

# National Reverse Mortgage Lenders Association

## Questions and Answers HECM Loan “Advisor” Program March 2006

1. **What is a HECM loan?** A HECM loan is an FHA-insured home equity conversion reverse mortgage loan (“HECM”). It generally permits seniors 62 years old or older to convert part of the equity in their homes into tax-free payment streams without having to sell their homes. All HECM loans are reverse mortgages. However, not all reverse mortgages are HECM loans.
2. **Do other types of reverse mortgages exist?** Yes. There are at least two other types of reverse mortgages currently offered by reverse mortgage loan originators: the Financial Freedom CashAccount Loan and the Fannie Mae HomeKeeper Loan.
3. **What is the HECM Loan “Advisor” Program?** A program developed and offered by certain FHA-approved lenders and loan correspondents (referred to as “HECM Loan Originators”). Under it, duly licensed mortgage brokers (“Advisors”) are retained, and paid directly or out of HECM loan proceeds, by seniors interested in securing a HECM loan from such HECM Loan Originators, to provide advice to the seniors who retain them about HECM loans and HECM Loan Originators and to assist them in completing the HECM loan application paperwork and in the HECM loan origination process.
4. **Does the FHA establish Advisor Program requirements?** No. They are established by the HECM Loan Originators that chose to offer them. Accordingly, the Advisor Programs of such Originators may differ, and participants in them must not rely upon these Questions and Answers in order to understand fully the features and limitations of any particular Advisor Program. These Questions and Answers describe aspects of such programs that the National Reverse Mortgage Lenders Association understands generally are offered by such Originators in the mortgage marketplace.
5. **Do these Questions and Answers describe everything that a HECM Loan Originator or Advisor needs to know in order to offer and implement an Advisor Program in compliance with all applicable FHA and other legal requirements?** Surely you jest. Originators and Advisors need to secure advice from competent and experienced professionals which is tailored to their particular facts and circumstances before they offer or implement or participate in an Advisor Program.
6. **Is it important that there be written agreements between Advisors and the seniors they advise, and between Advisors and the HECM Loan Originators that originate HECM Loans to such seniors?** Very.

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7. **Is the Advisor Program related in any way to reverse mortgage loans other than HECM Loans?** No.
8. **Are these Questions and Answers related in any way to any advisor or reverse or forward mortgage loan origination programs other than the HECM loan program?** No.
9. **Who may hire or retain the Advisor?** Only the senior HECM loan applicant. The Advisor works only for the senior. The Advisor does not work for the HECM Loan Originator. The Advisor does not originate the HECM loan; the HECM Loan Originator does.
10. **May the HECM Loan Advisor Program be used in connection with any other reverse or forward mortgage loans?** No. It is offered and may be used only in connection with the origination of a HECM loan by a HECM Loan Originator.
11. **Do Advisors perform any HECM loan origination functions?** No. Only FHA-approved HECM Loan Originators perform HECM loan origination functions. Advisors only advise the seniors who chose to retain them to provide advice and assistance.
12. **Who pays Advisors?** Senior HECM loan applicants who choose to retain Advisors agree to pay their Advisors, directly or indirectly out of HECM loan proceeds, for the advice and assistance they actually provide to such seniors.
13. **How much are Advisors paid?** Advisors are paid the amount (the “Advisor Fee”) the seniors who retain them agree to pay them, subject to four important, basic limitations.
14. **What are the four important, basic limitations on the amount of the Advisor Fee?** First, the senior HECM loan applicant must agree in writing (the “Advisor Agreement”) as to the amount of the Advisor Fee. Second, the amount of the Advisor Fee must be subtracted, dollar for dollar, and thereby must reduce, the maximum amount of the HECM loan Origination Fee that FHA permits a HECM Loan Originator to charge in connection with the origination of a HECM loan. For that reason, the agreement of the HECM Loan Originator may also be required before an Advisor Fee may be paid. Third, under the terms of the Advisor Agreement, the Advisor Fee generally is not paid to or earned by the Advisor unless the Advisor actually provides the specified advice and assistance to the senior and the HECM loan

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closes. Fourth, the Advisor Fee may not be paid for the referral of a HECM loan or senior loan applicant to a HECM Loan Originator and may not exceed the reasonable value of the goods, facilities and services provided by the Advisor to the senior.

15. **What state laws apply to Advisors?** State laws that are applicable to mortgage brokers generally (unless the Advisor is exempt from the application of such state laws to it) and state laws that are applicable to those who participate or play a role in the origination of HECM loans.
16. **How does state law apply to Advisors?** Unless exempt, Advisors generally must be duly licensed under applicable state mortgage broker laws; must provide disclosures required under such applicable state laws; and such state laws must permit or at least not bar such Advisors for collecting the Advisor Fee from the senior.
17. **What federal laws apply to Advisors?** Federal laws including among others the laws and regulations administered by the FHA and the provisions of the federal Real Estate Settlement Procedures Act (“RESPA”) and its implementing Regulation X.
18. **How do FHA regulations apply to Advisors?** Importantly, Advisors may not be approved by the FHA to originate FHA-insured mortgage loans either as a Mortgagee or a Loan Correspondent. If a mortgage broker or lender is an FHA-approved Mortgagee or Loan Correspondent, and it wishes to participate in the HECM loan program, it should do so as a Mortgagee or Loan Correspondent and provide the HECM loan origination services such FHA-approved entities are permitted by the FHA to provide. It may not participate as an Advisor.
19. **Are there other applicable FHA requirements?** Yes. An advisor should be generally knowledgeable about the reverse mortgage programs offered by various originators and available in the advisor’s market area, including HECM loans, HomeKeeper loans, and other reverse mortgage products. The Advisor and the HECM Loan Originator must be independent of each other and there must be no “identity of interest” or affiliation between them and one may not have a financial interest in the other. Written agreements between and among the Advisor, the senior, and the HECM Loan Originator should specify the respective duties, obligations and responsibilities of those who sign them, including but not limited to the obligation of the senior to pay the Advisor Fee and the amount of that fee. The senior must independently engage the Advisor to provide the advice and assistance, and it must actually be provided.

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20. **Where may these FHA requirements be found?** As to mortgage brokers, FHA regulations at 24 C.F.R. 203.27, and HUD Handbook 4155.1. As to the HECM loan program, FHA regulations at 24 C.F.R. 206.31 and HUD Mortgagee Letter 00-10 (March 8, 2000).
21. **What services does an Advisor typically provide?** Advisor services may include:
- assisting a senior in completing the forms required to obtain a HECM loan;
  - assisting a senior in dealing with the HECM Loan Originator;
  - educating the senior generally about reverse mortgages and HECM loans;
  - informing the senior about the different loan features of the HECM loan;
  - explaining matters such as set-asides, closing costs and the need to continue to pay taxes and hazard insurance after the HECM loan closes;
  - providing information about HECM Loan Originators and other reverse mortgage products in the Advisor’s geographic area;
  - describing the potential financial implications of a HECM loan for the senior;
  - describing the factors affecting the qualification for a HECM loan (including the amount of benefit);
  - advising the senior as to how the condition of the home may require repairs as part of the HECM loan;
  - explaining that the senior must maintain the structural integrity of the home and keep it in good repair and condition after the HECM loan closes;
  - providing the senior with the telephone numbers and web pages for independent resources to obtain more information regarding reverse mortgages;
  - assisting the senior in dealing with the HECM Loan Originator throughout the HECM loan processing and underwriting process; and
  - answering questions the senior may have related to the HECM loan.
22. **May the Advisor serve either as the HECM Loan Originator or the independent counselor required under the HECM loan regulations?** No.
23. **How does RESPA apply to the Advisor Program?** Section 8 of RESPA (12 U.S.C. 2607) and the corresponding provisions of Regulation X (24 C.F.R. 3500.14) generally bar or restrict the direct and indirect payment of anything of value for the referral of settlement service business in connection with the origination of a federally related mortgage loan (including a HECM loan), and the splitting of any fee received for rendering a settlement service other than a payment for services actually rendered

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in connection with such loans. Section 8 of RESPA and Regulation X generally permit an Advisor or any person or entity to be paid the reasonable value of the goods, facilities and services they actually provide.

**24. Does an Advisor meet the definition of a “mortgage broker” under RESPA?**

Yes. RESPA defines a mortgage broker as a person who brings a borrower and lender together and performs a settlement service. A settlement service is defined to include counseling the borrower.

**25. Do RESPA requirements generally specify the minimum services that a mortgage broker must provide if it is to be paid a fee in connection with the origination of a loan?**

Yes. RESPA Statement of Policy 1999-1 (March 1, 1999) issued by HUD generally provides that mortgage brokers must provide certain specified loan origination services to be paid and to receive compensation reasonably related to the value of the services performed. However, the statement also expressly acknowledges that it does not enumerate all the possible settlement services a mortgage broker may provide in order to be permissibly compensated. Under the statement, the determinative test is the relationship of the services furnished to the total compensation received by the mortgage broker.

**26. May reasonable arguments be made that the Advisor Program is consistent with the applicable requirements of RESPA Section 8 and Regulation X?**

We believe so. However, we caution that, to our knowledge, neither HUD nor any other agency formally has so ruled.

**27. What are the RESPA Section 8 compliance arguments supporting the Advisor Program?**

Here are some key ones. The senior must agree to the amount of the Advisor Fee, and the Advisor Fee may be paid only if the specified advice and assistance actually is provided. In no event may the Advisor Fee exceed the amount of the maximum HECM loan origination fee specified by the FHA, since the amount of the Advisor Fee reduces dollar for dollar the amount otherwise owed to the HECM Loan Originator as an Origination Fee. As a result, in no event does the participation of an Advisor increase the cost to a senior of the origination of HECM loan above the maximum amount that the FHA itself has determined is a reasonable origination fee for its origination. FHA expressly permits payments to mortgage brokers in connection with the origination of FHA-insured loans, and expressly permits the participation of mortgage brokers in the HECM loan program, if such mortgage brokers meet applicable FHA requirements. Although HECM loan origination functions may not be provided by Advisors since they are not FHA-approved HECM

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Loan Originators, the RESPA Statement of Policy permits mortgage brokers to provide valuable goods, facilities and services and be paid a reasonable fee therefore. The advice and assistance provided by the Advisor to the senior qualifies as such valuable goods, facilities and services, particularly when, as here, they are provided to a senior in connection with a highly complex mortgage loan product. The payment of the Advisor Fee by the senior for such advice and assistance is not a payment by the HECM Loan Originator for the referral of the senior to the Originator.

28. **What is the National Reverse Mortgage Lenders Association’s “parting advice” to HECM Loan Originators and Advisors in relation to the Program?** Be conservative. Be cautious. Protect seniors and their interests. Secure professional advice before offering or implementing an Advisor Program. Execute accurate, understandable written agreements. Assure that Advisors actually provide the specified advice and assistance. Assure that seniors agree to pay the Advisor Fee and that the amount of that fee is specified and that it is acceptable to the HECM Loan Originator. Do not permit FHA-approved HECM Loan Originators to be Advisors. Do not pay or receive any thing of value for the referral of HECM loan business.