

*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