

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 200, 213, 220, 221, 233, and 234**

[Docket No. FR-4112-F-01]

RIN 2502-AG80

Streamlining the Single Family Components of the Single Family-Multifamily Regulations

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

ACTION: Final rule.

SUMMARY: This final rule amends primarily the single family components of HUD's regulations for certain FHA single family and multifamily housing mortgage insurance programs. In an effort to comply with the President's regulatory reform initiatives, this rule streamlines these regulations by eliminating regulatory provisions that are redundant, obsolete, or otherwise unnecessary.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Manuel, Director of the Home Mortgage Insurance Division, Department of Housing and Urban Development, Room 9272, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-2700 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. HUD determined that the regulations for certain Federal Housing Administration (FHA) programs could be improved and streamlined by eliminating obsolete and unnecessary provisions, and by consolidating provisions that were repeated throughout several sets of regulations. Therefore, on April 1, 1996 (61 FR 14396), HUD published a final rule streamlining the regulations for certain FHA single family housing, multifamily housing, and health care facility mortgage insurance programs. Today's final rule will continue HUD's efforts to streamline its FHA regulations by amending the single family components of parts 220, 221, and 234

to eliminate regulatory provisions that are redundant, obsolete, or otherwise unnecessary. Today's final rule will also remove the single family components of the obsolete program in part 213, and both the single family and the multifamily components of the regulations for the obsolete program in part 233. This final rule will thereby eliminate approximately 44 pages of unnecessary regulations.

I. Single Family Streamlining**A. Part 220**

The Mortgage Insurance and Insured Improvement Loans for Urban Renewal and Concentrated Development Areas Program (part 220) is relatively inactive; there were few new loans insured in FY 1996, and HUD does not anticipate that this volume will increase. The April 1, 1996 final rule (61 FR 14396) streamlined the multifamily components of the regulations in part 220. Today's final rule will similarly streamline the single family components of these regulations by removing the eligibility provisions in subpart A. HUD has determined that it is unnecessary to retain these requirements because the statute, supplemented by the contract of insurance and HUD handbooks, will be sufficient. HUD is, however, retaining the provisions in these regulations regarding contract rights and obligations, because they are necessary for the continued administration of the outstanding loans insured under the program.

B. Part 221

Several single family provisions of HUD's regulations in part 221 for the Low Cost and Moderate Income Mortgage Insurance Program are duplicative or obsolete. Specifically, this final rule streamlines these provisions by correcting § 221.1(a), which contains a general cross-reference to the single family mortgage insurance regulations in part 203, along with a list of the exceptional sections in part 203 that do not apply to mortgages insured under section 221 of the National Housing Act (12 U.S.C. 1715f) (the Act). Although § 203.17 (Mortgage provisions) appears on this list of exceptions, the requirements of § 203.17 actually do apply to mortgages insured under section 221 of the Act, and in fact there are provisions within part 221 that duplicate those requirements. Therefore, this final rule removes § 203.17 from the list of exceptions in § 221.1, and it also removes those provisions that duplicate the requirements in § 203.17. This rule also removes § 203.46, which no longer exists, from the list of exceptions in

§ 221.1. This rule removes §§ 221.60 and 221.65, which are obsolete due to the inactivity of the mortgage insurance programs under sections 221(h) and 221(i) of the Act to which they apply. This rule also removes several other provisions that are duplicative either of part 203 or of the statute, or that are obsolete.

C. Part 234

Several provisions in HUD's regulations for the Condominium Ownership Mortgage Insurance Program in part 234 repeat the general single family mortgage insurance regulations in part 203. Therefore, this final rule will amend subpart A of part 234, which contains the eligibility requirements, to provide a general cross-reference to the similar eligibility requirements in subpart A of part 203. Subpart A of part 234 will retain those eligibility provisions that are unique to the Condominium Ownership Mortgage Insurance Program.

II. Obsolete Programs**A. Part 213**

There was no new loan activity in fiscal year (FY) 1996 in the single family component of HUD's Cooperative Housing Mortgage Insurance Program in part 213. HUD has determined that, due to the changes in the housing market and other factors, the single family component of this program is obsolete. Therefore, this final rule will remove the single family regulations in part 213 (subparts C, D, and E). A "savings clause" will be maintained in part 213 providing that the single family regulations in effect immediately before December 26, 1996 will continue to apply to any existing mortgages.

B. Part 233

HUD's regulations for the Experimental Housing Mortgage Insurance Program in part 233 are also obsolete. This program has been inactive for approximately 15 years. In accordance with the President's National Homeownership Strategy (May 1995), HUD will consider whether the program would effectively promote technological advances in homebuilding products. If HUD decides to expand and promote the program, it will develop new and more appropriate regulations at that time. Therefore, this final rule will remove the substance of the regulations in part 233, including both the single family and the multifamily components. A "savings clause" will be maintained in part 200, subpart W (§ 200.1302), providing that the regulations in effect immediately before December 26, 1996

will continue to apply to any existing mortgages.

III. Clarifications and Corrections

HUD is taking the opportunity in this final rule to clarify or correct certain provisions in its FHA regulations. First, this rule corrects a provision of the April 1, 1996 final rule (61 FR 14396). In an earlier final rule published in the Federal Register on September 11, 1995, HUD established a new § 200.1301 to contain the savings clauses for several expiring FHA programs. In the April 1, 1996 final rule, HUD intended to add a list of additional expiring programs to a new § 200.1302. Due to an error, however, rather than adding a new § 200.1302, the April 1, 1996 rule inadvertently revised § 200.1301, supplanting the list of programs initially issued in § 200.1301 on September 11, 1995. To correct this error, the Federal Register published a correction document on October 17, 1996 (61 FR 54267), which effectively reestablished § 200.1301 as it appeared in the September 11, 1995 rule, and added a new § 200.1302 as HUD intended in the April 1, 1996 rule.

While that error in the April 1, 1996 final rule has been corrected, today's final rule will correct another error. In the preamble to the April 1, 1996 rule, on page 14397, toward the bottom of the first column, HUD states that "Part 222 which pertains to Servicepersons Mortgage Insurance Program is an expired program. No more mortgages are insured under this program. The part will be removed and a savings clause will be retained." HUD inadvertently omitted part 222 from the savings clause for additional expiring programs (see 61 FR 14404-05). Therefore, this final rule will correct the provision for additional expiring programs in § 200.1302 to include part 222.

Second, this rule clarifies a new provision in § 234.26 regarding requirements for the insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance. On May 29, 1996 (61 FR 26962), HUD published a final rule in the Federal Register that added paragraph (i) to § 234.26 to permit such "spot loans" if the project meets certain criteria. In § 234.26(i)(1)(vi), HUD requires that for projects with fewer than 30 units, no more than 20 percent of the units in the project may be encumbered by FHA-insured mortgages. This final rule clarifies that for projects with four units (20 percent of which would be less than one whole unit), only one unit may be encumbered by an FHA-insured mortgage.

IV. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes obsolete and unnecessary regulatory provisions, and consolidates repetitive requirements; it does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This streamlining final rule will not have an environmental impact. When HUD was developing its final rule published on April 1, 1996 (61 FR 14396) that streamlined the regulations for certain FHA single family housing, multifamily housing, and health care facility mortgage insurance programs, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). That Finding applies to today's final rule, which continues HUD's streamlining efforts by primarily amending the single family components of those regulations. The Finding 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 the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development,

Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, chapter II of title 24 of the Code of Federal Regulations is amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 1436a and 3535(d).

2. In subpart W, section 200.1302 is revised to read as follows:

§ 200.1302 Additional expiring programs—savings clause.

No new loan assistance, additional participation, or new loans are being insured under the programs listed in this section.

(a) Any existing loan assistance, ongoing participation, or insured loans under the following programs will continue to be governed by the regulations in effect as they existed immediately before May 1, 1996:

Part 215 Rent Supplement Payments Program

Part 222 Serviceperson's Mortgage Insurance Program

Part 237 Special Mortgage Insurance for Low and Moderate Income Families

(b) Any existing loan assistance, ongoing participation, or insured loans under the following program will continue to be governed by the regulations in effect as they existed immediately before December 26, 1996:

Part 233 Experimental Housing Mortgage Insurance Program

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Subpart C consisting of § 213.501, is revised to read as follows:

Subpart C—Individual Properties Released From Project Mortgage; Expiring Program

§ 213.501 Savings clause.

No new loans are being insured under the Cooperative Housing Mortgage Insurance Program for individual properties released from a project mortgage. Any existing insured loans on individual properties released from a project mortgage under this program will continue to be governed by the regulations on eligibility requirements, contract rights and obligations, and servicing responsibilities in effect as they existed immediately before December 26, 1996.

Subparts D and E—[Removed]

5. In part 213, subpart D (consisting of §§ 213.751 and 213.752) and subpart E (consisting of § 213.800) are removed.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

6. The authority citation for part 220 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

Subpart A—[Removed]

7. In part 220, subpart A (consisting of §§ 220.1 through 220.249) is removed.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

8. The authority citation for 24 CFR part 221 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715j; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

9. Section 221.1 is amended by revising paragraph (a) to read as follows:

§ 221.1 Cross-reference.

(a) All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on dwellings insured under section 221 of the National Housing Act (12 U.S.C. 1715j), except the following provisions:

Sec.

203.18 Maximum mortgage amount.

203.18a Solar energy system.

203.18b Increased mortgage amount.

203.19 Mortgagor's minimum investment.

203.28 Economic soundness of project.

203.42 Rental properties.

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

203.45 Eligibility of graduated payment mortgages.

203.49 Eligibility of adjustable rate mortgages.

203.50 Eligibility of rehabilitation loans.

203.51 Applicability.

* * * * *

§§ 221.3 and 221.5 [Removed]

10. Sections 221.3 and 221.5 are removed.

11. Section 221.20 is amended by revising paragraph (c) to read as follows:

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

* * * * *

(c) *Definitions.* As used in the section, the terms *principal residence*, *secondary residence*, *eligible non-occupant mortgagor*, *undue hardship*, and *vacation home* are defined in § 203.18(f) of this chapter.

* * * * *

§§ 221.25, 221.30, 221.32, 221.35, and 221.45 [Removed]

12. Sections 221.25, 221.30, 221.32, 221.35, and 221.45 are removed.

13. Section 221.50 is amended by revising paragraph (a) to read as follows:

§ 221.50 Mortgagor's minimum investment.

(a) At the time the mortgage on a single-family dwelling is insured, a mortgagor other than a mortgagor qualifying as a "displaced family" (as that term is defined in section 221(f) of the Act) shall have paid in cash or its equivalent at least 3 percent of the Commissioner's estimate of the acquisition cost of the property.

* * * * *

§§ 221.57, 221.60, 221.65, and 221.70 [Removed]

14. Sections 221.57, 221.60, 221.65, and 221.70 are removed.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

15. Part 233 is removed.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

16. 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). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

17. In part 234, subpart A is revised to read as follows:

Subpart A—Eligibility Requirements—Individually Owned Units

Sec.

- 234.1 Cross-reference.
- 234.3 Definitions.
- 234.17 Mortgagor and mortgagee requirements for maintaining flood insurance coverage.
- 234.26 Project requirements.
- 234.54 Eligibility of assigned mortgages and mortgages covering acquired property.
- 234.63 Location of property.
- 234.65 Nature of title.
- 234.66 Free assumability; exceptions.

Subpart A—Eligibility Requirements—Individually Owned Units

§ 234.1 Cross-reference.

(a) All of the provisions of subpart A of part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on individually owned units insured under section 234 of the National Housing Act (12 U.S.C. 1715y), except the following provisions:

Sec.

- 203.12 Mortgage insurance on proposed or new construction in a new subdivision.
- 203.14 Builders' warranty.
- 203.18a Solar energy system.
- 203.18c One-time or up-front mortgage insurance premium excluded from limitations on maximum mortgage amounts.
- 203.38 Location of dwelling.
- 203.42 Rental properties.
- 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.
- 203.43d Eligibility of mortgages in certain communities.
- 203.43f Eligibility of mortgages covering manufactured homes.
- 203.43g Eligibility of mortgages in certain communities.
- 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
- 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.
- 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
- 203.50 Eligibility of rehabilitation loans.

(b) For the purposes of this subpart, all references in part 203 of this chapter to section 203 of the Act shall be construed to refer to section 234 of the Act.

§ 234.3 Definitions.

The terms *Act*, *Beginning of amortization*, *Commissioner*, *FHA*, *Insured Mortgage*, *Mortgage*, *Mortgagee*, *Mortgagor*, and *State*, as used in this

part, are defined in § 203.251 of this chapter. The following terms, as used in this part, are defined as follows:

Bona fide tenants' organization means an association of tenants formed by the tenants to promote their interests in a particular project, with membership in the association open to each tenant, and all requirements of the association applying equally to every tenant.

Common areas and facilities means those areas of the project and of the property upon which it is located that are for the use and enjoyment of the owners of family units located in the project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space and community and commercial facilities.

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.

Family unit means a one-family unit including the undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated.

Project means a structure or structures containing four or more family units.

Project mortgage means a mortgage which is or has been insured under any of the FHA multifamily housing programs, other than sections 213(a)(1) and 213(a)(2) of the Act (12 U.S.C. 1715e).

Restricted common areas and facilities means those areas and facilities restricted to a particular family unit or number of family units.

Tenant means the occupant(s) named in the lease or rental agreement of a housing unit in a project as of the date the condominium conversion documents are properly filed for the project, or as of the date on which the occupants are notified by management of intent to convert the project to a condominium, whichever is earlier.

§ 234.17 Mortgagor and mortgagee requirements for maintaining flood insurance coverage.

The maintenance of flood insurance coverage on the project by the condominium association will satisfy the requirements of § 203.16a of this chapter if such coverage protects the interest of the mortgagor in the family unit. For this purpose, "the interest of the mortgagor" is defined as insurance coverage equal to the replacement cost of the project less land costs.

§ 234.26 Project requirements.

No mortgage shall be eligible for insurance unless the following requirements are met:

(a) *Location of family unit.* The family unit shall be located in a project that the Commissioner determines to be acceptable.

(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.

(c) *Releases.* The family unit shall have been released from any mortgage covering the project or any part of the project.

(d) *Certificate by mortgagee.* The mortgagee shall certify that:

(1) The deed of the family unit and the deed or other recorded instrument committing the project to a plan of condominium ownership comply with legal requirements of the jurisdiction.

(2) The mortgagor has good marketable title to the family unit, subject only to a mortgage that is a valid first lien on the family unit.

(3) The family unit is assessed and subject to assessment for taxes pertaining only to that unit.

(e) *Conditions and provisions.* (1) The Commissioner may require such conditions and provisions as the Commissioner determines are necessary for the protection of consumers and the public interest.

(2) An application for mortgage insurance of a unit will not be approved if approval would result in less than 80 percent of the FHA-insured mortgages covering units in the project being occupied by mortgagors or co-mortgagors as a principal residence or a secondary residence (as these terms are defined in § 203.18 of this chapter).

(3) In addition to the other requirements of this section, in order for a project to be acceptable to the Secretary, at least 51 percent of all family units (including units not covered by FHA-insured mortgages) must be occupied by the owners as a principal residence or a secondary residence (as these terms are defined in § 203.18 of this chapter), or must have been sold to owners who intend to meet this occupancy requirement.

(f) *Limitations on conversion of rental housing to condominium use.* With respect to a family unit in any project that was converted from rental housing, no insurance will be provided under this section unless:

(1) The conversion occurred more than one year before the application for insurance; or

(2) The mortgagor or comortgagor was a tenant of a unit in the rental housing project converted to condominium use; or

(3) The conversion of the property is sponsored by a bona fide tenants' organization representing a majority of the households in the project.

(g) *Projects covered by an insured or Secretary-held mortgage.* In addition to the requirements contained in paragraphs (a) through (f) of this section, projects which are covered by an FHA-insured project mortgage, or by a mortgage held by the Secretary, must be in compliance with a conversion plan approved by the Commissioner. The conversion plan shall provide for:

(1) The termination by payment in full of the mortgage or by voluntary termination of the insurance contract covering any HUD/FHA-insured or Secretary-held mortgage on the project, unless the Commissioner determines that the Commissioner's interests, and those of the individuals purchasing the family units, are best served by not requiring the termination of the insurance or payment in full of the mortgage.

(2) On release of a family unit from the project mortgage, payment shall be made on the outstanding balance of the project mortgage in an amount equal to the share of the balance determined by HUD to be attributable to the family unit.

(3) The project mortgagee shall certify that, notwithstanding any provisions of the mortgage covering prepayment, no charge is contemplated or has been collected for prepayment in full of the project mortgage.

(h) *Projects not covered by an insured or Secretary-held mortgage.* In addition to the requirements contained in paragraphs (a) through (f) of this section, projects which are not covered by an insured project mortgage or by a Secretary-held mortgage and which have not been approved by the Department of Veterans Affairs for its guaranty, insurance, or direct loan programs shall meet the requirements of this paragraph. Except with the approval of the Commissioner for the purpose of constructing or converting the project in phases or stages, any special right of the declarant (as declarant and not as a unit owner) to do any or all of the following must have expired or must have been waived in a recorded instrument:

(1) Add land or units to the condominium;

(2) Convert common elements into additional units or limited common elements;

(3) Withdraw land from the condominium;

(4) Use easements through the common elements for the purpose of making improvements within the

condominium or within any adjacent land; or

(5) Convert a unit into two or more units, common elements, or into two or more units and common elements.

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project (spot loan) may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90 percent of the total units in the project must have been conveyed to the unit purchasers, and at least 51 percent of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10 percent of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) For projects with more than 30 units, no more than 10 percent of the total units in the project may be encumbered by FHA-insured mortgages. (If endorsement would result in more than 10 percent of the units in such a project being encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section.) For projects with between 5 and 30 units inclusive, no more than 20 percent of the total units may be encumbered by FHA-insured mortgages. For projects with four units, only one unit may be encumbered by an FHA-insured mortgage under the spot loan procedure of this paragraph (i); and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a spot loan in a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

(Approved by the Office of Management and Budget under control number 2502-0513.)

§ 234.54 Eligibility of assigned mortgages and mortgages covering acquired property.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart (except that the property must be located in a condominium project approved under § 234.26), any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the Act.

§ 234.63 Location of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 203.251 of this chapter, and not located on "Hawaiian home lands," as that term is defined in section 247(d)(2) of the Act.

§ 234.65 Nature of title.

A mortgage, to be eligible for insurance, shall be on a fee interest in, or on a leasehold interest in, a one-family unit in a project including an undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated. To be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

§ 234.66 Free assumability; exceptions.

For purposes of HUD's policy of free assumability with no restrictions, as provided in § 203.41 of this chapter, the definition of *Legal restrictions on conveyance* in § 203.41(a)(3) of this chapter does not include rights of first refusal held by a condominium association for a project approved by the Secretary under this subpart prior to September 10, 1993.

18. Section 234.251 is revised to read as follows:

§ 234.251 Definitions.

The definitions in § 203.251 of this chapter apply to this subpart.

§ 234.256 [Amended]

19. Section 234.256 is amended by revising paragraphs (a), (b), (e), and (f), to read as follows:

(a) *Selling mortgagor.* The requirements for the selling mortgagor are set forth in § 203.258(a) of this chapter.

(b) *Purchasing mortgagor.* (1) If the dwelling is a principal or secondary place of residence, the requirements for the purchasing mortgagor are set forth in § 203.258(b)(1) of this chapter.

* * * * *

(e) *Direct endorsement.* Requirements for the direct endorsement program are set forth in § 203.258(f) of this chapter.

(f) *Substitute mortgagor* is defined in § 203.258(f) of this chapter.

20. Section 234.259 is revised to read as follows:

§ 234.259 Claim procedure—graduated payment mortgages.

Section 203.436 of this chapter applies to mortgages under this subpart.

Dated: November 6, 1996.

Stephanie A. Smith,

*General Deputy Assistant Secretary for
Housing-Federal Housing Commissioner.*

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