

**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