



March 24, 2023

David Valdez  
Office of Housing Counseling  
Department of Housing and Urban Development  
1331 Lamar St., Suite 550  
Houston, TX 77002

**RE: Certification of Tribal Housing Counselors [FR-6322-P-01]**

Dear Mr. Valdez:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled “Certification of Tribal Housing Counselors,” which was published in the Federal Register on January 26, 2023, by the Department of Housing and Urban Development. As a leading provider of housing counseling training and an active participant in the HUD Housing Counseling Program, NeighborWorks is deeply invested in the success of the program. Simultaneously, NeighborWorks is working to deepen its service to Indian Country and the organizations that serve Native communities. It is against this backdrop, and in this spirit of partnership, that NeighborWorks offers its appreciation to the Department for its efforts to fulfill the requirements of Section 106 of the Housing and Urban Development Act of 1968 (“Section 106”) and tailor the requirements of housing counseling certification to support the provision of high-quality services in Indian Country, while noting that the proposals contained in the NPRM fall short of realizing this goal.

Please note that these comments have not been submitted to or approved by NeighborWorks America’s board and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed based on the ongoing work of NeighborWorks America with our network of nearly 250 NeighborWorks-chartered local and regional nonprofits, as well as ongoing partnership with Native-led and Native-serving organizations. Our network includes several Native-led organizations and Native Community Development Financial Institutions, as well as many others specifically serving Native communities. In addition, we engage actively in multiple coalitions of organizations focused on serving the unique needs of Native communities.

For nearly 45 years, the Neighborhood Reinvestment Corp. (doing business as NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing, increasing financial capability, and promoting community and economic development. From its earliest days, NeighborWorks America has been committed to housing counseling as a critical strategy for developing and maintaining sustainable homeowners. Nowhere are these services more necessary than in Native communities, where intertwined histories of financial marginalization, econo

mic distress, and constrained housing supply have contributed to very low homeownership rates and high rates of residential instability. While NeighborWorks recognizes the importance of providing high quality housing counseling to Native communities and on tribal lands, the potential for unintended negative consequences that serve to diminish access to these services is a major concern.

Notwithstanding the NPRM's discussion of the tribal consultation process in which the Department engaged, NeighborWorks is concerned that the proposed rule does not adequately reflect the feedback collected. Given the divergence between the views of tribal participants and the policies proposed, NeighborWorks recommends that the Department engage in further consultation to develop an alternative regulatory standard that will both meet the spirit of Section 106's requirements while also ensuring that tribal communities can continue to benefit from accessible, culturally-informed, and relevant housing counseling services. As described in the NPRM, we share in the Department's aims to create a standard for compliance "that recognizes Tribal sovereignty and self-determination, and accounts for the unique status of Tribal land and housing programs in Indian Country."

According to the Department's FY 2024 Congressional Budget Justification, "The tenets of the tribal self-determination policy, as embodied in the IHBG program, give Tribes greater flexibility to tailor their affordable housing programs to their local needs, and determine what types of services, programs, and projects they will carry out. This approach has worked well in Indian Country, where geographies, climates, customs, resources, and economic conditions vary widely." Imposing prescriptive housing counseling certification regulations that are not reflective of the needs and priorities of tribes would hinder their self-determined rights to manage and implement their housing activities, including housing counseling, contravening the congressional intent underpinning NAHASDA.

NeighborWorks America has participated as an Intermediary in the HUD Housing Counseling Program since 1997. Through our direct experience working with approximately 90 HUD-Certified Housing Counseling Organizations, we are acutely aware of the financial and compliance challenges of operating the program and maintaining certified counselors on staff. At the same time, we are deeply committed to the value that this program brings to communities and individuals across the country to acquire, preserve, and maintain adequate housing.

Since the HUD Housing Counseling Program's inception in 1968, the non-Native world has benefited from 55 years of experience to grow, adjust, acquire additional needed resources, and conform to the requirements of this complex program. The passage of NAHASDA in 1996 heralded a significant shift in Federal policy and relationships from the categorical HUD programs to a locally controlled resource that respects Tribal Sovereignty and self-determination. Although housing counseling is very much needed, the HUD Housing Counseling Program—as it has been developed for 55 years—cannot appropriately be applied as an overlay in Indian Country.

This tension creates an opportunity to develop a certification framework that both complies with the section 106 requirements, but also seizes on the potential for growth, development, resource enhancement, and collaboration, while also embodying the spirit and context of NAHASDA. To do so successfully will require a reimagining of the HUD Housing Counseling Program, stripping out many of the reporting and compliance aspects of the HUD Housing Counseling Program and embedding any remaining reporting/compliance within the established NAHASDA Annual Indian Housing Plan and Performance Report. At the same time, a heavy emphasis on training and skill-building will develop the competency and capacity of tribal housing program staff, enabling them to be a better resource to their community. Fully realizing this opportunity would mean moving customers to actively pursuing their desired outcomes rather than simply meeting their minimum expectations. The items below outline NeighborWorks’ recommendations for realizing this vision.

- *Compliance*

NeighborWorks recommends that a significantly abbreviated version of the Housing Counseling Plan be embedded in the NAHASDA Annual Indian Housing Plan, with the Quarterly HUD 9902 submitted as an attachment. The HUD 9910 should either be eliminated or consolidated into monitoring that ONAP does for NAHASDA. Customer tracking can be embedded in existing software that tribal housing programs use for rental property management. NeighborWorks notes that additional funding resources will be needed to adapt these software applications to accommodate the development of client action plans and high-level datapoint tracking.

- *Training*

Tailored training could help create mobility and empowerment within the Tribal Housing Programs. All training should be culturally relevant and based around the Pathways Home Homebuyer Education Curriculum, and NeighborWorks recommends development of a rental housing continuum companion training for Pathways Home. This expansion would cover information relevant to the many housing units owned and managed by Tribal Housing Programs which are set up as Mutual Help/Lease Purchase. By its own admission in the NPRM, the Department recognizes the extent to which the standard training requirements are an imperfect fit for the body of knowledge needed by counselors serving Native peoples, including in the areas of Federal Indian law, the unique status of trust land, the role of the Bureau of Indian Affairs in mortgage and realty-related transactions and matters, the role played by Indian tribes to grant leases on trust land, and more.

Training should cover the following competencies:

Financial Management	<ul style="list-style-type: none"> <li>• Budgeting and Financial Goal Setting</li> <li>• Credit, Debt and Consumer Protection</li> <li>• Savings and Asset Building</li> </ul>
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Housing Affordability	<ul style="list-style-type: none"> <li>• Housing Affordability and Homeownership Opportunities</li> <li>• Fair Housing Laws and Requirements</li> <li>• Calculation of Housing Affordability</li> </ul>
Homeownership	<ul style="list-style-type: none"> <li>• Homebuyer Education and Counseling</li> <li>• Mortgage Products and Programs including home improvement programs</li> <li>• Homeownership Process and Responsibilities</li> </ul>
Tenancy/Rental Counseling	<ul style="list-style-type: none"> <li>• Housing and Rental Market Analysis</li> <li>• Tenant and Landlord Rights and Responsibilities</li> <li>• Lease Agreements and Rental Assistance Programs</li> </ul>
Avoiding Foreclosure and Eviction	<ul style="list-style-type: none"> <li>• Default and Foreclosure Prevention Counseling</li> <li>• Loss Mitigation Strategies and Options</li> <li>• Loan Modification Programs and Requirements</li> </ul>

- *Testing*

NeighborWorks strenuously objects to the requirement in §214.6(c) that uses as its starting point the general housing counseling certification examination from §214.203(n). Any and all testing must be framed in a culturally relevant context. Furthermore, given that the Department allowed four years for HUD-approved Housing Counseling Agencies to comply with testing requirements, Tribal Housing Programs should be given at least as much time to obtain and complete culturally relevant testing in the focus areas.

As proposed, the housing counseling certification requirements would likely create a stumbling block and significantly limit the availability of counselors. While NeighborWorks is supportive of the change made in §214.6 to broaden the definition of eligible housing counseling organizations to include staff of Tribes, TDHEs, and other Tribal entities, other proposed requirements would prove extremely onerous. The IHBG program is the single largest source of funding for housing in Indian Country, where safe, decent, and affordable housing is desperately needed. NeighborWorks is concerned that onerous certification requirements would siphon already-scarce resources away from projects. During the Department’s 2021 tribal consultation, an overwhelming share of tribal representatives expressed concern that applying the HUD housing counseling certification requirements would financially burden tribal housing program who already operate with scarce resources.

NeighborWorks appreciates the Department’s recognition of the added costs of certification, but believes that the Department has understated the impact of not just the financial costs, but also the time burdens and the severe capacity constraints already in place. Participation in HUD housing counseling has proven difficult—and sometimes even prohibitive—for small and rural agencies. These challenges would only be magnified for tribal entities, many of which would need significant additional resources and technical assistance to develop the required infrastructure for reporting and compliance.

NeighborWorks is particularly concerned about the proposal to base the Native certification exam in the current HUD Housing Counseling exam. The content of the existing exam is not constructed through a culturally-informed lens and does not recognize the extent to which the geographies, climates, customs, resources, and economic conditions in Indian Country vary. Just as tribes pursue housing programs on the basis of their specific needs, so, too, should they provide housing counseling. Furthermore, the NPRM's proposal that tribal customers could simply be served by a general HUD housing counselor, is in tension with the fundamental recognition of a need for an alternative certification structure for Native programs and indeed, may not provide the services necessary for those particular customers.

Given these concerns, NeighborWorks fears that the ultimate effect of the NPRM's proposals—contrary to its purpose and intent—would be a diminution of housing counseling resources and service for Native communities. Small, geographically dispersed communities face unique human capital challenges, and many tribes and tribal entities may simply be unable to attract, train, and retain counselors who can meet the proposed certification requirements. Counselor turnover, already a significant issue in non-Native housing counseling organizations, would present a problem for many organizations, causing interruptions in service and instability. Given the burdensome compliance requirements, some tribal housing programs may be forced to avoid activities that would trigger a counseling requirement. In other circumstances, tribes will be forced to seek virtual counseling services from others.

Though NeighborWorks supports the use of technology and creative partnerships to expand counseling availability generally, the application of these strategies in a Native context, where each tribe has its unique customs, culture, and regulations, may not be fully appropriate. While NeighborWorks is eager to work with the Department to support the provision of high-quality housing counseling services in Native communities, we are very concerned about the direction outlined in the NPRM. Despite their intent to the contrary, these proposals would likely create significant barriers to tribal housing programs being able to effectively serve the counseling needs of their communities. NeighborWorks is confident that, with additional tribal consultation, a collaborative framework can be developed that will meaningfully support tribal needs while also complying with statutory requirements. We look forward to continuing to engage with the Department, our Native-led and Native-serving member organizations and partners, and others as we work together to achieve our shared goals.

Sincerely,



Kirsten T. Johnson-Obey  
Senior Vice President, Public Policy and Legislative Affairs