

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
8-Mar-12 .....	OR	Portland .....	Portland Intl .....	2/5031	1/24/12	ILS RWY 10R (SA CAT I), Amdt 34
8-Mar-12 .....	AZ	Phoenix .....	Phoenix Sky Harbor Intl .....	2/5642	1/27/12	RNAV (GPS) Y RWY 7R, Amdt 1

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 203

[Docket No. FR-5461-F-02]

RIN 2502-AJ01

### Federal Housing Administration (FHA): Suspension of Section 238(c) Single-Family Mortgage Insurance in Military Impacted Areas

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

**ACTION:** Final rule.

**SUMMARY:** On August 30, 2011, HUD published a proposed rule to suspend FHA's mortgage insurance program for military impacted areas under section 238(c) of the National Housing Act. This single-family mortgage insurance program, established by regulation in 1977, has been significantly underutilized for the past several years. Additionally, these mortgage loans are insured under comparable terms and conditions as loans insured under HUD's primary single-family mortgage insurance program under section 203(b) of the National Housing Act. Accordingly, those borrowers who would be served under section 238(c) of the National Housing Act are served equally well under the section 203(b) mortgage insurance program. The suspension of this mortgage insurance program is consistent with the President's budget requests for Fiscal Years (FYs) 2011 and 2012. In this final rule, HUD is adopting the proposed rule without change.

**DATES:** *Effective Date:* March 19, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410-8000; telephone number 202-708-4308 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background—The Proposed Rule

On August 30, 2011, HUD published a proposed rule in the **Federal Register** (76 FR 53851) to suspend FHA's mortgage insurance program for military impacted areas under section 238(c) of the National Housing Act (Act). Section 238(c) of the Act (12 U.S.C. 1715z-3(c)) was added by the Housing and Community Development Act of 1977 (Pub. L. 95-128) to authorize HUD to insure mortgages executed in connection with the construction, repair, rehabilitation, or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas in which conditions are such that one or more of the applicable insuring requirements under another single-family mortgage insurance program cannot be met.

HUD's current regulation implementing section 238(c) is codified at 24 CFR 203.43e. The regulation, promulgated in 1977, closely tracks the language of section 238(c) of the Act. Although established to ensure the availability of affordable housing in military impacted areas, the program has been minimally utilized by eligible borrowers. Section 238(c) mortgage insurance has been available in only six counties throughout the country, three in Georgia and three in New York. From January 1, 2005, to June 30, 2010, FHA insured 4,542 single-family home loans in these six counties, and only 2,309 were endorsed under section 238(c) of the Act. The 2,309 loans endorsed since 2005 represent only .05 percent of all FHA-insured loans endorsed during that span.

The President's budget requests for FYs 2011 and 2012 acknowledged the underutilization of the section 238(c) program and advised that HUD would take action to halt the availability of the program in light of the significant underutilization. The FY 2011 budget request found at <http://www.gpoaccess.gov/usbudget/fy11/index.html> states the following:

The Budget assumes that HUD will administratively suspend the Section 238(c) program in 2011. The Section 238(c) program provides single family mortgage insurance similar to MMI for a small number of families in areas affected by military installations. The elimination of Section 238(c) will not negatively impact the availability of FHA insured financing in the six counties currently covered under this program. (See

HUD Appendix to the Budget at page 620 at <http://www.gpoaccess.gov/usbudget/fy11/appendix.html>).<sup>1</sup>

### II. This Final Rule

This final rule follows publication of the August 30, 2011, proposed rule. The proposed rule provided for a 60-day public comment period, which closed on October 31, 2011. HUD did not receive any public comments, and HUD is adopting as final the proposed August 30, 2011, rule without change.

Consistent with the President's budget request and Executive Order (EO) 13563, entitled "Improving Regulation and Regulatory Review," signed by the President on January 18, 2011, and published on January 21, 2011, at 76 FR 3821, this final rule suspends the section 238(c) program and removes § 203.43e from HUD's codified regulations. HUD's removal of the regulations at § 203.43e is not inconsistent with suspension of the section 238(c) mortgage insurance program. If HUD subsequently determines that there is a demand for this program and that military families would be better served by this program, HUD can reactivate it on the basis of the statutory language and does not need a regulation to make insurance available under this program. If such a situation occurs, HUD would notify the public through **Federal Register** notice that the program has been activated, so that eligible borrowers would be able to inquire about the availability of insurance under this program from their lenders. HUD notes that the removal of the regulations at § 203.43e would have no impact on loans already endorsed for FHA insurance under the section 238(c) program.

### III. Findings and Certification

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a 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

<sup>1</sup> The President's Budget for FY 2012, found at <http://www.whitehouse.gov/omb/budget/Overview>, contains identical language to the paragraph cited above; see the HUD Appendix to the FY 2012 Budget on page 591.

economic impact on a substantial number of small entities.

The final rule would not modify or add any new regulatory burdens on FHA-approved mortgage lenders. Rather, the final rule would remove § 203.43e from HUD's regulations, in conformity to HUD's (and the Administration's) decision to no longer exercise its authority to insure mortgages under section 238(c) of the Act. As more fully discussed above in the preamble to this rule, the mortgage insurance authority provided by section 238(c) of the Act has been minimally sought by eligible borrowers and consequently minimally utilized by lenders and other small entities participating in the FHA programs. Further, as noted above, section 238(c) mortgage insurance operated in a manner comparable to FHA's mortgage insurance program under section 203(b) of the Act, HUD's primary single-family mortgage insurance program.

Accordingly, for the above reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of 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 rule will not have federalism implications and would 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 (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 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 UMRA.

#### *Environmental Impact*

This final 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 rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

#### **List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, 24 CFR part 203 is amended as follows:

#### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

- 1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

- 2. Remove and reserve § 203.43e.

Dated: February 10, 2012.

**Carol J. Galante,**

*Acting Assistant Secretary for Housing—  
Federal Housing Commissioner.*

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