

Text of Waiver of FHA Home Sale Flip Rules:

Pursuant to §7(q) of the Department of Housing and Urban Development Act (42 USC 3535 (q)) and 24 CFR 5.110, I hereby waive §203.37a(b)(2) of the regulations. The regulations at 24 CFR §203.37a(b)(2) provide that a mortgage for a property will not be eligible for FHA insurance if the contract of sale for the purchase of the property is executed within 90 days of the prior acquisition by the seller, and the seller does not come under any of the specific exemptions that apply to the 90-day rule.

This waiver, which takes effect on February 1, 2010, is limited to those sales meeting the following conditions:

All transactions must be arms-length, with no identity of interest between the buyer and seller or other parties participating in the sales transaction. Some ways that the lender can ensure that there is no inappropriate collusion or agreements between parties is to assess and determine the following:

- The seller holds title to the property;
- LLCs, corporations, or trusts that are serving as sellers were established and are operated in accordance with applicable state and Federal law;
- No pattern of previous flipping activity exists for the subject property, as evidenced by multiple title transfers within a 12-month time frame (chain of title information for the subject property can be found in the appraisal report);
- The property was marketed openly and fairly, via MLS, auction, For Sale by Owner offering, or developer marketing (any sales contracts that refer to an "assignment of contract of sale," which represents a special arrangement between seller and buyer may be a red flag).

In cases in which the sales price of the property is 20 percent or more over and above the seller's acquisition cost, the waiver will only apply if the lender:

- Justifies the increase in value by retaining in the loan file supporting documentation and/or a second appraisal which verifies that the seller has completed sufficient legitimate renovation, repair, and rehabilitation work on the subject property to substantiate the increase in value or, in cases where no such work is performed, the appraiser provides appropriate explanation of the increase in property value since the prior title transfer: and
- Orders a property inspection and provides the inspection report to the purchaser before closing. The lender may charge borrower for this inspection. The use of FHA-approved inspectors or 203(k) consultants is not required. The inspector must have no interest in the property or relationship or with the seller, and must not receive compensation for the inspection from any other party than the lender. Also, the inspector may not compensate anyone for the referral of the inspection. Additionally, the inspector may not receive any compensation for referring or recommending contractors to perform any repairs recommended by the inspection, and may not be involved with performing any repairs recommended by the inspection.

At a minimum, the inspection must include:

- The property structure, including the foundation, floor, ceiling, walls and roof;
- The exterior, including siding, doors, windows, appurtenant structures such as decks and balconies, walkways and driveways;
- The roofing, plumbing systems, electrical systems, heating and air conditioning systems;
- All interiors; and All insulation and ventilation systems, as well as fireplaces and solid-fuel-burning appliances.

The waiver is limited to forward mortgages, and does not apply to the Home Equity Conversion Mortgage (HELM) for Purchase program.

In support of the waiver, I make the following Determinations.

Flip Rule History

May 1, 2003 FHA imposed a **90 day flip rule** that prohibits everyone from accepting a purchase contract on a property within 90 days of their purchase. [HUD No. 03-055](#)

Waiver for Bank Owned Property Only

In a program reversal that could help move some bank-owned inventory, in June 2008 the federal government temporarily lifted its 90-day moratorium for any **bank owned resale properties** that use new FHA-guaranteed mortgages. **All other sellers remain subject to the 90 day flip rule.**

FHA has temporarily lifted (for one year) the 90-day waiting period for Bank REO resales financed by new FHA-guaranteed loans in an attempt to help lenders speed the process of getting real estate-owned properties off their books.

Below is the notice extending the 90 Day flip rule waiver to May 10, 2010

This revised notice on the FHA property flipping waiver extension corrects the date in the last line of the notice that was published on 5/15/09:

"Federal Housing Commissioner Brian D. Montgomery has extended the temporary property flipping waiver to May 10, 2010. Under the waiver, homes that were foreclosed on and are being sold by the mortgagee or on its behalf may be purchased by FHA borrowers without regard to the 90-day seasoning period. The waiver does not apply to entities that purchase foreclosures either singly or in bulk for resale. Subsequent sales of such properties will continue to be subject to the standard regulatory requirements.

The waiver expires for all loans for which the sales agreements were signed by the seller and buyer on or before May 10, 2010. "

Waiver

Waiver of Requirements of 24 CFR 203.37a (b)(2)

Pursuant to §7(q) of the Department of Housing and Urban Development Act (42 USC 3535 (q) and 24 CFR 5.110, I hereby waive §203.37a(b)(2) of the regulations. That regulation prohibits a mortgage from being insured by FHA if the sale of the property that will be the security for the mortgage is within 90 days of acquisition by the seller. This waiver is limited to a sale within the 90-day period if the property is acquired through foreclosure, and is effective for a period of one year. In support of the waiver, I make the following Findings and Determinations.

FINDINGS

1 Section 203.37a(b)(2) of the FHA regulations provides that the mortgage for a property will not be insured by FHA if the contract of sale is executed within 90 days of the acquisition of the property by the seller. One of several exceptions to this 90-day prohibition is contained in 203.37a(c)(6), which allows mortgage insurance for properties sold by state- and federally-chartered financial institutions and government-sponsored enterprises (e.g., Fannie Mae and Freddie Mac). The properties sold by these entities are usually obtained by foreclosure.

2. Since the promulgation of §203.37a in 2003, FHA has learned that 1) there is considerable difficulty in determining which mortgagees and/or servicing lenders that have sold properties acquired through foreclosure are state- or federally-chartered, and 2) many of the mortgagees covered by the existing exemption transfer titles to such properties to subsidiaries or vendors for the purpose of selling the properties, and those subsidiaries and vendors are not currently covered by the exemption.

3. Since the promulgation of §203.37a, the volume of foreclosures has increased dramatically, especially in the past year. In examining its policy regarding the 90 day prohibition contained in §203.37a, FHA finds that a temporary relaxation of its eligible property requirements also can help address the mortgage crisis.

4. FHA finds that in addressing specific cases related to the mortgage crisis, waiving the regulations so that properties acquired by foreclosure by mortgagees that are not state- or federally-chartered would allow the properties to become eligible for FHA-insured financing during the 90-day period. This would reduce holding costs to mortgage lenders. An expansion of the exemption will result in a lessening of the likelihood of property value deterioration to adjoining and near-by properties as well as to the properties acquired by foreclosure.

5. FHA can have a very significant role in helping the housing market stabilize, providing liquidity in the mortgage market, and increasing mortgage credit, both nationally and in those states suffering the most from the sub-prime mortgage meltdown.

6. The current exemptions from the 90-day restriction in §203.37a(c) are insufficient to accommodate sales of properties acquired as the result of foreclosure by mortgage lenders other than those currently exempted, and do not accommodate exempt institutions that use subsidiaries and vendors to sell their inventory of foreclosed properties.

Section 203.37a creates an unwarranted disparity between mortgagees that are state- or federally-chartered and mortgagees that are not so chartered. Section 203.37a also inhibits FHA's ability to provide access to safe and affordable mortgages for purchasers of these properties during the 90-day period.

DETERMINATIONS

1. Additional exemptions to the 90-day sale period must be granted for sales of real estate owned by mortgagees to reduce deterioration in properties acquired through foreclosure that may otherwise remain vacant for up to 90 days because of FHA's existing policy. This waiver also adds to the existing exemptions those properties foreclosed on by mortgagees, their subsidiaries, as well as vendors hired by exempt entities to sell their real estate owned.

2. The most expeditious means of effectuating such additional exemptions is by waiving §203.37a(b)(2). A waiver of §203.37a(b)(2) will not violate any statutory requirements.

3. The above-findings constitute good cause for the waiver, as required by 24 CFR 5.110.

4. The waiver shall expire one year from today's date.

WAIVER

Section 203.37a(b)(2) of the FHA regulations, 24 CFR 203.37a(b)(2), is hereby waived for a period of one year from today's date with regard to sales of properties acquired by mortgagees, whether sold directly by the mortgagees or by their subsidiaries or by vendors to whom they have transferred titles to properties for the purpose of effectuating sales of those properties.

Brian D. Montgomery
Assistant Secretary for Housing
Federal Housing Commissioner