

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 234

[Docket No. FR-5009-F-02]

RIN 2502-AI36

Approval of Condominiums in Puerto Rico on Evidence of Presentment of Legal Documents

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

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations 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 Office of the Property Registry. This final rule enables parties to obtain mortgage insurance upon presentment of legal documents, whether the condominium regime is under construction, proposed for construction, or was established by conversion. Instituting a single standard for approval of mortgage insurance will result in a reduction in risk, time, and cost for developers and help to increase FHA activity and homeownership opportunities in Puerto Rico. This final rule follows publication of a May 23, 2006, proposed rule on which HUD did not receive any public comments. Accordingly, HUD is adopting the May 23, 2006, proposed rule without change.

DATES: *Effective Date:* May 4, 2007.

FOR FURTHER INFORMATION CONTACT:

Maynard T. Curry, Housing Program and Policy Specialist, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9266, Washington, DC 20410-7000, telephone (202) 708-2121 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 23, 2006, HUD published a proposed rule (71 FR 29754) for public comment to amend the Department's regulations governing Federal Housing Administration (FHA) approval of condominium developments in the

Commonwealth of Puerto Rico for mortgage insurance under section 234 of the National Housing Act (12 U.S.C. 1715y(c)) (the Act). Section 234(c) of the Act authorizes the Secretary of HUD 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. 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. HUD's regulations implementing section 234 of the Act are codified at 24 CFR part 234.

In response to a severe backlog at the Puerto Rico Commonwealth Office of the Property Registry, which resulted in developers and proponents being responsible for paying assessments and costs associated with operating and maintaining the multifamily project as a condominium before mortgage insurance could be obtained, HUD issued a February 7, 2003, final rule that amended the definition of conversion. The final rule changed the definition of conversion with respect to Puerto Rico, to allow the running of the one-year waiting period to begin upon presentment for inscription (i.e., recording) of the required documentation.

This revision allowed the Department to approve condominium developments in Puerto Rico for FHA mortgage insurance on individual units within the multifamily project on the basis of evidence of presentment of legal documents and the parties' obtaining title insurance on each unit. The final rule thereby relieved 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 then-existing definition of conversion.

The May 23, 2006, proposed rule would revise the part 234 regulations to provide that, in the case of Puerto Rico, the date of presentment should serve as the date of recordation for all condominium regimes, which includes existing rental units that have been converted, units under construction, or units that are planned for construction. The proposed regulatory changes were designed to expand the scope of recordation while better reflecting the realities of the inscription process in Puerto Rico. Condominium plans would still have to comply with the legal requirements of the local jurisdiction. In addition, the proposed rule would not alter property rights, which are

conferred by the legal documents themselves and not their recordation. The proposed rule would allow all condominium regimes in Puerto Rico to obtain FHA approval for mortgage insurance at the time of presentment of condominium documents. This would establish a uniform approach to the FHA mortgage insurance approval process by allowing FHA mortgage insurance to be placed on condominiums, whether they be conversions of existing rental units, units under construction, or units planned for construction, following presentment of the condominium's legal documents to the Commonwealth Office of the Property Registry.

For more detailed information regarding the proposed regulatory changes, please refer to the preamble of the May 23, 2006, proposed rule.

II. This Final Rule

This final rule follows the publication of a May 23, 2006, proposed rule. The public comment period on the proposed rule closed on July 24, 2006. HUD did not receive any public comments on the proposed rule. HUD, therefore, is issuing this final rule without change from the proposed rule.

III. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in the section 234(c) program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0059. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Review

This amendment is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance, or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, this amendment is categorically excluded because it amends an existing

document where the existing document as a whole would not fall within the exclusion in 24 CFR 50.19(c)(1).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) 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 any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) there are no anti-competitive discriminatory aspects of the rule with regard to small entities, and (2) 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, to the extent practicable and permitted by law, an

agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or 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. Revise § 234.26(b) and (d)(1) to read as follows:

§ 234.26 Project requirements.

* * * * *

(b) *Plan of condominium ownership.* The project in which the unit is located shall have been committed to a plan of condominium ownership by a deed, or other recorded instrument, that is acceptable to the Commissioner. In the case of condominium documents in the Commonwealth of Puerto Rico, the Commissioner will accept documents presented for inscription (recordation) to the Commonwealth Office of the Property Registry so long as the mortgagor obtains a title insurance policy that reflects the condominium regime.

* * * * *

(d) * * *

(1) The deed of the family unit and the deed or other recorded instrument committing the project to a plan of condominium ownership must comply with legal requirements of the jurisdiction. In the case of condominium documents in the Commonwealth of Puerto Rico, the Department will accept documents presented for inscription (recordation) to the Commonwealth Office of Property Registry for certification purposes so long as the mortgagor obtains a title insurance policy that reflects the condominium regime.

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Dated: March 20, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

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