

November 5, 2001

Office of the General Counsel
Regulations Division
Room 10276
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

COMMENTS RE: DOCKET NO. FR-4615-P-01

The NATIONAL ASSOCIATION OF REALTORS® (NAR), which represents over 760,000 real estate practitioners, would like to submit the following comments on the proposed regulations governing the Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Program [Docket No. FR-4615-P-01, September 5, 2001].

Before addressing the actual contents of the proposed regulations, NAR would like to point out that we are certainly aware of the fact that certain mortgage products can potentially encumber a homeowner's equity or lend themselves to opportunities for abusive lending practices. In fact, during our Midyear Legislative Meetings this past May, NAR adopted a position to oppose abusive or predatory lending practices such as unsuitable loan terms and deceptive claims that can result in home equity stripping, diminished personal credit standing, or violations of federal consumer protection statutes and regulation.

While the NATIONAL ASSOCIATION OF REALTORS® understands the Department's desire to proactively address the reported instances of abusive property flipping that has occurred in certain markets, and thus the intent of the proposed rule, we do have major concerns regarding the rule that warrant HUD's immediate consideration and response. More importantly, we believe the Department has in place the necessary enforcement tools to properly penalize abusers and that HUD should utilize its existing sanction and penalty methods before subjecting the FHA program to more onerous regulation.

Specifically, we believe that the proposed rule could discourage investors (some of whom are REALTORS®) from participating in a property rehabilitation/marketing process utilizing FHA mortgage insurance. Investors make legitimate livings purchasing distressed properties, reconditioning them, and returning them to

market at fair market prices and within a reasonable amount of time. Additionally, legitimate property rehabilitation/resales is not done overnight and customarily entails utilizing relationships with builders, title companies, licensed systems contractors, home remodeling/hardware stores and code officials to obtain products, services and approvals to market responsibly. The end result is the availability of homeownership and a contribution to neighborhood revitalization.

Supplementary Information; Subpart II – This Proposed Rule (Six-month restriction on sales)

Regarding the time restriction on sales, NAR wants to point out that there are many legitimate rehabilitation projects that require less than six months to complete and the six-month time period delay could subject properties to continued deterioration and/or vandalism and further distress a community. Regardless of the time period, NAR has concerns that unscrupulous sellers and manipulators will still find a way to take advantage of the system. For example, the cost of a six month holding period could be built into an already inflated selling price or an ill-informed buyer could take up occupancy in the residence for six months in a lease-purchase type of agreement where the purchaser is led to believe they are building up equity in the property in order to make their loan application look stronger.

Supplementary Information; Subpart II – This Proposed Rule (Exceptions to property flipping restrictions)

Regarding the exceptions and whether they are sufficient, in the proposed regulation HUD has indicated that it may grant exceptions to the six-month holding period on a case by case basis if certain documentation is provided to HUD by the lender to demonstrate that the sales price of the property accurately corresponds to its market value.

In the list of documentation there is no reference to an independently developed opinion of value. NAR recommends that an appraisal should be included in the documentation to be considered in granting an exemption. As mentioned in the opening paragraphs, this proposed rule may cause problems for legal transactions and ethical market participants. In this regard, we hope that this rule is not an overreaction to fraudulent activity by some in the housing industry because NAR believes that the first line of defense for HUD in a fraudulent transaction could and should be the appraiser.

NAR certainly recognizes that flipping includes the participation of an FHA appraiser involved in the transaction, but we also know that HUD already has appraisal regulations in place to deal with those appraisers who collude with unscrupulous investors in such practices. We believe that the vast majority of appraisers are competent and ethical and respect the trust and confidence bestowed upon them by their clients and as such HUD should better enforce the appraisal regulations already in existence. This would be a productive approach to take in addressing the flipping problem.

NAR recommends that the Department consider the point that the need for this regulation may be an indictment of HUD's own appraisal review process. NAR believes that the Department needs to re-inject more control and accountability over its own system and rein in some of the authority they have given to the lenders.

Another concern among NAR members is what entity within HUD will have responsibility for examining and granting the exceptions and what process will be utilized to review and communicate the exceptions. NAR is concerned 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 6 month restriction period. This in turn could subject the property owner to greater risk and/or hardship (e.g. foreclosure). NAR recommends that the Department rule on exception requests within a short time frame, such as 30 days. HUD should establish clear guidelines on exceptions based on rulings and update them regularly. This will enable REALTORS® and others in the transaction to effectively advise purchasers on whether the transaction is eligible for FHA financing.

Finally, aside from the administration of the exceptions function, NAR suggests that HUD permit exceptions as a result of death, job loss, employment/military transfer and reasonable circumstances beyond the owner's control.

The NATIONAL ASSOCIATION OF REALTORS® appreciates the opportunity to provide these comments and if we can be of further information please let us know.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard Mendenhall". The signature is written in a cursive style with a large, looped initial "R" and "M".

Richard Mendenhall
President