

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 234

[Docket No. FR-4713-F-02]

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: Final rule.

SUMMARY: This final rule amends 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 change will improve homeownership opportunities through increased FHA activity under the section 234(c) program. This final rule follows publication of a proposed rule on August 21, 2002. One comment was received on the rule, and it supported the rule. Accordingly, the Department is adopting the proposed rule without change.

DATES: Effective Date: March 10, 2003.

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—The August 21, 2002, Proposed Rule

The Department published a proposed rule on August 21, 2002 (67 FR 54316), announcing its intention to amend its regulation that implements section 234(c) of the National Housing Act (12 U.S.C. 1715y(c)) (the Act). Section 234(c) 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. 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 regulation at 24 CFR 234.3 defines 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. When the condominium documents are presented, a condominium regime is established. 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.

The Department proposed revising the definition of "conversion" in 24 CFR 234.3 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 to approve condominium developments in Puerto Rico for FHA mortgage insurance on individual units within the project on the basis of evidence of presentment of legal documents and the parties' obtaining title insurance on each unit.

II. This Final Rule

This final rule follows publication of the August 21, 2002, rule, which invited public comment on the proposed revision. HUD received one comment on the rule. The commenter supported the proposed revision. The commenter wrote that the rule will relieve Puerto Rican lenders from the heavy burden of

holding section 234(c) loans without insurance, while waiting for documents to be recorded to meet the current definition of "conversion." Thus, the change will expedite placement of mortgage loans in the secondary mortgage market. The commenter also noted that the risks to HUD are minimal by adopting this rule. Under the condominium regime, legal documents undergo close scrutiny from lawyers who are experts in condominium law and hired by developers and bankers to protect their individual interests. The commenter added that the rule would expedite the conversion to condominiums of many section 8 rental projects in Puerto Rico. According to the commenter, the rule also will stimulate developers and lenders to build more condominium units in areas with high land prices, thus allowing many families the dream of homeownership.

Accordingly, HUD has decided to adopt the August 21, 2002, proposed rule without change.

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 final 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.

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 final rule does not have federalism implications and does 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 amends 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: January 27, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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