NRMLA
National Reverse Mortgage Lenders Association

1400 16th Street, NW
Suite 420
Washington, DC 20036
Tel. 202.939.1760
Fax. 202.265.4435

Ethics Advisory Opinion 2011-02
Ethical Refinancing of Reverse Mortgage Loans

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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.

The Code of Ethics establishes Values that convey the ethical and professional principles that NRMLA Members are expected to portray in all business and professional interactions. The Code of Ethics also establishes Rules that address the guidelines and standards of ethical and professional behavior applicable to NRMLA Members and to which they are required to adhere.

One of those Values under the Code of Ethics is Fairness. It requires that NRMLA Members treat consumers in a manner that is fair and reasonable, as they would want to be treated. One of the Rules related to the Value of Fairness requires that NRMLA Members provide to consumers only products and services that they have determined may provide a “bona fide advantage” to consumers. See Rule 107.

There are circumstances under which there may be a bona fide advantage to senior reverse mortgage consumers currently holding adjustable rate reverse mortgage loans to refinance those loans into fixed rate full draw reverse mortgage loans. Where a NRMLA Member determines that such circumstances exist, the offering of such reverse mortgage loan refinancing opportunities to such seniors would be consistent with Rule 107 and the Code of Ethics. However, where a NRMLA Member either determines or should have determined that such circumstances do not exist, then the offering of such reverse mortgage loan refinancing opportunities to such seniors would not be consistent with Rule 107 or the Code of Ethics.

The purpose of this Ethics Advisory Opinion 2011-02 (Ethical Refinancing of Reverse Mortgage Loans) is to provide additional guidance to NRMLA Members as they determine, as virtually all NRMLA Members do and as they each are required to do under the Code of Ethics and its Rule 107, whether the refinancing of adjustable rate reverse mortgage loans into full draw fixed rate reverse mortgage loans (referred to in this Opinion as an “Adjustable to Full Draw Fixed Rate Refinancing”) may provide a bona fide advantage to senior consumers. Indeed, if a NRMLA Member were to fail either to make such a bona fide advantage determination or to make it incorrectly, prior to offering such reverse loan refinancing opportunities to senior consumers, either directly or indirectly through others, such a NRMLA Member would be engaging in unethical conduct under the Code of Ethics. There is no place in NRMLA for those who engage in unethical conduct under our Code of Ethics.

In the view of the Committee, an Adjustable to Full Draw Fixed Rate Refinancing that may provide a bona fide advantage to a senior consumer generally is one that may provide to the senior consumer cash in the amount of a full draw that the senior consumer actually and reasonably wants, at a reasonable cost to the senior consumer.

Here, in the view of the Committee, are examples of such Adjustable to Full Draw Fixed Rate Refinancing opportunities that may and that do not provide a bona fide advantage to such senior consumers. In providing these examples, it is not the intention of the Committee inappropriately to circumscribe or limit the discretion and good judgment that NRMLA Members must have to determine whether their products and offerings may provide a bona fide advantage to their senior consumer customers. It is, however, its intention to underscore their obligation as NRMLA Members under the NRMLA Code of Ethics to exercise that discretion in a thoughtful and considered way.

In the first example, in 2006, Sally secured a HECM adjustable rate loan that paid off her existing first lien forward mortgage and left her with an $80,000 growing balance line of credit that met her need to establish an available cash reserve. In 2011, a third party originator sponsored by a lender approached Sally with an offer to refinance that loan into a full draw fixed rate loan that would have the following relevant characteristics: (a) it would provide an additional $17,000 in immediate cash proceeds, bringing the full draw amount to $97,000 (instead of the $80,000 immediately available cash proceeds under the current loan line of credit); (b) it would fix the note rate under the refinanced loan at 4.99% (instead of the adjustable rate on the current loan that presently was 2.5%); (c) it would increase the annual mortgage insurance premium to be paid to HUD from 0.5% to 1.25%; and (d) it would require the payment of closing costs.

In these circumstances, Sally neither wanted nor needed the immediate full draw proceeds that would accompany the refinanced loan. Moreover, the proposed refinanced loan would impose upon Sally an obligation to invest and secure the $97,000 in full draw funds and involve considerable upfront and ongoing increased costs, including for accruing interest and mortgage insurance premiums. In these circumstances, it is the view of the Committee that this refinancing opportunity would not provide a bona fide advantage to Sally, and that, as a result, and under the provisions of Rule 107 and the Code of Ethics, neither the lender nor its sponsored third party originator should have offered it to Sally.

In the second example, and in contrast, in 2006, Harry secured a HECM adjustable rate loan, prior to the adoption of a single national limit, that was secured by a home valued at the time well in excess of the maximum claim amount available under that loan. In 2011, a lender approached Harry with an offer to refinance that loan into a full draw fixed rate loan that would have the following relevant characteristics: (a) it would result in a maximum claim amount considerably higher than the one under his current loan; and (b) it would yield a considerable additional immediate full draw amount for which Harry had a present need.

In Harry's case, that need was to finance the cost of improving his home to accommodate his growing frailty and the relocation of a care giver. In others, it might be to pay off high cost unsecured debt or meet unexpected large one-time expenses such as those resulting from otherwise uninsured flood or tornado damage or to fund a divorce settlement.

In Harry's case, as in these others, although there also would be considerable upfront and ongoing increased costs, it is the Committee's view that there nevertheless may be bona fide advantages to offering such refinanced loans.

Finally, and in all such cases, the Committee believes it would be prudent for NRMLA Members appropriately to document the bases of their bona fide advantage determinations.

NRMLA Members, senior consumers, and others are urged to bring to the attention of NRMLA's President and the Committee concerns that they may have about potential unethical Adjustable to Full Draw Fixed Rate Refinancing practices, or other concerns related to or arising under the NRMLA Code of Conduct, for consideration and action by the President and the Committee in accordance with the procedures described in the Code of Ethics. The Code of Ethics, the Committee's Ethics Advisory Opinions, and contact information for NRMLA may be found at its website at NRMLAOnline.org.