

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 115

[Docket No. FR-5047-N-01]

Authority of Agencies in the Fair Housing Assistance Program To Investigate Allegations of Discrimination in Lending Complaints

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Statement of policy.

SUMMARY: This statement of policy advises the public that HUD does not view two recent fair housing federal court decisions as in any way affecting the authority of state and local agencies to enforce their own fair housing laws that HUD has certified as substantially equivalent to the federal Fair Housing Act. State and local fair housing enforcement agencies administering substantially equivalent fair housing laws have the authority to enforce those statutes and ordinances against any respondent, including a national bank, within their jurisdictions. This is not a new policy. This statement of policy clarifies existing regulations at 24 CFR 115.202.

FOR FURTHER INFORMATION CONTACT:

Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410-8000; telephone (202) 619-8046 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Two recent, related decisions in the United States District Court for the Southern District of New York (*The Office of the Comptroller of the Currency v. Spitzer*, 396 F.Supp.2d 383 (S.D.N.Y. 2005) ("*OCC v. Spitzer*") and *The Clearing House Association, L.L.C. v. Spitzer*, 394 F.Supp.2d 620 (S.D.N.Y. 2005) ("*Clearing House v. Spitzer*")), rejected the New York Attorney General's assertion of visitorial authority over national banks in order to enforce the state's fair housing law. As a result of these decisions, a question has arisen regarding the authority of state and local agencies to conduct investigations under laws that HUD has certified as being substantially equivalent to the federal Fair Housing Act.

It is HUD's position that these cases do not affect the authority of state and

local agencies to enforce laws that HUD has certified as substantially equivalent. In reaching its decision in *Clearing House v. Spitzer*, the Court took notice of the fact that the New York Attorney General was not the entity authorized to bring actions under the state's certified law. The Court noted, however, that the federal Fair Housing Act "establishes several means of enforcing these provisions and the other anti-discrimination provisions in the Act, including administrative enforcement by the U.S. Secretary of Housing and Urban Development; administrative enforcement by certified state and local agencies; private causes of action by aggrieved persons; and civil enforcement by the U.S. Attorney General where that federal official discerns a 'pattern and practice' of violations." *Id.* at 628 (Emphasis added.)

Therefore, it is HUD's statement of policy that state and local fair housing enforcement agencies who are administering fair housing laws that HUD has certified as substantially equivalent to the Federal Fair Housing Act have the authority to enforce those statutes and ordinances against any respondent, including a national bank, within their jurisdictions.

Dated: May 12, 2006.

Karen A. Newton,

Deputy Assistant Secretary for Operations and Management, Fair Housing and Equal Opportunity.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4911-F-02]

RIN 2502-AI18

Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs; Additional Exceptions to Time Restriction on Sales

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations that address the predatory practice of property "flipping" and establishes certain time restrictions regarding the sale of properties whose purchase is being financed with Federal Housing Administration (FHA) mortgage insurance. The final rule

broadens the exceptions to the time restrictions on sales to include government-sponsored enterprises (GSEs), state- and federally chartered financial institutions, nonprofits organizations approved to purchase HUD Real Estate-Owned (REO) single-family properties at a discount with resale restrictions, local and state governments and their instrumentalities, and, upon announcement by HUD through issuance of a notice, sales of properties in areas designated by the President as Federal disaster areas. This final rule follows publication of a December 23, 2004, interim rule, and takes into consideration the public comments received on the interim rule.

DATES: *Effective Date:* July 7, 2006.

FOR FURTHER INFORMATION CONTACT:

Margaret Burns, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, 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 through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2004 (69 FR 77114), HUD published an interim rule revising its regulations addressing property "flipping" in the Federal Housing Administration (FHA) single-family mortgage insurance programs at 24 CFR 203.37a. Property "flipping" is a predatory lending practice whereby a property that was acquired is quickly resold for a considerable profit with an artificially inflated value, often assisted by a mortgagee's collusion with the property appraiser and with others involved in the mortgage loan transaction. Most property flipping occurs within a matter of days after the initial property acquisition. Minor cosmetic improvements, if any, may be made to the property to make it appeal to an unwary homeowner.

Among other requirements, § 203.37a sets forth time restrictions that make properties that have recently been resold ineligible as security for FHA-insured mortgage financing. Specifically, § 203.37a prohibits FHA-insured mortgage financing for any property being sold in 90 days or less after acquisition by the seller. Properties that are sold between 91 and 180 days after acquisition by the sellers to homebuyers seeking FHA-insured

financing are generally eligible for an FHA-insured mortgage, but are subject to additional documentation requirements to ensure that any increases in the values of the properties are supportable.

HUD's regulation at § 203.37a also provides that the time restrictions on resales do not apply to sales by HUD of its Real Estate-Owned (REO) properties pursuant to 24 CFR part 291, as well as single-family assets in revitalization zones that HUD acquires and sells under the provisions of section 204 of the National Housing Act (12 U.S.C. 1710). Those time restrictions are also inapplicable to the sale of properties acquired by an employer or relocation agency in connection with the relocation of an employee who needs to sell his/her home in order to relocate.

The December 23, 2004, interim rule broadened the exceptions to the time restrictions to include all federal agencies that acquire properties as a result of a function of their programs and quickly market and sell these acquired properties. The interim rule also clarified that the time restrictions on sales do not apply to properties that have been acquired by inheritance.

Although the scope of the December 23, 2004, interim rule was limited to the two additional exceptions described above (for federal agencies and inherited properties), HUD recognized that there may be other circumstances or categories of sales where an exception to the time restrictions may be appropriate and consistent with the goals of the property flipping restrictions. Accordingly, HUD issued the regulatory amendments on an interim basis and provided the public with a 60-day comment period.

II. This Final Rule: Differences Between the December 23, 2004, Interim Rule and This Final Rule

This final rule follows publication of the December 23, 2004, interim rule and takes into consideration the public comments received on the interim rule. After careful consideration of the public comments, HUD has decided to include additional exemptions to the time restrictions on resales. Specifically, additional exceptions to the time restrictions on property resales will now include: (1) The government-sponsored enterprises (GSEs); (2) state- and federally chartered financial institutions; (3) nonprofit organizations approved to purchase HUD Real Estate-Owned (REO) single-family properties at a discount with resale restrictions; and (4) local and state governments and their instrumentalities.

In addition, as a result of HUD's experience with recovery efforts following Hurricane Katrina, the Department believes that an additional exemption to the time restriction is justified for presidentially declared disaster areas. When the President declares an area a federal disaster area, and housing options may be immediately limited, it is important that homeownership opportunities be made available in the affected areas as soon as possible. The additional exemption will increase homeownership opportunities and bring these properties into the marketplace quickly to assist displaced individuals and families, when the president declares a county, parish, state, or city as a disaster area. The final rule provides that, only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas will be exempt from the time restriction on resales. This particular property flipping exemption will become effective only when the notice is actually issued. The notice will specify the duration for which the exemption will be in effect.

III. Discussion of Public Comments

The public comment period on the December 23, 2004, interim rule closed on February 22, 2005. HUD received 69 public comments on the interim rule. Comments were received from nonprofit community development organizations; trade organizations representing the real estate, mortgage banking, and homebuilder industries; mortgage loan originators; and private citizens. This section of the preamble presents a summary of the significant issues raised by the public commenters and HUD's responses to these issues, the vast majority of which were requests that specific types of transactions be exempt from the time sale restrictions.

Comment: Nonprofit community housing development organizations (CHDOs) should be exempted from the time restrictions on resales. Several commenters explained that one particular nonprofit community development corporation, with whom the commenters are affiliated, operates a purchase, rehabilitation, and resale program for homeownership. Under that program, a homebuyer is pre-approved by a lender, the CHDO purchases and rehabilitates a home within 30 to 45 days, and the CHDO then transfers ownership to the homebuyer. The commenters wrote that the restrictions of the 90-day prohibition would cause hardships for homebuyers in that the homebuyer must continue to pay rent or stay in substandard housing; the lender

must renew the loan approval documents, adding expense for the homebuyer; the appraiser must recertify the home's value, adding expense for the homebuyer; and the interest rate lock-ins are not always available for this length of time, adding expense to the homebuyer. Another commenter wrote that CHDOs should be exempted from the time restrictions on resales due to the monitoring of CHDO activities by federal and state programs. The commenter, writing on behalf of an association of nonprofit developers, wrote that HUD's HOME program has designated CHDOs as Participating Jurisdictions to act on behalf of HUD. The commenter also wrote that flipping restrictions have adversely affected programs designed to serve people at limited income levels, and that because organization and development activities performed by CHDOs are funded and monitored by federal and state government agencies, CHDOs using state and federal programs do not engage in predatory lending practices.

HUD Response. HUD recognizes the potential hardship the 90-day holding period may impose on legitimate transactions; however, HUD does not agree that CHDOs should be exempt from the 90-day prohibition on property flipping without meeting additional criteria. While HUD recognizes the valuable contribution that many CHDOs have made in furthering homeownership opportunities, CHDOs are private, nonprofit enterprises that do not necessarily receive the level of oversight HUD believes is necessary to exempt this category of housing provider. CHDOs may or may not receive federal funding, and the level of supervision or monitoring may not be sufficient for HUD to exempt CHDOs across the board.

In this final rule, however, HUD is exempting nonprofit organizations approved to purchase HUD homes, and these nonprofit organizations may also be CHDOs. This exemption will also apply to instrumentalities of government acceptable to HUD that provide secondary financing for the borrower's down payment or closing costs as per section 528 of the National Housing Act (12 U.S.C. 1735f-6), and those HUD-approved nonprofit groups permitted to purchase HUD REO properties at a discount with resale restrictions. CHDOs that have met either of these thresholds are exempt from the time resale restrictions.

Comment: Nonprofit entities should be excluded from the time resale restrictions. Two commenters wrote that nonprofit organizations whose business

is the furtherance of affordable housing should be exempted.

HUD Response. HUD has not revised the rule in response to these comments. While HUD recognizes that the majority of nonprofit organizations operate their affordable housing programs in a responsible manner, the obtaining of Internal Revenue Service nonprofit status does not alone guarantee responsible leadership or operational integrity. HUD has, in some areas, suffered considerable losses to its insurance funds by the actions of nonprofit organizations that victimized homebuyers as well. Therefore, this final rule continues to provide that status as a nonprofit alone will not exempt that entity from the time restriction on resales. However, HUD recognizes the valuable contribution nonprofit organizations make in the expansion of affordable housing opportunities. Accordingly, as described elsewhere in this preamble, the final rule exempts nonprofit organizations approved to purchase HUD REO properties.

Comment: Nonprofit organizations that participate as a buyer and reseller of HUD homes in HUD's Single Family Property Disposition (SFPD) Program and nonprofit entities approved to utilize the HUD Discount Program to provide affordable housing to low-income families should be exempt from the time restrictions on resales. One commenter wrote that the SFPD Program holds the resale price at no more than 10 percent margin over net development cost, and that the current rule forced the commenter to offer a low-income buyer significantly worse terms than under the previous FHA loan commitment. Another commenter wrote that nonprofit organizations participating in the REO Program can hold only so many properties at one time, thus creating a financial burden for the nonprofit organization, and that it is impossible for a nonprofit organization to inflate the sales price when it is regulated by the so-called 110 percent rule. The commenter wrote that a homebuyer often must move on to another house or switch to conventional financing. Another commenter wrote that abuse of the HUD Discount Program would be impossible with the current checks and balances in place, and that time resale restrictions hinder nonprofits from what they are supposed to do; therefore "the losers * * * are the low income families."

HUD Response. HUD agrees with the commenters that nonprofit organizations that have been approved to purchase HUD REO properties should not be subject to the time restrictions on

resales when those nonprofits are reselling a property it bought from HUD's inventory. The limits imposed on the resale price preclude the egregious sceneries of artificially inflated values that were the basis of the original property-flipping rule. Also, as stated above, those nonprofit organizations that have received HUD approval to participate in the HUD Discount Program will be exempt from the time restrictions on resales.

Comment: State-licensed, federally-chartered lenders, or FHA-approved lenders, including Fannie Mae and Freddie Mac, should be exempt from the time restrictions on resales. One commenter stated that the intent of the 90-day rule is to prohibit property flipping, but that lending institutions do not engage in such an activity. Allowing state-licensed, federally chartered FHA-approved lenders to be exempt would increase lending opportunities in low-to moderate-income communities and expand homeownership in them. The commenter explained that because many borrowers cannot proceed with FHA's 203(k) loans under the 90-day rule, the effect of the 90-day rule is to promote investor purchases rather than owner occupancy. Another commenter wrote that regulated lenders are consistently reviewed and would have much to lose if they flipped property. The commenter explained that the majority of flipping cases have involved mostly appraisers, real estate brokers, and sellers—not lenders. Lenders have an incentive to sell foreclosed property quickly, and everyone wins—the lender, the new homeowner, and the neighborhood; and allowing exceptions for the REO properties of regulated lenders would expand the availability of FHA's 203(k) program. Another commenter wrote that Fannie Mae, Freddie Mac, or bank-owned institutional lenders are simply left with inventory and are trying to sell the inventory as quickly as possible, and, most of the time, at a very under-inflated price. The commenter wrote that Fannie Mae "appears to be changing their guidelines in an attempt to monitor and control property flipping."

HUD Response. HUD agrees and recognizes that state- and federally chartered financial institutions, and the GSEs, are highly regulated or supervised by state and federal agencies and do not engage in predatory practices. HUD believes that because these entities are so closely monitored, restricting these institutions from resales would ultimately hurt prospective FHA borrowers. Therefore, this final rule

exempts these enterprises from the time restrictions on resales.

Comment: Homebuilders' trade-in transactions should be exempt from time restrictions on resales. One commenter wrote that when a homebuilder accepts a homebuyer's existing home as a trade-in, the homebuilder makes the necessary repairs, and then the homebuyer sells the home quickly. The commenter wrote that builders assume risks in these transactions. The commenter explained that the 90-day resale prohibition blocks legitimate transactions and creates unnecessary hardships for builders and customers by preventing potential buyers from using FHA's mortgage insurance programs. The commenter wrote that HUD should repeal § 203.37a(b)(2) and amend CFR 203.37a(b)(3) to apply to "Resales occurring up to 180 days following acquisition." The commenter wrote that trade-in practices of builders do not fit HUD's description of property flipping as described in the interim rule and that HUD has provided no proof that extending the exceptions to cover builders' trade-in transactions would "substantially weaken the regulatory safeguards against property flipping."

HUD Response. HUD has not revised the rule to exempt builders from the property-flipping time restrictions for trade-ins connected with the resale of acquired homes. Under such trade-in programs, there are no assurances to prevent the subsequent purchaser from becoming a victim of collusion among the seller, the lender, and the appraiser. It was never HUD's intention to eliminate the ability of builders, investors, and contractors to profit from their actions, but rather to ensure that homebuyers are not purchasing overvalued houses and becoming the unwitting victims of predatory practices. While most builders do not engage in the practices that the property flipping regulation is meant to preclude, the opportunity to victimize the unwitting purchaser would be enhanced by exempting trade-ins from the property flipping rule.

Comment: Investors, including real estate agents, should be exempt from time restrictions on resales. One commenter wrote that investors make legitimate livings purchasing and reconditioning distressed properties and that legitimate property reconditioning is not done overnight. The commenter wrote that one of this rule's consequences may be continued curtailment of real estate investors in the affordable housing market. The commenter wrote that HUD should consider granting exceptions to the time

sale restrictions, on a case-by-case basis, when the mortgagee can show that the sales price of the property corresponds with its market value.

HUD Response. HUD has not adopted the commenter's suggestion. While most investors do operate in a responsible manner, the abuses uncovered that resulted in the issuance of HUD's regulatory prohibition on property flipping were the result of actions by investors, other sellers, real estate agents, appraisers, and others with a vested interest in the sale of real estate. HUD also does not agree to case-by-case exceptions due to resource limitations. Mortgagees have always been required to show that the sales price corresponds to the market value; the problem lies with false appraised values, which are often central to the egregious abuse that the property flipping regulations are designed to prevent.

Comment: Local, county, and state government agencies and the instrumentalities of local governments, including state housing finance agencies, should be exempt from time restrictions on resales. One commenter wrote that local, county, and state government agencies should be exempt from time sale restrictions, because they at times acquire properties as a result of the function of their programs: revitalizing neighborhoods, retaining affordability, resolving overcrowding, etc. The properties acquired are then sold to a qualifying low-income household within a time frame that works for all parties involved, which can be less than 90 days, and most of these households require FHA mortgage insurance. Another commenter wrote that state housing finance agencies should be exempted.

HUD Response. HUD agrees, and, as described elsewhere in this preamble, will exempt those enterprises permitted under section 528 of the National Housing Act to provide secondary financing on FHA-insured mortgages. HUD believes that because such entities are permitted under the law to provide such down payment assistance, that suggests that they also be exempt from the property flipping restrictions.

Comment: Family members' property transactions should be exempt from time restrictions on resales. One commenter wrote that an exception should be granted to a family member who quitclaims his or her interest in a property to another family member because of illness or financial hardship; the family member may then quickly refinance the property to pay for medical expenses. Another commenter requested exemptions for properties acquired in a divorce situation.

HUD Response. Nothing in the property flipping rule precludes the individual who obtains ownership from a quitclaim deed from refinancing. However, HUD does not believe it would be appropriate to carve out resale exemptions for such rarely occurring events and ones that would require substantial documentation in order to obtain such an exemption (*i.e.*, proof of family member relationship, as well as financial hardship or illness). The individual that gives the quitclaim due to illness or financial difficulty may sell the property him or herself or execute power of attorney to another family member to do so on his/her behalf. Divorce situations are not subject to the property flipping rules since the acquisition of property in such situations does not occur from a sale but as the result of a court order, separation agreement, or divorce decree and, in most cases, the seller would have been on title previously with the vacating spouse.

Comment: Additional co-tenancy transactions should be exempt from time restrictions on resales. One commenter wrote that general situations where a property may have been transferred from two owners into the name of one of those owners (*i.e.*, divorce, joint ownership to sole ownership, etc.) should not be considered property flipping. The commenter cited an example where two non-married individuals jointly owned a property, and one of them assumed the mortgage into his own name; thus, the other party signed the entire property over to one person. The commenter wrote that in that example, there was not truly a sale even though it would appear of record that one person sold his or her one half-interest to the other individual. The commenter asked whether the property flipping regulations would define this situation as property flipping.

HUD Response. HUD has never considered such a scenario as meeting the threshold for triggering the 90-day waiting period for resale eligibility using FHA financing. Most such transactions do not constitute a "sale" and, as long as one of the parties retains ownership, that party may sell without the necessity of being the sole owner for 90 days.

Comment: The time resale restrictions are not fair to real estate agents, builders, contractors, buyers, and lenders. One commenter wrote that real estate agents, because they must hold homes taken in on trade from a homeowner, would lose many resale opportunities due to a 90-day waiting period. The commenter wrote that the

problem really seems to be with the appraisers and the commenter asks whether the real issue is that appraisers cannot determine the property values. The commenter explained that the rule is not fair to buyers, since buyers have a right to obtain the best sale price possible. Contractors and builders are often experts at remodeling homes, and the 90-day rule limits the ability of buyers to purchase homes that contractors and builders have remodeled. The commenter questioned why some government agencies are exempt from the rule and wrote, "Limiting the turnover of homes does not change the value of the home. It only puts a limitation on the buyer, the remodeler, the Realtor and the Lender that had to foreclose on the property."

HUD Response. HUD has not revised the rule in response to this comment. HUD continues to believe that 90 days is not an unreasonable waiting period if actual remodeling, repairs, and improvements are being made on a property before it is resold.

Comment: Any outstanding uninsured cases should be insured. One commenter requested that any outstanding uninsured cases where a governmental agency was the seller be insured at this point.

HUD Response. HUD will advise its Homeownership Centers (HOCs) that if any unendorsed loans become eligible for insurance due to the changes promulgated in this final rule, that endorsement should go forward if all other eligibility criteria are met.

Comment: Clarification sought as to indemnification of a government agency. One commenter asked for clarification concerning loans where HUD has required indemnification due to property flipping involving a governmental agency. The commenter asked if the lenders would now be free from indemnification.

HUD Response. HUD has surveyed four of its HOCs and is not aware of any indemnification requests being executed by lenders where the seller was a government agency. However, HUD will instruct the HOCs that they are to lift indemnification if it was requested solely due to the status of the seller as a government agency.

Comment: Property flipping does not correlate with time resale restrictions. One commenter wrote that HUD's definition of property flipping may unfairly link the time in which a recently acquired property is sold with separate fraudulent acts.

HUD Response. HUD fully recognizes that the time resale restrictions are not a total solution to predatory lending. Nevertheless, in HUD's examination of

predatory lending practices, egregious examples of predatory lending included property resales occurring within a short time period and organized by appraisers and lenders as pre-arranged transactions with an unwitting buyer. This illustrates that property resales in short time frames often correlate with predatory lending practices. Thus, a 90-day holding period helps assure that the buyer is not victimized by a seller who acquires a property with the intention of immediately flipping it to the buyer for an amount that could not be realized without the help of the appraiser and others who would profit illicitly from the resale.

IV. Justification for Final Rulemaking for Properties Located in Presidentially Declared Disaster Areas

Before issuing a rule for effect in accordance with HUD's regulations on rulemaking in 24 CFR part 10, HUD generally publishes a rule for public comment. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment on the exemption to the time restriction on resales for those properties located in presidentially declared disaster areas, in that prior public comment on this exemption is contrary to the public interest. The reason for HUD's determination is as follows.

An exemption for presidentially declared disaster areas would benefit those areas in which housing options may be immediately limited. As noted above in this preamble, it is important that homeownership opportunities be made available in affected areas as soon as possible, and this exemption should increase homeownership opportunities and bring these properties into the marketplace relatively quickly. Delaying the effectiveness of this section of the final rule for public comment on this exemption would unnecessarily delay the public from immediate access to additional housing opportunities. Accordingly, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this amended final rule to solicit prior public comment.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "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, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for this final rule 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. 4332 *et seq.*). That Finding remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new or revised obligations of any kind on small entities participating in the FHA single-family mortgage insurance programs. Rather, the final rule is exclusively concerned with clarifying the scope of current regulatory requirements. Specifically,

the final rule broadens the exceptions to the property-flipping time restrictions. To the extent that the final rule has any impact on small entities, it will be to benefit those small entities that fall under one of the listed exemptions to the time restrictions on resales. Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

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 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 order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) 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 government, or on the private sector, within the meaning of UMRA.

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 as follows:

PART 203—SINGLE FAMILY HOUSING 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. 3535d.

■ 2. Section 203.37a is amended by revising paragraph (c) to read as follows:

§ 203.37a Sale of property.

* * * * *

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

(1) 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);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

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Dated: May 25, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

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