

ILLINOIS REGISTER

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED RULES

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 386
FORECLOSURE PREVENTION PROGRAM GRADUATED FUND

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AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and Section 7.30(b-1) of the Illinois Housing Development Act [20 ILCS 3805/7.30(b-1)].

SOURCE: Adopted at 39 Ill. Reg _____, effective _____.

SUBPART A: GENERAL RULES

Section 386.101 Authority

The Illinois Housing Development Authority is the designated administrator for the Foreclosure Prevention Program Graduated Fund in Illinois, which was established by Section 7.30(b-1) of the Illinois Housing Development Act, effective October 1, 2010.

Section 386.102 Purpose and Objectives

The purpose of the Program is to use moneys appropriated from the Foreclosure Prevention Program Graduated Fund, and any other funds appropriated for this purpose, to support housing counseling. Under the Program, the Authority will make grants to the Counseling Agencies for Eligible Uses.

Section 386.103 Definitions

The following terms used in this Part shall have the following definitions:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Applicant": A prospective Counseling Agency making an Application for a Grant.

"Application": An application to the Authority on the Authority's form for a Grant completed by a prospective Counseling Agency.

"Appropriation": The annual Appropriation of funds for the program by the Illinois General Assembly from the Foreclosure Prevention Graduated Fund to the Illinois Department of Revenue for the Authority, including any other funds appropriated for this purpose.

"Attorney General": The Illinois Attorney General.

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"Auditor General": The Illinois Auditor General.

"Authority": The Illinois Housing Development Authority.

"City": The City of Chicago.

"Commitment": A contract executed by the Authority and a Counseling Agency under which the Authority agrees to make a Grant to the Counseling Agency. Each Commitment shall contain a provision to the effect that the Authority shall not be obligated to provide funds under the Commitment if the Authority has not received sufficient funds from an Appropriation.

"Computer and Equipment Expenses": Computer and equipment costs incurred by a Counseling Agency in connection with the administration of the Grant.

"*Counseling Agencies*": *A housing counseling agency approved by HUD (Section 7.30(b-5) of the Act).*

"Eligible Uses": Shall have the meaning set forth in Section 386.302.

"Foreclosure Prevention Graduated Fund" or "Fund": A fund created in the State Treasury for the collection of certain fees as set forth in Section 15-1504.1 of the Illinois Code of Civil Procedure [735 ILCS 5/15-1504.1] paid by a plaintiff at the time of a filing of a foreclosure complaint in connection with residential real estate.

"General Operational Expenses": Operational costs incurred by a Counseling Agency in connection with the administration of the Grant.

"Grant": The portion of the Appropriation granted by the Authority to the Counseling Agencies for Eligible Uses under the Program.

"Approved Housing Counseling": *In-person counseling provided by a counselor employed by a Counseling Agency to all borrowers, or documented telephone counseling if a hardship would be imposed on one or more borrowers. A hardship shall exist in instances in which the borrower is confined to his or her home due to medical condition, as verified in writing by a physician, or the borrower resides 50 miles or more from the nearest Counseling Agency. In instances of telephone counseling, the borrowers must supply all necessary*

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documents to the counselor at least 72 hours prior to the scheduled telephone counseling session. (Section 7.30(b-5) of the Act)

"HUD": The U.S. Department of Housing and Urban Development.

"Program": The Foreclosure Prevention Graduated Program authorized by Section 7.30(b-1) of the Act.

"State": The State of Illinois.

"Technical Assistance": Counseling Agencies activities involving:

planning for Housing Counseling; or

assistance with an Application.

Section 386.104 Compliance with Federal and State Law

Notwithstanding anything in this Part to the contrary, this Part shall be construed in conformity and compliance with applicable federal and State law.

Section 386.105 Forms and Procedures for the Program

The Authority may prepare, use, prescribe, supplement and amend such forms, agreements and other documents and procedures as may be necessary to implement the Program.

Section 386.106 Fees and Charges

The Authority will not charge an application fee for the Program.

Section 386.107 Authority Administrative Expenses

The Authority is entitled to deduct from each Appropriation, prior to any distribution of funds under the Program and prior to making any Grants, an amount not to exceed 4% of each Appropriation for expenses associated with the administration of the Program, including, without limitation, expenses for staff salaries and benefits for time spent on design and administration of the Program; expenses incurred in performing outreach activities and providing Technical Assistance to the Counseling Agencies; the use of the Authority's equipment for Program purposes; the cost of office space and utilities incurred in connection with the Program; and any other expenses incurred in the administration of the Program. The Authority shall maintain a

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detailed accounting of its administrative expenses, which shall be available to the public for review.

Section 386.108 Amendment

This Part may be supplemented, amended or repealed by the Authority from time to time and in a manner consistent with the Illinois Administrative Procedure Act [5 ILCS 100], this Part, the Act and other applicable laws. This Part shall not constitute or create any contractual rights.

Section 386.109 Severability

If any clause, sentence, paragraph, subsection, Section or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Subpart to which the judgment is rendered.

Section 386.110 Gender and Number

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

Section 386.111 Non-Discrimination

The Counseling Agencies shall comply with the applicable provisions of the Illinois Human Rights Act [775 ILCS 5] and the regulations promulgated under that Act, the Fair Housing Act (42 USC 3601), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Illinois Environmental Barriers Act [410 ILCS 25], the Illinois Accessibility Code (71 Ill. Adm. Code 400), and all other applicable State and federal law concerning discrimination and fair housing.

Section 386.112 Titles and Captions

Titles and captions of Subparts, Sections and subsections are used for convenience and reference and are not a part of the text

SUBPART B: DISTRIBUTION OF FUNDS BY THE AUTHORITY

Section 386.201 Priority of Distributions

The Authority shall distribute funds from annual Appropriations in accordance with the following priorities:

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- a) To the Authority for its administrative expenses.
- b) After distributing the amount listed in subsection (a), the Authority shall make Grants from the moneys remaining in the Fund that have been appropriated as follows:
 - 1) *30% shall be used to make Grants for Approved Housing Counseling in Cook County outside of the City of Chicago;*
 - 2) *25% shall be used to make Grants for Approved Housing Counseling in the City of Chicago;*
 - 3) *30% shall be used to make Grants for Approved Housing Counseling in DuPage, Kane, Lake, McHenry and Will Counties; and*
 - 4) *15% shall be used to make Grants for Approved Housing Counseling in Illinois in counties other than Cook, DuPage, Kane, Lake, McHenry and Will Counties, provided that grants to provide Approved Housing Counseling to borrowers residing within these counties shall be based, to the extent practicable:*
 - A) *proportionately on the amount of fees paid to the respective clerks of the courts within these counties; and*
 - B) *on any other factors that the Authority deems appropriate.*
(Section 7.30(b-1) of the Act)

SUBPART C: GRANTS TO COUNSELING AGENCIES

Section 386.301 Counseling Agencies Eligibility

The Counseling Agencies are generally eligible to submit an Application for funding if they have been certified as a housing counseling agency by HUD. The Counseling Agencies are eligible for funding if they are certified prior to their application for funding under the Program and committed to participation in the Program. The Counseling Agencies must agree to the terms and conditions of the Program in order to be eligible.

Section 386.302 Eligible Uses of Grant Funds

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- a) Eligible Uses of Grant funds by the Counseling Agencies under the Program shall be:
 - 1) Computer and Equipment Expenses;
 - 2) General Operational Expenses;
 - 3) Housing Counseling;
 - 4) training of a Counseling Agency's employees;
 - 5) capacity building that increases a Counseling Agency's capacity to provide Housing Counseling;
 - 6) Technical Assistance; and
 - 7) advertising and marketing of the Program, and any other housing counseling activity as may be approved by the Authority.
- b) No Counseling Agency shall receive Grant funds for Computer and Equipment Expenses, General Operational Expenses and Technical Assistance Expenses in an amount greater than 10% of the Grant funds granted to the Counseling Agency during the term of the Counseling Agency's Grant.

Section 386.303 Application Cycle

The Authority will supply interested Applicants with an Application. Application forms under the Program are expected to be released annually based on funding available.

Section 386.304 Application Requirements

Each Application shall include the information required by this Section to be completed by the Applicant and any additional information the Authority may require to promote efficient Program administration and quality of performance.

- a) **Qualifications.** Each Applicant shall document qualifications to complete the Program activities, including evidence that a Counseling Agency is a HUD certified housing counseling agency.

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- b) **Counseling Data.** Each Applicant shall document the statistics in its area relevant to the types of Approved Housing Counseling offered (i.e., number of foreclosures filed, increase or decrease in homebuying, rental properties available, etc.).
- c) **Applicant's Capacity.** Each Applicant shall document its capacity to administer, and prior experience in administering, Approved Housing Counseling.
- d) **Capacity Building.** Each Applicant shall document how capacity will be expanded to meet the need for Housing Counseling in response to subsection (b).
- e) **Activities to be Undertaken.** Each Applicant shall list which Eligible Uses are to be undertaken with Program funds, including without limitation those activities outlined in Section 386.302 and the rest of this Part.
- f) **Time for Expending.** Each Applicant shall include a budget and schedule for performing the eligible activities outlined in the Application.

Section 386.305 Review of Applications

- a) **Application Screening.** The Authority shall screen all Applications to confirm that all elements of the Application package have been addressed. Applicants may be notified of deficiencies in Applications and may, at the option of the Authority, be given the opportunity to correct those deficiencies. Completed Applications will be reviewed and evaluated by the Authority staff in accordance with criteria in subsections (b) through (e).
- b) **Basic Eligibility Evaluation.** Each Application will be reviewed to assure compliance with Sections 386.301 and 386.302.
- c) **Willingness to Perform.** The Applicant must commit to remain ready, willing and able to perform Approved Housing Counseling as applicable throughout the Grant term.
- d) **Costs.** The Applicant must demonstrate that the costs identified in the Application are Approved Housing Counseling.
- e) **Capacity.** The Applicant must demonstrate that the proposed activities identified in the Application can be accomplished.

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Section 386.306 Grant Administration

- a) **Commitment.** Each Counseling Agency shall enter into a Commitment with the Authority; the Grant may be less than the amount requested in the Application. The term of Commitment shall be up to one year, subject to the availability of funds from an Appropriation, and may be renewed for one additional year at the discretion of the Authority.
- b) **Record Retention.** Each Counseling Agency shall maintain records in connection with the Grant under the Counseling Agency's Commitment for five years after the date of termination of the Commitment.
- c) **Monitoring.** The Authority, the Auditor General and the Attorney General shall have the right to monitor all Counseling Agency books and records relating to the implementation of the Program. Each Counseling Agency shall make all records relating to its Grant available for inspection, examination and copying by the Authority, the Auditor General or the Attorney General upon reasonable prior notice, as the Authority, the Auditor General or the Attorney General may reasonably require. The required documentation may include, but is in no way limited to, a copy of the Counseling Agency's Application to the Authority; all records relating to the eligible uses of Grant funds under the Program as set forth in Section 386.302; and any other documentation required by the Authority, the Auditor General or the Attorney General.

Section 386.307 Funding of Grants

Subject to the terms of the applicable Commitment with a Counseling Agency and the related documents evidencing the Grant, the Authority shall provide funds to the Counseling Agencies when the Appropriation is made available and as set forth in Section 386.302.

Section 386.308 Reporting Requirements

Each Counseling Agency shall provide reports to the Authority, on forms provided by the Authority, at the end of each quarter of the term of its Commitment. The Counseling Agency shall identify, at a minimum, the number of households that received Approved Housing Counseling; the number of Counseling Agency staff who attended training; the number of new counselors/staff hired to increase a Counseling Agency's capacity; the expenditures incurred for Technical Assistance, Computer and Equipment Expenses, General Operational Expenses, and any other expenses incurred by the Counseling Agency related to the Program.