



ETHICS ADVISORY OPINION 2009-1

Ethical Offers of Other Financial and Insurance Products and Services

June 16, 2009

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 Professional 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 is one of a series of formal Committee interpretations of the NRMLA Code of Ethics. It is Ethics Advisory Opinion 2009-1 (Ethical Offers of Other Financial and Insurance Products and Services). It replaces Ethics Advisory Opinion 2008-2, which was issued by the Committee and NRMLA on April 21, 2008, and which is hereby withdrawn.

This Ethics Advisory Opinion reflects, among other things, new guidance in this area provided by the U.S. Department of Housing and Urban Development (HUD) through Mortgagee Letter 2008-24 (September 16, 2008) (the Mortgagee Letter) and related relevant provisions of the recently enacted Housing and Recovery Act of 2008 (HERA), and related enactments in California (California Civil Code 1923.2(i)) and Rhode Island (Code, Section 34-25.1-7), among others.

NRMLA Ethics Advisory Opinions, and the NRMLA Code of Ethics, are published on the NRMLA website, www.NRMLAOnline.org.

Introduction. This Ethics Advisory Opinion 2009-1 (Ethical Offers of Other Financial and Insurance Products and Services) addresses a very important aspect of the relationship between NRMLA Members and the seniors whose financial security interests they are pledged to serve: the manner and extent to which NRMLA Members, consistent with the applicable requirements of the Code of Ethics, may refer, recommend, originate for or offer or cross-sell to, their senior reverse mortgage consumers (collectively, "product offering activities"), financial or insurance products (including but not limited to annuities and as further defined below) other than reverse mortgage loans.

Changes made by HERA, the guidance provided through the Mortgagee Letter, enactments of the states, and concerns expressed by and among NRMLA Members and NRMLA itself, have prompted the Committee to issue this Ethics Advisory Opinion, to help

assure that NRMLA Members engaging or participating in the product offering activities to seniors of financial or insurance products do so in a manner consistent with the applicable requirements of the Code of Ethics, and do not do so in a manner inconsistent with the Code of Ethics.

In this Ethics Advisory Opinion, we refer to practices by NRMLA Members that are consistent with the Code of Ethics as "Ethical Product Offering" and practices that are not as "Unethical Product Offering." Ethical Product Offering is permissible for NRMLA Members under the Code of Ethics. Unethical Product Offering violates the NRMLA Code of Ethics. There is no place in NRMLA for NRMLA Members who engage in Unethical Product Offering.

The purpose of NRMLA Ethics Advisory Opinion 2009-1 is to provide additional and specific guidance to NRMLA Members about what constitutes Ethical Product Offering and Unethical Product Offering.

The Broader Context. Initially conceived as an effective way for seniors to tap into or liquefy the equity in their homes in order to help meet their financial security needs as their working income diminishes, reverse mortgages have evolved into a significant retirement planning and security tool. Reverse Mortgages can help seniors age in place, and they can help finance longevity.

Another evolving trend is for seniors to want to be able to rely upon a single trusted source for holistic advice in these very important areas of their lives.

It is in this context that the need also arises to help assure that seniors are provided with all of the information they need to make well-informed decisions about such advisors, and that safeguards be put into place to help prevent abuses of the trust of seniors, such safeguards are particularly appropriate where such trusted advisors offer both reverse mortgages and other financial products and services to seniors.

This Ethics Advisory Opinion provides an ethical framework for NRMLA Members, as trusted advisors, to establish these safeguards while helping seniors consider, when and where appropriate, financial and insurance products in addition to reverse mortgages.

While this Ethics Advisory Opinion, by its terms, applies only to NRMLA Members, as noted below (see "Indirect Code of Ethics Violations") it also affects others. Moreover, it is hoped that the Ethical Product Offering requirements for NRMLA Members described in this Ethics Advisory Opinion become the market place

standard by which HUD, other regulators, and seniors judge and evaluate the conduct of all who offer such products to seniors as their trusted advisors.

The Code of Ethics. The first **Value** that the NRMLA Code of Ethics embraces is **Fairness**. Fairness under the Code of Ethics requires that NRMLA Members treat seniors with “respect and dignity, and in a manner that is fair, reasonable, and as they would want to be treated.” Additional **Values** embraced under the Code of Ethics require **Integrity, Competence, Diligence, and Professionalism**.

Rule 102 of the Code of Ethics requires that NRMLA Member reverse mortgage compensation be reasonable in amount and be clearly and timely described to seniors.

Rule 103 of the Code of Ethics states that NRMLA Members directly or indirectly offering or providing goods or services to seniors (including, for example, insurance or investment products) in conjunction with or that are related to their reverse mortgage lending activities for such seniors, shall do so only in a manner consistent with applicable law and under terms and conditions that are clearly and timely described to seniors.

Rule 107 of the Code of Ethics requires that NRMLA Members describe to seniors the range of programs and products offered by the Member that may provide “a bona fide advantage” to such seniors.

Rule 301 of the Code of Ethics requires NRMLA Members accurately to describe both the costs and benefits of the products and services presented to seniors.

Rule 302 of the Code of Ethics bars NRMLA Members from requiring, directly or indirectly, that seniors purchase other products or services in order to obtain reverse mortgage loans.

Rule 303 of the Code of Ethics generally requires NRMLA Members to arrange for the disbursement of reverse mortgage proceeds directly to seniors.

Rule 402 of the Code of Ethics generally requires NRMLA Members to advise seniors to seek appropriate professional counsel and advice prior to making decisions involving reverse mortgages, and bars NRMLA Members not qualified and appropriately licensed to provide such counsel and advice to seniors from providing such advice and counsel.

Rule 501 of the Code of Ethics requires NRMLA Members to exercise reasonable efforts to secure sufficient information to determine the senior's needs and objectives.

Rule 605 of the Code of Ethics generally requires NRMLA Members to comply with all applicable regulatory requirements.

HUD’s Guidance. In Mortgagee Letter 2008-24 (September 16, 2008) (Home Equity Conversion Mortgage (HECM) Program – Requirements on Mortgage

Originators) (the Mortgagee Letter), HUD referred to the applicable provisions of HERA, that added to the National Housing Act new Sections 255(n)(1) and (n)(2).

In essence, these HERA provisions provide for additional protections for seniors participating in the HECM reverse mortgage loan program, by barring certain arrangements that may provide incentives for the sale to such seniors of other financial or insurance products that do not meet their needs (the HERA Goals). They do so, in general, by requiring that there be appropriate firewalls or other safeguards to inhibit such inappropriate incentives, and also by prohibiting such a senior, as a condition of obtaining a HECM loan, from being required also to purchase such a financial or insurance product.

In the Mortgagee Letter, HUD noted its intention to provide definitive guidance with respect to HERA Section 255(n), following the receipt of comments from interested parties. NRMLA and others have provided such initial comments to HUD, and the Committee intends to amend this Ethics Advisory Opinion as and when and to the extent that such definitive guidance, subsequently issued by HUD, affects it.

In the interim, and until such HUD definitive guidance is issued, the Mortgagee Letter “advises that mortgagees must not condition a HECM mortgage on the purchase of any other financial or insurance product, and should strive to establish, consistent with the new law, firewalls and other safeguards to ensure that there is no undue pressure or appearance of pressure for a mortgagor to purchase another product of the mortgage originator or mortgage originator’s company.” In this Ethics Advisory Opinion, we refer to this HUD advice as “HUD’s Interim Guidance.”

Ethical and Unethical Product Offering Examples and Safeguards. These Code of Ethics Values and Rules, singly and together, HUD’s Interim Guidance, and a consideration of the HERA Goals, support the Committee’s conclusions that the following practices constitute, respectively, Ethical Product Offering and Unethical Product Offering under the NRMLA Code of Ethics.

First, a NRMLA Member engages in Ethical Product Offering if it has is in place at least one of the following Product Offering Safeguards, and other applicable requirements of this Ethics Advisory Opinion also are met.

(1) **The Separate Originator Safeguard.** The NRMLA Member shall separate those engaged in the offering, marketing and origination of reverse mortgages from those engaged in the offering, marketing and origination of other financial and insurance products, and take reasonable steps to assure that no one engaged in either of such activities receives, directly or indirectly, incentives or compensation for being engaged in the other. In this Ethics Advisory Opinion, this Safeguard is referred to as the Separate Originator Safeguard. Under the Separate Originator Safeguard, the NRMLA Member may offer both reverse mortgages and financial and insurance products concurrently, as long as those engaged in the offering, marketing and origination of all such products also are appropriately licensed to do so and comply with all

applicable legal requirements, including the HUD Interim Guidance, and, as noted above, are separate by compensation.

(2) **The Separate Transaction Safeguard.** The NRMLA Member shall separate the offering, marketing and origination of reverse mortgages from the offering, marketing and origination of other financial and insurance products by taking reasonable steps to assure that they are distinct and separate transactions. In this Ethics Advisory Opinion, this Safeguard is referred to as the Separate Transaction Safeguard. Under the Separate Transaction Safeguard, a distinct and separate transaction may be originated by the same appropriately licensed individual complying with the HUD Interim Guidance (in contrast, accordingly, with the Separate Originator Safeguard approach described above in which, among other things, different individuals are required to originate the transactions for the different products), as long as at least seven (7) business days (or, if required by separate legislation, any longer period during which the senior may rescind the reverse mortgage loan) have expired before the senior is offered any other financial or insurance product, and disbursement of the proceeds of a reverse mortgage loan is not made directly to the provider of another financial insurance product or service or at or in connection with the closing of the reverse mortgage.

The Committee does not intend, through its description of the Separate Originator Safeguard and the Separate Transaction Safeguard as examples of Ethical Product Offering, to limit NRMLA Members only to these approaches in providing such Safeguards. Other approaches that achieve the HERA Goals and adhere to the HUD Interim Guidance, and that are consistent with the requirements of the Code of Conduct and this Ethics Advisory Opinion, may be utilized by NRMLA Members as Product Offering Safeguards as they engage in Ethical Product Offering.

Second, in addition to the Product Offering Safeguards, a NRMLA Member engaged in Ethical Product Offering also shall provide to the senior, prior to offering such other financial or insurance products, a disclosure that is signed by both the senior and by the person making such offer, that makes clear that the senior has no obligation to purchase any such financial or insurance product with the proceeds of such reverse mortgage, and that reasonably describes to the senior the bona fide advantages to the seniors of purchasing such financial or insurance product with the proceeds of such reverse mortgage if the senior chooses to do so. In this Ethics Advisory Opinion, this disclosure is referred to as the **Anti-Tying and Bona Fide Advantage Disclosure Safeguard**.

Third, notwithstanding its Product Offering Safeguards, it is a violation of the NRMLA Code of Ethics, and thus Unethical Product Offering, for a NRMLA Member to engage in any product offering activities involving deferred fixed rate annuities with surrender charges, deferred variable rate annuities with surrender charges, deferred equity indexed annuity with surrender charges and any financial product that applies a penalty for early withdrawal or cancellation if it does not provide a bona fide advantage to such senior when it is

paid for or financed with the proceeds of the reverse mortgage loan which advantage is clearly described in the Anti-Tying and Bona Fide Advantage Disclosure.

Fourth, it is a violation of the NRMLA Code of Ethics, and thus Unethical Product Offering, for a NRMLA Member to fail to provide complete, timely and clear information about all compensation to be received or received, directly and indirectly, in connection with the origination of a reverse mortgage (the **Compensation Disclosure Safeguard**). Complete information describes all amounts paid or received, and identifies who paid and received them, in the form of a HUD-1 Settlement Statement, if applicable, or other comparable disclosure. Timely information is information that is provided to the senior when or before any product offering activities commence. Clear information is information that is plainly presented to and readily understandable by seniors.

Fifth, notwithstanding its Compensation Disclosure Safeguard, it is a violation of the NRMLA Code of Ethics, and thus Unethical Product Offering, for a NRMLA Member to receive unreasonably high compensation as a result of its Product Offering activities. Unreasonably high compensation is compensation in excess of that which complies with legal requirements including, as applicable, compensation limits established by appropriate regulators.

Additional Definitions. For purposes of this Ethics Advisory Opinion, a financial product includes a non-deposit investment product, including without limitation, a stock, bond, mutual fund, other security, or annuity offered to a senior. It does not include a forward (traditional or non-reverse) mortgage loan. For purposes of this Ethics Advisory Opinion, an insurance product includes a contract of insurance whose offering or sale is subject to state or federal regulation. It does not include title insurance, hazard, flood or other peril insurance, or other insurance products that are customary, normal or required in connection with the origination of a reverse mortgage loan.

Indirect Code of Ethics Violations. Under this Ethics Advisory Opinion, NRMLA Members may not engage in Unethical Product Offering either directly (such as through their own employees, agents and branch offices) or indirectly (such as through their affiliates or business partners). Both direct and indirect Unethical Product Offering by a NRMLA Member violate the NRMLA Code of Ethics.

Conclusion. 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 Unethical Product Offering directly or indirectly by NRMLA Members, for consideration and action by President and Committee in accordance with the procedures described in the Code of Ethics. Contact information for NRMLA may be found at its website at www.NRMLAOnline.org.