



National Reverse Mortgage Lenders Association
1400 16th Street, N.W.
Washington, DC 20036

Via Facsimile: (617) 956-1599

February 10, 2011

David Cotney, Commissioner

Massachusetts Division of Banks

1000 Washington Street, 10th Floor

Boston, MA 02118-6400

Re: Comments on Chapter 258: An Act Relative to Mortgage Foreclosures (Chapter 258)

Dear Mr. Cotney:

This letter responds to the request by the Division of Banks (the "Division") for comments on the Division's announcement to propose to implement the reverse mortgage provisions of Chapter 258: An Act Relative to Mortgage Foreclosures (Chapter 258). This comment letter describes the views of the National Reverse Mortgage Lenders Association ("NRMLA").

NRMLA is the principal nationwide trade association for financial services companies that originate, service, and invest in reverse mortgages. NRMLA was founded to enhance the professionalism of those engaged in reverse mortgage lending, and NRMLA is dedicated to assuring quality and integrity in reverse mortgage lending. Over 90% of the reverse mortgages in the United States today are originated, purchased, or serviced by NRMLA members. Additionally, at this time over 95% of the reverse mortgages originated in the United States are home equity conversion mortgage ("HECM") loans insured by the Federal Housing Administration ("FHA").

Chapter 258: An Act Relative to Mortgage Foreclosures (Chapter 258), was signed into law on August 7, 2010. Chapter 258 includes the extended 150-day right-to-cure after default on mortgage loans and additional consumer protections for reverse mortgages.

Chapter 258 also addresses the governance of reverse mortgages for borrowers over 60 years of age. Chapter 258 and other federal and Massachusetts reverse mortgage statutes and regulations address the eligibility, procedures, disclosures and counseling requirements for a reverse mortgage program.

The Division requested comments on the opt-in and counseling certification requirements of Chapter 258. In addition to any general comments on reverse mortgages, the Division is interested in the present availability of reverse mortgage counseling, personal experiences of counseling sessions, and the level of reverse mortgage foreclosure activity in Massachusetts.

With regard to the opt-in requirements, we request that the Division allow seniors to express their desire to obtain a reverse mortgage through currently utilized loan forms or documents. For instance, the Division may specify that by signing a formal loan application for a reverse mortgage, a senior expressly opts in and requests the reverse mortgage transaction. In the alternative, we request the Division create a model form that lenders and originators may use in order to document a senior's desire to opt in and choose a reverse mortgage, and that use of such form should not be required until the Division publishes it, and that once published, use of the Division's form is deemed a "safe harbor" and compliance with the law in this area.

The Division also requests responses to the following questions:

- **At this time, what is the estimate of counseling sessions that take place over the telephone versus face to face? What are the approximate lengths of the sessions?**

The current percentage of telephonic reverse mortgage counseling sessions is running at approximately 95%. The national reverse mortgage counseling intermediaries advise us that even when face-to-face counseling is offered at one of their branch offices, the vast majority of clients request the reverse mortgage counseling session to be conducted over the telephone. As these sessions are all subject to the HUD Counseling Protocols, the counseling sessions are taking between 60 minutes and two hours. The HUD-designated national reverse mortgage counseling intermediaries advise us that the average duration of a reverse mortgage counseling session is 80 minutes.

As a general comment on reverse mortgage counseling, NRMLA would like to remind the Division that new federal counseling requirements designed to help senior homeowners

independently evaluate, with assistance from a HUD-approved, exam qualified, professional housing counselor, whether a reverse mortgage might be an appropriate option for them, took effect on September 11, 2010. These new counseling requirements, which are supported by National Reverse Mortgage Lenders Association (NRMLA), mark a further strengthening of the consumer protections associated with this federally insured, seniors-only loan program.

The new counseling protocol requires use of a Financial Interview Tool (F.I.T.), developed by the National Council on Aging, to assess whether or not individual borrowers will be able to maintain the financial wherewithal to sustain themselves in their home and meet their financial obligations after obtaining a Home Equity Conversion Mortgage (HECM) loan. For low and moderate income borrowers, another mandatory counseling tool, called BenefitsCheckup.org, is utilized to help borrowers identify other sources of potential income that they can tap in lieu of, or in conjunction with, a reverse mortgage. Benefits Check-up is mandatory for counseling clients below a certain income threshold and offered as an option to those with higher incomes.

The counseling regime operates independently of lenders and is conducted by third-party elderly advocacy organizations and housing counseling agencies, such as the National Council on Aging, CredAbility, National Foundation for Credit Counseling and Consumer Credit Counseling Services around the country. The US Department of Housing and Urban Development oversees the selection and certification of counseling groups, and monitors their performance. All counselors must pass a rigorous exam administered by HUD. Massachusetts counselors must also be approved by the Massachusetts Executive Office of Elder Affairs (EOEA).

Prior to the mandatory counseling session, HUD requires that the individual borrowers receive an information packet. This information packet must include the following materials:

1. An informational document called "Preparing for Your Counseling Session"
2. A printout of loan comparisons (counselor generated or lender generated) so the counselor may review "the numbers"
3. A Printout of the Total Annual Loan Cost (TALC) Disclosure, the disclosure form required by the Federal Reserve Board on all reverse mortgage transactions. This form illustrates the cost of the loan if it is outstanding for different durations of time.
4. A Loan Amortization Schedule
5. The National Council on Aging (NCOA) booklet "Use Your Home to Stay at Home – A Guide for Homeowners Who Need Help Now"

The new protocol also requires that a counselor explain and review:

1. Alternatives and options
2. Reverse Mortgage Information
 - a. Rising debt, falling equity
 - b. Repayment information (how much, when)
 - c. Nonrecourse limitations
 - d. Leftover equity (implications for borrowers and their heirs)
 - e. Borrower Obligations –especially taxes and insurance
 - f. Factors determining loan amounts
 - g. Fees and fee financing
 - h. Retention of Title
 - i. Impact on Public Benefits
 - j. Refinancing a reverse mortgage

The new protocols require that the counselor discuss Fraud Prevention and educate the consumer about how to avoid becoming a victim of fraud.

HUD's new counseling protocols also mandate that a counseling agency must withhold a counseling certificate from a client who cannot successfully answer five of ten specified review questions. This aspect of the protocol is designed to ascertain the client's comprehension of the counseling session content. A lender may not process a Home Equity Conversion Mortgage without the required counseling certificate.

NRMLA would also like to comment on the present availability of face-to-face reverse mortgage counseling in Massachusetts, which we feel is inadequate at best. As previously mentioned, any counseling agency providing reverse mortgage counseling in Massachusetts must be approved by both HUD and the Massachusetts Executive Office of Elder Affairs (EOEA). The EOEA lists a total of nine (9) approved agencies, and one of these nine approved agencies is actually located in Maine. The nine approved agencies have a total of 30 HUD approved

counselors. NRMLA polled these agencies to determine how many of the 30 approved counselors would be available for face-to-face counseling and discovered that eight of the agencies offered face-to-face counseling with a total of 16 counselors available for face-to-face counseling sessions. Additionally, the national reverse mortgage counseling intermediaries are able to provide the resources which may be necessary in the event that a borrower may require counseling in a language other than English. NRMLA understands that such cultural competency would be compromised with a mandatory face-to-face counseling requirement.

In 2010 there were approximately 2,800 reverse mortgage counseling sessions and 1,766 reverse mortgage closings in Massachusetts.

It should be noted that NRMLA recently retained the services of an independent, third-party research firm to conduct a national survey of reverse mortgage borrowers. Massachusetts-based Marttila Strategies conducted this national survey between October 16 and October 20, 2010. One of the key findings of this research was that 86% of reverse mortgage borrowers found the mandated counseling session to be helpful.

• How often do you see circumstances where borrowers request to be re-counseled based on their lack of complete understanding of the product?

After these thorough counseling sessions, the national counseling intermediaries are reporting to NRMLA that there are relatively few instances when a counseling certificate must be withheld entirely. Those consumers who appear not to be grasping the information presented at an initial counseling session are encouraged to go back and review the advance materials with a family member and or trusted advisor, and then call back to schedule an additional session. For those clients who follow through and return to the counseling intermediary, the counseling certificate has generally been issued following the additional counseling session.

• What is the anticipated impact of the requirement that borrowers below an income/asset threshold must obtain in-person counseling?

We anticipate that lenders will require all borrowers to go to face-to-face counseling, because in the event there is a mistake in the assessment of a reverse mortgage applicant's low income/low asset status, and a borrower should have had face-to-face counseling, but did not, lenders are concerned about the "void-ability" language in the new law.

Notwithstanding a two (2) year statutory delay in the implementation of this rule, lenders are concerned that if every senior wishing to undergo reverse mortgage counseling is sent to face-to-face counseling, the current counseling capacities in Massachusetts will not be adequate. Further, we are concerned about instances wherein the senior has counseling prior to ever

talking to a lender, such counseling was not conducted face-to-face, and no assessment was made as to the senior's financial status. In such cases, lenders will be reluctant to rely on any financial assessment that might have been made by another party (the counseling agency), and will want the senior to undergo counseling again, in a face-to-face setting. Lenders cannot pay for counseling under the federal HECM program. Thus, in these instances, seniors will be required to pay for counseling twice. We do not believe such a result was intended or serves any legitimate policy purpose.

• What is the present activity level for a Home Equity Conversion Mortgage (HECM) refinancing transaction and what is a typical timeframe between transactions?

In fiscal year 2010 (October 1, 2009 through September 30, 2010), there were 1,766 HECMs closed and funded in MA. Of these, 5% (91) were HECM to HECM refinances.

In October and November 2010, there were 254 HECM's closed and funded in Massachusetts. Of these, five (or 1.97%) were HECM to HECM refinances. This compares to 11,833 HECMs closed and funded nationwide in October and November 2010, 488 (or 4.12%) which were HECM to HECM refinances.

We do not have the data on the typical timeframe between transactions.

We would like to note on this item, however, that NRMLA has established as part of its Code of Ethics & Professional Responsibility recommended and required practices with respect to HECM to HECM refinances. Please find that Code of Ethics and Advisory Opinion attached to this letter as *Exhibit A*.

NRMLA's Executive Committee and Ethics Committee, with assistance from its general counsel, issued NRMLA Ethics Advisory Opinion 2010-01 on September 30, 2010 which outlines parameters for determining whether or not any particular refinancing transaction might be appropriate.

Highlights of this Advisory Opinion include:

- 1.) The lender must illustrate and show comparisons for all reverse mortgage products that are being offered to the borrower;
- 2.) A borrower cannot refinance into a new HECM if the closing of the old HECM was less than 6 months prior;
- 3.) The funds available to the borrower of a new HECM (after payoff of existing HECM and closing costs) must exceed the funds available under the old HECM (or some other bona fide advantage must be demonstrated);

4.a) If the accrual rate on the new HECM (accrual rate = note rate + MIP rate) is greater than the accrual rate on the old HECM, the increase to the new principal limit must be at least five times the total cost of refinancing. All costs for the refinancing must be included in this calculation, regardless of who pays those costs. In other words, if costs are paid by the lender, they should still be included when undertaking this calculation; or b) If the accrual rate on the new HECM is less than or equal to the accrual rate on the old HECM, the increase to the new principal limit must be at least five times the total cost of refinancing of the new HECM, excluding closing costs paid by the lender;

5.) If the criteria above are not met, the lender must be able to demonstrate a bona fide advantage of refinancing to the borrower.

The "five times cost" standard is based on the calculations included in HUD's Mortgagee Letter 2004-18, which was originally issued in April of 2004 to govern which borrowers in HECM-to-HECM refinance transactions would be required to return for additional counseling, and as such guidance was updated by HUD's Mortgagee Letter 2009-21 issued in June of 2009.

• Should Massachusetts adopt an anti-tying prohibition so that a reverse mortgage loan cannot be conditioned upon the purchase of an insurance or financial product? Should there be a cooling-off period whereby such transactions are restricted following the closing, and, if so, what length of time should that encompass?

Under federal HECM law, currently, seniors cannot be required to obtain another financial services product, such as an annuity, in order to obtain a HECM. See 12 U.S.C. § 1720z-20(n) and (o). The majority of reverse mortgages offered and accepted on the market today are the FHA-insured HECM mortgage loan.

We further point out that the OCC, FRB, FDIC, OTS, and NCUA (the Agencies) have issued guidance on reverse mortgages, including conflicts of interest and abusive practices that may arise in connection with reverse mortgage transactions, including with the use of loan proceeds and the sale of ancillary investment and insurance products. (Reverse Mortgage Products: Guidance for Managing Compliance and Reputation, 75 Fed. Regis. 50801, Aug. 17, 2010). The Agencies developed the guidance to assist institutions in managing such risks effectively. Institutions are encouraged to manage the compliance and reputation risks raised by reverse mortgage lending through implementation of communication, disclosure, and counseling practices such as those discussed below and by taking actions to avoid potential conflicts of interest.

To manage the compliance and reputation risks associated with reverse mortgages, institutions should take all reasonably necessary steps to avoid any appearance of a conflict of interest and violation of applicable laws and rules. For example, an institution should:

- Adopt clear written policies and internal controls designed to ensure that the institution does not violate any applicable anti-tying restrictions.¹ For example, an institution risks violations if it: (1) Requires the borrower to purchase any annuity, insurance or any product other than a traditional banking product in order to obtain the reverse mortgage from the institution or an affiliate, or (2) varies the price of the reverse mortgage based on a condition that the borrower purchase such other product. Further, the Agencies expect that institutions will not do either of these things indirectly through brokers acting as agents;
- Adopt clear written policies and internal controls designed to ensure that the institution complies with restrictions designed to avoid conflicts of interest. For example, an institution risks violations if it requires the borrower to purchase any annuity, insurance (other than appropriate title, flood or hazard insurance), or similar financial product from the institution or third party in order to obtain the reverse mortgage from the institution or broker;
- Adopt clear policies designed to ensure that loan originators and brokers acting on behalf of an institution do not have an inappropriate incentive to sell other products that may appear to be linked to the granting of a reverse mortgage or to engage in inappropriate cross-marketing of other products. Such policies should ensure that any such cross-selling is clearly consistent with the FTC Act standards; and

¹ The anti-tying provisions of Section 106(b) of the Bank Holding Company Act of 1970 for banks and their subsidiaries, as applicable, and comparable anti-tying provisions for savings associations, savings and loan holding companies, and their affiliates prohibit these institutions from, among other things, requiring a customer to purchase certain nonbanking products or services, including insurance and annuity products, from the institution or an affiliate as a condition to obtaining or varying the price of credit. Exceptions from these anti-tying prohibitions are permitted if the required products are loans, discounts, deposits, or trust services (i.e., traditional banking products). See 12 U.S.C. 1464(q), 1467a(n), and 1972. 12 CFR 225.7.

In addition, banks and savings associations that offer insurance and annuities are specifically prohibited from engaging in practices that would cause a consumer to believe that an extension of credit is conditioned on the purchase of insurance or an annuity from the creditor. See 12 U.S.C. 1831x and Consumer Protection in Sales of Insurance Rules, 12 CFR 14.30, 208.83, 343.30, and 536.30. The Agencies examine institutions for compliance with these legal requirements and will take appropriate action to address any violations. Tying arrangements also remain subject to the general antitrust laws.

- Adopt clear compensation policies to guard against other inappropriate incentives for loan officers and third parties, such as mortgage brokers and correspondents, to make a loan. In addition, conflicts are less likely to be a concern if the borrower has received information and access to independent counseling.

The Conference of State Banks Supervisors issued Reverse Mortgage Examination Guidelines that address other financial service products offered with reverse mortgages. [See <http://www.csbs.org/regulatory/policy/policy-guidelines/Documents/RMEGsV2.doc>] Those guidelines instruct auditors to review state regulated institutions offering reverse mortgages in the area of referring reverse mortgage applicants to other products, services or service providers (e.g. referrals to insurance agents or products, securities dealers or products, etc.). The guidelines instruct the examiner to determine whether homeowners are offered or sold other products, which might be considered inappropriate, including the institution's own products.

Also, the Federal Reserve Board has proposed to amend Regulation Z to address other financial services product offerings with reverse mortgages (See 75 Fed. Regis. 58539 (Sept. 24, 2010)). In this proposed rule, the Federal Reserve proposes to limit a creditor or a loan originator, as defined in § 226.36(a)(1), from requiring a consumer to purchase any financial or insurance product as a condition of obtaining a reverse mortgage. The proposed rule defines a "financial or insurance product" to exclude a transaction account or savings deposit that is established to disburse proceeds of the reverse mortgage, or any product or service customarily required to protect the creditor's interest in the collateral or otherwise mitigate the creditor's risk of loss. (Note: The FRB has recently announced that it will wait for the new Consumer Protection Bureau to finalize this proposed rule.)

Finally, the Dodd-Frank Act has tasked the new Consumer Financial Protection Bureau with conducting a study on reverse mortgage transactions. If the Bureau determines through the study that conditions or limitations on reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this Title X of the Dodd-Frank Act (the "Consumer Financial Protection Act of 2010"), including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, it is authorized to implement regulations.

The regulations prescribed may, as the Bureau may so determine: (A) identify any practice as unfair, deceptive, or abusive in connection with a reverse mortgage transaction; and (B) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the federal Truth-in-Lending Act and the Real Estate Settlement Procedures Act, with the

disclosures required to be provided to consumers for Home Equity Conversion Mortgages under the HECM statute, section 255 of the National Housing Act.

The above study and rulemaking authority conferred upon the Bureau shall not limit the Bureau in issuing regulations, orders, or guidance that apply to reverse mortgages prior to the completion of the required study. See Section 1076 of the Dodd-Frank Act.

With regard to a cooling off period, we note that current Massachusetts law requires lenders to provide seniors with a commitment letter after which the senior has seven (7) days to decide whether to proceed with the transaction, and during which period the senior is not obligated to proceed with the transaction. In any event, under general principles of contract law, seniors are not obligated to proceed to closing a reverse mortgage transaction. Further, most reverse mortgage transactions are refinance transactions, and under such transactions, even after signing the loan documents, the senior has three days to rescind the loan transaction. Further note that some seniors are in need of funds under a reverse mortgage, and any additional cooling off period will only delay such fundings and further harm seniors. Respectfully, given all of the protections already in place, we do not feel an additional cooling off period is needed.

If the Division will adopt anti-tying rules in this area, we respectfully request that the Division be mindful of other rules, guidelines and proposed rules in this area, especially the robust protections under the federal HECM program (the dominant, and in many cases, sole program offered in most parts of the country today), and the Division adopt rules consistent with those reverse mortgages already in place, or proposed and soon to be adopted.

We trust you will find these comments helpful. Please do not hesitate to contact me if you have more questions or need any additional information on the above topics.

Sincerely,

A handwritten signature in black ink that reads "Peter Bell". The signature is written in a cursive style with a large initial "P".

Peter Bell

President and CEO

National Reverse Mortgage Lenders Association

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Exhibit A

NRMLA Code of Ethics & Professional Responsibility

Ethics and Standards Complaint Procedures

Preamble and Applicability

The *NRMLA Code of Ethics and Professional Responsibility (Code of Ethics)* describes Values shared and Rules applicable to all NRMLA Members. Under the Code of Ethics, NRMLA Members generally are responsible and will be held responsible for the actions or failures to act of their officers, directors, employees, agents and representatives. NRMLA Members unable or unwilling to commit and to adhere to the Values and comply with the Rules, or that are determined by the NRMLA Ethics and Standards Committee not to have so complied, may not be NRMLA Members.

This Codes of Ethics does not describe, nor does it attempt to describe, the full range of conduct and behavior to which NRMLA Members may subscribe or adhere as they participate in the reverse mortgage marketplace and interact with consumers in an ethical, professionally responsible, and lawful manner. What the Code of Ethics does describe are the Values and Rules applicable to NRMLA Members if they are to be and remain NRMLA Members. Accordingly, the Code of Ethics does not define the standards and behavior of a NRMLA Member for the purpose of determining its civil or criminal liability.

This Code of Ethics also does not impose on NRMLA Members the duty of learning or disclosing technical facts pertaining to taxation, real estate law, retirement planning or financial advice involving the real estate or financial markets.

This Codes of Ethics also does not confer any rights upon any NRMLA Member or any complainant or third party.

Composition and Scope

The Code of Ethics is divided into two parts: Part 1 – Values and Part II – Rules. The Values convey the ethical and professional principles that NRMLA Members are expected to portray in all business and professional interactions. The Rules address the guidelines and standards of ethical and professional behavior applicable to NRMLA Members.

Compliance

Member organizations are required to adhere to the Values and comply with the Rules of the Code of Ethics if they are to be and remain NMRLA Members. The Ethics and Standards Committee will investigate, review and take appropriate action with respect to alleged violations of the Code of Ethics by NRMLA Members, under the policies and procedures set forth in Appendix A.

Part 1 – Values

NRMLA Members are mindful that the soundness, usefulness, prosperity and future of our industry depend upon their honor and integrity, and on the manner in which they interact with each other and with the seniors whose interests they serve. Accordingly, each NRMLA Member agrees to observe and maintain and adhere to the following Values.

Value 1: Fairness

NRMLA Members shall treat consumers with respect and dignity, and in a manner that is fair, reasonable and as they would want to be treated.

Value 2: Confidentiality

NRMLA Members shall appropriately respect, protect, preserve and safeguard the privacy and confidentiality of information obtained from and about consumers.

Value 3: Integrity

NRMLA Members shall act with integrity by adhering to the letter and spirit of this Code of Ethics, which includes disclosing potential conflicts of interest to consumers in a timely basis..

Value 4: Competence

NRMLA Members shall provide services to consumers in a competent manner, acquiring and maintaining necessary and appropriate knowledge, skills and experience to do so, and referring consumers to others who possess such knowledge, skills and experience when they are unable to do so.

Value 5: Diligence

NRMLA Members shall provide services to consumers with diligence and due care, promptly, thoughtfully, in a manner considerate of the interests of consumers and fully in compliance with all applicable legal and regulatory requirements.

Value 6: Professionalism

NRMLA Members' conduct shall reflect positively on NRMLA, the profession and the industry.

Part II – Rules

Consistent with the Values described in Part I, NRMLA Members agree to comply with the following Rules (as applicable).

Rules Related to the Value of Fairness

Rule 101

NRMLA Members shall timely and accurately describe to consumers:

- Material information relevant to the relationship, including the Member's business affiliation, contact information, and the scope of and limitations on the Member's authority to act; and
- The information required by all laws applicable to the relationship in a manner complying with such laws, including counseling agency contact information, estimates of fees and charges, and relationships with others who may be assisting or providing related services.

Rule 102

NRMLA Members compensation shall be reasonable in amount and clearly and timely described to consumers. Estimates shall be clearly identified as such and be based on reasonable assumptions.

Rule 103

NRMLA Members directly or indirectly offering or providing goods or services to consumers (including, for example, insurance or investment products) in conjunction with or that are related to their reverse mortgage lending activities for such consumers, shall do so only in a manner consistent with applicable law and under terms and conditions that are clearly and timely described to such consumers.

Rule 104

NRMLA Members shall not, directly or indirectly, solicit or communicate with consumers through false or misleading or deceptive or unfair communications or advertisements or in any manner inconsistent with applicable law. In such communications and advertisements, NRMLA Members shall not refer to third parties (including, for example, HUD or the FHA or the federal government or the AARP) unless such third parties have agreed to be so referred to

therein. A communication or advertisement on behalf of NRMLA Member clearly shall identify that NRMLA Member.

Rule 105

NRMLA Members shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a material false or misleading statement to consumers or others.

Rule 106

NRMLA Members shall offer and provide their products and services to all consumers who may be eligible or qualified for them, and in compliance with all applicable fair housing and fair lending laws.

Rule 107

NRMLA Members shall describe to consumers the range of programs and products offered by the Member that may provide a bona fide advantage to such consumers.

Rule 108

In appropriate cases, NRMLA Members shall encourage consumers to review contemplated transactions with their family members or trusted advisors, and shall reasonably cooperate in such reviews.

Rule 109

NRMLA Members shall make a good-faith effort to resolve concerns received from consumers about the products and services they offer or provide to them.

Rules Related to the Value of Confidentiality

Rule 201

NRMLA Members shall take reasonable steps (including implementing appropriate training and compliance procedures) to help assure that the privacy of and confidentiality of information obtained from and about consumers is respected, protected, honored and safeguarded, and shall do so in a manner consistent with applicable law.

Rules Related to the Value of Integrity

Rule 301

NRMLA Members shall accurately describe both the costs and benefits of the products and services presented to consumers.

Rule 302

NRMLA Members shall not require directly or indirectly that products or services other than the reverse mortgage loans they offer or provide, also must be purchased by consumers in order to obtain reverse mortgage loans from or through them.

Rule 303

Other than as appropriate under the circumstances (including for example to pay third party costs, make prior loan payoffs or fund set-asides directly related to reverse mortgage transactions), NRMLA Members shall arrange for the disbursements of reverse mortgage loan proceeds directly to such consumers.

Rule 304

Material potential conflicts of interests involving NRMLA Members and consumers shall timely and accurately be described to consumers prior to the rendering of material services by such Member so that they, assisted as appropriate by family members, trusted advisors and counselors, reasonably may assess whether and the circumstances under which they may choose to do business with such NRMLA Members.

Rules Related to the Value of Competence

Rule 401

NRMLA Members shall acquire and maintain the necessary and appropriate knowledge, skills and experience required to competently offer and provide their products and services in a manner consistent with this Code of Ethics and applicable law, including, as applicable, in the origination, processing, underwriting, closing and servicing of reverse mortgage loans.

Rule 402

NRMLA Members shall advise consumers to seek legal, tax, and investment counsel and advice, if it may reasonable appears to be in the interests of such consumers that they do so, prior to making decisions involving reverse mortgages. NRMLA Members not qualified and

appropriately licensed to provide such counsel and advice to consumers shall not do so, and shall, instead, refer such consumers to those who are.

Rules Related to the Value of Diligence

Rule 501

NRMLA Members shall exercise reasonable efforts to secure sufficient information to determine the consumer's needs and objectives.

Rule 502

NRMLA Members shall provide their products and services to consumers with diligence and due care and in a manner considerate of the interests of such consumers.

Rules Related to the Value of Professionalism

Rule 601

NRMLA Members shall take reasonable steps to help assure that their employees understand and act in a manner consistent with the requirements of this Code of Ethics.

Rule 602

NRMLA Members shall neither accept nor condone actions or failures to act of other NRMLA Members that are inconsistent with this Code of Conduct. NRMLA Members knowledgeable about potential material violations of this Code of Ethics by others subject to its provisions strongly are encouraged to bring such potential violations to the attention of NRMLA in the manner described in this Code of Ethics.

Rule 603

NRMLA Members shall not bring or threaten to bring complaints under this Code of Ethics, or make or threaten to make use of this Code of Ethics, for no substantial purpose other than to harass, maliciously injure, embarrass and/or unfairly burden another NRMLA Member.

Rule 604

NRMLA Members shall pay to NRMLA amounts due and owing to it related to their membership in NRMLA on a timely basis.

Rule 605

NRMLA Members shall comply with all applicable regulatory requirements include provisions of the Federal Real Estate Settlement Procedures Act barring among other things referral fees and kickbacks, state mortgage regulatory provisions requiring licensing, and, with respect to FHA-insured HECM reverse mortgage loans, FHA requirements regarding licensing and employees and restricting arrangements with third parties.

Rule 606

NRMLA Members reasonably shall cooperate with NRMLA and its Standards and Ethics Committee in their consideration of complaints under this Code of Ethics made against or involving them. NRMLA Members shall honor the confidentiality requirements described in Appendix A of the Code of Ethics that are applicable to them.

Rule 607

NRMLA Members shall employ individuals who have passed a background check and are determined by them to be of good moral character.

Appendix "A"

NRMLA's Policies and Procedures: Code of Ethics Complaints Against Members

The President of NRMLA will receive and review complaints that NRMLA Members have violated the NRMLA Code of Ethics and take action, including referring complaints to the Co-Chairs of the NRMLA Ethics and Standards Committee for consideration by the Committee, pursuant to the following policies and procedures. The President of NRMLA, in consultation with the General Counsel of NRMLA as appropriate, shall have the discretion to vary these procedures when it is determined that to do so would be in the best interests of NRMLA and its Members. These policies and procedures do not confer any rights upon any NRMLA Member or any complainant or third party.

I. Source of Complaints

A. Complaints May Originate From:

1. Members (including but not limited to the President of NRMLA and the Co-Chairs and Members of the Ethics and Standards Committee), or
2. Non-Members (including consumers)

B. Complaints May Be Against:

1. Members, or
2. Non-Members

II. Receipt and Review of Complaints

A. Complaints initially will be referred to and reviewed by the President of NRMLA.

B. NRMLA shall not review or act upon anonymous complaints. (However, in limited circumstances, as described below, NRMLA may respond to complaints without further identifying the complainant.)

C. Complaints against Non-Members

NRMLA will respond to complaints against Non-Members by informing the complainant that NRMLA is unable to take action in response to such complaints, and, where appropriate, refer the complaining party to an appropriate agency or authority if it appears that they may be able to be of assistance.

D. Complaints against Members

1. Complaints against Members should contain sufficient facts to permit an “initial determination” to be made by the President of NRMLA.

(a) If, in the judgment of the President, the complaint contains sufficient facts upon which the President may make an “initial determination,” the President shall take one of two actions:

- (i) If the complainant does not state a complaint against a Member of the type or scope that warrants further action, the President shall inform the complainant of that determination by the President and the decision of the President shall be final. The President concurrently shall report all such determinations to the Co-Chairs of the Ethics and Standards Committee, including a brief statement of the reasons for the determination.
- (ii) If the complainant states a complaint against a Member of the type and scope that warrants further action, the President shall seek and secure from the complainant the complainant’s agreement that the written complaint or any statements contained or information included therein (including but not limited to the identity of the complainant) may be shared with the Member that is the subject of the complaint or any other party deemed necessary and appropriate to assist in better understanding or resolving the complaint, including members of the Ethics and Standards Committee, the Board of Directors, and General Counsel.

(b) If, in the judgment of the President, the complainant does not recite and include sufficient facts or allegations upon which the President may make an

“initial determination,” NRMLA will notify the complaining party that additional facts are required and provide an additional ten (10) business days from the date of such letter for the complainant to supplement the complaint. In any event, before forwarding a complaint to the Ethics and Standards Committee or any other person or entity, the President shall secure the agreement of the complainant that the written complaint and any statements contained or information included therein (including but not limited to the identity of the complainant) may be shared with the Member that is the subject of the complaint or any other party deemed necessary and appropriate to assist in better understanding or resolving the complaint, including members of the Ethics and Standards Committee, the Board of Directors, and General Counsel. Absent special circumstances, a refusal by a complainant to agree to such sharing of the complaint (with the identify of the complainant redacted as requested and appropriate) will result in an initial determination by the President that NRMLA will take no further action in response to the complaint, and the notification to the complainant (and the Ethics and Standards Committee Co-Chairs) of that final determination by the President

2. Upon receipt of the complainant’s affirmative response to a NRMLA acknowledgement and letter of agreement, the President generally shall provide the Member about which the complaint has been made with an opportunity to respond to the complaint.
3. Ordinarily, the President will provide the respondent Member ten (10) business days to respond in writing. Absent special circumstances, the failure of a respondent to deny or explain any material fact alleged in the complaint within the established response period will be deemed an admission of such fact.
4. The President, based on the complaint and/or the response thereto, and other investigation and consideration of the matter as the President deems necessary and appropriate, shall decide either:
 - (a) to take no further action in regards to the complaint, having concluded that it is not of the type or scope to warrant further NMRLA action (in which event the President shall so notify the complainant and the respondent Member, and the Ethics and Standards Committee Co-Chairs (accompanied by a brief explanation of the basis for the President’s determination)); or

- (b) to refer the complaint and response and related materials to the Co-Chairs of the Ethics and Standards Committee, accompanied by a brief explanation of the President's reasons for so referring the complaint.

III. Review and Action by the Ethics and Standards Committee

- A. Unless either Ethics and Standards Committee Co-Chair disagrees with President (in which case the Ethics and Standards Committee Co-Chair shall so notify the President and Chair of the Board of Directors), the Ethics and Standards Committee shall review the complaint, response and related information referred for action by the President.
- B. On the basis thereof, and other investigation and consideration of the matter as the Ethics and Standards Committee deems necessary and appropriate, the NRMLA Ethics and Standards Committee shall determine whether the NRMLA Code of Ethics has been violated by the Member that is the subject of the complaint, and, if so, the Ethics and Standards Committee shall determine the action of NRMLA in response thereto. In general, actions by the Ethics and Standards Committee against a Member shall be limited to probation (for a specified period, during which another Code of Ethics violation will lead to suspension or withdrawal of NRMLA Member membership), suspension of NRMLA Member membership (for a specified period of time), or withdrawal of NRMLA Member membership for at least three years. A copy of the opinion shall be provided to the complainant, the Member respondent (with redaction of the complainant's name, as appropriate), the President, and the Co-Chairs of the NRMLA Board of Directors. Opinions of the NRMLA Ethics and Standards Committee are final decisions of NRMLA.
- C. The Ethics Committee shall confer with the President and the General Counsel, as appropriate, and no adverse action shall be taken against a Member without the prior concurrence of the General Counsel that it is action that NRMLA may take against such Member under applicable law and NRMLA's policies and procedures and this Code of Ethics.
- D. The President of NRMLA and the Co-Chairs of the Ethics and Standards Committee shall submit written quarterly reports to the Board of Directors as to the actions taken or not taken with respect to complaints received by the President, and as to

recommendations with respect to appropriate amendments to these Policies and Procedures, and the Code of Ethics, as appropriate.

IV. Confidentiality

All Members and NRMLA staff, including but not limited to the President; the Co-Chairs and members of the Ethics and Standards Committee; and members of the Board of Directors, shall maintain the strict confidentiality of all complaints, responses, recommendations and opinions related to any complaints subject to these Policies and Procedures and the Code of Ethics. A violation by any Member of this requirement for maintaining strict confidentiality shall be considered by NRMLA to be a violation by such Member of the Code of Ethics.

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 2010-2 (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 2010-2 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.