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## NRMLA ETHICS ADVISORY OPINION 2010-01

### ETHICAL HECM-TO-HECM REFINANCING AND ANTI-CHURNING PRACTICES

September 30, 2010

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.

On September 21, 2010, HUD published Mortgagee Letter 2010-34 (HECM Saver). Under its authority, and effective October 4, 2010, borrowers seeking HECM reverse mortgage loans may select either of two HECM loan products to meet their needs: (1) the current HECM Standard form of loan (for mortgagors who, in general, wish to have available to them a relatively larger amount with a relatively higher upfront initial mortgage insurance premium (MIP)); or (2) the new HECM Saver form of loan (for mortgagors who, in general, wish to have available to them a relatively smaller amount with a relatively smaller upfront initial MIP).

In addition, Mortgagee Letter 2010-34 provides that the amount of HECM loan proceeds for all mortgage loans originated after its effective date (both HECM Standard and HECM Saver), including refinances of such HECM loans after that date, must be reduced (from those available before that date), in accordance with changes made by HUD to its "Principal Limit Factor" tables.

With the advent of a second FHA-insured HECM loan product, the establishment of different principal limits (the maximum amount made available to the mortgagor under the loan), and the provision of various initial MIP and loan cost features, both mortgagors and lenders have a new array of choices available to them. In addition, with respect to the pipeline of existing loan applications (Pipeline Loans), which do not close before the effective date of the Mortgagee Letter, an election will need to be made.

The NRMLA Code of Ethics embraces certain Values and requires conformity to certain Rules that embody those Values. Among those Values are Fairness (NRMLA Members shall treat consumers in a manner that is fair and reasonable and as they would want to be treated) and Integrity (NRMLA Members shall disclose to consumers potential conflicts of interest). Among those Rules are Rule 107 ("NRMLA members shall describe to consumers the range of products and products offered by the Member 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").

The NRMLA Ethics Committee issues this NRMLA Ethics Advisory Opinion 2010-01 (Ethical HECM-to-HECM Refinancing and Anti-Churning Practices) to provide additional guidance to NRMLA Members as to the manner in which the Values and Rules of the NRMLA Code of Ethics—particularly, Rules 107 and 301—apply, and to inform and restrict the choices NRMLA Members make as they offer both HECM Standard and HECM Saver loan products to consumers, including, in particular, the opportunity to refinance such HECM loans with additional HECM loans.

In general, and consistent with the requirements of Rule 107 and the NRMLA Ethics Code, NRMLA Members, subject to market availability and loan origination systems constraints, should make available to consumers directly or indirectly both the HECM Standard and HECM Saver loan products.

In addition, and consistent with the requirements of Rules 107 and 301 and the NRMLA Code of Ethics, NRMLA Members need to assure that the loan products it offers to consumers provide to them a "bona fide advantage." That requirement will have particular applicability now—as consumers with Pipeline Loans are given the opportunity to choose between HECM Standard and HECM Saver loan products—and in the future—when consumers are offered the opportunity to refinance from one HECM to another. In this regard, lenders should provide illustrations and comparison of the most prevalent HECM programs that it offers to consumers.

**The NRMLA Ethics Committee has concluded that, 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 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.**

**Additionally, for a HECM-to-HECM refinance that occurs after six (6) months from the closing of the prior HECM loan being refinanced, a bona fide advantage to a consumer may be demonstrated by a lender if it is able to show that both of the following are met: (1) the funds available to the consumer under the chosen loan (after payoff of other loans and other costs) exceeds the funds available under the other or existing loan or some other bona fide advantage is made available to the consumer as a result of the choice, and (2)(i) if the accrual rate on the new HECM is greater than the accrual rate on the HECM being refinanced, the increase in the mortgagor's principal limit as a result of the choice exceeds the "total cost of refinancing" (as defined in 24 C.F.R. § 206.53(b)) of the chosen loan by an amount equal to at least five (5) times the total cost of the chosen loan regardless of whether the borrower, lender or broker pays any or all of the closing costs, or (ii) if the accrual rate on the new HECM is equal to or less than the accrual rate on the HECM being refinanced, the increase in the mortgagor's principal limit as a result of the choice exceeds the "total cost of refinancing" of**

**the chosen loan by an amount equal to at least five (5) times the total cost of the chosen loan excluding closing costs paid by the lender or broker on behalf of the borrower. For this purpose, "accrual rate" means the note rate plus the on-going MIP.**

For guidance in making this calculation, NRMLA Members are referred to Mortgagee Letter 2004-18 (April 23, 2004) (Refinancing Existing HECM Loans), and to Exhibit 1 thereof (How To Calculate The Total Cost of Refinancing). That Mortgagee Letter required that calculation to be made for a different though closely related purpose, described by HUD in that Mortgagee Letter as assuring that the borrower is not being induced to refinance her existing HECM loan without benefit to the borrower and/or solely for the benefit of the lender.

That, in the view of the NRMLA Ethics Committee, is the essence of the bona fide advantage to the consumer requirement of Rule 107 and the NRMLA Code of Ethics, and it is for that reason that the approach adopted by HUD in this Mortgagee Letter is the one adopted by the NRMLA Ethics Committee as it applies this requirement in this context under its Code its Ethics.

Absent the demonstration by a NRMLA Member in this context that such a bona fide advantage has been made available to the consumer, the NRMLA Ethics Committee may conclude that such Member engaged in the "churning" of these or similar loans as it offered such choices and closed such loans for consumers, in violating of the NRMLA Code of Ethics. A purpose of this Ethics Advisory Opinion 2010-01 is to establish an "Anti-Churning" requirement as part of the NRMLA Code of Ethics responsibilities of NRMLA Members.

Demonstrating that the choice offered to the consumer meets the tests of this Ethics Advisory Opinion, 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.

**Accordingly, it is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to engage in HECM-to-HECM refinance activities that constitute churning as outlined above, or otherwise not to provide a bona fide advantage to consumers for each product offered to consumers by Members. A NRMLA Member offering and providing a choice to consumers between a HECM Standard and a HECM Saver, as part of a Pipeline Loan transaction, or as a refinance of a HECM Standard or HECM Saver, must be able to demonstrate that that consumer was provided with such an advantage because the calculations and determinations described in this Ethics Advisory Opinion have been completed and met, or in some other persuasive manner if that Member is to meet its obligations under the NRMLA Code of Ethics. In addition, NRMLA Members are reminded that in making any such refinancing decisions, they also must comply with applicable state laws that may impose additional or related obligations upon them to determine that a "net tangible benefit" or similar advantage is realized by the consumer in connection with such refinancing transaction. Further, Regulation Z has been revised, effective April 1, 2011, to prohibit loan originators from steering consumers to loan products, including closed end reverse mortgages, based on the fact that the originator will receive additional compensation when that loan may not be in the consumer's best interest.**

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](http://NRMLAOnline.com).