

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 206**

[Docket No. FR-4267-F-02]

RIN 2502-AG93

Home Equity Conversion Mortgage Insurance; Right of First Refusal Permitted for Condominium Associations

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

ACTION: Final rule.

SUMMARY: This final rule removes, for the Home Equity Conversion Mortgage (HECM) insurance program only, the restriction on FHA mortgage insurance for a dwelling unit in a condominium project where the condominium association has a right of first refusal.

DATES: *Effective Date:* March 6, 2000.

FOR FURTHER INFORMATION CONTACT:

Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708-2700. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed by calling the Federal Information Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

HUD published an interim rule on April 9, 1998 (63 FR 17654) to permit a condominium unit owner to obtain an FHA-insured Home Equity Conversion Mortgage (HECM) when the condominium association holds a right of first refusal. The interim rule created an exception to the general policy for FHA single family programs which bars most rights of first refusal, including all rights of first refusal held by condominium associations. The interim rule does not permit condominium associations to exercise their rights of first refusal to engage in practices that violate the Fair Housing Act, and the

Department stated in the preamble to the interim rule that all of its enforcement authority would be used if illegal discriminatory practices occur as a result of the exercise of a right of first refusal.

Public Comment

HUD received one public comment on the interim rule. It suggested that the exception created by the interim rule for condominiums be expanded to include planned unit developments (PUDs), to permit HUD to insure HECMs on property in PUDs where a homeowner association holds a right of first refusal. The Department will consider this suggestion in the future, and may go forward with further rulemaking if it is decided that PUDs should be included in the same exception as condominiums. At this time, however, the Department has not determined that such a change is needed. It is appropriate to conclude this rulemaking by adopting the interim rule as a final rule without change.

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 interim rule, and in doing so certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule removes the restriction on FHA mortgage insurance for a dwelling unit in a condominium project where the condominium association has a right of first refusal to purchase units that are offered for sale.

Environmental Finding

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This 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 7th Street S.W., Washington, D.C. 20410.

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 compliance costs on State and local governments or is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final 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.

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 interim 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.

Catalog of Domestic Federal Assistance

The Catalog of Federal Domestic Assistance number for the Home Equity Conversion Mortgage Program is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the interim rule published at 63 FR 17654, April 9, 1998, is adopted as final without change.

Dated: January 20, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

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