

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