NRMLA ETHICS ADVISORY OPINION 2013-03

ETHICAL REFINANCING OF HECM SINGLE DISBURSEMENT LUMP SUM PAYMENT OPTION LOANS AND ANTI-CHURNING PRACTICES

October 17, 2013

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 3, 2013, HUD published Mortgagee Letter 2013-27 (Changes to HECM Program Requirements). Under its authority, and effective September 30, 2013, borrowers seeking HECM reverse mortgage loans could select a new HECM loan option (among others): a Single Disbursement Lump Sum Payment Option Loan.

As described in Mortgage Letter 2013-27, a HECM Single Disbursement Lump Sum Payment Option Loan is a HECM loan under the terms of which only a single disbursement is permitted, only at loan origination, the amount of which may not exceed the greater of 60% of the HECM loan Principal Limit, or the permissible Mandatory Obligations plus 10% of the Principal Limit.

This Ethics Advisory Opinion 2013-03 describes important limitations upon the refinancing of such HECM Single Disbursement Lump Sum Payment Option Loans and imposes related anti-churning restrictions affecting such loans that the Committee has concluded are necessary and appropriate under the NRMLA Code of Ethics, and that NRMLA Members, accordingly, are required to honor and comply with as they advise consumers and originate, purchase, sell and securitize such loans. This Ethics Advisory Opinion 2013-3 addresses only HECM loans that are Single Disbursement Lump Sum Payment Option Loans.

A description of these important limitations upon the refinancing of such HECM Single Disbursement Lump Sum Payment Option Loans and related anti-churning restrictions, and the Values and Rules of the NRMLA Code of Ethics that prompt and support the issuance by the Committee of this Ethics Advisory Opinion 2013-03, follows, below.

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), Integrity (NRMLA Members shall disclose to consumers potential conflicts of interest) and Professionalism (NRMLA Members conduct shall reflect positively on NRMLA, the profession and the industry). Among those Rules are Rule 105 (NRMLA Members shall not knowingly make misleading statements to consumers or others), Rule 107 (NMRLA Members shall describe to consumers the full range of products and products that may provide a bona fide advantage to such consumers), Rule 301 (NRMLA Members accurately shall describe both the costs and benefits of products presented to consumers), and Rule 605 (NRMLA Members shall comply with all applicable regulatory requirements).

The Committee, in reliance upon these Values and Rules, among others, previously has addressed HECM loan refinancing and anti-churning practices. For example, on September 30, 2010, the Committee issued Ethics Advisory Opinion 2010-1 (Ethical HECM-to-HECM Refinancing and Anti-Churning Practices) in conjunction with the establishment by HUD, through Mortgagee Letter 2010-34, of another then new (and, as announced in Mortgagee Letter 2013-27, now discontinued) HECM loan option, the HECM Saver. And, more recently, on July 10, 2013, through its issuance of Ethics Advisory Opinion 2013-2, the Committee addressed the related practice of planned repayments of full draw HECM loans.

Through this Ethics Advisory Opinion 2013-03, the Committee, also in reliance upon these Values and Rules and the NRMLA Code of Ethics, addresses similar concern that arises as a result of the establishment by HUD through Mortgagee Letter 2013-27 of the HECM Single Disbursement Lump Sum Payment Option Loan.

It is the view of the Committee that the Code of Ethics and its Values and Rules do not permit NRMLA Members to advise consumers, directly or indirectly, to plan to refinance HECM Single Disbursement Lump Sum Payment Option Loans into other HECM loans for such consumers within the twelve month period following the closing of such initial HECM loans, and that, as a result, and in addition, NRMLA Members may not directly or indirectly refinance or assist the refinancing of such loans into other HECM loans within such period.

It is the view of the Committee that planned refinances of HECM Single Disbursement Lump Sum Payment Option Loans into other HECM loans within the twelve month period following the closing of such initial HECM loans may circumvent (contrary to the requirements of Rule 605, among others) the disbursement limitations applicable to such loans that are described in Mortgagee Letter 2013-27--as further illustrated in the example that follows.

(In that connection, the Committee also notes that its establishment, through this Ethics Advisory Opinion 2013-03, of a twelve month limit on the planned refinancing of such HECM loans by NRMLA Members, is consistent with the First 12-Month Disbursement Period limit established by HUD in Mortgagee Letter 2013-27 for related purposes.)

In addition, it is the view of the Committee that planned repayments of HECM Single Disbursement Lump Sum Payment Option Loans into other HECM loans, within the twelve month period following the closing of such initial HECM loans, can seriously impede the development and vitality of the secondary market for HECM loans. Repayment/prepayment expectations play an important role in determining the secondary market value of HECM loans, and unexpected planned repayments of disbursed funds has a negative impact on the development of an effective, robust secondary market—a market that is needed to help assure that the HECM product remains competitive and viable in the long term. Accordingly, it is the view of the Committee that such planned refinances are inconsistent with the Professionalism Value under the Code of Ethics, and its other Values and Rules.

Finally, it is the view of the Committee that consumers interested in HECM Single Disbursement Lump Payment Option Loans timely should be informed by NRMLA Members that the refinancing of such loans into other HECM loans within a twelve month period following the closing of such initial HECM loans will not be possible, as described in this Ethics Advisory Opinion 2013-3, and thus that such consumers (with the assistance of the counselors who advise them, as appropriate), should consider the fact as well as such HECM loan options are evaluated.

The following provides a further illustration and explanation of the limitations and restrictions established by this Ethics Advisory Opinion 2013-03, related to such HECM loans.

The HECM loan described in Example 3 in Mortgagee Letter 2013-27 may be originated as a Single Disbursement Lump Sum Payment Option Loan. If so originated, this loan, with an assumed Principal Limit of $200,000, and assumed Mandatory Obligations of $17,000, would yield an Initial Disbursement Limit of $120,000, and, for our purposes, mostly importantly, permit a single draw, at closing only, of no more than $70,000 in funds to the consumer. See Example 3, Mortgagee Letter 2013-27.

Now, assume that, as a result of a planned refinance of this HECM loan for this consumer, or otherwise, this loan is refinanced within twelve months, for the same consumer, into a new HECM Single Disbursement Lump Sum Payment Option Loan. For this new HECM loan, the Mandatory Obligations rise from $17,000 (the Mandatory Obligations for the initial HECM loan) to $120,000 (defined as a Mandatory Obligation under Mortgagee Letter 2013-27 for this new HECM loan since it is an "amount required to discharge (an) existing lien [imposed in connection with the initial HECM loan] on the property").

For this second planned refinance HECM loan, then, with an assumed Principal Limit still of $200,000, and newly increased Mandatory Obligations of $120,000 (as noted above), the Initial Disbursement Limit would rise to $140,000 (from $120,000 under the initial HECM loan).

This new Initial Disbursement Limit is calculated under Mortgagee Letter 2013-27 as the amount equal to the greater of 60% of the Principal Limit (or $120,000 for this new HECM refinance loan) or Mandatory Obligations plus 10% of the Principal Limit ($120,000 plus $20,000), thus yielding $140,000 as the Initial Disbursement Limit of this new HECM loan. (See, for example, the calculation of the Initial Disbursement Limit provided through Example 4 of Mortgagee Letter 2013-27).

With the prior HECM loan (in the amount of $120,000) paid off as a Mandatory Obligation through the Single Disbursement Lump Sum Payment at the closing of this new HECM loan, the consumer then would have received, as a result of having obtained this second planned HECM refinance loan (with its new Initial Disbursement Limit of $140,000) an additional $20,000 in cash (the difference between the Initial Disbursement Amount of $140,000 for this new HECM loan and the required Mandatory Obligation payoff of $120,000 of the initial HECM loan)--with that additional $20,000 in cash distributed to the consumer at the closing of the second planned refinance HECM loan being added to the $70,000 in cash distributed to the consumer at the closing of the initial HECM loan. And, the initial HECM loan unexpectedly would have been pre-paid within twelve months of its origination.

Even considering all or part of the costs associated with the origination of the second HECM loan (some or all which might be paid or absorbed by those originating or purchasing that loan), it is the view of the Committee that such planned or other refinances of HECM Single Disbursement Lump Sum Payment Option Loans into other HECM loans within twelve months is inconsistent with the applicable provisions of the NRMLA Code of Ethics.

NRMLA Members routinely and overwhelmingly engage in ethical HECM loan refinancing, and not in unethical churning activities, for the benefit of the seniors they are pledged to serve and in keeping with their professional obligations under the NRMLA Code of Ethics. All the more reason, then, that there is no place in NRMLA for NRMLA Members who engage in impermissible HECM Single Disbursement Lump Sum Payment Obligation Loan refinancing and churning 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 limitations and restrictions of this Ethics Advisory Opinion 2013-03, 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.