(6) Address such other items that the Director shall provide in writing in advance of such submission.

(b) *Deadline for submission.* A Bank must submit a proposed capital restoration plan no later than 15 business-days after it receives written notification that such a plan is required either because the notice specifically states that the Director has required the submission of a plan or the notice indicates that the Bank's capital classification or reclassification is to a category for which a capital restoration plan is a mandatory action required of the Bank. The Director may extend this deadline if the Director determines that such extension is necessary. Any such extension shall be in writing and provide a specific date by which the Bank must submit its proposed capital restoration plan.

* * * * *

Dated: July 29, 2009.

James B. Lockhart, III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–18581 Filed 8–3–09; 8:45 am]

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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: Section 1218 of the Housing and Economic Recovery Act of 2008 (HERA) requires the Federal Housing Finance Agency (FHFA) to permit 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. On October 17, 2008, FHFA amended its AHP regulation to authorize the Banks to provide AHP direct subsidies under their homeownership set-aside programs 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 HERA. Based on the comments received on the amendments and continuing adverse conditions of the mortgage market, FHFA has determined that in order for the AHP set-aside refinancing program to be implemented successfully for the benefit of the intended households, the scope of the program authority should be broadened and the Banks should have greater flexibility in implementing the program. Accordingly, FHFA is issuing and seeking comment on an interim final rule that authorizes the Banks to provide AHP subsidy through their members to assist in the refinancing of eligible households' mortgages under eligible Federal, State and local programs for targeted refinancing in addition to the Hope for Homeowners Program. These programs would include the Administration's Making Home Affordable Refinancing program. The interim final rule permits the Banks to provide AHP direct subsidy to members and to use the subsidy for principal reduction and for loan closing costs, and requires that households obtain counseling for qualification for refinancing and foreclosure mitigation.

In addition, the interim final rule enhances the ability of the Banks to respond to the mortgage crisis by providing greater flexibility to accelerate their future annual statutory AHP contributions for use in their AHP homeownership set-aside programs in the current year. The interim final rule also permits the Banks to adopt multiple housing needs under their Second District Priority scoring criterion under the AHP competitive application program.

DATES: The interim final rule is effective on August 4, 2009. FHFA will accept written comments on the interim final rule on or before October 5, 2009.

ADDRESSES: Submit comments, identified by regulatory information number (RIN) 2590–AA04, by any of the following methods:

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, Attention: Public Comments/RIN 2590–AA04.
- *E-mail: regcomments@fhfa.gov.* Please include ''RIN 2590–AA04'' in the subject line of the message.
- *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 FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission ''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.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, 202–408–2819, *Nelson.Hernandez@fhfa.gov*; Charles E. McLean, Jr., Acting Manager, Housing Mission and Goals, 202–408–2537, *Charles.McLean@fhfa.gov*; or Melissa L. Allen, Senior Policy Analyst, 202–408–2524, *Melissa.Allen@fhfa.gov*, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Sharon B. Like, Associate General Counsel, 202–414–8950, *Sharon.Like@fhfa.gov*, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the interim final rule, and will revise the rule as appropriate after taking all comments into consideration. Copies of all comments will be posted on the FHFA Internet Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

II. Background

A. HERA

Effective July 30, 2008, Division A of HERA, Public Law 110–289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal Government. HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the 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 FHFA. HERA provides for the abolishment of OFHEO and FHFB one year after the date of enactment. 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 FHFB until FHFA issues its own regulations. *See* HERA at § 1302, 122 Stat. 2795.

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% 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% of the units will be occupied by and affordable for households earning 50% 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% 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 HERA amended section 10(j) by adding a new paragraph (2)(C) which requires 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 FHFA must establish the percentage of set-aside funds eligible for this use by regulation.

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). Currently, a Bank may allocate up to the greater of $4.5 million or 35% of its annual required AHP contribution to homeownership set-aside programs in that year.

C. AHP Refinancing Initiative and Proposed Rule

In January 2008, FHFB waived certain homeownership set-aside program provisions of the AHP regulation 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 eligible households with subprime or nontraditional loans held by a San Francisco Bank member or its affiliate to refinance or restructure the loans into affordable, long-term fixed-rate mortgages. *See* FHFB Resolution No. 2008–01 (Jan. 15, 2008). The authority will expire on December 31, 2009.

In April 2008, FHFB published a proposed rule that would have extended the temporary authority to use AHP set-aside funds for mortgage refinancing or restructuring to all 12 Banks. *See* 73 FR 20552 (Apr. 16, 2008). FHFB received 36 comments on the proposal. Commenters who supported use of AHP funds for refinancing, recommended flexibility in the rules governing use of the funds so that the Banks and their members would be able to assist a greater number of borrowers in distress, including allowing the use of AHP set-aside funds in conjunction with other Federal, State or local mortgage refinancing programs.

D. October Interim Final Rule

Before FHFB took final action on the proposed amendments to the AHP regulation, section 1218 of HERA added section 10(j)(2)(C) to the Bank Act. Title IV of HERA also required establishment of the Hope for Homeowners Program, a temporary mortgage refinancing program under the FHA, which will expire on September 30, 2011. To implement the requirements of section 1218 of HERA, on October 17, 2008, FHFA published an interim final rule (''October amendments''), which added new § 1291.6(f) to the AHP homeownership set-aside regulation authorizing the Banks, in their discretion, to temporarily establish an AHP set-aside refinancing program. *See* 73 FR 61660 (Oct. 17, 2008). Specifically, § 1291.6(f) authorized the Banks to provide AHP direct subsidy to their members to assist in the refinancing of low- or moderate-income homeowners' mortgage loans under the Hope for Homeowners Program through the use of AHP subsidy to reduce loan principal and pay FHA-approved closing costs. By linking the use of the AHP subsidy with the Hope for Homeowners Program, FHFA intended to leverage and enhance the effectiveness of each program, ensure that the full range of Federal assistance to affected homeowners was available quickly, and provide the flexibility that the Banks and their members need to make the AHP refinancing program successful.

FHFA received 38 comment letters on the October amendments, representing 40 commenters.[1] Commenters included: 8 Banks; 2 Bank Advisory Councils; 3 trade associations; 2 housing advocacy and assistance organizations; and 25 individuals. Thirteen of the 40 commenters supported the use of AHP subsidies for refinancing households with unaffordable mortgages. The other 27 commenters opposed the use of AHP subsidies for refinancing, citing the ongoing, critical need for AHP homeownership set-aside subsidies to assist home purchases.

E. HERA Section 1201

Section 1201 of HERA requires the FHFA Director 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. *See* 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 rule implements a statutory provision of the Bank Act that applies only to the Banks. *See* 12 U.S.C. 1430(j). Nonetheless, FHFA requests comment on whether these factors should result in a revision of the rule as it relates to the Banks.

III. Analysis of the Interim Final Rule

A. Definition of Eligible Targeted Refinancing Program: § 1291.1

The October amendments provided that a household's 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. FHFA specifically requested comment on whether the Banks should be permitted 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, FHASecure, or any

[1] Letters from two of the Banks also incorporate the comments of those Banks' respective Affordable Housing Advisory Councils (Advisory Councils).

State housing finance agency programs. *See* 73 FR 61660, 61662 (Oct. 17, 2008). Thirteen commenters supported AHP refinancing authority for the Banks but opposed limiting the authority to assistance under the Hope for Homeowners Program. The commenters stated that the Hope for Homeowners Program is too narrowly tailored to assist a large number of households and has attracted little lender interest. The commenters pointed out that there are other, successful Federal and State programs targeted to assisting households refinance their unaffordable mortgages, and that the Banks should be permitted to provide AHP subsidy in conjunction with these programs. Twelve of the 13 commenters specifically supported use of AHP subsidy with the FHASecure Program, U.S. Department of Agriculture (USDA) programs, and State and local housing finance agency programs. Ten commenters recommended that the Banks be permitted to provide AHP subsidy in conjunction with targeted refinancing or restructuring programs of Fannie Mae and Freddie Mac, which had established the Streamlined Modification Program at the time of the October amendments. Since then, the Administration has superseded the Streamlined Modification Program with the Making Home Affordable Refinance and Modification programs for mortgages owned or guaranteed by the Enterprises. The commenters stated that each Bank should have discretion and flexibility to determine which programs in its district would make best use of AHP subsidy.

In the past year or so, a number of State housing finance agencies established taxable bond programs to refinance households with unaffordable mortgages. To help State and local housing finance agencies address the need for refinancing households into affordable mortgages, HERA authorized the temporary use of tax-exempt mortgage-revenue bonds for refinancing at-risk households with subprime mortgages. *See* HERA, § 3021. Housing finance agencies are likely to increase their refinancing activity in light of this new authority. Most of the Banks work closely with the housing finance agencies in their districts, some of which are also housing associates of the Banks, and many Bank members are participating lenders in existing housing finance agency mortgage-revenue bond programs for home purchasers.

In addition, as part of the Administration's Homeowner Affordability and Stability Plan, Fannie Mae and Freddie Mac are now responsible for implementing the Making Home Affordable programs, which include the Home Affordable Refinance program for first mortgage loans owned or guaranteed by these agencies. Many Bank members are also Fannie Mae and Freddie Mac approved seller/servicers that already participate in Fannie Mae and Freddie Mac homeownership mortgage programs.

Based on the comments and FHFA's review of Federal, State and local refinancing programs, FHFA has determined that the Hope for Homeowners Program has experienced limited usage due to statutory and regulatory restrictions and market conditions, rendering the current AHP refinancing authority of limited utility.[2] To date, no Bank has implemented an AHP refinancing program pursuant to the current AHP regulatory refinancing authority. However, other Federal, State and local targeted mortgage refinancing programs could be used in conjunction with the AHP set-aside refinancing authority. Accordingly, the interim final rule provides that loans are eligible for refinancing with AHP subsidy if they are refinanced under an ''eligible targeted refinancing program,'' which is defined in § 1291.1 as a program offered by the Department of Housing and Urban Development (HUD), USDA, Fannie Mae, Freddie Mac, a State or local government, or a State or local housing finance agency for the limited purpose of refinancing first mortgages on primary residences for households that cannot afford or are at risk of not being able to afford their monthly payments, as defined by the program, in order to prevent foreclosure. The Hope for Homeowners Program, as a HUD program, continues to be an eligible program that may be used in conjunction with the AHP set-aside refinancing program. Making the AHP subsidy available for State and local housing finance agency refinancing programs is consistent with the provision in HERA authorizing housing finance agencies to issue Federal tax-exempt mortgage-revenue bonds through the end of 2010 in order to refinance households that have subprime mortgages and are at risk of financial hardship. Including additional eligible targeted refinancing programs of other Federal, State and local agencies is also consistent with the requirement in section 10(j)(9)(G) of the Bank Act that the AHP regulation 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).

FHFA believes that there should be sufficient demand among these eligible targeted refinancing programs to absorb the limited amount of AHP subsidy that will be available for refinancing. Eligible targeted refinancing programs do not include programs that permit households to refinance for any reason, programs that provide the full amount of subsidy or other financing concessions needed for a household to achieve an affordable mortgage in accordance with the program's terms (see discussion under the Eligible Uses of Subsidy section below), or programs that involve the modification or restructuring of the loans, rather than refinancing (*i.e.,* paying off the original mortgage with the proceeds of a new loan).

The interim final rule does not limit eligible targeted refinancing programs to those in existence as of the effective date of the rule. Federal, State and local agencies and housing authorities are likely to add or replace refinancing programs during the period of AHP set-aside refinancing authorization, based on refinancing needs and housing market conditions, and FHFA does not wish to preclude the use of AHP subsidy with such programs that are consistent with the purposes of this rule. USDA is a primary source of Federal funding for owner-occupied housing primarily in rural areas, and although it has not announced a targeted refinancing program to date, it may do so in the future. A number of State housing finance agencies are also expected to implement targeted refinancing programs under their new tax-exempt mortgage-revenue bond authority in the near future. The FHASecure Program, which ended in December 2008 and assisted thousands of households in troubled mortgages, may be revived, or a program of a similar nature may be established.

Several commenters suggested that FHFA permit AHP subsidy to be used in conjunction with private targeted refinancing programs including not-for-profit programs. One commenter recommended limiting the AHP refinancing set-aside program to assisting in the refinancing of loans originated by Bank members. Three commenters also supported the use of AHP subsidy to restructure or refinance mortgages originated by members and purchased by the Banks for their Mortgage Partnership Finance (MPF) and Mortgage Purchase Program (MPP) portfolios, as consistent with efforts by the Federal Deposit Insurance Corporation to promote lender

[2] Recent changes to the Hope for Homeowners Program enacted by Congress may expand its usage.

modifications. The interim final rule does not authorize the use of AHP subsidy in conjunction with private refinancing programs, Bank-sponsored targeted advances programs for refinancing, Bank member loan refinancing programs such as the San Francisco Bank AHP refinancing pilot program, or refinancing of MPF or MPP loans. Authorizing the use of AHP subsidy in conjunction with such private refinancing sources would require the establishment of minimum program standards for eligible refinancing, including affordability requirements for the refinanced loan, loan-to-value ratios and other lending terms. If AHP subsidy were permitted to be used in conjunction with refinancing member loans, the interim final rule would need to establish member contribution requirements to ensure that the subsidy was not rewarding members or the Banks for poor underwriting or investment decisions. The comments on the April 2008 AHP refinancing proposal, which was based largely on the San Francisco Bank AHP refinancing pilot program and which included explicit program loan underwriting and member contribution requirements, indicated that the circumstances of the pilot program were not applicable outside of the San Francisco Bank district.

B. Funding Allocation: § 1291.2(b)(2)(i)

The AHP regulation permits a Bank, in its discretion, to set aside annually, in the aggregate, a maximum of the greater of $4.5 million or 35% of its annual required AHP contribution to provide funds to members participating in homeownership set-aside programs, including mortgage refinancing programs established under § 1291.6(f). *See* 12 CFR 1291.2(b)(2). Prior to the October amendments, the AHP regulation also required that at least one-third of a Bank's aggregate annual set-aside allocation to such programs be targeted for first-time homebuyers. The October amendments changed this requirement by allowing a Bank to allocate the maximum permissible homeownership set-aside allocation entirely to a mortgage refinancing program established under § 1291.6(f). *See* 12 CFR 1291.2(b)(2)(i)(A). The October amendments also provided that if a Bank sets aside funds solely for homeownership set-aside programs other than a mortgage refinancing program established under § 1291.6(f), at least one-third of the Bank's aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers. *See* 12 CFR 1291.2(b)(2)(i)(B).

All 27 commenters that opposed the October amendments opposed using AHP subsidies for refinancing at the expense of assisting new home purchases, especially at a time when there are fewer sources of purchase assistance and the decline in home prices is making homeownership possible for more low- or moderate-income households. Two of these commenters expressed concern that refinancing often does not prevent a household from losing its home due to factors other than the terms of the original mortgage and, therefore, does not constitute a better use of AHP subsidy than purchase assistance. Three commenters stated that the regulation should retain the existing homeownership set-aside requirement that a minimum one-third of the total set-aside allocation be allocated for first-time homebuyers in order to ensure that some minimum amount of AHP home purchase assistance is available.

FHFA finds these comments to be persuasive. In the current market where many existing homeowners are unable to sell their homes and purchase move-up homes because their mortgages exceed their homes' value, efforts to promote new home purchases could contribute to recovery and stabilization of the housing market. Ensuring that at least some portion of AHP set-aside subsidies is available for home purchase assistance is also consistent with HERA's establishment of Federal funding for what is commonly referred to as the Neighborhood Stabilization Program (NSP). *See* HERA, §§ 2301 through 2305. The NSP provides funding to State and local government programs for purchasing, rehabilitating and renting or selling foreclosed properties in order to mitigate the blight on communities resulting from the housing crisis. A number of State housing finance agencies are using NSP and mortgage-revenue bond funds to assist first-time homebuyers in purchasing these foreclosed properties.

Consequently, the interim final rule reinstates in § 1291.2(b)(2)(i) the requirement that at least one-third of a Bank's total annual set-aside allocation shall be targeted to assist first-time homebuyers, regardless of whether the set-aside allocation is being used for homeownership or refinancing assistance, or both. Thus, a Bank may use up to two-thirds of its annual set-aside allocation for the AHP set-aside refinancing program. If a Bank wants to increase the amount of AHP subsidy dollars available for refinancing assistance, the Bank may increase its total AHP set-aside allocation, and thereby its refinancing set-aside amount, by accelerating additional funding from subsequent years' AHP contributions as permitted under § 1291.2(b)(3) and discussed further below. In addition, the first-time homebuyers provision requires that the Bank allocate one-third of the Bank's set-aside funding for first-time homebuyers but does not require the Bank to commit or use the amount of the allocation for first-time homebuyers. If there is not sufficient demand for the first-time homebuyers allocation and the Bank does not commit the entire allocation to first-time homebuyers, then the Bank may ultimately carry over the unused portion of the first-time homebuyers allocation to other AHP set-aside uses, including refinancing.

C. Acceleration of Future AHP Contributions: § 1291.2(b)(3)

Under the Bank Act, a Bank is required to contribute at least 10% of its prior year's net earnings to its current year's AHP. *See* 12 U.S.C. 1430(j)(5)(C). Section 1291.2(b)(3) of the current AHP regulation permits a Bank, in its discretion, to reallot (*i.e.,* accelerate), from the subsequent year's required annual AHP contribution for use in the current year, an amount up to the greater of $2 million or 20% of its required annual AHP contribution for the current year. *See* 12 CFR 1291.2(b)(3). Prior to amendment in 2007, the AHP regulation based the percentage amount on the Bank's estimated amount of its required AHP contribution for the subsequent year, rather than on its required contribution for the current year.

The current housing and financial crises have created unprecedented financial conditions not contemplated by the AHP regulation. Bank earnings declined in 2008, and the Banks' earnings potential in the near future is uncertain and more unpredictable than in previous years because of market instability. In this environment, a Bank that accelerates AHP funds from the subsequent year's required contribution may find that the subsequent year's actual required AHP contribution is less than the amount accelerated. At the same time, a Bank may have no required current year AHP contribution on which to base a percentage calculation, or even expectation of a required subsequent year AHP contribution. In 2009, two Banks with no 2008 earnings have no required AHP contributions, while several other Banks have very small required AHP contributions. The ability to accelerate funds from future required AHP contributions would enable these Banks to make some level of AHP funding available in 2009.

Consequently, the interim final rule amends § 1291.2(b)(3) to increase the maximum amount that a Bank may accelerate in any one year to the greater of $5 million (an increase from $2 million) or 20% of the Bank's required annual AHP contribution for the current year. In addition, because of the uncertainty of future earnings and the possibility that a Bank may find itself in the same situation of having little or no required AHP contribution in the subsequent year, the interim final rule allows a Bank to credit the amount of the accelerated contribution against required AHP contributions over one or more of the subsequent five years. This is consistent with FHFA's policy for treatment of excess AHP annual contributions, under which a Bank that restates its earnings with the result that its annual AHP contribution exceeded the statutorily required amount, may credit the excess contributions against required AHP contributions in future periods. *See* Advisory Bulletin 06–01, ''AHP and REFCORP Contributions'' (Jan. 25, 2006). FHFA specifically requests comment on the revised acceleration provision in the interim final rule, including whether it provides sufficient flexibility to enable the Banks to maintain adequate AHP contributions during the current housing market and economic crisis.

As a technical matter, FHFA has found that use of the term ''allot'' in the current AHP regulation to describe the acceleration process has been confused with the process of allocating AHP funding between the homeownership set-aside and competitive application programs, and may also be confused with the process of allocating AHP set-aside funds between the homeownership set-aside and refinancing set-aside programs. Accordingly, the interim final rule uses the term ''acceleration,'' which was used prior to 2007, in lieu of the term ''allot'' to describe the process of using future required AHP contributions in the current year.

D. General AHP Refinancing Program Authority; Retention Agreements: § 1291.6(f)(1)

Section 1291.6(f)(1) authorizes a Bank, in its discretion, to 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 that meets the requirements in § 1291.6, except for certain specified provisions, as well as with the requirements of part 1291. The October amendments exempted the AHP set-aside refinancing program from the provisions in § 1291.6 governing five-year retention agreements on AHP-assisted household's units. *See* 12 CFR 1291.6(c)(5). Thus, an AHP-assisted household under the refinancing program would not repay AHP subsidy 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). This exemption from the AHP retention requirements was considered in light of the equity and appreciation sharing requirements of the Hope for Homeowners Program. *See* HERA, § 1402(a) (National Housing Act sec. 257(e)(4)(B), and (k)); 73 FR 61660, 61663 (Oct. 17, 2008).

Three commenters recommended that the Banks be able to require AHP retention agreements for repayment of the AHP subsidy in the event of a sale or refinancing during the five-year retention period. Four commenters stated that there could be cases where households receive AHP subsidy but subsequently fail to qualify under the Hope for Homeowners Program because they fail to make the first payment on their newly refinanced loan, and the Bank could not recover the AHP subsidy in such cases if the household subsequently sold or refinanced the home.

Under the Banks' current AHP competitive application and home purchase set-aside programs, AHP retention agreements, which may be subordinate liens or other forms of legally enforceable agreements, are used in conjunction with all types of mortgage financing provided by all Federal, State and local agencies, including other FHA programs. Because the AHP regulation requires that AHP subsidy only be repaid from any net gain from the sale or refinancing, the AHP repayment requirement should not interfere with any appreciation or equity sharing requirements of the eligible targeted refinancing programs. Requiring AHP retention agreements for the AHP set-aside refinancing program would also maintain consistency between the refinancing program and all other AHP programs, which are subject to the retention agreement requirement. Accordingly, the interim final rule requires that a household assisted under the AHP set-aside refinancing program be subject to an AHP five-year retention agreement in accordance with § 1291.6(c)(5).

E. Eligible Loans: § 1291.6(f)(2)

As discussed above, the interim final rule amends § 1291.6(f)(2) to make loans refinanced under other eligible targeted refinancing programs in addition to the Hope for Homeowners Program eligible for AHP refinancing subsidy. To be eligible for AHP refinancing assistance, a household must meet the terms of refinancing established by the eligible targeted refinancing program, such as the mortgage debt-to-income ratio, loan-to-value ratio, payment history, type of original loan (*e.g.,* subprime or nontraditional), and reasons for delinquency. In addition, pursuant to HERA, the household must have an income at or below 80% of the area median income (AMI), and the household's loan being refinanced must be a first mortgage on an owner-occupied unit that is the household's primary residence. Two commenters recommended that FHFA establish parameters or details for eligibility and underwriting standards under which other programs' requirements would fall. In the October amendments, FHFA noted that it was not necessary to establish underwriting and other household and loan eligibility requirements for the AHP set-aside refinancing program, because the requirements and standards of the Hope for Homeowners Program provide adequate protections to borrowers whose loans will be refinanced and protect the integrity of the AHP. *See* 73 FR at 61662. The requirements and standards of the other eligible targeted refinancing programs included in the interim final rule similarly protect borrowers and the integrity of the AHP. Reliance on the requirements and standards of other lenders is also consistent with the AHP home purchase set-aside program, which does not establish specific requirements for underwriting a household's mortgage, leaving the establishment of such requirements to the individual lender. Five commenters supported this approach, and several commenters stated that FHFA should not limit eligible loans to subprime and nontraditional mortgages, or require that a household be delinquent in order to receive assistance.

Consistent with the October amendments, for purposes of determining whether a household is at or below 80% of AMI under the AHP set-aside refinancing program, the interim final rule does not establish specific requirements for how a Bank should calculate a household's income. Thus, a Bank may make its own calculation of total household income, or may use the eligible targeted refinancing program's calculation of total household income for purposes of determining whether a household meets the 80% of AMI income limit. This is also consistent with the AHP home purchase set-aside program, under which each Bank establishes requirements for how to calculate household income, which may include relying on the member's calculation of household income determined in the process of underwriting the mortgage. The Hope for Homeowners Program and the Home Affordable Refinance program do not require households to meet certain income limits in order to be eligible for the program, but do calculate total household income for purposes of determining loan underwriting ratios. State housing finance agency refinancing programs have specific household income limits under their mortgage-revenue bond programs (generally 100% of AMI), and calculate total household income for purposes of determining compliance with those income limits as well as for purposes of determining underwriting ratios. The housing finance agency refinancing programs vary in how they calculate total household income with regard to the income time period (past income or current income) and the income sources (only the mortgage borrowers or all adult household members) used. Ten commenters recommended that the Banks rely on the calculation of total household income determined by other programs providing the refinancing assistance where such programs calculate income.

Section 1291.6(c)(2)(i) of the existing AHP regulation requires a Bank or member to determine a household's income eligibility at the time the member enrolls the household in the AHP homeownership set-aside program. Consistent with this requirement, the Bank or member must determine that the household is at or below 80% of AMI at the time of enrollment in the AHP set-aside refinancing program. However, a Bank or member may use the total household income provided by the eligible targeted refinancing program regardless of when that program calculated the amount.

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

1. Reduction in Outstanding Loan Principal Balance

The October amendments provided that AHP subsidy may pay 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 for the household to also meet that program's maximum debt-to-income ratio. 12 CFR 1291.6(f)(3)(i). However, there may also be cases where the household meets the program's maximum mortgage debt-to-income ratio but the outstanding principal balance of the loan exceeds the program's maximum loan-to-value ratio. To take into account such cases, the interim final rule amends the AHP regulation to permit use of the AHP subsidy to reduce the outstanding loan principal balance to the eligible targeted refinancing program's maximum loan-to-value ratio even if this results in the household having a mortgage debt-to-income ratio below the program's maximum mortgage debt-to-income ratio. The maximum amount of AHP subsidy that may be provided for the refinancing is the least amount that results in the loan meeting both the program's maximum loan-to-value ratio and maximum mortgage debt-to-income ratio. Consequently, there is no need for any AHP subsidy where a refinancing program already provides concessions and subsidy sufficient for a household to achieve an affordable mortgage in accordance with the program's terms. For example, the Fannie Mae and Freddie Mac Home Affordable Refinance program, with certain exceptions, does not require maximum mortgage debt-to-income ratios, so, generally, the AHP subsidy could be used only to reduce loan principal to achieve that program's maximum loan-to-value ratio. The interim final rule also clarifies that the applicable program underwriting debt-to-income ratio is the mortgage debt-to-income ratio.

2. Loan Closing Costs

The October amendments also authorized a member to use the AHP subsidy to pay only FHA-approved loan closing costs in connection with the refinancing of an eligible loan under the Hope for Homeowners Program. 12 CFR 1291.6(f)(3)(ii). One commenter opposed restricting the use of AHP subsidy for loan closing costs that are FHA-approved, noting that this is inconsistent with the provision in the AHP regulation that does not specify that AHP subsidy may pay only for FHA-approved closing costs in connection with the purchase of a home under the homeownership set-aside program or under the competitive application program. *See* 12 CFR 1291.6(c)(4) and (8). To maintain consistency between the AHP homeownership and refinancing set-aside programs, the interim final rule removes the language restricting eligible closing costs to FHA-approved closing costs.

Two commenters requested clarification that AHP subsidy may be used to pay FHA up-front insurance premiums under the AHP set-aside refinancing program. Because they are required for the mortgage financing, FHA up-front insurance premiums are eligible costs under the AHP homeownership set-aside and competitive application programs. Consequently, AHP subsidy may pay for such insurance premiums under the AHP set-aside refinancing program.

The October amendments excluded the current requirement of the AHP homeownership set-aside program that the rate of interest, points, fees and any other charges for all loans made in conjunction with the AHP subsidy cannot exceed a reasonable market rate of interest, points, fees and other charges for loans of similar maturity, terms and risk. 12 CFR 1291.6(c)(7). As part of the goal to achieve consistency, where applicable, between the requirements of the AHP homeownership set-aside and the refinancing set-aside programs, the interim final rule applies § 1291.6(c)(7) to the refinancing set-aside program.

G. Eligible Lender Participants: § 1291.6(f)(4)

The October amendments stated that a Bank may provide 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 under the Hope for Homeowners Program. The October amendments also stated that a Bank may, 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). All 13 commenters supporting refinancing, opposed limiting participants in the AHP set-aside refinancing program to FHA-approved lenders, noting that relatively few Bank members are FHA-approved lenders and many Bank members participate in housing finance agency mortgage-revenue bond programs and are Fannie Mae and Freddie Mac approved seller/servicers. Several commenters also stated that assistance should be available to households based on their qualifications, regardless of whether the member providing the AHP subsidy is FHA-approved. In addition, the requirement that members be FHA-approved is too restrictive since the interim final rule permits the use of the AHP subsidy with other eligible targeted refinancing programs in addition to the FHA's Hope for Homeowners Program.

Accordingly, the interim final rule eliminates the FHA-approved lender requirement.

Under the current AHP home purchase set-aside program, the Banks have discretionary authority to decide whether to permit a household to obtain a purchase-money mortgage from any lender or to require the household to obtain its mortgage from the member providing the AHP assistance.[3] Consistent with this authority, § 1291.6(f)(4) of the interim final rule permits a Bank, in its discretion, to require a household to obtain its refinancing loan through a member participating in the eligible targeted refinancing program that is providing the new mortgage to the household. The interim final rule also removes the requirement that a Bank must consult with its Advisory Council before determining that a household may use a lender other than a member of the Bank. This requirement is not specified in § 1291.6(c)(2)(iii) with respect to the adoption of other optional household eligibility requirements under the home purchase set-aside program and, in any case, is redundant with the general regulatory requirement that the Banks consult with their Advisory Councils in adopting their AHP Implementation Plans. 12 CFR 1291.3(a) and (b).

H. Household Counseling: § 1291.6(f)(5)

Section 1291.6(c)(2)(iii) of the current AHP regulation permits a Bank, in its discretion, to require homebuyers who are not first-time homebuyers to obtain homeownership counseling under the AHP home purchase set-aside program. *See* 12 CFR 1291.6(c)(2)(iii). The October amendments did not make the discretionary authority to adopt additional household eligibility requirements, such as counseling, applicable to the AHP set-aside refinancing program. Several commenters objected to the exclusion of counseling as an optional household eligibility requirement, noting the importance of counseling for households with troubled loans. The 2008 Consolidated Appropriations Bill recognized the importance of homeowner counseling by establishing and funding the National Foreclosure Mitigation Counseling (NFMC) program to assist households seeking refinancing or restructuring of their mortgages in order to avoid foreclosure. *See* Public Law 110–161. The NFMC program, under the auspices of NeighborWorks America, is comprised of an array of counseling groups including NeighborWorks' partner organizations, the Homeownership Preservation Foundation, HUD's HOPE NOW counseling coalition, the National Urban League, USA Cares (military assistance), and State and local housing finance agency counseling programs. Most, if not all, of the State housing finance agency refinancing programs require households to be reviewed and vetted by these counseling organizations before applying to their programs. The Home Affordable Refinance program encourages households to seek counseling assistance to determine if they qualify for the Fannie Mae/Freddie Mac refinance program. The NFMC program is playing an important role in counseling households to help them determine their options and qualifications for refinancing assistance under these Fannie Mae, Freddie Mac and State housing finance agency eligible targeted refinancing programs.

FHFA agrees that counseling is an important component of successful refinancing, and should be provided by competent and reputable counseling programs, such as the NFMC program or other counseling programs used by State or local government or housing finance agencies that may not be part of the NFMC program. These counseling programs can also serve as an efficient and effective means of identifying for households the assistance programs for which they may qualify. Accordingly, § 1291.6(f)(5) of the interim final rule requires that a household seeking AHP assistance must obtain counseling for foreclosure mitigation and qualification for refinancing by an eligible targeted refinancing program, through the NFMC program or other counseling program used by a State or local government or housing finance agency. Bank members would refer interested households to an NFMC program participant, or to a State or local government or housing finance agency counseling program, which would determine whether the households are eligible to have their loans refinanced through an eligible targeted refinancing program. Households determined by a counseling organization to qualify for refinancing under an eligible targeted refinancing program would then be referred to participating Bank members, who would enroll the households in the AHP set-aside refinancing program upon determination of their AHP income eligibility.

Under the interim final rule, the NFMC program and other permissible counseling organizations would thereby act as a gateway for households seeking refinancing assistance. The interim final rule does not establish a requirement for the type of educational counseling that may take a period of time that could delay the closing on the refinancing. Rather, the interim final rule requires the household to go to an NFMC program principally to determine if its loan can be refinanced by one of the eligible targeted refinancing programs and whether AHP subsidy will be needed in order for the household to obtain the refinancing. Although the household will benefit from accompanying foreclosure mitigation and credit counseling, the primary purpose of the interim final rule requirement is to ensure that the household receives counseling on a variety of available refinancing options that are suitable for that household. For example, a lender, such as an FHA lender or Fannie Mae/Freddie Mac seller/servicer, may be able to determine if a household is eligible for a specific program involving that lender, but is not likely to know if the household has other options if it is not eligible for the lender's specific program. Consequently, under the interim final rule, when a household contacts a member directly, the member would refer the household to the NFMC program or other State or local government or housing finance agency counseling program, to determine the household's eligibility before enrolling the household in the AHP refinancing program and committing AHP subsidy.

All NFMC program counseling is free to households; therefore, the interim final rule does not authorize the use of AHP subsidy to pay for such counseling costs. FHFA specifically requests comment on whether households should be required to obtain counseling for foreclosure mitigation and qualification for refinancing by an eligible targeted refinancing program prior to enrollment in the AHP set-aside refinancing program.

I. Sunset Date: § 1291.6(f)(6)

The October amendments included 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 HERA. 12 CFR 1291.6(f)(5). FHFA specifically requested comment on whether the sunset date should be extended to be co-extensive with the sunset date of the Hope for Homeowners Program on September 30, 2011. *See* 73 FR at 61663. Two commenters supported an extension of this sunset date to coincide with the sunset date for the Hope for Homeowners Program. *See* HERA,

[3] Requiring a household to obtain a new mortgage through the member is one of several types of optional household eligibility requirements that a Bank may establish under § 1291.6(c)(2)(iii).

§ 1402(a) (National Housing Act sec. 257(r)). One commenter recommended that FHFA consider adopting the sunset dates of other refinancing programs. The interim final rule retains the sunset date of July 30, 2010 in redesignated § 1291.6(f)(6). FHFA may reconsider an extension of the sunset date based on program performance as the sunset date approaches.

J. Competitive Application Program; Second District Priority Scoring Criterion: § 1291.5(d)(5)(vii)

Under the Banks' AHP competitive application program, the Second District Priority is the only one of nine scoring criteria in the AHP regulation for which a Bank may select a housing need that is not prescribed in the regulation. Unlike the First District Priority scoring criterion, the Second District Priority permits a Bank to establish only one housing need in its district. 12 CFR 1291.5(d)(5)(vi), (d)(5)(vii). The current housing crisis has led to acute housing needs that the AHP regulation does not contemplate. These needs reflect a number of interconnected factors related to foreclosures and declining home values, which adversely affect all participants in the housing industry. The hardest hit areas must contend with blighted properties and declining communities where there is a critical need for sustainable and affordable homeownership and assistance to rental sponsors to absorb properties being sold to avoid foreclosure or that are in foreclosure. At the same time, there is an increased demand for affordable rental housing in the wake of households losing their homes, compounded by a significant decline in investors for low-income housing tax credits and housing finance agency bonds for rental production.

FHFA believes that these housing market conditions have generated an urgent need for more flexibility in the Banks' capacity to respond under the AHP. The current scoring system in the AHP regulation can address foreclosed properties only marginally within the context of other, more general housing needs. Permitting the Banks to establish one or more housing needs under the Second District Priority scoring criterion would allow the AHP competitive application program to complement the efforts of the AHP refinancing set-aside and other targeted refinancing programs for foreclosure prevention and HERA's NSP for the disposition of foreclosed properties. Accordingly, the interim final rule amends § 1291.5(d)(5)(vii) of the AHP regulation to permit a Bank to establish one or more housing needs in the Bank's district under the Second District Priority scoring criterion.

FHFA believes that the severity of the housing market and the urgent need for housing assistance create exigent circumstances for amending the Second District Priority scoring criterion through an interim final rule. An immediate change is also necessary to allow the Banks and their Advisory Councils the opportunity to make any scoring revisions in this regard to their AHP Implementation Plans that would be applicable to their 2009 AHP competitive application funding rounds. FHFA specifically requests comment on whether this scoring change benefits the AHP competitive application program.

IV. Notice and Public Participation

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)(B). Section 1218 of HERA requires that FHFA's regulations authorize the use of AHP set-aside 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 set-aside refinancing programs pursuant to § 1218. In addition, as discussed above, exigent circumstances exist for amending the Second District Priority scoring criterion through an interim final rule. The delay that would ensue during a proposed notice and comment rulemaking would significantly curtail the available period of time for implementation and operation by the Banks of AHP mortgage refinancing programs and revised Second District Priorities. In view of the number and nature of the changes being made by this rule, FHFA is requesting comments and will consider all comments received on or before October 5, 2009 in promulgating a final rule.

V. Effective Date

For the reasons stated in part IV. above, FHFA for good cause finds that the interim final rule should become effective on August 4, 2009. *See* 5 U.S.C. 553(d)(3).

VI. 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, FHFA has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.*

VII. Regulatory Flexibility Act

FHFA is issuing 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 Part 1291

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

■ For the reasons stated in the preamble, FHFA hereby amends chapter XII of title 12 of the Code of Federal Regulations as follows:

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 1. The authority citation for part 1291 continues to read as follows:

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

■ 2. In § 1291.1, add the following definition in alphabetical order:

§ 1291.1 Definitions

* * * * *

Eligible targeted refinancing program means a program offered by the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture (USDA), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), a State or local government, or a State or local housing finance agency for the limited purpose of refinancing (*i.e.,* paying off) first mortgages on primary residences for households that cannot afford or are at risk of not being able to afford their monthly payments, as defined by the program, in order to prevent foreclosure.

* * * * *

■ 3. Amend § 1291.2(b)(2)(i) and (b)(3) 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 Bank, in its discretion, may set aside annually, in the aggregate, up to the greater of $4.5 million or 35% 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, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers, pursuant to the requirements of this part.

* * * * *

(3) *Additional funding.* A Bank may accelerate to its current year's program from future annual required AHP contributions an amount up to the greater of $5 million or 20% of its annual required AHP contribution for the current year. The Bank may credit the amount of the accelerated contribution against required AHP contributions under this part 1291 over one or more of the subsequent five years.

■ 4. Amend § 1291.5(d)(5)(vii) to read as follows:

§ 1291.5 Competitive application program.

* * * * *

(d) * * *

(5) * * *

(vii) *Second District priority: Defined housing needs in the District.* The satisfaction of one or more housing needs in the Bank's District, as defined by the Bank in its AHP Implementation Plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (d)(5)(vi) of this section, provided it is different from the criterion or criteria adopted by the Bank under such paragraph.

* * * * *

■ 5. Amend § 1291.6(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 regulations in this part. The provisions of paragraphs (c)(2)(ii), (c)(2)(iii), (c)(4), (c)(6) and (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 an eligible targeted refinancing program.

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

(i) Reduce the outstanding principal balance of the loan by no more than the amount necessary for the new loan to qualify under both the maximum loan-to-value ratio and the maximum household mortgage debt-to-income ratio required by the eligible targeted refinancing program; or

(ii) Pay loan closing costs.

(4) *Eligible lender participants.* A Bank, in its discretion, may require that a household obtain its refinancing loan through a member participating in an eligible targeted refinancing program.

(5) *Counseling.* Prior to enrollment in an AHP set-aside refinancing program established under this paragraph (f), a household must obtain counseling for foreclosure mitigation and for qualification for refinancing by an eligible targeted refinancing program through the National Foreclosure Mitigation Counseling program or other counseling program used by a State or local government or housing finance agency.

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

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

Dated: July 28, 2009.

James B. Lockhart, III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–18484 Filed 8–3–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. FAA–1999–5401; Amendment No. 135–118]

Manual Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making a minor technical change to a final rule published in the **Federal Register** on February 2, 2005. This final rule established new manual requirements for aging aircraft under 14 CFR part 135. In the final rule, the FAA inadvertently changed one of the regulatory references in § 135.427(a).

DATES: *Effective Dates:* Effective on August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Kim A. Barnette, Flight Standards Service (AFS–320), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC; phone (202) 385–6403; e-mail *Kim.A.Barnette@faa.gov.*

SUPPLEMENTARY INFORMATION: On February 2, 2005, the FAA published a final rule in the **Federal Register** (70 FR 5533), better known as 'Aging Airplane Safety', clarifying the content requirements in the maintenance manual. In the process, this final rule re-designated 14 CFR 135.424 to § 135.423, and failed to revise § 135.427(a), which still referenced § 135.424.

Technical Amendment

This technical amendment will correct § 135.427(a) to properly reference § 135.423.

List of Subjects

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 135 is amended as follows:

PART 135—OPERATING REQUIREMENTS; COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44101, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 2. Amend § 135.427 by revising paragraph (a) to read as follows:

§ 135.427 Manual requirements.

(a) Each certificate holder shall put in its manual the chart or description of the certificate holder's organization required by § 135.423 and a list of persons with whom it has arranged for the performance of any of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work.

* * * * *