

## NRMLA Ethics Advisory Opinion 2015-2

### Ethical Refinancing of HECM Reverse Mortgage Loans and Anti-Churning Considerations—New Requirements

October 30, 2015

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 2015-2 is such an interpretation of the Code of Ethics.

A goal of this Ethics Advisory Opinion 2015-2 (Ethical Refinancing of HECM Reverse Mortgage Loans and Anti-Churning Considerations—New Requirements) is to provide to NRMLA Members further updated guidance and advice with respect to the ethical considerations under the Code of Ethics by which they are bound as they make such choices and offer, process, underwrite, fund, close, sell, purchase or securitize Home Equity Conversion Mortgage (HECM) loans that refinance previous HECM loans (HECM-TO-HECM Refinances).

The Ethics and Standards Committee has provided similar guidance over the years, as the HECM program has been changed by HUD, in anticipation of such changes, and as it continues to gain experience as it administers and enforces the Code of Ethics. It did so on September 26, 2014 (Ethics Advisory Opinion 2014-1); and on October 23, 2013 (Ethics Advisory Opinion 2013-3); and on February 24, 2011 (Ethics Advisory Opinion 2011-2); and on September 30, 2010 (Ethics Advisory Opinion 2010-1) (collectively, the Prior HECM-TO-HECM Refinance Ethics Advisory Opinions).

Principles and requirements described in the prior HECM-TO-HECM Refinance Ethics Advisory Opinions are brought forward, and remain applicable, except to the extent they are further revised and updated in and through this Ethics Advisory Opinion 2015-2. That is how important it is to the Ethics and Standards Committee and to NRMLA and to its Members that have pledged to abide by its Code of Ethics that their HECM-TO-HECM Refinances proceed in a manner fully consistent with the applicable Values and Rules of the Code of Ethics.

Among those Values are Fairness and Integrity and Professionalism. Among those Rules are Rule 107 ("NRMLA Members shall describe to consumers the range of programs and products generally available in the marketplace 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").

These Values and Rules appropriately give priority, under the Code of Ethics, to the best interests of consumers offered and provided with HECM-TO-HECM Refinances. As the Ethics and Standards Committee also has made plain, however, these Values and Rules also serve to help foster the development and vitality of the secondary market for such HECM loans—a market that, as expressly noted in Ethics Advisory Opinion 2014-1, “is needed to help assure that the HECM product remains competitive and viable in the long term.”

To that end, the Ethics and Standards Committee advises NRMLA Members, through this Ethics Advisory Opinion 2015-2, that HECM-TO-HECM Refinances conforming to the Code of Ethics shall have the following characteristics and meet the following requirements:

- **Seasoning Requirement** - For a HECM-TO-HECM Refinance to provide the required bona fide advantage to a consumer, the date on which FHA assigns the case number for the HECM Refinance shall be **after** (not sooner than) **eighteen (18) months** from the date of the closing of the prior HECM loan being refinanced; and,

In addition to the requirement that the HECM Refinance have a case number assignment date that is at least eighteen (18) months after the closing date of the prior HECM loan being refinanced, for a HECM Refinance to provide the required bona fide advantage to a consumer, the HECM Refinance shall **either**: (a) be originated at the written request of the current HECM loan mortgagor to add as a mortgagor under the HECM Refinance a non-borrowing spouse or other member of the current mortgagor’s family, who is residing in the principal residence of the current mortgagor and who is otherwise qualified to be a mortgagor; **or** (b) pass **both** a **Closing Cost Test** and a **Loan Proceeds Test**, as each of those terms is further defined, below, in this Ethics Advisory Opinion 2015-2.

- **Closing Cost Test** - The Closing Cost Test compares: (a) the total calculated amount of the closing costs for the HECM Refinance that are to be paid by (charged to) the consumer i.e. all costs and charges assessed to the consumer before or upon the consummation of the HECM Refinance, including, but not limited to, up-front MIP, origination fees, title insurance premiums, appraisal and credit report fees (the *Total Closing Cost Amount*); and (b) the total increase in Principal Limit between the Current Principal Limit of the original HECM, the loan being refinanced, and the current HECM Refinance (the *Principal Limit Increase Amount*). To pass the Closing Cost Test, the *Principal Limit Increase Amount* must equal or exceed five (5) times the *Total Closing Cost Amount*.
- **Loan Proceeds Test** - The Loan Proceeds Test compares: (a) the *Available Benefit Amount*, defined as the amount of the Principal Limit that is available to the consumer after deducting the sum of the original HECM loan balance being paid off through closing of the HECM Refinance and the *Total Closing Cost Amount* of the HECM Refinance; and (b) the Principal Limit of the HECM Refinance available to the consumer at closing (the *HECM Refinance Principal Limit*). To pass the Loan Proceeds Test, the *Available Benefit Amount* from the HECM Refinance must equal or exceed five percent (5%) of the *HECM Refinance Principal Limit*.
- **Loan Type Test** - A HECM-TO-HECM Refinance that only provides to the consumer a change in the type of HECM loan (including, for example, a change from a fixed rate to an adjustable rate HECM loan, or a change in the terms of an adjustable rate HECM loan with respect to the maximum amount of permitted adjustments or from adjustments made say monthly to

annually) does **not**, itself, provide a bona fide advantage to the consumer that would permit, under the terms of this Ethics Advisory Opinion 2015-2, such a HECM Refinance to be originated and closed, unless the subject loan meets the Seasoning Requirement, Closing Cost Test, and Loan Proceeds Test described above.

Please see Attachment (A) of this Advisory Opinion for examples of the described refinancing tests.

NRMLA Members also are advised to timely inform consumers of these restrictions, and to implement them, with respect to applications for HECM Refinances in process or not yet closed, for all such pending applications except to the extent that doing so would provide a material disadvantage to the consumer.

In addition, NRMLA Members also are reminded of that full documentation of the bases for all of their required bona fide advantage determinations is required to be maintained, including, specifically, the date on which FHA assigns the case number for the HECM Refinance and the date of the closing of the prior HECM loan being refinanced and the elapsed time between such dates; the written request of the current HECM loan mortgagor to add a mortgagor under the circumstances described in this Ethics Advisory Opinion 2015-2 and the qualifications of such additional mortgagor; the calculation of the Total Closing Cost Amount, the Available Benefit Amount, the Principal Limit Increase Amount, the HECM Refinance Principal Limit, the Closing Cost Test and Loan Proceeds Test; and the determination to close an application for a HECM Refinance that was pending on the date of the publication of this Ethics Advisory Opinion 2015-2 that did not otherwise meet the requirements and restrictions of this Ethics Advisory Opinion.

Finally, NRMLA Members are reminded that the principles and requirements of the Prior HECM-TO-HECM Ethics Advisory Opinions remain applicable except to the extent they are revised and further updated in and through this Ethics Advisory Opinion 2015-2, and that all Ethics Advisory Opinions, and the Code of Ethics, apply to all NRMLA Members that offer, process, underwrite, fund, close, sell, purchase or securitize HECM loans.

NRMLA Members routinely and overwhelmingly engage in ethical HECM-TO-HECM Refinances, and not in “churning” or other unethical activities as described in the Prior HECM-TO-HECM Refinance Ethics Advisory Opinions, 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 unethical HECM-TO-HECM Refinances.

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 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 [www.NRMLAOnline.org](http://www.NRMLAOnline.org).

**Attachment (A) to NRMLA Ethics Advisory Opinion 2015-2**

<b>PASS</b>		<b>FAIL</b>															
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