

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 234**

[Docket No. FR-5009-P-01; HUD-2006-0005]

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:** Proposed rule.

**SUMMARY:** This proposed 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 proposed rule would enable 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.

**DATES:** Comment Due Date: July 24, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Electronic comments may be submitted through either:

- The Federal Rulemaking Portal: at <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to

security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (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. Copies of the public comments are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

**FOR FURTHER INFORMATION CONTACT:** Margaret Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9278, 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—Amending the Definition of Conversion: February 7, 2003, Final Rule**

The Department published a final rule on February 7, 2003 (68 FR 6596), which amended 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. Section 234(k) of the Act provides that, before Federal Housing Administration (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.

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 amended the definition of conversion in the February 7, 2003, final rule. Prior to the effective date of that final rule, the date of conversion in Puerto Rico was deemed to commence upon the recording of the required documentation. 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.

**II. This Proposed Rule**

The Department proposes to revise the provisions found in 24 CFR 234.26 to provide that, in the case of Puerto Rico, the date of presentment should serve as the date of recordation for all condominium regimes. The proposed rule expands the scope of recordation while better reflecting the realities of the inscription process in Puerto Rico. At present, given the close scrutiny of legal documents by lawyers who are experts in condominium law, once legal documents are presented to the Commonwealth Office of the Property Registry they almost always result in the recordation of the property interest. Under the proposed rule, 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 process for inscription is currently the same for both new condominium regimes and condominium conversions. This results in the same kinds of difficulties, delays, and costs that developers and proponents of new condominium regimes experienced with conversion condominiums prior to the February 7, 2003, final rule. Under the current regulatory scheme, new condominiums and converted condominiums must comply with the same requirements, yet they are treated differently. Both types of condominiums must meet the recordation requirement of 24 CFR 234(f)(1); however, while a developer of a new condominium must wait for the entire inscription process to be completed before approval of mortgage insurance can be obtained, a developer of a converted condominium can seek approval upon presentment of the legal

documents to the Commonwealth Office of the Property Registry.

The new proposed rule would broaden the definition of recordation to include presentment of condominium documents in the case of all condominium regimes in Puerto Rico. This would establish a uniform approach to the FHA mortgage insurance approval process by allowing FHA mortgage insurance to be placed on condominiums, including those under construction or planned for construction, following presentment of the condominium's legal documents to the Commonwealth Office of the Property Registry. This proposed rule would not only resolve the disparate treatment among condominium regimes but also reduce risk, time and expenses to developers, but also substantially increase FHA's market share and homeownership opportunities in the Commonwealth.

### 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 proposed rule 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, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

#### 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 proposed 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. 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.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites 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, 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 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. 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 Department 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: April 27, 2006.

**Brian D. Montgomery,**  
Assistant Secretary for Housing-Federal  
Housing Commissioner.

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