can be calculated using the formulas provided within this Guide. A homeownership education workshop costs can be divided into three categories, labor, materials, and space. There are several ways to develop funding to assist in the covering of these three areas of associated workshop costs. It is important to understand how workshop costs and associated fees interact with other funding agreements. Depending on the source of funding, there will be varying requirements for how to disclaim this funding mechanism to the workshop participant. If a mortgage lender is involved in the funding of a workshop, the HUD Housing Counseling Handbook requires that a MOU is signed between the HCA and the mortgage lender.

For example, a homeownership education workshop could be held at a local employer's break room, the course handouts and materials costs could be provided by a mortgage insurance provider. The labor costs associated with teaching the course could be covered in part by volunteer real estate agents, mortgage lenders and real estate appraisers. A housing counselor would act as the main instructor providing the bulk of the course materials. The costs associated with the housing counselor's labor could be covered by charging a nominal fee to the client.

4. Lender Funding Agreement Components

Roles and Responsibilities

Defining the roles and responsibilities of the granting entity, counselors, and clients within the structure of a lender funding agreement may be addressed differently depending on the agreement. Usually the roles and responsibilities are spelled out, up front, in the agreement using an individual section header. Take for instance an agreement that illustrates a State Housing Finance Agency (SHFA) that has secured funding to provide a housing counseling agency, which is labeled a sub-grantee of the SHFA, for use in providing default counseling services to state residents. Once each party's role has been determined, the agreement will continue to define more details required to accomplish the underlying reason for the funding agreement.

Statement of Work

The statement of work outlines the types of activities, processes, documents, and procedures that will result in compensation from the lender. The statement of work also defines the target client base. The statement of work, or scope of services, may be segmented as an exhibit of the agreement and addressed in detail separately. This section might also identify specifics parameters for the agency to follow in conjunction with the providing services, such as:

- ✓ Curriculum to use
- ✓ Locations to provide services
- ✓ Systems to use
- ✓ Standards to follow
- ✓ Certifications to hold

- ✓ Language preferences
- ✓ Service delivery methods
- ✓ Program Eligibility Requirements

Compensation

Most HCAs do not have a sustainable source of funding and rely heavily on funding agreements to generate the revenue necessary to provide counseling services to the community. The compensation component of a funding agreement must be in line with the cost of providing the services defined in the statement of work. If the compensation and the expenses do not align the HCA will have to leverage or match the funding to cover all related expenses. Compensation can be structured using different payment methods and at a variety of amounts even among the same counseling service type. It is the HCA's responsibility to analyze the cost of providing services prior to entering into any funding agreement.

Payment Methods

There are many different payment methods used in the industry today and it is important for agencies to be confident they can perform the required services accordingly within the payment method.

Conditional Payment

Payments to the HCA are based on the HCA or clients meeting a specified condition to be considered worthy of payment under the agreement. An HCA may have to enter clients into an online portal to determine eligibility for a specific program. The HCA may not be able to receive payment if the client does not meet the conditional eligibility requirements. Reimbursement payment structured agreements are also conditional because the HCA has to show that funds have been expended for the expense(s) being reimbursed.

Unconditional Payment

Payments to an HCA are based on providing a service only. There are no conditional requirements beyond the service provision such as a specific counseling outcome, or eligibility for specific program. For example, providing a client with homebuyer education qualifies for payment regardless if the client purchases a home or receives a specific loan product.

Tiered Payment

Tiered payments based on achieving a specific level within the provision of housing counseling services. An HCA might receive one payment for providing an initial counseling session to a client and then another payment once that client achieves an outcome.

Partial Payment

A partial payment provides for a portion or percentage of payment upfront with the expectations that the remainder payment(s) will be made upon the completion of certain milestones or benchmarks. This payment method provides HCAs' ability to have funding available to create momentum towards the agreement goal or to use as leverage in order to provide the services under the agreement. For example, an agreement that provides 50 percent of the funding upfront, with an additional payment of 25 percent when the half way performance milestone is reached, and then the remainder 25 percent upon the completion of the goal.

Upfront Payment

Upfront payment is made before the HCA performs the services under the agreement. Although the upfront payment method is rare, it is a payment method used for housing counseling and housing counseling service projects. A prime example is a corporate foundation providing an HCA with funding, paid up front, for the increase of service capacity in a defined geographic area.

Funding Agreement Requirements

Reporting Requirements

Funding agreements define the data that must be reported. Most HCAs start with the collection of client data during the intake session. Client data is commonly required under most funding agreements. The reporting section of the agreement will indicate what data needs to be collected and reported. It will also indicate the reporting frequency, level of detail necessary, and what format to use.

Online portals and systems have increasingly become the reporting vehicle among many housing counseling funders. These systems provide a centralized reporting point for HCAs, a centralized data repository for the funder to use in evaluating the program performance, and a uniform set of data for both parties to use when discussing the success of housing counseling in the community.

Security Requirements

The Security of client information, lender information, and HCA information needs to be defined within any agreement. The funding entity, the HCA, and the counseling clients have a vested interest in the security of the information being exchanged. The level of security detailed in a funding agreement can range from basic standards required by HUD to high security protocols like those used in agreements with major international corporations. There may even be a security assessment or visit by the funding entity to ensure the agency meets the security compliance requirements. Any third party entities used by the agency could also be subject to meeting any security compliance requirements.

Termination Requirements

The term and length of any funding agreement needs to be detailed within any agreement. The termination component of an agreement will describe the contract timeframes as well as the possible reasons either party may terminate the agreement and the process each entity would use. The details regarding the term and length of the agreement may be contained within the statement of work section.

Insurance Requirements

When working with lenders or other funders, there are risk considerations that need to be detailed in the funding agreement; this is best handled with a section spelling out the insurance requirements for each party. The insurance required will vary in both type and amount of insurance coverage. Conformity with both state laws is the starting point. This can include a workman’s compensation insurance requirements. The second most common type of insurance written into funding agreement requirements is commercial liability insurance. The required amount of commercial liability insurance can vary. It is important to always compare the insurance requirements of a funding agreement to the HCA's existing coverage to ensure complete coverage as agreed upon.

Disclosure Requirements

Funding agreements need to outline how privacy, confidentiality, and relationships are disclosed to the various parties listed in the agreement. HCAs typically see agreements that describe the requirement to safeguard nonpublic personal information collected from clients. This component will also likely instruct HCAs as to the disclosures of the HCA's relationships with any third party entities that a client might be referred to with which the HCA has a vested interest or strategic partnership.

Legal Requirements

Any funding agreement signed by an HCA must comply with all applicable laws, HUD regulations, RESPA laws, Fair Housing laws, OMB Circulars and align with the National Industry Standards for Homeownership Education and Counseling. It is important to consult with an agency's HUD Government Technical Representative and an agency's legal counsel regarding any funding agreement concerns. The Real Estate Settlement Procedures Act (RESPA) is administered and enforced by the Consumer Financial Protection Bureau (CFPB). For more information go to the Consumer Financial Protection Bureau website at http://www.consumerfinance.gov/

5. Client Cost Analysis

When negotiating or determining the appropriate fee for housing counseling services, an HCA must determine the cost of providing the housing counseling services. This determination involves more than simply dividing the dollar amount necessary to run a program by the number of clients[1]. A study conducted in 2005, illustrated a reasonable method of calculating the cost per client. The study applied a formula created by Baker and Collins, which is described in Figure 1 below.[2]

Figure 1
Formula for Calculating Total Cost of Counseling Service

Source: Baker, C., & Collins, J. M. (2005, May). Measuring the delivery costs of pre-purchase homeownership education and counseling [Electronic version]. Washington DC: Neighborworks America

$$TC = FC + (Hg*(W*N)*C) + (Hi*W*Q2) + ((Wh*P) *Tn)*W)$$

TC	Total program costs
FC	Fixed costs (Total direct + Total indirect = Employee Salaries and Benefits)
Hg	Hours per Foreclosure Workshop Classes (including prep time)
W	Staff wages per hour including benefits ($/hour per counselor)
N	Number of staff per workshop

[1] Joint Center for Housing Studies (2004a, February). The cost-effectiveness of community-based foreclosure prevention (Working Paper Series BABC 04-18). Harvard University: Quercia, R. G., Cowan, S. M., & Moreno, A.
[2] Baker, C., & Collins, J. M. (2005, May). Measuring the delivery costs of pre-purchase homeownership education and counseling [Electronic version]. Washington DC: Neighborworks America.

Tn	Total number of Housing Counselors
Wh	2080 hours per year per Housing Counselor (52 weeks time 40 hours)
P	Percentage of Time Housing Counselor hours worked not directly counseling homeowners
C	Total number of classes held per year
Q1	Number of clients per year served in workshops
Q2	Number of clients per year served in individual counseling sessions
Hi	Number of hours spent counseling individual clients (based on a weighted average determined by the readiness of clientele). Readiness of clientele can range from those who required a minimum (3 hours), moderate (8 hours), or intense (14 hours) foreclosure prevention counseling

Types of Costs

The costs involved in counseling can be separated into two categories, direct and indirect, and can include variable and non-variable costs.

Direct costs include:

- ✓ Office supplies
- ✓ Counselors training and salaries
- ✓ Marketing and outreach
- ✓ Computers (hardware and software)

Indirect costs, items necessary to sustain the HCA, include:

- ✓ Overhead (the cost of maintaining the building, workshop space, counseling rooms, office space, security, utilities, etc.)
- ✓ Salary for the director and other management staff
- ✓ Other administrative costs

Calculating Costs

The formula shown in Figure 2 below depicts how the cost per client can be calculated to determine an appropriate fee to be charged. The total cost per client includes both the cost to counsel individual clients as well as total workshop costs, as most programs derive their individual client base from those clients who first attend a workshop. While not common, if a program segregates workshop participants from participating in individual counseling sessions, then this scenario would call for an exclusion of workshop costs when calculating the total cost per individual client.

Figure 2 Estimated Calculation of Total Cost per Client	
WC/Q1 = Total Cost per Client	
TC	Total annual program costs
Q2	Number of clients per year served in individual counseling sessions

Figure 3, below, provides a formula for estimating the cost per client for a workshop. The estimated cost per workshop client can vary based on attendance to each workshop. However, this formula provides a rough estimate to determine the costs associated with hosting a workshop. The workshop cost estimate is a subset of the total program costs. The total program costs should not be considered when attempting to calculate costs of hosting workshops. Conversely, the total number of workshop clients should not be added to the total number of individual clients when calculating the total cost per client, as this will dilute this cost artificially.

Figure 3 Estimated Calculation of Total Cost per Workshop Client	
WC/Q1 = Total Cost per Client	
WC	Total workshop costs [WC = FC + (Hg*(W*N)*C)]
Hg	Hours per Foreclosure Workshop Classes (including prep time)
W	Staff wages per hour including benefits ($/hour per counselor)
N	Number of staff per workshop
C	Total number of classes held per year
Q1	Number of clients per year served in workshops

6. Duplicate Billing

Most often an HCA generates revenue and funding from multiple sources. Managing multiple revenue streams appropriately can be challenging, but is necessary to avoid comingling reimbursable costs against more than one funding source. Reclaiming a cost multiple times against multiple funding sources is sometimes referred to double dipping. Charging a client for a credit report when the cost has already been paid to the HCA through a grant such as a HUD housing counseling comprehensive grant is an example of double dipping.

The HUD Housing Counseling Handbook 7610.1 Revision 5 states:

The HUD Housing Counseling Handbook 7610.1 Revision 5 states:

Grantees must not voucher HUD for full or partial housing counseling service costs under a HUD housing counseling grant and charge other funding sources for the same full or partial service to the same client. Examples include but are not limited to:

1. The agency may use multiple sources of funding to pay for a specific counselor or specific counseling activities, provided the combined funding does not exceed the actual cost. For example, if a non-HUD grant program reimburses at a fixed rate on a per household counseled basis, and the reimbursement does not cover the true cost of counseling the agency may bill HUD for the balance of the cost.
2. The agency charges a client a fee for the housing counseling services. Only the portion of the session not covered by fees can be counted toward the HUD Housing Counseling NOFA grant drawdown if fees charged to the client do not cover the full cost of the session.

7. Compliance Issues

There are several levels of regulations, laws, and other regulatory considerations that impact a lender funding agreement. This section identifies the most significant compliance requirements. However, this cannot be considered a complete list of all laws that need to be considered when entering into a funding agreement.

HUD Housing Counseling Handbook 7610.1

HUD provides program guidance through the publication of the HUD Housing Counseling Handbook. The HUD Housing Counseling Handbook 7610.1 provides guidance for agencies with respect to lender funded counseling services. The most recent version of the Handbook should be used to ensure an HCA is in compliance when negotiating and drafting any funding agreement.

The HUD Housing Counseling Handbook 7610.1 Revision 5, Section 7.5 states:

With the exception of reverse mortgage counseling, lenders may pay agencies for counseling services, through a lump sum or on a case-by-case basis, provided the level of payment does not exceed a level that is commensurate with the services provided, is reasonable and customary for the area, and does not violate requirements under the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq). These transactions and relationships must be disclosed to the client as required in § 214.303 (g) and in Chapter 6, Paragraph 6-1G, of this handbook. Agencies must also assure that such arrangements do not violate the provisions regarding conflicts of interest described in § 214.303(e) and in Chapter 6, Paragraph 6-2.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was written to provide states with a national regulatory framework within which to regulate the activities of mortgage loan originators. While employees of a HUD approved HCA are generally exempt from these regulatory requirements, it is important to understand the boundaries between housing counseling and loan originators. The exemption provided to HCAs is unique within the mortgage industry. No other group has such a significant exemption from licensure requirement.

The SAFE Act states:

It is the substance of an individual's activities, and not the label, profession, or job title of the individual that determines whether an individual is engaged in the business of a loan originator.

Avoid situations where an HCA's activities may be construed as mortgage loan origination. The exemption enjoyed by HCAs could be found to be inadequate if the boundaries are not properly respected regarding the SAFE Act.

Real Estate Settlements Procedure Act

HCAs should be fully aware of RESPA as housing counselors typically ensure that their clients are or have not been involved in a transaction that violates RESPA laws. HCAs may not be aware that some funding agreements and the HCA's actions under those funding agreements could be a violation of RESPA laws. The HUD Housing Counseling Handbook provides guidance for agencies to follow in order to stay compliant with RESPA Laws.

The Real Estate Settlement Procedures Act (RESPA) is administered and enforced by the Consumer Financial Protection Bureau (CFPB).

If you have a question or complaint related to a mortgage or mortgage servicer, you can also contact the CFPB's Consumer Response team at 855-411-2372 (855-729-2372 TTY/TDD) 8am - 8pm EST.

If you are a settlement service provider with questions about RESPA, please email the CFPB at CFPB_RESPAInquiries@cfpb.gov

For more information go to the Consumer Financial Protection Bureau website at http://www.consumerfinance.gov/

The HUD Housing Counseling Handbook 7610.1 Revision 5 states:

The Real Estate Settlements Procedure Act (RESPA) provides for disclosures and protections for consumers during the process of closing a mortgage loan. It governs interactions between those parties involved in the home buying process, including lenders, title companies, real estate agents, mortgage brokers, and consumers by:

1. Requiring disclosures throughout the process of closing a loan. These disclosures inform consumers about fees, the various responsibilities of the lender and escrow agent in the servicing of the loan, and basic relationships of the parties involved;
2. Prohibiting unearned fees and kickbacks from the lender in exchange for referral of business.

24 CFR Sec. 3500.14 (g) states that Section 8 of RESPA permits:

A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

Thus, while RESPA explicitly prohibits lenders from paying agencies for providing referrals, the Act does allow lenders to pay fees specifically associated with services.

Once a housing counseling agency has decided to enter into a relationship with a particular lender, HUD requires that you enter into a Memorandum of Understanding, signed by both parties, to formalize your relationship. (An example MOU can be found on HUD's website). The purpose of the document is to outline the expectations of both parties. Outline the terms of your agreement to ensure compliance with RESPA requirements and additionally the two following terms should also be included in the agency's MOU:

1. The client will choose between comparable products from at least 3 different lenders; and
2. The fee income is based on services rendered, NOT on the amount of the loan.

State and Local Laws

HCAs are also subject to compliance related to any state or local laws when providing services to clients. As each state and municipal laws vary, it is crucial for an HCA to be aware of any conflicting laws when negotiating and drafting any funding agreement. If an HCA is unfamiliar with local laws, the subject should be discussed with the HCA's legal counsel.

8. Conflict of Interests

HCAs are always required to avoid potential conflicts of interest while providing counseling services to their clients. This is even more important when exploring funding agreements whether the agreement is between the HCA and the client or a lending institution. Specific guidance is provided by HUD through the Federal Register with the e Housing Counseling Program, Final Rule in September, 2007.

The Final Rule states:

Conflicts of interest.

1. A director, employee, officer, contractor, or agent of a participating agency shall not engage in activities that create a real or apparent conflict of interest. Such a conflict would arise if the director, employee, officer, contractor, agent, his or her spouse, child, general partner, or organization in which he or she serves as employee (other than with the participating counseling agency), or with whom he or she is negotiating future employment, has a direct interest in the client as a landlord, broker, or creditor, or originates, has a financial interest in, services, or underwrites a mortgage on the client's property, owns or purchases a property that the client seeks to rent or purchase, or serves as a collection agent for the client's mortgage lender, landlord, or creditor.
2. A director, employee, officer, contractor, or agent of a participating agency shall not refer clients to mortgage lenders, brokers, builders, or real estate sales agents or brokers in which the officer, employee, director, his or her spouse, child, or general partner has a financial interest, neither may they acquire the client's property from the trustee in bankruptcy or accept a fee or any other consideration for referring a client to mortgage lenders, brokers, builders, or real estate sales agents or brokers.
3. A director, employee, officer, contractor, or agent of a participating agency or any member of his or her immediate family shall avoid any action that might result in, or create the appearance of, administering the housing counseling operation for personal or private gain; providing preferential treatment to any organization or person; or undertaking any action that might compromise the agency's ability to ensure compliance with the requirements of this part and to serve the best interests of its clients.
4. HUD may investigate agency practices and may take action to inactivate or terminate the agency's approval or participation in the Housing Counseling program.
5. Participating agencies must notify HUD of conflicts of interest not later than 15 calendar days after the conflict occurred and report to HUD on the corrective action taken to cure the immediate, and avoid future, conflicts.

HCAs should have conflict of interest policies in place to help directors, officers, and employees identify situations that present potential conflicts of interest. These policies also provide an organization with a procedure that will allow a transaction to be treated as valid and binding (if desired by the HCA) even though a director, officer, or employee has or may have a conflict of interest with respect to the transaction.

Common Conflict of Interest Terms

The following are some important terms frequently used on a Conflict of Interest Policy:

✓ **Outside Interests:**

1. A contract or transaction between an organization and an employee, board member, or family of a board member.
2. A contract or transaction between an employee or board member and an entity in which an employee, board member, or family of a board member has a financial interest.

✓ **Outside Activities:** An employee or member of the board competing with the organization in the rendering of services or in any other contract or transaction with a third party. An employee or member of the board having a financial interest in an entity competing with the organization.

✓ **Prohibited gifts, gratuities and entertainment:** An employee or member of the board accepting prohibited gifts, entertainment, considerations, or other favors from certain individuals or entities, usually exceeding a determined monetary value.

✓ **Disclosure Statement:** Develop or implement a disclosure statement in compliance with HUD guidelines which will be provided to all clients. Each employee involved in the housing counseling program should be familiar with this disclosure statement.

✓ **Conflict of Interest procedures:** Rules determining actions required in the event of a perceived or potential conflict of interest.

✓ **Confidentiality:** Each employee or member of the board should disclose confidential information or agree to never use confidential information for the personal profit or advantage of the employee, member of the board or a family member.

✓ **Review of the conflict of interest policy:** Each new employee or member of the board should be required to review and sign a copy of the policy. The policy should be reviewed annually by the board of directors, employee or member of the board.

9. Model Funding Agreements

Most funding entities will require their own agreements as drafted by their attorneys. A model funding agreement is included in Appendix A. The Statement of Work is typically the section of an agreement that varies the most between the services being provided.

Client to Agency Scope of Work Model

Many HCA's use housing counseling agreement language embedded in existing forms such as the Intake Form or Client Action Plan. The agreement reads much like a statement explaining the roll of each the counselor and the client in the given counseling service being provided. It is important to include the agreement language on an existing form that requires the client's signature. Below is an example of language used to create an agreement between an HCA and a client.

The Agency role in the home buying process is that of a trusted advisor, educating the homeowner on the process and the options available. The counselor many times will bridge the gap between the homeowner and the various parties involved in a real estate transaction including but not limited to the mortgage company, real estate broker, real estate appraiser, and home inspector. This role is to serve as an educator, mediator, and advisor only.

The home-buying process can be a lengthy and frustrating at times, determination and persistence from the potential homeowner is required. During the days and weeks leading up to a real estate transaction closing a housing counselor will advise the homeowner on the best options available for homeownership sustainability according to their individual situation.

I, as the prospective homebuyer understand that I must play an active role in the process towards the stated goal of closing this real estate transaction.
I also agree that the decision to close or not close on this transaction is solely mine, and that of my co-borrower. A housing counselor may not make any decision on my behalf.

I am responsible for all decisions made throughout this lending process. I take the responsibility for and will follow through on the tasks listed on the action plan.
I understand that the Agency counselor will not conduct work for me in this process without my prior consent and my full participation.

The fee collected by the agency is to cover the costs associated with the educational material and courses provided to me which is designed to increase my knowledge and understanding of this home buying process. This fee is charged regardless of whether I choose to purchase a home and no fees associated with this agreement are contingent or based on whether I choose to purchase a home. The fee is set at $______ for the ABC Housing Counseling Agency Homeownership Education Program. If you have a hardship which prevents you from paying this fee, please contact your housing counselor for a hardship waiver.

10. Currently Available Funding Opportunities

Funding for housing counseling activities originates from three main sources: the Federal Government, private sector institutions, and clients. The funding may originate from these main sources, but may actually be distributed by many others.

Examples of Federal Government funding distribution includes:

- ✓ HUD Notice of Funding Availability
- ✓ National Foreclosure Mitigation Council agreements
- ✓ State and County Community Development Block Grants and HOME Investment Partnership Program

- ✓ State Emergency Shelter Grants
- ✓ Fair Housing Initiative Program
- ✓ Housing Choice Voucher Self Sufficiency Program
- ✓ Temporary Aid for Needy Families Program funds

Examples of private sector institution funding include:

- ✓ Financial institution foundations or charitable giving grants
- ✓ Large regional employers
- ✓ Real Estate Organizations
- ✓ Insurance institution foundations or charitable giving grants
- ✓ Funding derived from civil litigation settlements

Note to Appendices

This set of appendices is provided strictly as a reference guide of foundational documents necessary for any start-up nonprofit HUD-approved housing counseling agency. These documents are provided as samples with the disclaimer that the use of these documents may involve certain legal consequences which may only be properly vetted by an attorney licensed to practice law within the state(s) in which you operate. These are legal documents with tax and legal consequences which may not be used without adequate review by a licensed attorney.

Appendix A: Model Funding Agreement

This appendix provides model Funding Agreement that HCAs can use as a basis to tailor a funding agreement that meets their needs.

HOUSING COUNSELING MODEL FUNDING AGREEMENT

This funding agreement is entered into on the ___day of _______, 20___ between ______________________________ (“HCA”)
and_____________________________(Partner).

The scope of this funding agreement is for the HCA to perform housing counseling services for mutual clients (“clients”) who may benefit from the activities and associated outcomes obtained from said counseling. This Funding Agreement shall remain in effect until a request for termination is made giving the remaining party 30 days’ notice to quit this agreement.

I. The Parties

HCA is a tax-exempt non-profit organization as described under section 501(c)(3) of the Internal Revenue Code and is approved as a housing counseling HCA by the U.S. Department of Housing and Urban Development. The Partner is a ____Mortgage Servicer ____Federally Chartered Partner ____Mortgage Insurance Co. ____Mortgage Investor ____Government Sponsored Entity ____Non-Profit Organization
____Other (please explain)____. The Partner is fully compliant with all applicable local, state and federal law.

II. Real Estate Settlement Procedures Act/ Conflict of Interest

This agreement is reached in compliance with 24 CFR Sec. 3500.14 (g) which states that Section 8 of RESPA permits:
A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
Any agreement or compensation which is not congruent with the above referenced 24 CFR Sec. 3500.14 (g). is excluded from this agreement.
The partner agrees to the following statements and acknowledges the following statements will be disclosed to the mutual client.
1. The client will choose between comparable products from at least 3 different lenders.;
2. The funding derived from this agreement is based on services rendered, NOT on the amount, terms or conditions of any mortgage loan or other related transaction.
3. No endorsement, sponsorship or other preferential treatment will be conveyed to the partner for entering into this agreement

II. Statement of Work

HCA shall perform homeownership education, pre-purchase counseling, foreclosure prevention counseling, related housing counseling services and other responsibilities and duties identified in the attached Statement of Work. The counseling services may be provided to each customer identified and referred by the Partner to HCA and/or to clients who contact the HCA for housing counseling services. The partner agrees to adhere to the privacy requirements found in Gramm-Leach-Bliley Act 15 USC, Subchapter I, Sec. 6801-6809.

> *"Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.*
> ***Sec. 6803. Disclosure of institution privacy policy***
> *(a) Disclosure required*
> *At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to -*
> *(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;*
> *(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and*
> *(3) protecting the nonpublic personal information of consumers.*
> *Such disclosures shall be made in accordance with the regulations prescribed under section 6804 of this title.*
> *(b) Information to be included*
> *The disclosure required by subsection (a) of this section shall include -*
> *(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including -*
> *(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and*
> *(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;*
> *(2) the categories of nonpublic personal information that are collected by the financial institution;*
> *(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and*
> *(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title."*

To the extent the HCA receives nonpublic personal information about customers in the course of providing such services under this Agreement, HCA agrees to the requirements for the treatment and use of such nonpublic personal information defined in the Statement of Work.

III. The Compensation

The Partner agrees to pay HCA $XX.XX per each mutual client to whom HCA provides housing counseling services resulting in a contact with the Partner. The Partner shall also pay HCA an additional $XXX.XX for each completed transaction of each customer. Each party shall bear its own expenses in administering this Agreement. Each party shall be responsible for any liability arising from its own conduct and retain immunity and all defenses available to them pursuant to federal and state law.

________________________________ ____________________
Date

Chief Executive Officer
Partner

____ ___________________
Date

Executive Director
HCA

Appendix B: Lender to Agency Statement of Work

ABC Housing Counseling Agency “the Agency” agrees to provide foreclosure prevention counseling to the customers of CBA First National Bank “the Bank”. The counseling performed by the agency must be conducted in a manner that is compliant with the HUD Housing Counseling Handbook 7610.1 Revision 5. The Agency must also adhere to the National Industry Standards for Homeownership Education and Counseling. The primary delivery method to be used is one-on-one in-person counseling sessions to be made available in both English and Spanish.

The Agency will complete the following tasks with each borrower referred to the agency by the Bank:

- Educate potential Bank customers regarding homeownership process
- Assist mortgage applicants with the loan application process
- Help borrowers call and connect with their loan servicer at the bank.
- Collect information and data relevant to complete a full loss mitigation package
- Provide the borrower with information regarding appropriate loss mitigation options.
- Assist borrowers in communicating with the bank regarding their mortgage obligations
- Provide follow up counseling services to the borrower when necessary

Definition of Pre-purchase counseling Services
The Agency specifically agrees to provide Homeownership Education counseling services as follows:

- **Basic Intake Session:**
  The Agency must conduct an intake including client name and address, basic demographic information, lender and loan information, reason for counseling, complete budget form, pull soft credit pull, enter client data into CMS and make a warm transfer to the Bank.
- **Homeownership Education Course:**
  The completion of a 8 hour homeownership education course covering the topics agreed upon between the Agency and the Bank.
- **Pre-purchase Counseling:**
  Based on the completion of a homeownership education course, a housing counselor should schedule a one-on-one counseling session with the client. This counseling session is to review all questions the client has regarding the coursework completed. To review specific scenarios regarding all possible loan products. The client is expected to draft an action plan with the help of the housing counselor. This action plan should outline a path to homeownership. This action plan should be developed with the caveat that

the client has the responsibility to walk away from the homeownership process at any point the client feels this process in no longer in his/her best interest. The Agency must complete a current budget form and provide addition budget counseling if necessary.

Definition of Foreclosure Counseling Services

- **Basic Intake Session:**
  The Agency must conduct an intake including client name and address, basic demographic information, lender and loan information, reason for delinquency, complete budget form, pull soft credit inquiry (a soft credit inquiry does not negatively affect the overall credit score), enter client data into CMS and make a warm transfer to the bank.
- **Loss Mitigation Packet Submission:**
  All basic intake requirements in addition to the compilation and submission of a complete loss mitigation packet per Investor/Servicer standards included with a recommended workout plan. Follow up with client and servicer to insure proper review of file. After decision has been made, the Agency will meet with client to review decision and insure timely submission of all necessary documents to complete the workout plan.
- **Workout Performance Follow-up:**
  Based on a positive outcome from the initial counseling intake session and loss mitigation packet submission resulting in an executed loan workout plan, the Agency will perform a six month workout performance follow up with the client. The Agency must complete a current budget form and provide addition budget counseling if necessary.

Systems for Use

The Agency will utilize a secure Client Management System (CMS) as a data repository for client information. The CMS must allow exporting of reporting information for agency use to comply with the agreement reporting terms.

The Agency is allowed to utilize the Bank’s loan origination underwriting system and/or loss mitigation portal of choice to transmit client documents and communicate with the Bank regarding client file information. Access to and training from the Bank for these systems will be granted to the Agency upon the execution of this agreement at no cost.

Appendix C: Agency to Agency Statement of Work

This Statement of work is written in accordance with the terms set forth in the grant agreement that govern the expenditure of the grant between the Department of Housing and Urban Development (“HUD”) and The Housing Counseling Providers, Inc. (“Grantee)”, a HUD-approved National Intermediary.

This Statement of Work sets forth the agreed upon services to be provided by ABC Housing Counseling Agency (“Sub-grantee”) as part of the Sub-grantee Agreement with the Grantee.

Services
Sub-grantee will provide potential homebuyers with homebuyer education courses and pre-purchase counseling.

- **Basic Intake Session**
  The Sub-grantee must conduct an intake of data including client name and address, basic demographic information, potential lender and loan information, reason for counseling, complete budget form, pull soft credit pull, enter client data into client management system (CMS).
- **Homeownership Education Course**
  The completion of a 8 hour homeownership education course covering the a curriculum agreed upon between the Grantee and Sub-grantee.
- **Pre-purchase counseling:**
  Based on the completion of a homeownership education course, a housing counselor should schedule a one-on-one counseling session with the client. This counseling session is to review all questions the client has regarding the coursework completed. To review specific scenarios regarding all possible loan products. The client is expected to draft an action plan with the help of the housing counselor. This action plan should outline a path to homeownership. This action plan should be developed with the caveat that the client has the responsibility to walk away from the homeownership process at any point the client feels this process in no longer in his/her best interest. The Agency must complete a current budget form and provide addition budget counseling if necessary.

These counseling services must be provided in accordance to the requirements set by the HUD Housing Counseling Handbook 7610.1 Revision 5.

- **Requirements**
  Sub-grantee agrees to make the make counseling services available to persons with disabilities and those with limited English proficiency. Whereas any necessary service delivery aids, equipment or translation services will be utilized at the expense of the sub-grantee.
  Sub-grantee agrees to comply with the Fair Housing Act and the Real Estate Settlement Procedures Act.

Sub-grantee certifies to be in good standing under the laws of the state in which it operates, meet all approval and programmatic requirements described in 24 CFR Part 214 and the Housing Counseling Handbook 7610.1.Sub-grantee may also be asked to self-certify that agency will follow and has adopted the guidelines set forth by the National Standards for Homeownership Education and Counseling.

- **Documentation**
  Sub-grantee agrees to collect a signed client authorization form for each client being served. The authorization must explain the counseling service being provided and that non-public personal data will be released to Grantee and HUD for program monitoring and evaluation purposes. Non-public personal data is described as, but not limited to, the data collected during the client intake process.
  Each client will be provided a copy of the Sub-grantees privacy policy statement prior to the start of a counseling session.
  Sub-grantee agrees to comply with any request(s) for documents, whether print, electronic, or online from HUD and the Grantee for program and compliance monitoring reviews.
- **Systems**
  The Agency will utilize a secure Client Management System (CMS) as a data repository for client information. The CMS must allow exporting of reporting information for agency use to comply with the agreement reporting terms.
  The Sub-grantee is allowed to utilize the Grantee's CMS or proprietary portal to transmit client documents and communicate with the Grantee regarding client file information. Access to and training from the Grantee for the these systems will be granted to the Sub-grantee upon the execution of this agreement at no cost.