

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Doc. No. FR-4615-F-02]

RIN 2502-AH57

Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule addresses property "flipping," the practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. Specifically, the final rule establishes certain new requirements regarding the eligibility of properties to be financed with Federal Housing Administration (FHA) mortgage insurance. The regulatory amendments will comply with Congressional mandates to maintain the FHA Insurance Fund in a sound actuarial manner. The new requirements will make flipped properties ineligible for FHA-insured mortgage financing, thus precluding FHA home purchasers from becoming victims of predatory flipping activity. The final rule follows publication of a September 5, 2001, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's September 5, 2001, Proposed Rule

On September 5, 2001 (66 FR 46502), HUD published a proposed rule for public comment to address property "flipping," the predatory lending practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. Most property

flipping occurs within a matter of days after acquisition, and usually with only minor cosmetic improvements, if any. In the September 5, 2001, proposed rule, HUD proposed to restrict flipping by establishing new eligibility requirements for properties whose purchase is being financed with FHA mortgage insurance.

As noted, property flipping involves the rapid re-sale, often within days, of a recently acquired property. Accordingly, HUD proposed to prohibit FHA financing for any property being sold within six months after acquisition by the seller. The proposed six-month restriction would not have applied to re-sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710). The proposed rule also provided for legitimate transactions involving the quick and profitable re-sale of a recently acquired property, by authorizing HUD to grant case-by-case exceptions to the six-month restriction where the lender demonstrates that the sales price of the property corresponds to its market value.

HUD also proposed to establish a new owner of record requirement for properties financed with FHA mortgage insurance. Unscrupulous investors will often flip properties they have contracted to purchase (but have not yet acquired) by selling or assigning the rights to the sales contract, often for a significant profit. The September 5, 2001, proposed rule addressed this issue by providing that only those properties purchased from the owner of record would be eligible for mortgages insured by FHA.

The preamble to the September 5, 2001, proposed rule provides more information regarding the proposed regulatory amendments to the FHA regulations.

II. Significant Differences Between This Final Rule and September 5, 2001, Proposed Rule

This final rule follows publication of the September 5, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the September 5, 2001, proposed rule are summarized below. Additional information regarding these changes is provided in the discussion of the public comments in sections III through VI of this preamble.

1. *Revised time restrictions on re-sales.* In response to significant public comment on this issue, this final rule

revises the proposed time restrictions on re-sales. The final rule reduces the time restriction on FHA mortgage insurance to short-term re-sales occurring within 90 days following acquisition by the seller.

The rule, however, provides additional measures that HUD may take after 90 days, depending upon the circumstances of the re-sale. If the re-sale is between 91 days and 180 days following acquisition by the seller, the final rule requires the lender to document the re-sale value if the re-sale price is a certain percentage, as established by HUD, over the purchase price. The percentage established by HUD will be between 50 to 150 percent over the purchase price. The final rule provides the lender a number of options to meet this requirement. Specifically, the lender may obtain a second appraisal that supports the increased value. As an alternative, the lender may document its file to establish that the increased value is the result of rehabilitation to the property. The requirement for additional documentation will be set at a level that, as determined by HUD, will deter unscrupulous purchasers from attempting to flip property while simultaneously ensuring that legitimate rehabilitation of properties continues. This final rule would establish the level that triggers the additional documentation requirement at 100 percent above the original purchase price. HUD may revise the level that triggers this documentation requirement by **Federal Register** notice.

In addition to requiring documentation for re-sales within the 91 to 180 day period, the final rule authorizes HUD to impose additional protections against "flipping" for re-sales up to 12 months following acquisition by the seller. To address specific circumstances or locations where HUD identifies property flipping as a problem, the final rule authorizes that HUD may require the lender, for re-sales occurring between 91 days and 12 months, to obtain additional documentation to support the re-sale value if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). Should HUD exercise this authority, it would supersede the higher threshold established for the 91 day to 180 day period. At HUD's discretion, this documentation must include, but is not limited to, an appraisal from another appraiser.

HUD will announce its determination to require additional value documentation for re-sales up to 12

months following acquisition by the seller through **Federal Register** notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. The **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. In order to provide the public with sufficient time to adjust to the additional documentation procedures, any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

If the additional documentation supports a value that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used in calculating the maximum insured mortgage amount. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

2. *Clarification of relevant dates for time restrictions on re-sales.* The final rule clarifies that, for purposes of the time restrictions on re-sales, the seller's date of acquisition will be based upon the date of settlement. The re-sale date will be based on the date of execution of the sales contract that will result in FHA mortgage insurance.

3. *Elimination of case-by-case exceptions to time restrictions on re-sales.* The final rule no longer provides for case-by-case exceptions to the time restrictions on re-sales.

4. *Inapplicability of time restrictions on re-sales.* The final rule continues to provide that the time restrictions on re-sales do not apply to re-sales by HUD of REO properties under 24 CFR part 291 and single family assets in revitalization areas pursuant to section 204 of the National Housing Act. In addition, the final rule also provides that the time restrictions do not apply to the re-sale of properties acquired by an employer or relocation agency in connection with the relocation of an employee.

5. *Owner of record documentation requirements.* The final rule adopts the owner of record requirements contained in the proposed rule, but clarifies that lenders will be required to verify compliance with the requirement. The final rule provides that the lender must

submit documentation verifying that the seller is the owner of record as part of the application for mortgage insurance. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed, or other documentation (such as a copy of a property tax bill, a title commitment, or binder) indicating the seller's ownership of the property.

6. *Sanctions and indemnification.* The final rule clarifies that failure of a lender to comply with the regulatory anti-flipping requirements may result in HUD requesting indemnification of the mortgage loan and/or seeking other appropriate remedies.

7. *Conforming changes to § 203.255.* The final rule amends § 203.255 of the FHA regulations, which lists the items that must be included in a mortgage insurance application, to reflect the anti-flipping documentation required by this rule.

III. Discussion of Public Comments Received on the September 5, 2001, Proposed Rule

The public comment period on the September 5, 2001, proposed rule closed on November 5, 2001. HUD received 120 public comments on the proposed rule. Comments were received from national associations representing realtors, individual realtors, homebuilders and contractors, mortgage bankers, state and local housing and community development agencies, and other commenters. Many commenters submitted identical "form" letters. Sections IV, V, and VI of this preamble present a summary of the most significant issues raised by the public commenters, and HUD's responses to these issues. Section IV of the preamble discusses the public comments regarding the proposed six-month restriction on re-sales. Section V discusses the public comments on the provisions regarding case-by-case exceptions and the owner of record requirements. Section VI of the preamble discusses the other public comments received by HUD on the September 5, 2001, proposed rule.

IV. Comments Regarding Time Restriction on Re-Sales

Under the September 5, 2001, proposed rule, any property sold within six months after acquisition by the seller would not be eligible for a mortgage insured by FHA. The proposed six-month restriction would not have applied to re-sales by HUD of REO properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act. This provision of

the proposed rule was of significant public interest, and the majority of comments on the September 5, 2001, proposed rule concerned the six-month restriction on re-sales. Several commenters supported the restriction, writing that the proposal would help to eliminate the most extreme cases of property flipping. Most of the commenters, however, expressed concerns about the six-month restriction and urged HUD to reconsider its proposal.

Comment: The proposed time restriction will hurt HUD's interests and the interests of homebuyers. Several commenters wrote that a six-month restriction would be too short, and fail to deter longer-term property flipping transactions. These commenters suggested lengthening the re-sale ban to nine months or one year. Many other commenters, however, wrote that the six-month restriction would be too long, and hurt HUD's interests and the best interest of the home buying public. The commenters wrote that by eliminating the ability of legitimate investors to resell homes using HUD financing, the six-month ban would reduce the incentive for investors to buy and rehabilitate these properties. The commenters wrote that this could mean that many undesirable properties remain unsold by the lender for years. Rather than providing a decent home, these properties would instead blight neighborhoods as decaying eyesores. The commenters wrote that the unintended consequence of the proposed rule would be to unwittingly close down the businesses of many residential real estate investors while attempting to outlaw the predatory practices of a few.

HUD Response. In response to these concerns raised by the public commenters, HUD has substantially revised the proposed time restrictions on re-sales. HUD agrees with the commenters who wrote that there are many legitimate transactions that would be prohibited by a six-month restriction on FHA financing. Accordingly, HUD has revised the rule to accommodate such re-sales, while still implementing safeguards to assure that the value of the property is recognized in the marketplace and to reduce the possibility of appraisal fraud.

The final rule reduces the time restriction on FHA mortgage insurance to short-term re-sales occurring within 90 days following acquisition by the seller. HUD will not grant case-by-case exceptions to the 90-day restriction. If the re-sale is between 91 and 180 days following acquisition by the seller, HUD will require that the lender document

the increased value of the property if the re-sale price exceeds an established value between 50 and 150 percent of the purchase price. As a further safeguard against flipping for re-sales up to 12 months following acquisition by the seller, the final rule authorizes HUD to require that the lender obtain additional verification of the value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale).

HUD believes that short re-sales executed within 90 days imply pre-arranged transactions that often prove to be among the most egregious examples of predatory lending practices and, thus, will not insure mortgages on these "flipped" properties. Ninety days is also not an unreasonable waiting period if actual rehabilitation and repairs of a property occur before the property is re-sold. HUD agrees that the previously proposed six-month ban on re-sales would have been disruptive to the industry and would have provided a disincentive to legitimate contractors who improve houses—thus increasing the stock of affordable housing. It was never HUD's intention to eliminate the ability of investors and contractors to profit from their actions, but rather to assure that homebuyers are not purchasing overvalued houses and becoming the unwitting victims of predatory practices. To this end, HUD believes that the final rule accomplishes this goal. While the most egregious examples of property flipping consist of nearly immediate re-sales or "flips," HUD also agrees with the commenters who wrote that the six-month restriction was too short to deter longer-term predatory flipping transactions. While an outright ban on FHA mortgage insurance is not warranted for re-sales occurring beyond 90 days, HUD agrees that additional safeguards may be required to ensure that the value of the property has not been fraudulently inflated. Recognizing this, the final rule requires that lenders document the increased value of the property if the re-sale price exceeds an established value for re-sales occurring between 91 and 180 days following acquisition of the property. As an additional protection against flipping, the final rule provides that HUD may require lenders to obtain additional documentation that supports the re-sale price for re-sales within 12 months of the acquisition date if the re-sale price is 5 percent or greater than the purchase price if HUD identifies specific circumstances or locations where property flipping is a problem.

Should HUD exercise this authority, this authority would supersede the higher threshold established for the 91 day to 180 day period. At HUD's discretion, this additional documentation must include, but is not limited to, an appraisal from another appraiser. As an alternative, the lender may document its file to establish that the increased value is the result of rehabilitation to the property.

For re-sales between 91 and 180 days, HUD will establish the level that triggers this documentation requirement at 100 percent above the original purchase price. HUD believes that setting the level at 100 percent above the original purchase price will deter unscrupulous purchasers from attempting to flip property while simultaneously ensuring that legitimate rehabilitation of properties continues. The final rule provides HUD the authority to revise the level. Should HUD determine that the level is not effectively deterring property flipping, HUD may lower the trigger. Similarly, HUD may increase the level if HUD determines that legitimate rehabilitation of properties is adversely affected by the documentation requirement, and that adverse effect is not justified by a significant deterrent effect on property flipping. HUD may revise the trigger level by **Federal Register** notice. In order to provide the public with sufficient time to adjust to the additional documentation procedures, revisions to the standard will be issued at least thirty days before taking effect.

If HUD identifies specific circumstances or locations where property flipping is a problem, HUD may require the lender, for re-sales up to 12 months following acquisition of the property, to provide additional documentation if the re-sale price is 5 percent or greater than the purchase price. Should HUD exercise this authority, this authority would supersede the higher threshold established for the 91 day to 180 day period. HUD will announce its determination to require additional value documentation through issuance of a **Federal Register** notice. The requirement for additional value documentation may be established on a nationwide or regional basis. Further, the **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. In order to provide the

public with sufficient time to adjust to the additional documentation procedures, any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

If the additional documentation supports a value that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used in calculating the maximum insured mortgage amount. Otherwise, the original value supported by the first appraisal will be used to calculate the maximum mortgage amount.

Comment: Re-sales involving only a modest increase over the previous sales price should be exempt from the time restrictions. Several commenters wrote that when the sale price increases only a small amount between the previous sale and the new sale to be financed with an FHA-insured mortgage, HUD's concern with property flipping is drastically diminished.

HUD Response. HUD agrees that its concerns with property flipping are reduced when the sales price increases only a small amount between the previous sale and the new sale to be financed with an FHA-insured mortgage. As described in more detail in the preceding response, HUD may exclude re-sales of less than a specific dollar amount from any additional valuation requirements.

Comment: The proposed rule could have significant negative consequences on government and corporate employees relocated yearly by their employers. Several commenters wrote that the six-month restriction would have a negative impact on the thousands of government and private sector employees that are relocated each year. The commenters wrote that, from an employer's standpoint, any house purchased from a relocating employee would essentially be unsaleable through the FHA programs because the six-month waiting period would result in unacceptably large carrying costs. Several of the commenters advocated that the final rule exempt properties acquired by an employer in connection with an employee's relocation from the restriction on re-sales.

HUD Response. HUD agrees with the commenters and has revised the proposed rule at the final rule stage accordingly. The final rule exempts properties acquired by an employer or relocation agency in connection with the relocation of an employee from the time restriction on re-sales.

Comment: The final rule should provide clarification regarding the relevant dates for calculating the time

restriction on re-sales. Several commenters recommended that the final rule define the date of acquisition of the property by the seller and the re-sale date used to calculate the time restriction on re-sales.

HUD Response. HUD agrees with the commenters. The final rule clarifies that, for purposes of the time restrictions on re-sales, the seller's date of acquisition will be based upon the date of settlement. The re-sale date will be based on the date of execution of the sales contract that will result in FHA mortgage insurance.

V. Comments Regarding Case-by-Case Exceptions and Owner of Record Requirements

A. Comments Regarding Case-by-Case Exceptions to Time Restrictions on Re-Sales

The September 5, 2001, proposed rule would have provided HUD with the authority to grant exceptions to the six-month restriction on re-sales, on a case-by-case basis, if the mortgagee provided written documentation demonstrating that the sales price of the property accurately corresponded to its market value. The proposed rule provided that such documentation could include, but would not be limited to, evidence that: (1) The sales price reflected a rapidly appreciating real estate market; (2) the seller had made improvements that resulted in a corresponding increase in the value of the property; or (3) the property was being sold at below market value due to a distress sale or at a tax sale.

Comment: Objections and Requested Clarifications to Proposed Exceptions Procedure. Several commenters submitted comments regarding the proposed exceptions procedure contained in the proposed rule. Some of the commenters focused on the process HUD would use to process exception requests. These commenters asked HUD to provide additional details regarding this process (such as identifying the entity within HUD that would be responsible for examining exception requests.) Some of these commenters also wrote that HUD does not have sufficient resources to responsibly handle this task and that the "wheels of bureaucracy" could drag the review process beyond the six-month restriction period. The commenters requested that the final rule establish specific deadlines for speedily processing and granting exception requests (for example a 30-day period).

Other commenters objected to the factors that the proposed rule stated HUD would consider in determining

whether to grant an exception. The commenters wrote that these factors were all biased toward market abnormalities and had little relevance to the amount of time the owner holds a property. The commenters advocated that HUD expand the list of factors to address this perceived deficiency. For example, some commenters suggested that the final rule specify that HUD will permit exceptions as a result of death, job loss, unemployment/military transfer, and other reasonable circumstances beyond the owner's control. Other commenters suggested that the list of factors should be modified to recognize specific actions by lenders to justify exceptions to the six-month restriction, such as obtaining a home inspection.

HUD Response. HUD has eliminated the need for case-by-case exceptions by reducing the time restriction on FHA mortgage insurance to short-term re-sales that occur within 90 days following acquisition of the property by the seller. HUD believes that the short-term restriction on re-sales is reasonable, addresses concerns raised by the public commenters on the proposed rule, and will prohibit the most egregious examples of predatory lending involving flipped properties. HUD will not grant case-by-case exceptions to the revised 90-day restriction.

B. Comments Regarding Owner of Record Requirement

The September 5, 2001, proposed rule provided that only those properties purchased from the owner of record would be eligible for a mortgage insured by FHA.

Comment: The owner of record requirements require clarification. One commenter suggested that the owner of record requirements be expanded and clarified to ensure that unscrupulous parties do not avoid the intent of the rule. The commenter recommended that the language of the proposed rule be revised to specify that the property must be purchased "solely and completely" from the owner of record to be eligible for a mortgage insured by FHA. The commenter also suggested that the proposed rule be revised to clarify that the sale may not involve any transfer or assignment of any sales agreement or any interest therein. Further, the commenter wrote that the final rule should clearly prohibit any person intervening in the sales transaction on behalf of the owner of record, including those who transfer ownership to the buyer and collect the sale proceeds.

HUD Response. HUD agrees and has modified the proposed rule to clarify

what constitutes an "owner of record" and the manner in which compliance with this requirement must be verified. The final rule clarifies that lenders will be required to verify compliance with the requirement. The final rule provides that the lender must submit documentation verifying that the seller is the owner of record as part of the application for mortgage insurance. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed, or other documentation (such as a copy of a property tax bill, a title commitment, or binder) indicating the seller's ownership of the property.

VI. Other Comments on the Proposed Rule

A. General Objections to Proposed Rule

Comment: HUD should focus its efforts on fraudulent appraisals. Several commenters wrote that rather than establishing additional regulatory requirements, HUD should focus its enforcement efforts on the root of most property flipping—poor and fraudulent appraisals. Several of the commenters wrote that HUD should conduct independent appraisals of all properties being purchased with FHA financing. Other commenters suggested that HUD strengthen its requirements concerning the education and experience of appraisers conducting FHA appraisals. Still other commenters recommended that HUD take more aggressive steps to identify and sanction unscrupulous appraisers engaged in property flipping.

HUD Response. HUD agrees that fraudulent and inflated appraised values are the source of most predatory practices involving property flipping, and the final rule requires additional appraised value safeguards. HUD does not agree that FHA should be the entity to perform the appraisals. Staffing realities and HUD's commitment to the Direct Endorsement (DE) program compel it to rely on qualified appraisers and DE lenders to deliver mortgage financing to the consumer as efficiently and inexpensively as possible. HUD also notes that it has implemented several policies to help ensure the accuracy and completeness of appraisals on properties securing FHA-insured mortgages. For example, HUD has established the FHA Appraiser Roster, which lists those appraisers who are eligible to perform FHA single family appraisals. HUD is also developing several other initiatives to strengthen the quality of FHA appraisals, and to impose stricter FHA Appraiser Roster qualifications. In addition, where those involved in property flipping schemes

have been identified, HUD will pursue those entities and individuals to impose sanctions available to HUD, and HUD will enlist the assistance of applicable federal and local authorities in prosecuting those individuals.

Comment: HUD should target known property flippers. Several commenters wrote that, rather than imposing new restrictions, HUD should focus its regulatory efforts on individuals who are known to have engaged in property flipping. The commenters suggested that HUD should review its claim and default records to identify those persons currently engaged in predatory lending practices. The commenters suggested that those persons should be barred from participating in the FHA programs for a specified period (such as 1–3 years). The commenters wrote that in this way HUD could reduce predatory lending activity without punishing the innocent subsequent buyer.

HUD Response: HUD believes it is better to preclude predatory practices proactively and eliminate opportunities for unscrupulous actors, than to retroactively attempt to find the perpetrators after the damage to the homebuyers has been done. As noted, however, in the response to the preceding comment, where unscrupulous actors have been identified in property flipping schemes, HUD will take action against those individuals and entities.

Comment: HUD already has the enforcement tools necessary to prohibit property flipping. Several commenters wrote that HUD should make better use of its existing sanction and penalty methods to deter property flipping, rather than subject the FHA programs to increased regulation.

HUD Response. HUD agrees in principle that existing procedures exist to protect its interests as well as those of the homebuyers. However, unlike existing enforcement tools, the additional safeguards implemented by this final rule are directly targeted at the problems associated with property flipping. The final rule proactively deals with both the pre-arranged transaction that often results in predatory practices against unwitting homebuyers as well as appraisals that cannot support the value claimed.

B. Suggested Changes to Proposed Rule

Comment: HUD should establish additional safeguards for victims of property flipping. One commenter made this suggestion. The commenter wrote that such procedures should include timely and thorough re-appraisals of properties where flipping is alleged, assistance for all homeowners

victimized by a fraudulent appraisal or other mortgage fraud, and remediation to victimized homeowners.

HUD Response. HUD does not agree that the expansive remedies proposed by the commenter are necessary, since this final rule should preclude the most egregious examples of fraudulent property flips before they occur.

Comment: HUD should expand the scope of the rule to include mortgages insured by other governmental entities. One commenter made this suggestion.

HUD Response. HUD has not revised the proposed rule in response to this comment. HUD has no jurisdiction over mortgages guaranteed or made by other government agencies, such as the Department of Veterans Affairs, and the Rural Housing Service of the Department of Agriculture.

Comment: The final rule should prohibit gifts to potential borrowers that will enable them to pay off debts that would otherwise render them ineligible for FHA mortgage insurance. The commenters wrote that “gifts” made to potential borrowers in order to enable them to pay off debts, including judgments and liens, are often a principal tool of those engaged in property flipping and should be prohibited in the final rule.

HUD Response. HUD does not believe that a change to the rule is required. Mortgagee Letter 2002–02 (issued on January 16, 2002) already addresses gifts for the purpose of paying off obligations and judgments. A copy of this Mortgagee Letter may be downloaded from the HUD Client Information and Policy System (HUDCLIPS) Internet Web site at <http://www.hudclips.org>.

C. Miscellaneous Comments

Comment: HUD should consider modifying the FHA connection appraisal assignment screen to include a field for capturing the seller's name. The commenter wrote that this would allow HUD to more easily determine whether a seller had previously sold a home to an FHA applicant, and if so, whether the history of a prior sale is indicative of possible property flipping.

HUD Response. HUD is considering the change to the FHA connection system suggested by the commenter, and may implement this modification at a later date.

Comment: HUD should create a public database of property sales within neighborhoods and the pricing history of individual homes. Several commenters made this recommendation. The commenters wrote that the names of the lenders, brokers, real estate agents, and appraisers should also be included in

the database. The commenters wrote that the database would allow potential buyers to research the market values of homes in their areas. Additionally, the commenters wrote that because many victims of property flipping may not have access to computers, these services must be advertised and made available, possibly at community home counseling offices. The commenters also recommended that HUD make available to the public lists of lenders and appraisers involved in a high volume of foreclosures.

HUD Response. HUD does not have the capacity to develop such a database for other than FHA-insured mortgages, and does not believe it should compete with private-sector service providers that already have developed property sales history reporting systems. HUD already provides public access to information regarding lenders with high rates of mortgage defaults through its Neighborhood Watch system.

Comment: HUD should focus on educating homebuyers. One commenter wrote that HUD should help ensure that low-income buyers are better educated regarding the risks and responsibilities of purchasing a home, including predatory lending abuses.

HUD Response. HUD has long advocated homeownership counseling and funds many agencies that provide such services.

VII. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0547. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a “significant regulatory action” as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department’s Rules Docket Clerk, Office of General Counsel, Room 10276, 451

Seventh Street, SW., Washington, DC 20410-0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows. The final rule is exclusively concerned with curbing the predatory lending practice of property flipping. The vast majority of lenders participating in the FHA single family mortgage insurance programs fully comply with all program requirements and conduct themselves in an ethical manner. The final rule will only impact the small minority of unscrupulous lenders who participate in the FHA programs and engage in this predatory practice.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the

private sector. This final rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 203 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

■ 2. Add § 203.37a to read as follows:

§ 203.37a Sale of property.

(a) *Sale by owner of record.* (1) *Owner of record requirement.* To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.

(2) *Supporting documentation.* The mortgagee shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b)(12). This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.

(b) *Time restrictions on re-sales.* (1) *General.* The eligibility of a property for a mortgage insured by FHA is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). The mortgagee shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to HUD as part of the

application for mortgage insurance, in accordance with § 203.255(b).

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be insured by FHA.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage insured by FHA.

(ii) However, HUD will require that the mortgagee obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The mortgagee may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) HUD may revise the level at which additional documentation is required under § 203.37a(b)(3) at 50 to 150 percent over the original purchase price. HUD will revise this level by **Federal Register** notice with a 30 day delayed effective date.

(4) *Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.*

(i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, HUD may require that the lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum mortgage amount under § 203.18. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

(iv) HUD will announce its determination to require additional value documentation through issuance of a **Federal Register** notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. Further, the **Federal Register** notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The **Federal Register** notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. Any such **Federal Register** notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

(v) The level at which additional documentation is required under § 203.37a(b)(4) shall supersede that under § 203.37a(b)(3).

(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

(c) *Exceptions to time restrictions on re-sales.* The time restrictions on re-sales described in paragraph (b) of this section do not apply to:

(1) Re-sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710); and

(2) Re-sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee.

(d) *Sanctions and indemnification.* Failure of a mortgagee to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan, or seeking other appropriate remedies under 24 CFR part 25.

■ 3. Amend § 203.255 as follows:

■ a. Revise paragraph (b)(1);

■ b. Redesignate paragraph (b)(13) as (b)(14); and

■ c. Add a new paragraph (b)(13) to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(b) * * *

(1) Property appraisal upon a form meeting the requirements of the Secretary (including, if required, any additional documentation supporting the appraised value of the property under § 203.37a), or a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value, and all accompanying documents required by the Secretary;

* * * * *

(13) The documentation required under § 203.37a providing that:

(i) The seller is the owner of record; and

(ii) That more than 90 days elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance.

* * * * *

Dated: February 7, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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