



NRMLA Ethics Advisory Opinion 2016-1

Unethical Planned Prepayment HECM Loans

May 6, 2016

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 2016-1 (Unethical Planned Prepayment HECM Loans) is such an interpretation of the Code of Ethics.

In NRMLA Ethics Advisory Opinion 2015-1 (February 4, 2015; Freedom of Choice Remaining Draw Options After 12 Months/Ethical Obligations and Restrictions), the NRMLA Ethics and Standards Committee (the "Committee"), in part in reliance upon HUD Mortgagee Letter 2014-11 (June 18, 2014), advised NRMLA Members that under provisions of the NRMLA Code of Ethics and Professional Responsibility (the "Code of Ethics") they generally were required to honor the right of all HECM loan applicants and borrowers to determine "in their discretion and according to their views of their needs and without "encouragement" from mortgagees to do otherwise," the amount and timing of, among other things, the respective draws available to them under the terms of their HECM loans. This Ethics Advisory Opinion referred to these borrowers' rights in that regard as their "Freedom of Choice."

In NRMLA Ethics Advisory Opinion 2015-2 (October 30, 2015; Ethical Refinancing of HECM Reverse Mortgage Loans and Anti-Churning Considerations—New Requirements), the Committee advised that the NRMLA Code of Ethics restricted NRMLA Members from refinancing previous HECM loans that failed to meet certain detailed requirements, both in order to serve the best interests of HECM borrowers and to “help foster the development and vitality of the secondary market for such HECM loans.” See also NRMLA Ethics Advisory Opinion 2014-1 (September 26, 2014).

NRMLA Members participating directly or indirectly in the Ginnie Mae HMBS securitization program for HECM loans also are prohibited or least need to be fully knowledgeable about the Ginnie Mae restriction that bars the pooling of what Ginnie Mae describes as “planned refinance” loans, and which it defines, generally, as “premium” loans that lenders and borrowers have agreed to refinance at later dates and at interest rates lower than the current rates on such loans. See Ginnie Mae MBS Guide, Section 9-2, (G). NRMLA members are required under the Code of Ethics to originate, close and service only HECM loans that comply in all respects with all applicable requirements of FHA and Ginnie Mae, including this one. See Code of Ethics, Rule 401.

The Committee acknowledges that HECM loan applicants and borrowers, in the exercise of their Freedom of Choice, may elect to pay off their outstanding HECM loan balances by refinancing their existing HECM loans, or to prepay all or part of their existing HECM loan draws, at any time, as provided and described in their HECM loan documents. However, the Code of Ethics and these Ethics Advisory Opinions and this Ginnie Mae Guide restriction impose certain requirements and restrictions upon NRMLA Members as HECM loan borrowers make those determinations. Through this Ethics Advisory Opinion 2016-1 (Unethical Planned Prepayment HECM Loans) the Committee advises NRMLA Members of an additional restriction related to what it defines, below, as “planned prepayment HECM loans.”

For purposes of this Ethics Advisory Opinion 2016-1, a “planned prepayment HECM loan” is one in which the HECM loan borrower generally has reached an understanding with the lender or loan originator of such HECM loan (either orally or in writing, and at or prior to the borrower’s prepayment of all or part of the drawn proceeds of such HECM loan) that the borrower shall prepay such HECM loan drawn proceeds by a later date following the closing of such HECM loan.

By way of example but not limitation, an understanding or agreement, formal or informal by and between a HECM loan borrower and a lender or originator, that the borrower shall draw down any portion of the amount permitted to be drawn at closing

under applicable HECM variable rate loan requirements of the FHA (which HECM loan, as a result, may be offered on relatively favorable terms and conditions to such borrower) to be followed by the prepayment of all or part of such drawn proceeds at a later date (which then, for example, may permit the borrower to establish a revolving line of credit under the terms of the existing HECM loan) generally would be classified as a planned prepayment HECM loan within the meaning of this Ethics Advisory Opinion 2016-1 that NRMLA Members are advised would be an Unethical Planned Prepayment HECM Loan that they may not offer or provide or assist in arranging, as doing so would be inconsistent with their obligations under the Code of Ethics.

However, in contrast and as a further example but not limitation, an understanding or agreement, formal or informal by and between a HECM loan borrower and a lender or originator that, as part of an aging in place or retirement planning strategy the borrower shall make periodic, planned, partial prepayments over time of any portion of the amount permitted to be drawn at the closing of the HECM loan generally would not be classified as an unethical planned prepayment loan within the meaning of this Ethics Advisory Opinion 2016-1. In such situations, NRMLA Members further are advised to retain appropriate documentation of the bases of their actions.

NRMLA Members routinely and overwhelmingly engage in ethical HECM loan 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 that offer or originate Unethical Planned Prepayment HECM Loans.

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 of this Ethics Advisory Opinion 2016-1, 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.org.