

of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

The interim rule should have a positive effect on families by clarifying the coverage rules for mortgage servicing accounts, which contain, for some period of time, the mortgage payments from borrowers.

**VII. Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget has determined that the interim rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 ("SBREFA") (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

**List of Subjects in 12 CFR Part 330**

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

**PART 330—DEPOSIT INSURANCE COVERAGE**

■ 1. The authority citation for part 330 continues to read as follows:

**Authority:** 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. In § 330.1, paragraph (n) is revised to read as follows:

**§ 330.1 Definitions.**

\* \* \* \* \*

(n) *Standard maximum deposit insurance amount*, referred to as the "SMDIA" hereafter, means \$250,000 from October 3, 2008, until December 31, 2009. Effective January 1, 2010, the SMDIA means \$100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use \$100,000 as the SMDIA.

\* \* \* \* \*

■ 3. In § 330.7, paragraph (d) is revised to read as follows:

**§ 330.7 Account held by an agent, nominee, guardian, custodian or conservator.**

\* \* \* \* \*

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, up to a limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 10, 2008, for all existing and future mortgage servicing account.

\* \* \* \* \*

By order of the Board of Directors.  
Dated at Washington DC., this 10th day of October 2008.

Federal Deposit Insurance Corporation.  
**Valerie J. Best,**  
*Assistant Executive Secretary.*

[FR Doc. E8-24626 Filed 10-16-08; 8:45 am]  
**BILLING CODE 6714-01-P**

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 951**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1291**

**RIN 2590-AA04**

**Affordable Housing Program Amendments: Federal Home Loan Bank Mortgage Refinancing Authority**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing and seeking comment on an interim final rule to implement section 1218 of the Housing and Economic Recovery Act of 2008 (Recovery Act), which requires the FHFA to allow the Federal Home Loan Banks (Banks) until July 30, 2010, to use Affordable Housing Program (AHP) homeownership set-aside funds to refinance low- or moderate-income households' mortgage loans. This rulemaking relocates the AHP regulation to the FHFA rules, and adds new provisions that allow the Banks to use AHP set-aside funds to provide direct subsidies to low- or moderate-income households who qualify for refinancing

assistance under the HOPE for Homeowners Program established by the Federal Housing Administration (FHA) under Title IV of the Recovery Act.

**ADDRESSES:** This interim final rule is effective October 17, 2008. The FHFA will accept written comments on the interim final rule on or before December 16, 2008.

**Comments:** Submit comments to the FHFA using any *one* of the following methods:

**E-mail:** [comments@fhfb.gov](mailto:comments@fhfb.gov). Please include RIN 2590-AA04 in the subject line of the message.  
**Fax:** 202-408-2580.

**Mail/Hand Delivery:** Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, **Attention:** Public Comments/RIN 2590-AA04.

**Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the FHFA at [comments@fhfb.gov](mailto:comments@fhfb.gov) to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Federal Housing Finance Agency. Interim Final Rule: Affordable Housing Program Amendments: Federal Home Loan Bank Mortgage Refinancing Authority. RIN 2590-AA04.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfb.gov/Default.aspx?Page=93&Top=93>.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Martinez, Senior Policy Analyst, 202-408-2825, [martinezs@fhfb.gov](mailto:martinezs@fhfb.gov); or Amy Bogdon, Senior Advisor, 202-408-2546, [bogdona@fhfb.gov](mailto:bogdona@fhfb.gov). For legal questions: Sharon B. Like, Senior Attorney-Advisor, 202-408-2930, [likes@fhfb.gov](mailto:likes@fhfb.gov). You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Federal Housing Finance Regulatory Reform Act of 2008**

Effective July 30, 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008 (Reform Act), created the Federal Housing Finance Agency (FHFA) as an independent agency of the federal government. The Reform Act

transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the Federal Home Loan Banks (Banks), and the Bank System's Office of Finance, from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) to the FHFA. The Reform Act provides for the abolishment of OFHEO and the FHFB one year after the date of enactment. The FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including being capitalized adequately, and carry out their public policy missions, including fostering liquid, efficient, competitive, and resilient national housing finance markets.

The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and the FHFB until the FHFA issues its own regulations.

#### *B. The Banks' Affordable Housing Program*

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable a Bank's members to finance homeownership by households with incomes at or below 80 percent of the area median income (low- or moderate-income households), and to finance the purchase, construction, or rehabilitation of rental projects in which at least 20 percent of the units will be occupied by and affordable for households earning 50 percent or less of the area median income (very low-income households). See 12 U.S.C. 1430(j)(1) and (2). The Bank Act requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 12 Banks of \$100 million. See 12 U.S.C. 1430(j)(5)(C). Section 1218 of the Reform Act amended section 10(j) by adding a new paragraph (2)(C) that requires the FHFA to allow the Banks until July 30, 2010, to use AHP homeownership set-aside funds to refinance low- or moderate-income households' first mortgage loans on their primary residences. See 12 U.S.C. 1430(j)(2)(C). The Director of the FHFA must establish the percentage of set-aside funds eligible for this use by regulation.

The FHFB regulation implementing the AHP provisions of the Bank Act, previously codified at 12 CFR part 951, is relocated by this rulemaking to part 1291. The following discussion uses the

new numbering references. Among other things,<sup>1</sup> the AHP regulation authorizes a Bank, in its discretion, to set aside a portion of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households. See 12 CFR 1291.6. Under the homeownership set-aside programs, a Bank may provide AHP direct subsidy (grants) to members to pay for down payment assistance, closing costs, and counseling costs in connection with a household's purchase of its primary residence, and for rehabilitation assistance in connection with a household's rehabilitation of an owner-occupied residence. See 12 CFR 1291.6(c)(4). The AHP regulation does not authorize the Banks to use AHP set-aside funds for refinancing of mortgages. Currently, a Bank may allocate up to the greater of \$4.5 million or 35 percent of its annual required AHP contribution to homeownership set-aside programs in that year, provided that at least one-third of the Bank's annual set-aside allocation is targeted to first-time homebuyers. See 12 CFR 1291.2(b)(2)(i).

In January 2008, the FHFB waived certain provisions of the AHP homeownership set-aside program rule to allow the Federal Home Loan Bank of San Francisco (San Francisco Bank) to establish a temporary pilot program to provide AHP direct subsidy to enable a household with a subprime or nontraditional loan held by a San Francisco Bank member or its affiliate to refinance or restructure the loan into an affordable, long-term fixed-rate mortgage. See FHFB Resolution 2008-01 (Jan. 15, 2008). The authority will expire on December 31, 2009. In April 2008, the FHFB published a proposed rule that would have temporarily extended the authority to use set-aside funds for mortgage refinancing or restructuring to all of the Banks. See 73 FR 20552 (Apr. 16, 2008). The FHFB received 36 comments on the proposal. Commenters who supported use of AHP funds for refinancing suggested flexibility in the rules governing use of the funds so the Banks and their members would be able to assist a greater number of borrowers in distress, including allowing use of AHP set-aside funds in conjunction with other federal, state or local mortgage refinancing programs.

<sup>1</sup> In addition to the discretionary set-aside authority, the AHP regulation requires that each Bank establish a competitive application program under which the Bank's members may apply for AHP subsidies pursuant to eligibility requirements and scoring criteria set forth in the regulation and implemented through Bank policies. See 12 CFR 1291.5.

Before the FHFB took final action on the proposed amendments to the AHP rule, the Reform Act added section 10(j)(2)(C) to the Bank Act. Title IV of the Recovery Act also required establishment by the FHA of the HOPE for Homeowners Program, a temporary program expected to be implemented by October 1, 2008, and which will expire on September 30, 2011. Participation in the HOPE for Homeowners Program is voluntary on the part of homeowners and existing loan holders. Under the HOPE for Homeowners Program, FHA-approved lenders may refinance loans that will qualify for FHA insurance if the amount of the loan is reduced to no more than 90 percent of the currently appraised value of the owner-occupied property. The FHA insurance premium, which equals 3 percent of the remaining principal, is deducted upfront. The borrower will pay an annual premium of 1.5 percent of the outstanding mortgage amount.

The purpose of the HOPE for Homeowners Program, like that of the Banks' refinancing authority under the AHP, is to assist distressed homeowners and support long-term affordable homeownership. The FHFA believes that use of AHP subsidy in conjunction with the HOPE for Homeowners Program will leverage and enhance the effectiveness of each program, ensure that the full range of federal assistance to affected homeowners is available quickly, and provide the flexibility that the Banks and their members need to make the AHP refinancing program successful. In adopting this approach, the FHFA has consulted with the FHA. Linking the use of the AHP subsidy to refinancing under the HOPE for Homeowners Program also would be consistent with the requirement in section 10(j)(9)(G) of the Bank Act that the AHP rule coordinate AHP activities with other federal or federally-subsidized affordable housing activities to the maximum extent possible. See 12 U.S.C. 1430(j)(9)(G). Accordingly, this interim final rule authorizes a Bank, in its discretion, to temporarily establish a homeownership set-aside program for the use of AHP direct subsidy by its members to assist in the refinancing of a household's mortgage loan under the FHA's HOPE for Homeowners Program.

Section 1201 of the Reform Act requires the Director of the FHFA to consider the differences between the Banks and the Enterprises in rulemakings that affect the Banks with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure,

and joint and several liability. 12 U.S.C. 4513(f). In preparing the interim final rule, the Director considered these factors and determined that the rule is appropriate, particularly because the AHP regulation implements a statutory provision of the Bank Act that applies only to the Banks. See 12 U.S.C. 1430(j).

## II. Analysis of the Interim Final Rule

### A. Relocation of AHP Rule to Part 1291

The interim final rule relocates the AHP rule from part 951 of the FHFBA regulations to part 1291 of the FHFA regulations, and renames the new part to read "Federal Home Loan Banks' Affordable Housing Program". The rule also renumbers references within the rule to reflect its new part number.

### B. Authority To Establish Mortgage Refinancing Program: § 1291.6(f)(1)

The interim final rule adds a new paragraph (f) under the existing AHP homeownership set-aside program provisions of § 1291.6 of the AHP regulation, that authorizes a Bank, in its discretion, to temporarily establish a homeownership set-aside program for the use of AHP direct subsidy by its members to assist in the refinancing of a household's mortgage loan under FHA's HOPE for Homeowners Program. 12 CFR 1291.6(f). As a general proposition, any such new refinancing program must comply with the existing requirements in § 1291.6, except for certain specified provisions, as well as with the requirements of part 1291. Thus, the existing provisions in § 1291.6 governing eligible member applicants, member allocation criteria, household income eligibility, maximum subsidy per household limit of \$15,000, *de minimis* cash backs, application approvals, funding procedures, reservation of subsidies, and progress towards use of the subsidy, all apply to a Bank's mortgage refinancing program. See 12 CFR 1291.6(b), (c)(1), (c)(2)(i), (c)(3), (c)(9), (d), (e). Similarly, a Bank's mortgage refinancing program must otherwise meet the requirements of part 1291, including the monitoring, remedial actions for member noncompliance, and agreements provisions in §§ 1291.7, 1291.8, and 1291.9, respectively, other than the requirement in § 1291.9(a)(7) for five-year retention agreements in connection with a household's subsequent sale or refinancing of the unit.

The interim final rule provides that the provisions in § 1291.6 governing household completion of a counseling program, first-time homebuyer and additional discretionary household eligibility criteria, eligible uses of AHP

subsidy, five-year retention agreements, lender financial or other concessions, loan financing costs, and counseling costs requirements, all do not apply to the new refinancing programs. See 12 CFR 1291.6(c)(2)(ii), (c)(2)(iii), (c)(4)–(c)(8).

### C. Funding Allocation: § 1291.2(b)(2)(i)

In order to maximize the Banks' role in responding to the current national mortgage crisis, the interim final rule allows a Bank to allocate the maximum permissible homeownership set-aside allocation entirely to a mortgage refinancing program established under new paragraph (f). See 12 CFR 1291.2(b)(2)(i). The interim final rule further provides that if a Bank sets aside funds solely for homeownership set-aside programs other than a mortgage refinancing program established under paragraph (f), at least one-third of the Bank's aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers. This is consistent with the current one-third first-time homebuyers requirement.

### D. Eligible Loans: § 1291.6(f)(2)

Under the interim final rule, a loan is eligible to be refinanced with AHP direct subsidy if the loan is secured by a first mortgage on an owner-occupied unit that is the primary residence of the household, and the loan is refinanced under the HOPE for Homeowners Program. 12 CFR 1291.6(f)(2). In order to be refinanced under the HOPE for Homeowners Program, the loan must meet all applicable underwriting requirements and other FHA standards for the HOPE for Homeowners Program. The FHFA believes that these requirements and standards will provide both adequate protections to borrowers whose loans will be refinanced and protect the integrity of the AHP. For example, under the HOPE for Homeowners Program and FHA standards:

- The borrower must be unable to afford its existing mortgage payments; the borrower's mortgage debt-to-income ratio, as of March 1, 2008, must have been greater than 31 percent, or such higher amount as the FHA determines appropriate;
- The principal amount of the refinanced loan shall not exceed 90 percent of the currently appraised value of the property;
- The refinanced loan must be a fixed-rate, fully amortizing, 30-year loan;
- Prepayment fees must be waived;
- All fees and penalties related to default or delinquency on the original mortgage must be waived or forgiven;

- Any outstanding mortgage liens on the property shall be removed;

- Investor-owned properties are not eligible—the borrower must be an owner-occupant;

- The borrower must have verified income based on an IRS tax return or other equivalent standards;

- The borrower may be charged only reasonable and customary closing costs established by the FHA;

- Origination fees are subject to limitation; and

- Rates on refinanced mortgages must be commensurate with market interest rates.

There are other programs that provide refinancing assistance to distressed borrowers. The Enterprises offer programs that allow for loan modifications targeted at subprime mortgage borrowers but which do not require that lenders take an initial write-down based on the current appraised value. The FHA offers a refinancing option in addition to the HOPE for Homeowners Program called FHA Secure. Under FHA Secure, any mortgage payment arrearage on the first loan can be rolled into a new FHA-insured loan. Further, lenders have the option of placing a second lien on the property if the borrower owes more than the property is worth or exceeds the FHA loan limit or to cover prepayment penalties and arrearages. In addition, state housing finance agencies are developing their own refinancing programs to assist distressed homeowners. Because these programs are diverse and emerging, the FHFA has not analyzed their specific merits.

The FHFA requests comment on whether the rule should authorize the Banks to use AHP set-aside funds to assist homeowners refinancing under other programs intended to aid distressed homeowners, such as those offered by the Enterprises, FHA Secure, or any state housing finance agency programs. In addition, the FHFA requests comment on how the standards for these programs will assure the affordability of the housing costs to the borrower and the sustainability of the refinanced loan.

### E. Eligible Uses of AHP Subsidy: § 1291.6(f)(3)

The interim final rule allows members to provide AHP direct subsidy for two uses. 12 CFR 1291.6(f)(3). A member may use the subsidy to reduce the outstanding principal balance of the household's loan below the maximum loan-to-value ratio required under the HOPE for Homeowners Program in order to enable the household to meet the applicable mortgage debt-to-income

ratio requirements under such Program, *i.e.*, to make the refinanced loan affordable to the household. This use of the AHP subsidy is consistent with the current AHP rule, which permits use of the AHP subsidy to pay for down payment assistance in connection with the purchase of a home under the homeownership set-aside program. See 12 CFR 1291.6(c)(4). In addition, under the new AHP refinancing authority, a member may use the AHP subsidy to pay FHA-approved loan closing costs. This use of AHP subsidy also is consistent with the current AHP rule, which permits use of the AHP subsidy to pay for closing costs in connection with the purchase of a home under the homeownership set-aside program. See 12 CFR 1291.6(c)(4) and (8).

#### *F. Eligible Lender Participants: § 1291.6(f)(4)*

Under the interim final rule, a Bank may provide the AHP direct subsidy to members that are FHA-approved lenders for the purpose of refinancing an eligible loan with an FHA-insured loan by the member. A Bank may also, in its discretion, provide the AHP subsidy to members that will provide the subsidy to FHA-approved lenders that are not members of the Bank for the purpose of refinancing an eligible loan if, after consulting with the Bank's Advisory Council, the Bank determines that such action would be in the best interests of borrowers in the Bank's district. 12 CFR 1291.6(f)(4). Providing the subsidy to members, or to members who provide it to nonmembers, is consistent with the current AHP homeownership set-aside process under which a Bank provides the AHP subsidy to a member for use in conjunction with making a loan to a borrower, or to a member that provides the subsidy to another member or nonmember lender to make an AHP-assisted loan to a borrower.

#### *G. AHP Retention Agreements*

The interim final rule does not require five-year retention agreements as required under the current AHP regulation and, therefore, does not require repayment of AHP subsidy by a household in the event of a subsequent sale or refinancing of the unit during the five-year retention period. See 12 CFR 1291.6(c)(5) and 1291.9(a)(7). The FHFA has decided not to include this requirement because the HOPE for Homeowners Program includes a requirement generally that any appreciation or equity created as a result of a sale or refinancing during the five-year period must be shared between the FHA, the borrower, and any subordinate mortgage holder whose lien was

extinguished as part of the refinancing under the Program. See Reform Act at sec. 1402(a) (National Housing Act sec. 257(e)(4)(B), and (k)).

#### *H. Monitoring: § 1291.7(b)*

The interim final rule amends existing § 1291.7(b), which sets forth the monitoring requirements for homeownership set-aside programs generally, to make a Bank's mortgage refinancing program subject to those monitoring requirements. Thus, a Bank's written monitoring policies for its homeownership set-aside programs must include requirements for: (i) Determining whether AHP subsidy was provided to households with incomes at or below 80 percent of the area median income as required in § 1291.6(c)(2)(i), and all other applicable eligibility requirements in § 1291.6(c) and (f); (ii) Bank review of member certifications, prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in § 1291.6(c) and (f); and (iii) Bank review of back-up documentation regarding household incomes maintained by the member, and maintenance and Bank review of other documentation in the Bank's discretion.

#### *I. Sunset Date: § 1291.6(f)(5)*

The interim final rule includes a provision terminating the Banks' authority to commit AHP subsidy for refinancing after July 30, 2010, which is the expiration date of the two-year period in section 1218 of the Reform Act. 12 CFR 1291.6(f)(5). The rule allows lenders to use AHP subsidy committed by that date to refinance loans that are in the pipeline. This means that a lender may use the AHP subsidy for a loan that was submitted to the FHA for approval on or before July 30, 2010 that is approved for refinancing under the HOPE for Homeowners Program after that date. Title IV of the Reform Act provides that the sunset date for the HOPE for Homeowners Program is September 30, 2011. See Reform Act at sec. 1402(a) (National Housing Act sec. 257(r)). In light of our view that prior to its amendment by the Reform Act, section 10(j) of the Bank Act provided the legal authority for the FHFA to permit the Banks to use AHP subsidy to pay costs associated with refinancing existing mortgage loans, see 73 FR at 20553–55, the FHFA requests comment on whether it should extend the sunset date to be co-extensive with that of the HOPE for Homeowners Program.

The FHFA invites comments on all aspects of the interim final rule.

### **III. Notice and Public Participation**

The FHFA for good cause finds that the notice and comment procedure required by the Administrative Procedure Act is impracticable or contrary to the public interest in this instance. See 5 U.S.C. 553(b)(3)(B). Section 1218 of the Reform Act requires that the FHFA's regulations authorize the use of AHP subsidy for mortgage refinancing for a two-year period commencing on July 30, 2008. Issuance of an interim final rule will enable the Banks to expedite implementation of AHP mortgage refinancing programs pursuant to section 1218. The delay that would ensue during a proposed notice and comment rulemaking would significantly curtail the available period of time for implementation and operation of AHP mortgage refinancing programs by the Banks. However, because the FHFA believes that public comments are valuable, it encourages comments on this interim final rule, and will consider all comments received on or before December 16, 2008 in promulgating a final rule.

### **IV. Effective Date**

For the reasons stated in part III above, the FHFA for good cause finds that the interim final rule should become effective on October 17, 2008. See 5 U.S.C. 553(d)(3).

### **V. Paperwork Reduction Act**

The information collection contained in the current AHP regulation, entitled "Affordable Housing Program (AHP)," has been assigned control number 3069–0006 by the Office of Management and Budget (OMB). The interim final rule does not substantively or materially modify the approved information collection. Consequently, the FHFA has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995 (PRA). See 44 U.S.C. 3501 *et seq.*

### **VI. Regulatory Flexibility Act**

The FHFA is adopting this regulation in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2) and 603(a).

### **List of Subjects in 12 CFR Parts 951 and 1291**

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the FHFA hereby amends chapters IX

and XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

■ 1. Amend title 12 CFR chapter XII by establishing subchapter E, consisting of parts 1280 through 1299, to read as follows:

Subchapter E—Housing Goals and Mission CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 951—AFFORDABLE HOUSING PROGRAM

■ 2. Transfer 12 CFR part 951 from chapter IX, subchapter G, to chapter XII, subchapter E and redesignate as 12 CFR part 1291.

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 3. The authority citation for the newly redesignated part 1291 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

■ 3A. Revise the heading of newly redesignated part 1291 to read as set forth above.

■ 4. Amend the newly redesignated part 1291 as follows:

Table with 3 columns: Amend, By removing the reference to, And adding in its place. Lists various CFR sections and their corresponding changes.

■ 5. In newly redesignated part 1291, revise all references to "Finance Board" to read "FHFA".

■ 6. In newly redesignated § 1291.1, add the following definitions in alphabetical order:

§ 1291.1 Definitions.

\* \* \* \* \*

Director means the Director of the Federal Housing Finance Agency, or his or her designate.

\* \* \* \* \*

FHFA means the Federal Housing Finance Agency.

\* \* \* \* \*

■ 7. Amend § 1291.2(b)(2)(i) to read as follows:

**§ 1291.2 Required annual AHP contributions; allocation of contributions.**

\* \* \* \* \*

(b) \* \* \*

(2) *Homeownership set-aside programs*—(i) *Allocation amount; first-time homebuyers.* (A) A Bank, in its discretion, may set aside annually, in the aggregate, up to the greater of \$4.5 million or 35 percent of the Bank's annual required AHP contribution to provide funds to members participating in homeownership set-aside programs, including a mortgage refinancing set-aside program established under paragraph (f) of this section, pursuant to the requirements of this part.

(B) If a Bank sets aside funds solely for homeownership set-aside programs other than a mortgage refinancing program established under paragraph (f) of this section, at least one-third of the Bank's aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers.

\* \* \* \* \*

■ 8. Amend § 1291.6 by adding paragraph (f) to read as follows:

**§ 1291.6 Homeownership set-aside programs.**

\* \* \* \* \*

(f) *Mortgage refinancing program*—(1) *General.* A Bank may establish a homeownership set-aside program for the use of AHP direct subsidy by its members to assist in the refinancing of a household's mortgage loan, provided such program meets the requirements of this paragraph (f) and otherwise meets the requirements of part 1291. The provisions of paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(4) through (c)(8) of this section, shall not apply to such program.

(2) *Eligible loans.* A loan is eligible to be refinanced with AHP direct subsidy if the loan is secured by a first mortgage on an owner-occupied unit that is the primary residence of the household, and the loan is refinanced under the Federal Housing Administration's (FHA) HOPE for Homeowners Program established pursuant to Title IV of the Housing and Economic Recovery Act of 2008 and thereby meets all applicable underwriting requirements and other standards under Title II of the National Housing Act, as amended by Title IV (12 U.S.C. 1707 *et seq.*).

(3) *Eligible uses of AHP direct subsidy.* Members may provide the AHP direct subsidy to:

(i) Reduce the outstanding principal balance of the loan below the maximum loan-to-value ratio required under the HOPE for Homeowners Program in order to make the refinanced loan affordable to the household by enabling

the household to meet the HOPE for Homeowners Program's debt-to-income standards for a low-or moderate-income household; or

(ii) Pay FHA-approved loan closing costs.

(4) *Eligible lender participants.* A Bank may provide the AHP direct subsidy to members that are FHA-approved lenders for the purpose of refinancing an eligible loan with an FHA-insured loan by the member, or, in the Bank's discretion, to members that provide the subsidy to FHA-approved lenders that are not members of the Bank for the purpose of refinancing an eligible loan if, after consulting with the Bank's Advisory Council, the Bank determines that such action would be in the best interests of borrowers in the Bank's district.

(5) *Sunset.* (i) This paragraph (f) shall expire on July 30, 2010, and a Bank may not commit AHP subsidy to households under its refinancing program after such date.

(ii) A lender may use the AHP subsidy committed by such date for a loan submitted to the FHA for approval on or before July 30, 2010 that is approved for refinancing under the HOPE for Homeowners Program after such date.

■ 9. Amend § 1291.7 by:

■ a. In paragraph (b)(1)(iii), adding “and § 1291.6(f)” after “§ 1291.6(c)”; and

■ b. In paragraph (b)(2)(i), adding “and § 1291.6(f)” after “§ 1291.6(c)”.

■ 10. In newly redesignated § 1291.11, revise all references to “Board of Directors” to read “Director”.

Dated: October 7, 2008.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

[FR Doc. E8-24320 Filed 10-16-08; 8:45 am]

**BILLING CODE 8070-01-P**

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 101**

**RIN 3245-AF75**

**Small Business Energy Efficiency Program**

**AGENCY:** Small Business Administration.

**ACTION:** Direct final rule; comment request.

**SUMMARY:** The U.S. Small Business Administration (SBA or Administration) is establishing a government-wide program that builds on the Energy Star for Small Business Program, and is located at <http://www.sba.gov/energy>. This rule is promulgated to comply with a provision of the Energy Independence and Security Act of 2007.

**DATES:** This rule is effective December 1, 2008, without further action, unless SBA receives a significant adverse comment by November 17, 2008. If SBA receives any significant adverse comments, SBA will publish a timely withdrawal of this rule in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by RIN: 3245-AF75, by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting documents.

• *Mail, for paper, disk, or CD-ROM submissions:* Kathryn Holt, Analyst, Office of Policy and Strategic Planning, Office of the Administrator, 409 Third Street, SW., Mail Code 2150, Washington, DC 20416.

• *Hand Delivery/Courier:* Kathryn Holt, Analyst, Office of Policy and Strategic Planning, Office of the Administrator, 409 Third Street, SW., Mail Stop 2150, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Kathryn Holt, Analyst, Office of Policy and Strategic Planning, Office of the Administrator, 409 Third Street, SW., Mail Stop 2150, Washington, DC 20416, or send an e-mail to [kathryn.holt@sba.gov](mailto:kathryn.holt@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make its final determination of whether it will publish the information or not.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Holt, Analyst, Office of Policy and Strategic Planning, Office of the Administrator, 409 Third Street, SW., Mail Stop 2150, Washington, DC 20416 or [kathryn.holt@sba.gov](mailto:kathryn.holt@sba.gov).

**SUPPLEMENTARY INFORMATION:** The Administration has developed and coordinated a Government-wide program, building on the Energy Star for Small Business Program, to assist small business concerns in: Becoming more energy efficient, understanding the cost savings from improved energy efficiency, and identifying financing options for energy efficiency upgrades. This rule is promulgated to comply with the Energy Independence and Security Act of 2007, § 1203(b). (15 U.S.C. 657h).

The program was developed and coordinated in consultation with the Secretary of the Department of Energy and the Administrator of the Environmental Protection Agency, and