

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Housing and Community Development
(DLS Control No. 15-179)**

Overview and Legal and Fiscal Impact

The regulations clarify policies and procedures for assistance grants made under the Housing Counseling and Foreclosure Mediation Fund so as to more accurately reflect the ability of the assistance grants to be used for homebuyer education and financial counseling for prospective homebuyers.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Housing and Community Development:

Homebuyer Education and Counseling: Foreclosure Prevention and Housing Counseling Grant Programs: COMAR 05.19.03.01, 02, .03 and .05

Legal Analysis

Background

Chapter 485 of 2010 made significant changes to the statutory law governing the foreclosure process for residential real property. Among other things, Chapter 485 established the Housing Counseling and Foreclosure Mediation Fund, to be administered by the Department of Housing and Community Development, for the basic purposes of supporting nonprofit entities and government agencies, assisting existing homeowners in avoiding or addressing foreclosure proceedings, and educating existing and prospective homeowners about the legal and financial aspects of owning a home.

Summary of Regulations

The regulations clarify policies and procedures so as to more accurately reflect the ability of assistance grants made by the department under the Housing Counseling and Foreclosure Mediation Fund to be used for homebuyer education and financial counseling for prospective as well as existing homebuyers, in conformance with State law.

The regulations amend four existing regulations concerning the department's Foreclosure Prevention and Housing Counseling Grant Programs, which include the National Foreclosure Mitigation Counseling Program, the Housing Counseling and Foreclosure Mediation Fund, and other housing

counseling grants. Specifically, the regulations amend COMAR 05.19.03.03 so that the term “housing counseling services” includes homebuyer education and pre-purchase counseling. In addition, the regulations amend COMAR .05.19.03.01, 05.19.03.02, and 05.19.03.05 similarly so as to clarify that, under the Housing Counseling and Foreclosure Mediation Fund, owner-occupants of single-family properties may be either existing or prospective; the regulations further amend COMAR 05.19.03.05 to add homebuyer education, housing advice, or financial counseling as one of the eligible uses of grant assistance under the fund.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites § 12-1303 of the Commercial Law Article, §§ 2-102 and 4-507 of the Housing and Community Development Article, and § 7-105.1 of the Real Property Article as statutory authority for the regulations.

Section 12-1303 of the Commercial Law Article requires a lender of a mortgage loan secured by owner-occupied residential property located in the State, if not otherwise required by federal or State law, to provide a borrower a specified written notice that includes: a statement recommending that the borrower complete home buyer education or housing counseling and information about home buyer education or housing counseling programs and services provided and maintained by the department.

In the Housing and Community Development Article, § 2-102 lists the basic mandatory and discretionary functions of the department. Some of the required functions include: serving as a clearinghouse for information and materials that may be pertinent to sound community assistance and providing training and educational services to public entities and nonprofit organizations for community assistance purposes. Also in the Housing and Community Development Article, § 4-507 creates the Housing Counseling and Foreclosure Mediation Fund in the department and specifies that the purposes of the fund include supporting nonprofit entities and specified State agencies in assisting homeowners avoid foreclosure and providing homeowners and prospective homeowners with homebuyer education, housing advice, and financial counseling.

Section 7-105.1 of the Real Property Article sets out the process for the foreclosure of residential real property, including specifying that the revenue collected under specified filing fees established under the section shall be distributed to the Housing Counseling and Foreclosure Mediation Fund.

In addition to the provisions cited, § 2-111 of the Housing and Community Development Article provides statutory authority for these regulations. Section 2-111 invests the Secretary of Housing and Community Development with responsibility for adopting regulations for the Office of the Secretary and authorizes the Secretary to approve, disapprove, or revise the regulations of each governmental unit in the Department.

With the addition of § 2-111 of the Housing and Community Development Article, this authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

As requested by the Department of Legislative Services, assistant Attorney General Mark Petruskas confirms that the department will cite § 2-111 of the Housing and Community Development Article among its statutory authority and make the following technical corrections to the Statement of Purpose: the purpose of the regulations is to clarify existing regulations and conform to statutory law, rather than simply “amend”; the correct name of the fund that is the subject of the regulations is the Housing Counseling and Foreclosure Mediation Fund, rather than the “Maryland Housing Counseling Fund (MHCF)”; and the reference to “other housing counseling programs” will be deleted as surplusage. In addition, all references to the MHCF will be corrected as described above throughout the regulations for accuracy and consistency.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations expand the scope of activities that may be performed by a nonprofit housing counseling agency under an operating assistance grant from the Maryland Housing Counseling and Foreclosure Mediation Fund. The department advises that the regulations have no fiscal impact. The Department of Legislative Services concurs as the funding available for such grants is not affected.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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