

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 234

[Docket No. FR-4713-P-01]

RIN 2502-AH80

FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department's regulations with respect to condominium ownership mortgage insurance to provide that the date of recordation for purposes of obtaining Federal Housing Administration (FHA) approval of a condominium development in the Commonwealth of Puerto Rico for mortgage insurance under the Section 234(c) program is the date the condominium legal documents are presented to the Commonwealth Registry of the Property. The Department believes that the proposed change will improve homeownership opportunities through increased FHA activity under the Section 234(c) program.

DATES: *Comment Due Date:* October 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-2121 ext. 2204 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1-800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 234(c) of the National Housing Act (12 U.S.C. 1715y(c)) (Act) authorizes the Secretary to insure an individual mortgage on a one-family unit in a multifamily project and an undivided interest in the common areas and facilities that serve the project, provided certain conditions are met. The regulations at 24 CFR 234.26(b) provide that the project in which a unit is located shall be committed to a plan of condominium ownership by a deed or other recorded instrument that is acceptable to the FHA Commissioner. As it relates to condominiums, recordation especially commits the developer to following through with the establishment of a viable condominium. Recordation marks a specific point in time when various fees must be paid and when rights and obligations vest in a non-profit condominium association that has been created by the articles of condominium association.

Section 234(k) of the Act provides that, before FHA mortgage insurance can be placed on a unit in a condominium project converted from rental property, at least one year must elapse between the date of conversion and the date application for insurance is made. Conversion is not defined in the Act. HUD's regulations at 24 CFR 234.3 define conversion as the date on which all documents necessary to create a condominium under State law (and under local law) have been recorded.

Under the Commonwealth of Puerto Rico's inscription law, the legal documents to create a condominium regime are "presented" to the Commonwealth Office of the Property Registry, which closely reviews the documents for sufficiency and accuracy. If the documents are found to be in compliance, or can be corrected to be brought into compliance, the documents then are inscribed or recorded. (Because of a current backlog, the review process now takes several years.) When the condominium documents are presented, a condominium regime is established. During the review period, the purchaser acquires a fee interest in a unit together with a common, undivided interest in the common areas as do purchasers in those jurisdictions with more standard recordation procedures. Only in extraordinary circumstances would recordation of the condominium documents not ultimately occur once the legal documents are presented to the Commonwealth Office of the Property Registry.

From the time the condominium legal documents are presented for inscription,

the developer/proponent is responsible for paying assessments and costs associated with operating and maintaining the project as a condominium. This can result in substantial cost to a developer prior to the project's eligibility for FHA mortgage insurance.

II. This Rule

This proposed rule would revise the definition of "conversion" in 24 CFR 234.26(b) to provide that, in the case of Puerto Rico, conversion is defined as the date on which a condominium development's legal documents (which must be in compliance with applicable law) are "presented" for inscription (*i.e.*, recordation) to the Commonwealth Registry under Puerto Rico's inscription process. This revision would allow the Department's approval of condominium developments in Puerto Rico for FHA mortgage insurance on individual units within the project on the basis of evidence of presentation of legal documents and the parties obtaining title insurance on each unit.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive

discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not

impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 234 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 234 to read as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d).

2. The definition of "conversion" in § 234.3 is revised to read as follows:

§ 234.3 Definitions

* * * * *

Conversion means the date on which all documents necessary to create a condominium under State law (and under local law, where applicable) have been recorded, except that in the case of the Commonwealth of Puerto Rico, *conversion* is defined as the date on which the legal documents (which must be in compliance with applicable law) to create a condominium are presented for inscription (*i.e.*, recordation) to the Commonwealth Office of the Property Registry.

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Dated: July 8, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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