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Housing Counseling Agencies: Tips to Avoid Government Scrutiny

The recent announcements of government funding for housing counseling is welcome news to agencies that are struggling to help homeowners. In mid-March 2012, the U.S. Department of Housing and Urban Development ("HUD") and NeighborWorks announced that over 100 million dollars in grant money would be distributed hundreds of housing counseling agencies. The money, however, comes with certain strings attached that all recipients must factor into their compliance programs.

The downfall of the Association of Community Organizations for Reform Now ("ACORN") two years ago serves as an important lesson to all nonprofit HUD-approved housing counseling organizations. An embezzlement scandal, allegations of voter registration fraud and other questionable behavior by employees involved in a counseling session gained national attention, led to federal legislation prohibiting the distribution of federal funds to ACORN, and ultimately resulted in the organization's bankruptcy and dissolution in 2010.

In today's around-the-clock news cycle environment, where each federal dollar is closely scrutinized, it is important for HUD-approved housing counseling agencies to be of the harm that can be caused by allegations of inappropriate conduct and bad press. On top of this, all agencies should be familiar with the mechanisms available to the federal government to take action, and of course, the tools available to such organizations to mitigate such action.

In the past, the federal government primarily relied upon routine exams by grant-making offices and the Executive Branch's prosecutorial powers to punish bad actors and unscrupulous organizations. However, the ACORN case is particularly telling as it shows Congress's own inclination to act upon perceived violations of law. This includes the severe action of imposing statutory funding restrictions, as well as consistent efforts to mandate suspension/debarment actions for certain misconduct. As a result, HUD-approved housing counseling agencies under scrutiny need to prepare themselves not only for routine exams, but also potential criminal and civil defense and heightened congressional scrutiny.

No HUD-approved housing counseling agency is immune from individual employees making bad decisions or providing advice that is perceived as inappropriate. Organizations must prepare themselves to be able to address and mitigate scrutiny and governmental action on all fronts.

When faced with scrutiny, many organizations believe they are prepared or have adequately protected themselves after the fact by hiring defense counsel to navigate investigations. While experienced counsel can be useful, there is much an organization can do preemptively to curb the potential for misconduct.

Essential to every HUD-approved housing counseling agency should be an appropriate compliance and ethics program suitable to the size and sophistication of the organization. At a minimum, these programs should include (to varying degrees of particularity and complexity depending on the organization):

- Documented policies and procedures, including codes of ethics and conduct, organizational conflict of interest policies, as well as appropriate program- and funding-specific policies and procedures;
- Training that educates employees on the organization's policies and procedures and to advise employees of who to contact with questions or concerns;
- Internal monitoring to ensure the organization's policies and procedures are effective in advising and assisting employees in appropriately conducting their business;
- Channels for employees and others to report potential issues;
- A crisis communication plan; and
- An appointed individual with overall responsibility for ensuring the adequacy of the compliance and ethics program, including that the policies, procedures, training and monitoring functions are adequate and who conducts and/or oversees investigations of potential issues.

In the event of an action or inquiry against a HUD-approved housing counseling agency, having a

suitably-tailored compliance and ethics program in place can help provide a defense that the organization did as much as could reasonably be expected and the organization itself, notwithstanding a few bad actors, is a reputable and responsible steward of taxpayer dollars.

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Jonathan Pompan is Of Counsel at Venable LLP in the Washington, DC office. He represents credit counseling agencies, in a wide variety of areas such as before the Consumer Financial Protection Bureau, compliance with applicable federal and state regulations, and in connection with Federal Trade Commission and state investigations and law enforcement actions. Mr. Locaria is a member of Venable's government contracts practice, working frequently with nonprofits in connection with federal grant and contract issues.

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