

## Waiver of Requirements 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 insured by FHA if the contract of sale for the purchase of a property with FHA insured mortgage financing is executed within 90 days of the prior acquisition by the seller, and the seller does not come under any of the specific exemptions of the 90 day rule. 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 a mortgage secured by a property will not be eligible for insurance by FHA if the contract of sale is executed by the prospective FHA borrower within 90 days of the previous acquisition of the property by the seller. One of several exceptions to this 90-day prohibition is contained in §203.37a(c)(7), which authorizes FHA mortgage insurance for the purchase of properties sold by state and local government agencies.
2. Since the promulgation of §203.37a, the volume of foreclosures nationwide has increased dramatically, especially during the past two years. 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 neighborhood stability that has been exacerbated by the national mortgage foreclosure and property abandonment crisis.
3. Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA) (Pub. L. 110-289, approved July 30, 2008) appropriated \$3.92 billion for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provided under a rule of construction that, unless HERA states otherwise, the grants are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III of HERA is referred to as the Neighborhood Stabilization Program (NSP).
4. Under the NSP, HUD issues grant funds to state and local government agencies whose jurisdictions have experienced high foreclosure rates. The grant funds are to be used by these government agencies for the purpose of the acquisition and rehabilitation of foreclosed and abandoned properties.

5. Pursuant to a Notice of Allocations (Notice) issued by the Secretary and published in the Federal Register at 73 F.R. 58329 (October 6, 2008), the grantees are permitted to distribute the funds to sub-recipients, contractors, and developers, under agreement that the funds be used for this sole purpose. The properties are then to be sold to low to moderate income borrowers. The Notice spells out in detail the requirements that grant recipients must follow in using the funds.
6. FHA finds that in some instances, state and local government agencies may be unable to acquire title to properties in their own names, or they must go through extensive and time-consuming procedures in order to acquire title to properties, rehabilitate them and sell them. Thus, as permitted under the Notice, state and local government agencies have turned to non-profit and for-profit entities to use the grant funds, pursuant to the instructions in the Notice, to purchase and rehabilitate abandoned and foreclosed properties.
7. Acquiring, rehabilitating and then selling these properties to low and moderate income homeowners is contemplated in a substantial number of cases to take less than 90 days from the date the government, or the non-profit or for-profit entity using funds obtained by the government pursuant to this Notice, acquires title to the property, and the date of sale to the prospective homeowner. Prospective homeowners would like to be able to obtain FHA insured mortgage financing to purchase the dwellings.
8. The NSP program is a temporary and emergency program funded through another Office within the Department of Housing and Urban Development, of which FHA is also a component part. FHA eligibility requirements, however, will preclude the use of FHA mortgage insurance until 90 days have passed from the resale by the non-profit or for-profit using NSP grant funds from the state or local government.
9. Precluding the use of FHA mortgage insurance because transfers of single family properties are structured under the NSP program with the use of non-profit or for-profit entities instead of direct transfers from state or local government agencies thwarts not only the purpose of the temporary and emergency nature of the NSP program, but also is contrary to FHA's stabilizing role in the housing market, providing liquidity in the mortgage market, and increasing mortgage credit, both nationally and in those states suffering the most from the high foreclosure rates.
10. Authorizing the use of FHA insured mortgage financing by the waiver of the 90 day resale prohibition contained in §203.37a (b) (2) will also enable both FHA in the HUD Office of Housing and the HUD Office of Community Planning and Development to coordinate the use of both of their programs in a concerted and more efficient and effective manner.

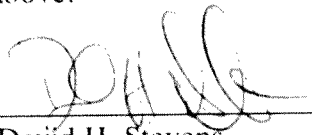
## DETERMINATIONS

1. An additional exemption to the FHA 90-day sale period for insurance eligibility must be granted for re-sales of foreclosed and abandoned properties.
2. The FHA policy contained in §203.37a (b) (2) that precludes the eligibility, for FHA mortgage insurance, of a property that is resold within 90 days of a prior sale should not apply to NSP activity, where:
  - (A) A state or local government agency (NSP grantee) has received grant funds under §2301 et seq. of HERA and the Notice of Allocation (73 FR 58329);
  - (B) The state or local government agency is precluded by law or other requirement, or otherwise significantly lacks the capacity to acquire and/or hold title to the foreclosed or abandoned property directly, and therefore uses a for-profit or non-profit entity pursuant to the requirements set forth in the Notice;
  - (C) The NSP grantee has established a written agreement or similar document authorizing one or more duly incorporated entities (for-profit or non-profit) as the NSP grantee's representative purchaser of the abandoned or foreclosed properties consistent with the NSP requirements;
  - (D) The intended purpose of the closely sequential property transfers (i.e., within the 90 day prohibited timeframe of the rule) is to facilitate property renovation and neighborhood stabilization; and
  - (E) The property that is to be the security for the FHA insured mortgage financing shall not have been acquired by the state or local government agency or the non-profit or for-profit entity from FHA under 24 CFR part 291.
3. The most expeditious means of effectuating this additional exemption is by waiving §203.37a (b) (2), under conditions as set out further below.
4. A waiver of §203.37a (b) (2) will not violate any statutory requirements.
5. The above-findings constitute good cause for the waiver, as required by 24 CFR §5.110.

6. The waiver shall expire one year from today's date, **provided**, that if the FHA discovers that there is a significant increase in the number of mortgage defaults and mortgage insurance claims that arise that are attributable to mortgages insured that are secured by properties that have gone through the NSP process, the Commissioner may, at his discretion, withdraw this waiver immediately. The term "significant increase" shall be construed to mean a default and claim rate that is synonymous with the Credit Watch national default and claim rate as defined at 24 CFR §202.3(c)(2).

**WAIVER**

Section 203.37a(b)(2) of the FHA regulations, 24 CFR, is hereby waived for a period of one year from today's date with regard to sales of previously foreclosed or abandoned properties acquired and resold by for-profit and non-profit entities using funding from and performing under agreements with state and local government agencies under the NSP program as further established by the Notice of Application referenced above.

  
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David H. Stevens  
Assistant Secretary for Housing-  
Federal Housing Commissioner

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Issued \_\_\_\_\_, 2009