

March 9, 2007

Regulations Division  
Office of General Counsel  
Department of Housing and Urban  
Development  
451 Seventh Street, SW, Room 10276  
Washington, DC 20410-0500

**Re: Home Equity Conversion Mortgage (HECM) Counseling Standardization  
and Roster – Proposed Rule; Docket No. FR-4989-P-01**

Dear Sir or Madam:

The National Reverse Mortgage Lenders Association (“NRMLA”) writes regarding the Department of Housing and Urban Development’s (“HUD”) proposed rules governing the approval and registration of individuals that counsel seniors prior to such seniors’ application for FHA-insured home equity conversion mortgages (or “HECMs”) (the “Proposed Rule”).<sup>1</sup>

NRMLA is the principal nationwide trade association for financial services companies that originate, service, and invest in reverse mortgages. NRMLA was founded to enhance the professionalism of those engaged in reverse mortgage lending, and NRMLA is dedicated to assuring quality and integrity in reverse mortgage lending. Over 80% of the reverse mortgages originated and purchased in the United States today are originated by NRMLA members, and over 85% of the reverse mortgages originated in the United States at this time are HECM loans insured by the Federal Housing Administration.

This Proposed Rule would add a new Subpart E to Part 206 of HUD’s regulations, codified in Title 24 of the Code of Federal Regulations (C.F.R.). The Proposed Rule sets standards for individuals to qualify as counselors eligible to provide counseling services to seniors interested in applying for a HECM loan. NRMLA supports counseling for seniors in connection with FHA-insured HECM loans. And, NRMLA generally supports HUD’s efforts, through the Proposed Rule, to enhance the quality of HECM counseling. NRMLA, however,

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<sup>1</sup> 72 Fed. Reg. 869 (Jan. 8, 2007).

requests that HUD consider revising or clarifying several points contained in the Proposed Rule, as follows:

- 1) If HUD intends that HECM lenders refer seniors to *individual* counselors contained on the roster, as opposed to HUD-approved *counseling agencies* that employ individual counselors, NRMLA requests that HUD provide in the final rule certain safe harbors (as described below) for lenders that refer seniors to individual counselors;
- 2) NRMLA requests that HUD provide more detail in the final rule on the manner by which it will publish the names of *individual* counselors placed on the roster, as well as the removal of such individuals' names from the roster;
- 3) NRMLA requests that HUD refrain from establishing by rule the continuing education and examination requirements for individual counselors, but instead provide that such requirements will be prescribed by the Secretary;
- 4) NRMLA requests additional clarification on lenders' responsibility to provide the "list" of the counselors within the state of the borrowers' residence; and,
- 5) NRMLA requests that HUD provide in the final rule that, once a senior begins counseling with an individual counselor whose name is contained on the roster, a lender may rely upon the resulting counseling certificate even when such counselor is subsequently removed from the roster.

The Proposed Rule changes the HUD regulation found at 24 C.F.R. § 206.41. Currently, that regulation requires HECM lenders, at the time of the initial contact with the prospective senior applicant, to give the senior a list of the names and addresses of *housing counseling agencies* which have been approved by HUD as responsible and able to provide the required counseling related information. The Proposed Rule requires HECM lenders instead to give seniors interested in applying for a HECM loan a list of the names, addresses, and telephone numbers of *housing counselors*, which have been approved by HUD in accordance with the Proposed Rule. The Proposed Rule also adds a definition of "Home Equity Conversion Mortgage (HECM) counselor" to mean "an individual who provides statutorily required counseling to individuals and their families who may be eligible for or interested in obtaining an FHA-insured HECM." Because under the Proposed Rule HECM counselors must be employed by a HUD-approved counseling agency, affiliate of a HUD-approved intermediary or state housing finance agency, NRMLA requests that HUD consider retaining that part of the current rule that allows lenders to refer seniors to HUD-approved *counseling agencies*. We also request, as described below, that HUD provide in the final rule safe harbors for lenders referring seniors to individual counselors, and for certain instances when the status of an individual counselor could affect the validity of the counseling a senior receives.

NRMLA requests clarification on the time frame HUD expects between a counselor being approved and his or her name being placed on the roster. The roster also should include effective dates of the counselors' approval. Also, NRMLA believes that HUD should prescribe, either with this rulemaking, or through other means, the methods by which the roster of approved

individual counselors will be communicated to financial institutions offering HECM loans. NRMLA also requests that HUD provide that lenders' reliance on the roster, and the means by which it is communicated, act as a safe harbor for such financial institutions that act upon such roster, until the information thereon is updated and such updates are communicated to the lending community. One method by which HUD may communicate the roster is through the FHA Connection. Another such method could be through the publication in the Federal Register or upon HUD's website. NRMLA requests that the final rule clarify that HECM lenders may rely on the roster until notification or publication from HUD in a manner reasonably designed to provide timely and adequate notice to HECM lenders. Further, because under the Proposed Rule, a individual counselor must be employed by a HUD-approved counseling agency, financial institutions should be able to rely upon such agencies' or intermediaries' review and assurances that individual counselors that they employ are properly listed on HUD's HECM counselor roster.

NRLMA also requests that HUD clarify lenders' responsibility to provide the "list" of the counselors. Such a list should not, for instance, include all counselors within the state of the borrowers residence because there potentially could be several hundred counselors on such a list. Requiring lenders to provide an entire list to potential borrowers will be overwhelming to the customer and onerous to lenders.

It may prudent for the rule also to clarify that the Secretary will prescribe the type of HECM courses that will be considered for the counselors' continuing training. Further, regarding proposed section 206.304(b)(4), NRMLA requests clarification on the type of technology that counselors must have to monitor client "actions." We ask HUD to consider whether this would include monitoring the clients moving forward with a loan application and/or closing on a reverse mortgage. If so, this may require lender involvement and raise confidentiality issues.

The Proposed Rule asks whether HUD should delay the implementation of the HECM roster for those counselors that have already passed the HECM counseling exam. NRMLA supports a delayed implementation for those counselors that have already passed the HECM exam so as to make the transition into the final rule smoother. HUD may wish to prescribe that the effective date will be as specified by the Secretary, as opposed to being established by the final rule, so as to provide flexibility in the event that a sufficient number of individuals initially do not pass the HECM exam. Further, NRMLA suggests that HUD not place the re-examination requirements into the final rule, but instead further consider whether re-examination of all counselors is necessary, as opposed to merely requiring re-certification of some or all counselors based upon, among other things, a counselor's attendance at specified continuing education classes. HUD may also wish to establish flexibility in this area by providing that the re-certification will be required as further prescribed by the Secretary, but no less often than perhaps three or five years. Then, as experience is developed with the roster, HUD will be able to respond in a more flexible manner to the needs of seniors and the industry by establishing a re-

certification schedule that could be based upon, among other things, merit, including perhaps monitoring by HUD and feedback from seniors and the industry.

The Proposed Rule states that failure to maintain any registration or certification requirements of a state or local authority will result in automatic termination of the counselor from HUD's roster. Again, the final rule should clarify that HECM lenders may rely on the roster until notification from HUD, and such notification should be designed to provide adequate and timely notice to HECM lenders.

Finally, NRMLA requests that HUD clarify the appropriate types of evidence of counselor misconduct, such as steering, inaccurate information, unsatisfactory performance, and so on; and, that HUD further define the process for lenders to submit documentation and evidence of such counselor misconduct, and the time frame for HUD's response to such lender complaints.

NRMLA supports counseling for seniors in connection with FHA-insured HECM loans. NRMLA generally supports HUD's efforts, through the Proposed Rule, to enhance the quality of HECM counseling. For the reasons outlined above, however, NRMLA respectfully, requests that HUD take into account our comments herein in finalizing the Proposed Rule.

NRMLA appreciates the opportunity to comment on the Proposed Rule.

Regards,

Peter Bell, President