

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