

**§ 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;

(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)(ii), 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**

**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, § 1203(b). (15 U.S.C. 657h).

**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

in cooperation with entities the Administration has considered appropriate, for example, industry trade associations, industry members, and energy efficiency organizations.

The Administration is making available the information and materials developed under the program to small business concerns, including smaller design, engineering, and construction firms, and other Federal programs for energy efficiency, such as the Energy Star for Small Business Program.

The Administration will develop a strategy to educate, encourage, and assist small business concerns in adopting energy efficient building fixtures and equipment.

### Consideration of Comments

This is a direct final rule, and SBA will review all comments. SBA believes that this rule is routine and non-controversial, and SBA anticipates no significant adverse comments to this rulemaking. If SBA receives any significant adverse comments, it will publish a timely withdrawal of this direct final rule.

### Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

#### Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### Executive Order 13132

For purposes of E.O. 13132, the SBA has determined that the rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

### Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations (Government agencies), Intergovernmental relations, Investigations, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 101 as follows:

### PART 101—ADMINISTRATION

■ 1. The authority citation for part 101 is revised to read as follows:

**Authority:** 5 U.S.C. 552 and App. 3, secs. 2, 4(a), 6(a), and 9(a)(1)(T); 15 U.S.C. 633, 634, 687; 31 U.S.C. 6506; 44 U.S.C. 3512; 42 U.S.C. 6307(d); 15 U.S.C. 657h; E.O. 12372 (July 14, 1982), 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by E.O. 12416 (April 8, 1983), 48 FR 15887, 3 CFR, 1983 Comp., p. 186.

■ 2. Amend part 101 by adding Subpart E to read as follows:

#### Subpart E—Small Business Energy Efficiency

Sec.

101.500 Small Business Energy Efficiency Program.

##### § 101.500 Small Business Energy Efficiency Program.

(a) The Administration has developed and coordinated a Government-wide

program, which is located at <http://www.sba.gov/energy>, 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.

(b) The Program has been developed and coordinated in consultation with the Secretary of the Department of Energy and the Administrator of the Environmental Protection Agency, and in cooperation with entities the Administrator has considered appropriate, for example, such as industry trade associations, industry members, and energy efficiency organizations. SBA's Office of Policy and Strategic Planning will be responsible for overseeing the program but will coordinate with the Department of Energy and EPA.

(c) The Administration is distributing and making available online, the information and materials developed under the program to small business concerns, including smaller design, engineering, and construction firms, and other Federal programs for energy efficiency, such as the Energy Star for Small Business Program.

(d) The Administration will develop a strategy to educate, encourage, and assist small business concerns in adopting energy efficient building fixtures and equipment.

**Sandy K. Baruah,**

*Acting Administrator.*

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### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 240

[Release No. 34-58774; File No. S7-08-08]

RIN 3235-AK06

#### “Naked” Short Selling Antifraud Rule

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is adopting an antifraud rule under the Securities Exchange Act of 1934 (“Exchange Act”) to address fails to deliver securities that have been associated with “naked” short selling. The rule will further evidence the liability of short sellers, including broker-dealers acting for their own