



NRMLA Ethics Advisory Opinion 2014-1

Ethical Refinancing of HECM Reverse Mortgage Loans and Anti-Churning Considerations-Updated

September 26, 2014

The Ethics and Standards Committee (the "Committee") of the National Reverse Mortgage Lenders Association ("NRMLA"), the trade association of the reverse mortgage lending industry, enforces the NRMLA Code of Ethics and Responsibility (the "Code of Ethics"). All NRMLA Members are required to comply with the Code of Ethics as a condition of their continued membership in NRMLA. If the Committee determines that a NRMLA Member has not complied with the Code of Ethics, sanctions may be imposed, up to and including the termination of NRMLA Membership. Committee decisions enforcing the Code of Ethics may be made public.

The Committee also interprets the Code of Ethics, and, from time to time, proposes changes to it for consideration and approval by the NRMLA Board of Directors. This Ethics Advisory Opinion 2014-1 is such an interpretation of the Code of Ethics.

New HUD Mortgagee Letters. On September 3, 2013, the U.S. Department of Housing and Urban Development ("HUD") published Mortgagee Letter 2013-27 that, among other things, established an Initial Disbursement Limit and a related Single Disbursement Lump Sum Payment Option for certain fixed rate Home Equity Conversion Mortgages ("HECMs") insured by HUD. On June 18, 2014, HUD published Mortgage Letter 2014-11 that further clarified that fixed rate HECM reverse mortgage loans may not provide mortgagors with any option for future payments beyond the amount of the otherwise permissible initial Borrower's Advance or Initial Disbursement Limit. On June 27, 2014, HUD published Mortgagee Letter 2014-12, that identified Principal Limit Factor changes for the HECM program that affected the Principal Limit Amounts, Borrowers Advance and Initial Principal Limits that may be provided to or received by HECM loan borrowers.

These Mortgagee Letters, and other changes to the HECM program made by HUD, provide to both HECM loan borrowers and NRMLA lender members a new array of choices, opportunities and limitations. A goal of this Ethics Advisory Opinion 2014-1 (Ethical Refinancing of HECM Reverse Mortgage Loans and Anti-Churning Considerations--Updated) is to provide to NRMLA Members updated guidance and advice with respect to the ethical considerations under the Code of Ethics by which they are bound as they make such choices and offer and originate HECM loans for consumers.

Prior Ethics Advisory Opinion Guidance. The Ethics and Standards Committee has provided similar guidance over the years, as the HECM program has been changed by HUD and in anticipation of such changes. For example, on September 30, 2010, it published Ethics Advisory Opinion 2010-1 (Ethical HECM-TO-HECM Refinancing and Anti-Churning Practices). On February 24, 2011, it published Ethics Advisory Opinion 2011-2 (Ethical Refinancing of Reverse Mortgage Loans).

And, on October 17, 2013, it published both Ethics Advisory Opinion 2013-3 (Ethical Refinancing of HECM Single Disbursement Lump Sum Payment Option Loans and Anti-Churning Practices), and Ethics Advisory Opinion 2013-4 (Ethical Considerations Affecting HECM Loan MIP Premium Decisions).

Important principles and requirements described in these earlier Ethics Advisory Opinions have been brought forward and updated through this current Ethics Advisory Opinion 2014-1.

Other Ethics Advisory Opinions published by the NRMLA Standards and Ethics Committee (all available through the NRMLA website at www.NRMLAOnline.org) also continue to be relevant and required reading for NRMLA Members.

This Ethics Advisory Opinion 2014-1. The Code of Ethics embraces certain Values and requires conformity to certain Rules that embody those Values. Among those Values are Fairness and Integrity. Among those Rules are Rule 107 ("NRMLA Members shall describe to consumers the range of programs and products generally available in the marketplace that may provide a bona fide advantage to such consumers") and Rule 301 ("NRMLA Members shall accurately describe both the costs and benefits of products presented to consumers").

This Ethics Advisory Opinion 2014-1 provides additional and updated guidance to NRMLA Members as to the manner in which the Values and Rules of the Code of Ethics--and, particularly, Rules 107 and 301--apply, and inform and restrict the choices NRMLA Members make as they offer HECM programs and products to consumers including, in particular, the opportunity to refinance such HECM loans with additional HECM loans (HECM-TO-HECM Refinancing).

Ethics Advisory Opinion 2010-1 concluded, in part, that: (a) the bona fide advantage standard of Rule 107 may not be met by a NRMLA Member unless a HECM-to-HECM refinance occurs after six (6) months after the closing of the prior HECM loan being refinanced; and (b) for a HECM-to-HECM refinance, the bona fide standard of Rule 107 may be met if the NRMLA Member also is able to show that certain additional requirements with respect to funds made available to the consumer and the "total cost of refinancing" also are met (and included the establishment of a "5 to 1" cost limitation restriction in certain circumstances, and related "anti-churning" requirements).

Ethics Advisory Opinion 2010-1 also expressly noted that although meeting such stated restrictions, limitations and requirements is "not the only way for a NRMLA Member to establish that it meets its obligation under the NRMLA Code of Ethics to provide a bona fide advantage" to consumers, absent the ability of a NRMLA Member to demonstrate its compliance with such requirements in the manner described in Ethics Advisory Opinion 2010-1, the NRMLA Member "would be subject to sanctions under the NRMLA Code of Ethics." In addition, in Ethics Advisory Opinion 2011-2 (Ethical Refinancing of Reverse Mortgage Loans), NRMLA Members also are reminded of the importance of documenting the bases of all of their required bona fide advantage determinations.

Please see Ethics Advisory Opinions 2010-1 and 2011-2 for additional details.

The Standards and Ethics Committee has determined, and experience has confirmed, that the requirements and restrictions described in Ethics Advisory Opinion 2010-1 are effective overall and remain important elements of the ethical provision of HECM-to-HECM refinance loans by NRMLA Members.

However, the Standards and Ethics Committee also has determined that it is appropriate that those requirements and restrictions of Ethics Advisory Opinions 2010-1 and 2011-2--that generally remain in effect--also be updated, as follows:

- 1) As previously noted in Ethics Advisory Opinion 2010-1, and absent further guidance from HUD with respect to the offering of such choices to consumers, the bona fide advantage standard of the Code of Ethics generally may not be met unless a HECM-to-HECM refinance occurs after six (6) months of the closing of the prior HECM loan being refinanced.

Demonstrating that the choice offered to the consumer meets the tests of Ethics Advisory 2010-01, as described above, is not the only way for a NRMLA Member to establish that it meets its obligation under the NRMLA Code of Ethics to provide a bona fide advantage to the consumer as they make such choices. But, absent the ability of a NRMLA Member to demonstrate its compliance with that requirement in that or some other persuasive manner, the NRMLA Member would be subject to sanctions under the NRMLA Code of Ethics.

- 2) Ethics Advisory Opinion 2010-1 establishes a "5 to 1" cost limitation applicable in certain circumstances, absent other clear demonstrable bases for concluding that a bona fide advantage is presented to the consumer. Among the considerations that might help support such a bona fide advantage determination by a NRMLA Lender Member might be the addition of a borrower on a loan, such as a previously non-borrowing spouse or a family member residing in the home who now qualifies for and would like the advantages of being a HECM borrower. And, among the circumstances that might be reflected in the 5 to 1 cost limitation calculation might be the potential beneficial effects of, say, lowering an interest rate cap currently applicable in the HECM loan to be refinanced, particularly if that is combined with, say, providing closing cost credits in connection with the refinanced HECM loan that effectively lower, in a material way, the applicable monthly MIP of the borrower.
- 3) Also, in calculating an applicable 5 to 1 cost limitation, the Additional Principal Limit amount included in that calculation should reflect and include only that portion of any Available Principal actually available to a borrower to draw. For example, a HECM could be refinanced by a new Fixed Rate HECM where the mandatory obligations are less than 90%. In this example, there would be unused and unavailable funds in the *Available Principal Limit* (as defined by HUD to be the entire Principal Limit and thus including funds that will never be available to the senior). In this example, the Available Principal Limit used to calculate the 5 to 1 ratio may not include such funds not actually available to the senior.

These ethical requirements apply to all HECM-to-HECM refinancing with which a NRMLA Member is involved, through or a result of origination, processing, underwriting, funding, or securitizing, and irrespective of whether such loans are brokered, sold or acquired on a flow or closed loan basis.

Attention also is called to Ethics Advisory Opinion 2013-4 (Ethical Considerations Affecting HECM Loan MIP Premium Decisions), published on October 17, 2013. It requires, among other things, that NRMLA Members describe to consumers, in a clear and timely manner, the amounts of the initial mortgage insurance premium (MIP) that they will owe to HUD under the Disbursement Amount Elections available to them under the HECM program, and to compare those amounts with amounts such consumers will receive as Initial Disbursements as a result of their elections--all in order to help assure that such consumers receive a "bona fide advantage" as a result of their HECM loan program and product decisions, as required under the Code of Ethics.

Finally, the particular attention of NRMLA Members involved in HECM-to-HECM refinancing also is drawn to the continuing restrictions and limitations of Ethics Advisory Opinion 2013-3. In particular, and as described in Ethics Advisory Opinion 2013-3 (Ethical Refinancing of HECM Single Disbursement Lump Sum Payment Option Loans and Anti-Churning Practices), the Committee emphasized that the Code of Ethics does "not permit NRMLA Members to advise consumers, directly or indirectly, to plan to refinance HECM Single Disbursement Lump Sum Payment Option Loans into other HECM loans for such consumers within the twelve month period following the closing of such initial HECM loans, and that, as a result, and in addition, NRMLA Members may not directly or indirectly refinance or assist in the refinancing of such loans into other HECM loans within such period."

NRMLA Members routinely and overwhelmingly engage in ethical HECM-to-HECM refinancing, and not in churning activities, for the benefit of the seniors they are pledged to serve. All the more reason, then, that there is no place in NRMLA for NRMLA Members who engage in impermissible HECM-to-HECM refinancing practices.

NRMLA Members, seniors, and others are urged to bring to the attention of NRMLA's President and the Committee concerns they may have about potential violations of the NRMLA Code of Ethics, including the Anti-Churning requirements of this Ethics Advisory Opinion, directly or indirectly by NRMLA Members, for consideration and action in accordance with the procedures described in the NRMLA Code of Ethics. A form for that purpose also may be found at the NRMLA website, at NRMLAOnline.com.