

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. 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:

1. 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:
 - a. The seller holds title to the property;
 - b. LLCs, corporations, or trusts that are serving as sellers were established and are operated in accordance with applicable state and Federal law;
 - c. 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);
 - d. 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).

2. 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:
 - a. 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
 - b. Orders a property inspection and provides the inspection report to the purchaser before closing. The lender may charge the 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 with the seller, and must not receive compensation for the inspection from any party other 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:

- i. The property structure, including the foundation, floor, ceiling, walls and roof;
 - ii. The exterior, including siding, doors, windows, appurtenant structures such as decks and balconies, walkways and driveways;
 - iii. The roofing, plumbing systems, electrical systems, heating and air conditioning systems;
 - iv. All interiors; and
 - v. All insulation and ventilation systems, as well as fireplaces and solid-fuel-burning appliances.
3. The waiver is limited to forward mortgages, and does not apply to the Home Equity Conversion Mortgage (HECM) for Purchase program.

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 FHA will not insure a mortgage for a property if the contract of sale is executed within 90 days of the acquisition of the property by the seller. Several exceptions to this 90-day resale restriction are contained in §203.37a(c). The properties sold by HUD and other exempted entities are usually obtained through foreclosure.
2. On June 7, 2006, a final rule, contained in §203.37a(c), was published to broaden the exemptions from the 90-day resale restriction as follows:
 - a. Sales by HUD of REO and single family assets in revitalization areas;
 - b. Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;
 - c. Sales by nonprofit organizations approved to purchase HUD REO at a discount with resale restrictions;
 - d. Sales of properties that were acquired by the sellers through inheritance;
 - e. Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;
 - f. Sales of properties by state and federally chartered financial institutions and any other Government Sponsored Enterprise (GSE);

- g. Sales of properties by local and state government agencies; and
 - h. Sales of properties located in Presidentially Declared Disaster Areas, but only upon announcement by HUD through the issuance of a Mortgagee Letter.
3. On June 9, 2008, a waiver of §203.37a(b)(2) was granted exempting sales of REO properties acquired by mortgagees, whether sold directly or by subsidiaries or vendors to whom they have transferred title, from the 90-day resale restriction. On May 15, 2009, the FHA Commissioner extended this waiver for all loans for which sales agreements were signed by the seller and buyer on or before May 10, 2010.
 4. On September 14, 2009, a waiver of §203.37a(b)(2) was granted exempting sales of properties that had previously been foreclosed on or abandoned, which were acquired and resold by for-profit and non-profit entities using funding from and performing under agreements with state and local government agencies under HUD's Neighborhood Stabilization Program (NSP), from the 90-day resale restriction.
 5. Since the promulgation of §203.37a, the volume of foreclosures has increased dramatically, especially over the past two years. In examining its policy regarding the 90-day resale restriction contained in §203.37a, FHA finds that a temporary relaxation of its eligible property requirements can also help address the foreclosure crisis.
 6. FHA finds that eliminating the 90-day resale restriction for buyers will give FHA a greater opportunity to dispose of its single family REO properties in a way that maximizes return to the FHA mortgage insurance fund; also, permitting buyers to use FHA-insured financing to purchase other bank-owned properties, or properties sold through private sales for resale, will help create market conditions that will allow homes to resell as quickly as possible, thus helping to stabilize real estate prices as well as helping to stabilize neighborhoods and communities where foreclosure activity has been high.
 7. HUD REO, many bank-owned properties, and properties sold through private sales are often sold in an "as is" state, without repairs or warranties. Many of these homes require repairs and are purchased by buyers with the financial means and necessary resources to complete needed rehabilitation work and return the homes to the market at fair market prices.
 8. Acquiring, rehabilitating and then reselling these properties to prospective homeowners takes less than 90 days. Prohibiting the use of FHA mortgage insurance for a subsequent sale within 90 days of acquisition adversely impacts the willingness of purchasers to bid on these properties, as these potential buyers need to consider holding costs associated

with the purchase, along with the risk of vandalism associated with allowing a property to sit vacant over a 90-day period of time. Thus, the 90-day resale restriction often hinders community stabilization and revitalization.

9. As a result of the currently tightened credit market, FHA-insured mortgage financing is often the only means of financing available to potential homebuyers. FHA has an unprecedented opportunity to fulfill its mission by helping many homebuyers find affordable housing while contributing to the stabilization of neighborhoods and communities.

DETERMINATIONS

1. To help facilitate the return of repaired and habitable properties to the market in a timely fashion, additional exemptions to the 90-day resale restriction period must be granted for the purchase of properties by investors. This policy change will help to sell properties that may otherwise remain vacant for up to 90 days, while offering affordable housing options to buyers wishing to use FHA-insured financing.
2. All other guidance concerning property flipping prohibition remains unchanged.
3. The most expeditious means of effectuating such additional exemptions is by waiving §203.37a(b)(2).
4. The above findings constitute good cause for the waiver, as required by 24 CFR §5.110.
5. A waiver of §203.37a(b)(2) will not violate any statutory requirements.
6. The waiver shall expire one year from February 1, 2010, unless otherwise extended or withdrawn by the Commissioner. If FHA discovers that there is a significant increase in mortgage defaults and mortgage insurance claims attributable to insured mortgages obtained through this waiver, the Commissioner may, at his discretion, withdraw this waiver immediately.

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 February 1, 2010, with regard to subsequent sales by purchasers, subject to the conditions of this waiver.



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Assistant Secretary for Housing-
Federal Housing Commissioner

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