



NRMLA ETHICS ADVISORY OPINION 2010-02

ADDITIONAL ETHICAL ADVERTISING PRACTICE REQUIREMENTS

October 15, 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 February 28, 2008, over two years ago, the Committee issued its first formal interpretation of the then new NRMLA Code of Ethics, Ethics Advisory Opinion 2008-01 (Ethical Advertising). The following year, on June 16, 2009, the Committee issued a related and follow-up interpretation, Ethics Advisory Opinion 2009-02 (Lead Generation State Licensing Requirements and Ethical Advertising). NRMLA Ethics Advisory Opinions are published and may be found on the NRMLA website at [NRMLAOnline.org](http://NRMLAOnline.org).

The two earlier Ethics Advisory Opinions rely on and cite to a series of Values and Rules described in the NRMLA Code of Ethics that address what Ethics Advisory Opinion 2008-01 characterized as a very important aspect of the relationship between NRMLA Members and the seniors whose interests they are pledged to serve: the manner in which NRMLA Members make, advertise and make known to seniors the reverse mortgage loans and programs they offer to them.

Ethics Advisory Opinion 2008-01 also expressly noted the growing concern among seniors and their advocates and legislators, and among NRMLA Members and NRMLA itself, that some NRMLA Members are engaging , participating, or tolerating marketing and advertising practices that are false, misleading, deceptive or unfair--referred to in that Opinion, collectively, as "Unethical Advertising."

These earlier Ethics Advisory Opinions made clear and declared that "Unethical Advertising expressly violates the NRMLA Codes of Ethics," and added: "There is no place in NRMLA for NRMLA Members who engage in Unethical Advertising."

Through its issuance of this Ethics Advisory Opinion 2010-02 (Additional Ethical Advertising Practice Requirements), the Committee expressly re-affirms the interpretations published in Ethics Advisory Opinion 2008-01 and Ethics Advisory Opinion 2009-2, and re-iterates its view that the Values and Rules of the NRMLA Code of Ethics are violated by NRMLA Members who engage in Unethical Advertising. The purpose of this Ethics Advisory Opinion 2010-02 is to provide additional explicit guidance to NRMLA Members about such Ethical and Unethical advertising practices, and through the Appendix attached to this Opinion, additional important related information.

In Ethics Advisory Opinion 2008-01, the Committee cited and described six specific acts and practices that it concluded violated the NRMLA Code of Ethics because they constituted Unethical Advertising. In Ethics Advisory Opinion 2009-2, the Committee effectively required that NRMLA Members complying with the NRMLA Code of Ethics assure that Lead Generation Providers with which they work be duly licensed under applicable state law. In both Ethics Advisory Opinions, the Committee also made clear that indirect violations of its Code of Ethics also are subject to sanctions under its Code of Ethics.

As the Committee intends vigorously to continue to enforce the NRMLA Code of Ethics relating to Ethical and Unethical Advertising, it urges NRMLA Members to review those prior Opinions, and the Code of Ethics, and to assure that their advertising practices, and those of their vendors, fully conform to these requirements.

Additionally, through this Ethics Advisory Opinion 2010-02, the Committee makes clear that the following six additional specific advertising acts and practices not only violate the NRMLA Code of Ethics, but that they also may violate applicable federal and state law requirements that are described in the Appendix to the Opinion that follows.

### ***No Cost Loans***

It has been reported to NRMLA that some reverse mortgage lenders are touting some reverse mortgage programs as "no cost loans." While lenders may be waiving origination fees, paying borrowers closing costs and even paying for some or all of the up-front FHA mortgage insurance premium due to the FHA (which sums may more usually be paid by the borrower), reverse mortgage loans, nevertheless, are not cost free, due to the obligation to repay interest, among others.

As further described below, such claims of "no cost" also may violate several provisions of federal and state law, and federal regulatory guidance with respect to reverse mortgage marketing in that such claims can be and often are misleading if not downright false, and typically do not present fair and balanced information regarding reverse mortgages.

**Accordingly, it is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to state or imply in its advertising or marketing to seniors or others that reverse mortgage loans either are "no cost" loans or "require no payments," or that seniors need not repay a reverse mortgage "during their lifetime" or that a senior "cannot lose" or that there is "no risk" to a senior's home with a reverse mortgage loan, at least without also explaining, in an equally prominent and conspicuous manner in such advertising or marketing, that Reverse Mortgage loans do require seniors to make certain specified payments and meet other specified obligations.**

### ***Use of Celebrities***

NRMLA Ethics Advisory Opinion 2008-1 already provides that it is a violation of the NRMLA Code of Ethics for a NRMLA Member to provide or arrange for a testimonial or endorsement or infomercial that fails clearly to disclose the nature of the relationship (including, if applicable, that a payment has been made as part of the relationship) between the NRMLA Member and the person or entity providing the testimonial or endorsement or infomercial.

It also has been reported to NRMLA that some reverse mortgage lenders also are using celebrity images either without the celebrity's permission or without attribution that the celebrity is paid to appear in the advertising piece on behalf of the lender, in a manner that may mislead, or be unfair or deceptive to seniors, and that also may violate applicable federal and state law requirements as further described in the Appendix that follows.

**Accordingly, it is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to use a celebrity's image or likeness without that person's express, written and documented permission, or to provide celebrity endorsements that do not reflect the honest opinions, findings, beliefs, or experiences of the endorsers. Further, an endorsement may not convey any express or implied representation that would be unfair, misleading or deceptive if made directly by the NRMLA Member.**

### ***Pre-Approved or Pre-Qualified Loans***

Stating that a borrower is pre-approved for a reverse mortgage without fully and clearly disclosing qualification conditions and other criteria can be misleading. (In addition, If marketers have information on seniors that does indicate that the seniors may be qualified for a reverse mortgage, and such information was received from a consumer reporting agency, such offers also may have to comply with the firm offer of credit rules under the federal Fair Credit Reporting Act and FTC regulations, if it is possible to do so, as further described in the Appendix that follows.)

**Accordingly, it is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to state or imply in its advertising or marketing to seniors or others that an applicant or borrower is "pre-approved" or "pre-qualified" for a reverse mortgage loan without also fully and clearly disclosing approval or qualification conditions or other criteria that apply.**

### ***"Stimulus" Money; Call to Action, Sense of Urgency***

References to federal legislation providing more money for seniors for reverse mortgage loans typically are misleading. President Obama signed into law the American Recovery and Reinvestment Act (the "Stimulus Act") on February 17, 2009, over a year and half ago, increasing on an interim basis the HECM Maximum Claim Amount to \$625,500. In addition to that action not being "recent," it also did not provide more or additional federal monies for seniors. When such inaccurate or unknown (or speculative ) information (such as that HUD or the Congress may or will "soon" reduce available loan proceeds or increase loan costs) is coupled with a "sense of urgency" or "call to action" on the part of those they are aimed at, lest they "miss out" on such a limited "opportunity," such advertising clearly may be misleading and deceptive, as also further described in the Appendix that follows.

**Accordingly, it is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to state or imply in its advertising or marketing to seniors or others, that "recent" federal legislation or HUD action provides more money for seniors, if such legislation or action, if any, is not recent, or if such funds have not been appropriated for seniors, especially if coupled with a sense of urgency or call to action stating or implying that if the senior does not promptly respond, he or she may or will lose or miss out on this or related "limited" opportunities.**

### ***Simulated Checks and Currency***

Applicable law generally prohibits or limits the use of simulated currency and simulated checks, money orders, vouchers, and the like, in connection with consumer loan or mortgage marketing. This can also be construed as unfair and deceptive advertising, as described in the Appendix that follows.

**Accordingly, it is also a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to include as part of its advertising or marketing to seniors or others, simulated checks or currency.**

### ***Use of HUD Logo***

Federal law prohibits the use, under all but very narrowly circumscribed circumstances, of the HUD logo or other references to HUD or the FHA in advertisements by reverse mortgage lenders among others, as described more fully below.

**Accordingly, it is a violation of the NRMLA Code of Ethics for a NRMLA Member, directly or indirectly, to use the names or logos of the U. S. Department of Housing and Urban Development ("HUD") or Federal Housing Administration ("FHA"), or names or logos confusingly similar in appearance, in its advertising or marketing of reverse mortgages to seniors or others, except as otherwise expressly may be permitted under applicable law.**

Additional details and references are described in the Appendix to this Ethics Advisory Opinion 2010-1, that follows.

NRMLA Members routinely and overwhelmingly engage in Ethical Advertising, 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 Unethical Advertising.

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 Advertising, 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).

## APPENDIX TO NRMLA ETHICS ADVISORY OPINION 2010-02

### Overview of Federal Regulations and Guidelines:

#### Helping Families Save Their Homes from Foreclosure Act of 2008 (HFSH Act)

Under section 203 of the HFSH Act, FHA-approved mortgagees must use their HUD registered business names in all advertisements and promotional materials related to FHA programs. HUD registered business names include any alias or “doing business as” (DBA) on file with FHA. FHA-approved mortgagees must keep copies of all advertisements and promotional materials for a period of two years from the date that the materials are circulated or used to advertise.

The HFSH Act expands FHA’s ability to pursue civil money penalties against any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, for any use of Federal Housing Administration, Department of Housing and Urban Development, Government National Mortgage Association, Ginnie Mae, the acronyms HUD, FHA, or GNMA, or any official seal or logo of the Department of Housing and Urban Development, except as authorized by the Secretary.

Members are reminded that FHA rules generally prohibit misleading advertising. An approved mortgagee may not use deceptive advertising. All advertisements must emphasize the name of the company and not the government. False advertising or wrongfully misusing names to indicate Federal agency or Government seals is a potential violation of the federal criminal code. See 18 U.S.C. §709 and 18 U.S.C. §1017.

The following is an illustrative list of prohibited advertising practices as identified by the FHA, but should not be considered all-inclusive:

- Improperly using the name or seal of FHA or HUD to imply that the advertisement is from or is endorsed by FHA or HUD; or
- Improperly advertising on a government type form designed to simulate an official Federal government document.

#### Federal Reserve HOEPA Regulation Amendments to Regulation Z

On July 30, 2008, the Federal Reserve Board published final rules amending Regulation Z, which implements the Truth in Lending Act and Home Ownership and Equity Protection Act (or HOEPA). The goals of the amendments are to ensure that advertisements for mortgage loans provide accurate and balanced information, and do not contain misleading or deceptive representations. Below is a summary of some of the new rules brought about by the HOEPA amendments, effective October 1, 2009.

*Misleading use of the current lender's name.* A creditor may not use the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:

- (i) Discloses with equal prominence the name of the person or creditor making the advertisement; and
- (ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

*Misleading claims of debt elimination.* A creditor may not make any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

*Misleading use of the term "counselor".* A creditor may not use the term "counselor" in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

*Misleading foreign-language advertisements.* A creditor may not provide information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but provide information about other trigger terms or required disclosures, such as information about the fully-indexed rate, only in English in the same advertisement.

#### S.A.F.E. Act Related Advertising Requirements

The federal S.A.F.E. Act was enacted as part of the HERA on July 30, 2008. States generally had one year to enact similar loan originator licensing provisions, and all states since that time have enacted S.A.F.E. Act compliant legislation.

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) published a Model SAFE Act for state legislatures to consider and adopt. Most states adopted provisions of the Model Act.

In addition to the licensing provisions, the Model Act requires mortgage loan originators to obtain a unique identifier number. The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the applicable state regulator.

#### RMEGs

In the Spring of 2009, the American Association of Residential Mortgage Regulators developed reverse mortgage examination guidelines for state regulators conducting reverse mortgage compliance examinations. These guidelines contain items that state regulators could review, including whether the institution uses any form of solicitation that appears to be generated by the government or can be interpreted to be misleading to the consumer.

Further, most states mortgage banking rules include laws against unfair, deceptive or misleading advertising practices, and these laws generally also apply to reverse mortgage transactions.

In addition, some states have specific prohibitions on deceptive practices in connection with reverse mortgage advertising.

For instance, in Illinois, a mortgage lender or broker may not employ fraudulent or deceptive acts or practices in the making of a reverse mortgage loan, including deceptive marketing and sales efforts. 205 Ill. Comp. Stat. Ann. 635/5-5(b). The North Carolina Reverse Mortgage Act and the Tennessee Home Equity Conversion Mortgage Act also prohibit deceptive acts and practices in connection with reverse mortgages.

#### State Enforcement Actions in Connection with Reverse Mortgage Advertising

Several states have taken enforcement actions against reverse mortgage originators over the past few years in connection with faulty reverse mortgage advertising. Some of these enforcement actions have resulted in cease and desist orders and administrative actions.

#### GAO Report on Reverse Mortgage Advertising

In June 2009, the Government Accountability Office (“GAO”) reported that only a few regulatory agencies had received only a few complaints about HECM marketing.

Nonetheless, the GAO stated that a review of selected advertisements found examples of marketing claims that were potentially misleading because they were inaccurate, incomplete, or used questionable sales tactics. Federal agency officials agreed that some of these advertisements raised concerns.

In its report, the GAO noted six potentially misleading claims, and agency officials generally agreed. The concerns raised were as follows:

1. “Never owe more than the value of your home”
2. Implications that the reverse mortgage is a “government benefit” or otherwise not a loan:
3. “Lifetime income” or “Can’t outlive loan”
4. “Never lose your home”
5. Misrepresenting government affiliation
6. Claims of time and geographic limits.

Some claims falsely imply that consumers must respond within a certain time to qualify for the loan. Examples include “must call within 72 hours” and “deadline extended.”



## FTC Guidance on Deceptive or Misleading Reverse Mortgage Advertising

The Federal Trade Commission enforces the Federal Trade Commission Act (the FTC Act) which prohibits unfair or deceptive acts or practices by nonbank lenders and mortgage brokers.

The Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Board of Governors of the Federal Reserve System (FRB), and Federal Deposit Insurance Corporation (FDIC), enforce this provision of the FTC Act and any applicable regulations under authority granted in the FTC Act and section 8 of the Federal Deposit Insurance Act. The National Credit Union Administration (NCUA) enforces this provision of the FTC Act and any applicable regulations under authority granted in the FTC Act and sections 120 and 206 of the Federal Credit Union Act.

Practices may be found to be deceptive and thereby unlawful under section 5 of the FTC Act generally if: (1) there is a representation, omission, act, or practice that is likely to mislead the consumer; (2) the act or practice would be deceptive from the perspective of a reasonable consumer; and (3) the representation, omission, act, or practice is because it is likely to affect a consumer's decision about a product or service. A practice may be found to be unfair and thereby unlawful under section 5 of the FTC Act if (1) the practice causes or is likely to cause substantial consumer injury; (2) the injury is not outweighed by benefits to the consumer or to competition; and (3) the injury caused by the practice is one that consumers could not reasonably have avoided.

Further, the FTC generally has required that in mortgage advertising, the disclosure of material terms must be prominent, presented fairly, placed in a manner to draw the senior's attention thereto, and proximate or near to the associated terms or conditions it is describing. Generally this guidance discourages the use of small print, or placing important material in footnotes or on the back of an advertising piece. FTC staff has also indicated that it disfavors and views with higher scrutiny ads that attempt to create a "sense of urgency" or an immediate call to action.

## FFIEC

The Federal Financial Institutions Examination Council ("FFIEC"), which is comprised of the Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA) (the Agencies) recently issued guidance (Guidance) to assist their regulated financial institutions in managing risks presented by reverse mortgage products.

The Guidance applies to all banks and their subsidiaries, bank holding companies (other than foreign banks) and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, credit unions, U.S. branches and agencies of foreign banks engaged in reverse mortgage transactions, and any other entity supervised by those adopting the Guidance. The Guidance refers to all of those covered as "institutions." However, some state mortgage banking regulators with authority over non-bank mortgage lenders have posted notices that such agencies expect their non-bank regulated entities also to follow the Guidance. And, as discussed in more detail below, at least one state mortgage regulator, Pennsylvania, has issued its own guidance on reverse mortgage marketing and lending.

The Guidance focuses on ways an institution may provide adequate information about reverse mortgage products. Under the Guidance, institutions offering either HECMs or proprietary reverse mortgages are encouraged to develop clear and balanced product descriptions and make them available to consumers shopping for a mortgage. They should set forth a description of how disbursements can be received and include timely information to supplement the TILA and other disclosures. Promotional materials and product descriptions should include information about the costs, terms, features, and risks of reverse mortgage products.

The Guidance noted that institutions should review advertisements and other marketing materials to ensure that important information is disclosed clearly and prominently. For example, institutions should review the prominence of marketing claims and any related clarifying statements to ensure that potential borrowers are not misled or deceived. Institutions also are responsible for ensuring that marketing materials do not provide misleading information about product features, loan terms, or product risks, or about the borrower's obligations with respect to taxes, insurance, and home maintenance.

The Guidance noted that consumers are not always adequately informed that reverse mortgages are loans that must be repaid (and not merely ways to access home equity). Some marketing material has prominently stated that the consumer is not incurring a mortgage, even though the fine print states otherwise.

The Guidance noted that some advertisements stated that reverse mortgage borrowers have no risk of losing their homes or are guaranteed to retain ownership of their homes for life. These advertisements did not clearly indicate the circumstances in which the reverse mortgage becomes immediately due and payable or in which borrowers may lose their homes.

Advertisements that are potentially misleading include "income for life," "you'll never owe more than the value of your home," "no payments ever," and "no risk." The Guidance noted that institutions offering reverse mortgages should clearly advise consumers about the consumers' obligation to make direct payments for taxes and insurance.

The Guidance also noted misrepresentations that reverse mortgages constitute "government benefits" or a "government program," with no explanation that the products are loans made by private entities and that the only government program for reverse mortgages is the federally-insured HECM program.

### **State-specific Examples of Policy and Guidelines**

#### *Pennsylvania*

On July 10, 2010, the Pennsylvania Department of Banking issued a Statements of Policy on Reverse Mortgages. 40 Pa.B. 3869. The purpose of the Statement of Policy is to provide guidance to mortgage licensees regarding the Department's interpretation of the proper conduct of making, originating or servicing reverse mortgage loans and to inform licensees of the proper use of, and risks associated with, reverse mortgage loans.

The Statement of Policy provides, among other things, that licensees, when offering a proprietary reverse mortgage loan, should confirm that the applicant understands that the reverse mortgage loan being offered is not a government-sponsored or insured reverse mortgage loan and explains the differences between a proprietary reverse mortgage loan and government-sponsored or insured reverse mortgage loan. Licensees also should not offer, solicit or make a reverse mortgage loan for the purpose of financing the sale of a product or service by the licensee or any affiliated person.

### Connecticut

In connection with an advertisement in Connecticut, a mortgage lender, correspondent lender or broker may not use a simulated check.

Further, a lender may not make representations such as “verified as eligible”, “eligible”, “preapproved”, “prequalified” or similar words or phrases, without also disclosing, in immediate proximity to and in similar size print, language which sets forth prerequisites to qualify for the residential mortgage loan, including, but not limited to, income verification, credit check, and property appraisal or evaluation.

A lender may not use any words or symbols in the advertisement or on the envelope containing the advertisement that give the appearance that the mailing was sent by a government agency.

Conn. Gen. Stat. Ann. § 36a-497(2).

### Georgia

Small loan licensees in Georgia may not use any advertising in the form of a simulated check or other negotiable instrument. While this law generally does not apply to mortgage lenders, use of a simulated check along with other factors such as erroneous messaging or the unauthorized use of a celebrity’s likeness, could be seen as unfair and deceptive advertising.

### Nevada

The mortgage regulator in Nevada has proposed rules that a licensee shall not use advertising material that simulates the appearance of a check or a communication from a governmental entity, or an envelope containing a check or a communication from a governmental entity, unless:

(A) The words "THIS IS NOT A CHECK," "NOT NEGOTIABLE" or "THIS IS NOT A GOVERNMENTAL ENTITY," as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a governmental entity; and

(B) If the material simulates the appearance of a check, the material does not contain an American Bankers Association number, microencoding or any other marks intended to create the appearance that the material is a negotiable check.

## Texas

A second mortgage lender is prohibited from advertising, displaying, or distributing mailing pieces which have a similarity or resemblance to a blank counter check, postal or express money order, U.S. currency, cash, exchange certificate, or any negotiable instrument whatsoever, or any federal, state, or local government warrant. In addition, a lender is prohibited from using an envelope which in any way indicates or implies that it is from federal, state, or local government. 7 Tex. Admin. Code § 83.855. While this law does generally not apply to first lien lenders, use of a simulated check along with other factors such as erroneous messaging or the unauthorized use of a celebrity's likeness, could be seen as unfair and deceptive advertising.

**NOTE: In providing the foregoing information about federal and state laws and regulations, neither NRMLA nor the NRMLA Ethics Committee is intending to provide legal advice or guidance to NRMLA Members or others, or to express any opinions with respect to such laws or regulations. NRMLA Members and others should seek and receive the advice of qualified legal and other advisors before relying on the information provided in this Appendix, which is provided for the general information of NRMLA Members.**