Enterprise

Alfred Pollard, General Counsel
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, DC 20219

RE: RIN 2590-AA83, Comments on Proposed Amendments to Affordable Housing Program

Dear Mr. Pollard:

On behalf of Enterprise Community Partners, thank you for the opportunity to comment on the Federal Housing Finance Agency's proposed Affordable Housing Program (AHP) rule for the Federal Home Loan Banks (FHLBs or, simply, Banks). The AHP has proven to be an important source of funds for supporting the development and preservation of affordable rental housing, and we commend FHFA for its efforts to make the program a useful complement to other, larger funding sources like the Low Income Housing Tax Credit (Housing Credit) through streamlined compliance and potentially increased flexibility to meet a range of pressing housing needs. In developing the final rule, we encourage FHFA to make additional improvements to reduce uncertainty about disbursement of awarded funds, thereby lowering overall development costs, increasing the value of the program, and furthering the achievement of its goals.

Enterprise is a leading provider of the development capital and expertise it takes to make well-designed homes affordable and improve lives and communities. Since 1982, we have raised and invested $36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities. We are a family of companies comprised of Enterprise Community Partners (the parent nonprofit) and its related organizations: Enterprise Community Investment (a financial services company), Enterprise Community Asset Management (a multifamily asset management firm), Enterprise Community Loan Fund (a certified Community Development Financial Institution), Enterprise Homes (a housing developer) and Bellwether Enterprise Real Estate Capital (a multifamily and commercial mortgage originator).

In 2015, Enterprise Community Loan Fund joined the Federal Home Loan Bank of Atlanta and in 2017 received a $1 million award under AHP, which it split equally between the Montgomery (MD) Housing Partnership and the Midwest Affordable Housing Corporation. In addition, Enterprise Community Investments syndicates low-income housing tax credits for affordable housing developments in which AHP funds contribute to closing funding gaps. Over the past five years, one-sixth of all Housing Credit developments that we syndicated included AHP in the sources of funds.

Our approach to responding to the Notice of Proposed Rulemaking (NPR) is based on a recognition that when AHP has been successfully used as source of funds for developing or preserving affordable rental housing, it has been a needed subsidy to close gaps in project finances, but decisions about location, scale, and targeting are primarily driven by the priorities set by the primary funding source, often the Housing Credit. We would like the simplification of the compliance regime included in the NPR to be better mirrored in the underwriting process, consistent with AHP's relatively small share of overall development costs. We also strongly encourage the adoption of the flexibility shown by other funding sources to address fluctuating costs during the development process and comparable discretion at the Bank level to address deficiencies.

We recommend that the current caps on homeownership set-asides be retained, consistent with substantial need for increasing the supply of affordable rental housing. As currently proposed, we believe Targeted Funds may prove difficult to implement and insufficiently flexible to respond to emergent needs, but they may also serve as a mechanism to ensure compliance with the new outcome-based scoring system. Similarly, we encourage FHFA to provide additional, detailed guidance to Banks on developing their new scoring systems in order to achieve the flexibility intended by the NPR. It remains an open question whether the proposed system is sufficiently better than the current one to warrant the structural change; as such, FHFA might consider incorporating the desired flexibility into the existing scoring structure.

We believe that the rulemaking process now under way offers an opportunity to make the overall development process and compliance period more efficient and cost effective.

Allocation of AHP funds

We have divided our analysis of the proposed allocation of funds within AHP into three parts. First is the overall level of support for affordable rental housing and the maximum set-aside allowed for homeownership assistance. Second is the proposed creation of Targeted Funds that could be carved out of the General Fund. Third, and perhaps most important, is the introduction of an entirely new scoring system for the competitive allocations.

Ownership Set-Aside vs Rental Support

Given the severe need for affordable rental housing, we have concerns about the proposal to increase the maximum AHP allocation for the ownership set-aside from 35 percent to 40 percent. Unfortunately, in the narrow context of AHP funds, allocation is a zero-sum game. While the FHFA suggests that there is significant demand for set-aside funds "which exceeds the current maximum percentage" (p. 18), it also finds that "during the 28 years that the Programs have operated, the demand for the AHP subsidies has always exceeded the amount available. In 2016, the Banks approved, on average, 43 percent of applications received." (p. 7) No data is provided on demand for the set-aside, however, so we have no basis on which to conclude that the five percent increase in the ownership set-aside (and the corresponding five percent decrease in support for affordable rental) is warranted.

The NPR notes, “FHFA anticipates that most Banks will take advantage of the opportunity to expand their allocations of AHP funds to their Homeownership Set-Aside Programs if the proposed increase in the annual set-aside allocation from 35 to 40 percent is adopted in the final rule.” If that proves true, allowing banks to increase the set-aside from 35 to 40 percent of the total AHP allocation will effectively reduce support for affordable rental housing.

We support expanding opportunities for affordable homeownership and believe the NPR’s proposed increase in individual limits from $15,000 to $22,000 can be helpful for achieving affordable and sustainable homeownership. (See question 7.) Additionally, we believe the focus on owner-occupied rehabilitation is valuable, particularly as the funds can help aging homeowners make needed upgrades to their homes to allow them to age in place—a less costly alternative to congregate care—or make needed repairs to prevent older homes from falling into significant disrepair. We note, however, that increasing the allowable grant increases the possible value of flipping, especially if there’s a renewed focus within the Homeownership Set-Aside on rehabilitation, which could boost the marketability of a property. The lack of resales in the past should not necessarily be taken as an indication of a lack of need for the recapture of any windfall gains but rather an indication that the provisions in place are effective at achieving the desired policy outcome. (This addresses question 6.)

It is not entirely clear why it is necessary to include owner-occupied rehabilitation in the first-time buyer allocation. There is relatively little public purpose in supporting non-first-time homebuyers outside of rehab, so an alternative approach would be to establish a separate allocation within the set-aside, especially if rehab is seen as a pressing district need. Given that the set-aside funding itself is first-come, first-served (as opposed to competitively allocated) and 80–90 percent of funds go to first-time homebuyers in practice, formally creating an allocation for rehab will ensure some of the funds are used for that purpose and still allow banks to meet the requirement that one-third of the set-aside funds to be used for home purchases.

As a final comment on the ownership set-aside, responding to questions on Subpart D, we believe indexing the limits to inflation is a reasonable approach to maintaining the usefulness of the program, but we question the need to keep the limit from moving downwards when the HPI declines. Allowing the maximum levels to fluctuate with house prices would be consistent with efforts elsewhere in the NPR to base grants on need for subsidy.

General Fund vs. Targeted Funds

One substantial innovation in the proposed rule is the introduction of Targeted Funds, wherein Banks can carve out up to three pools from the competitively allocated General Fund to meet a particular district housing need not otherwise prioritized in the scoring process for the General Fund.

The NPR mandates publication of Targeted Community Lending Plans (TCLPs) six months before the start of each plan year (and 12 months in advance if Banks offer Targeted Funds) and the subsequent linking of the needs identified in the plans to the AHP Implementation Plans. These long lead times appear to provide a measure of guidance for developers, who must draw upon multiple competitive funding sources with differing priorities and make strategic decisions about which project(s) to pursue in any funding round. If AHP funds were the primary funding source in a deal, this advance notice would be beneficial. AHP's role as a gap filler, however, means that AHP priorities may be locked in well in advance of the priorities set in state Qualified Allocation Plans (QAPs) for the availability of the low-income housing tax credits that are the primary funding source for most subsidized affordable housing.

Others have noted that AHP has functioned well to this point, with Banks able to set priorities in their annual implementation plans, which do not require the lead times mandated for the TCLPs in the NPR. Similarly, some commenters have focused on the lack of flexibility the lead times create, since those preclude the ability to respond to housing challenges like disasters that might emerge between the TCLP publication date and the applicable program year.

The long lead times have another shortcoming, which results from the fact that each Bank's profitability fluctuates over time. (See Appendix 1.) For example, FHLB Des Moines more than doubled its competitive grants between 2016 and 2017, while FHLB San Francisco's AHP assessment dropped by nearly half between 2016 and 2017.[1] The TCLPs with Targeted Funds must be developed more than a full fiscal or calendar year before the plan year, but that determination would need to made long before the AHP requirement is known. A Bank with larger than expected profits might want to use its additional funds to establish a Targeted Fund to focus on needs that might not be effectively or efficiently supported with a smaller AHP obligation. On the other hand, a steep drop in profitability might lead to much smaller Targeted Funds that would either offer smaller grants (making them less attractive to developers because of the need to identify additional sources of gap funding) or fewer large grants (reducing the odds of getting a grant and possibly leading developers to apply for general AHP funds). As such, compliance with proposed Section 1290.20(c)1's requirement that a Targeted Fund be designed to "receive sufficient numbers of applicants…to enable the Bank to facilitate a genuinely competitive scoring process" may not be possible.

Given the changes to the scoring process and its intersection with statutory and regulatory requirements as defined in the rule (discussed below), it is possible that banks may seek to establish targeted funds designed to ensure compliance with the requirement to meet two out of three regulatory priorities enumerated in proposed Section 1291.48(d), paragraphs 1-3. Establishing Targeted Funds would be entirely consistent with the program rules, but the narrowness implied by targeting might make it difficult for project sponsors to access the Targeted Funds when the focus of state QAPs prioritizes other goals. These QAP priorities may

[1] http://www.fhlbsf.com/about/news/releases/2-21-18-4Q-operating-results.aspx

include specific activities (preservation or new construction), particular geographies (urban, suburban, or rural), and/or socioeconomic and demographic factors (leading to revitalization or investment in high-opportunity communities). To the extent possible, FHFA should encourage Banks' Targeted Funds to align with the priorities identified by other funding sources likely to be the primary determinant of development decisions. (This addresses questions 1, 3, and 4 in the specific requests for comments.)

Scoring System: Meeting Statutory and Regulatory Priorities

FHFA proposes a new scoring system for the competitive allocation program—under a Bank's General Fund or the new Targeted Funds—based on a desire to offer Banks more flexibility in meeting districts' affordable housing needs. The current competitive scoring framework requires Banks to develop a scoring matrix with nine mandatory categories, each of which carries a minimum point allocation. Of the 100 points in the current system, at least 20 must be allocated towards targeting lower-income households. In addition, individual Banks may select one or more priorities from a list of 11 categories in current Section 1291.5(d)(5)(vi) and identified in their AHP Implementation Plan as their First District Priority and allocate points accordingly. Banks have similar flexibility in assigning their Second District Priority based on needs they identify.

The NPR seeks comment on whether the two District Priorities should be combined, partly based on the finding that Bank Second District Priorities "include multiple housing needs under this Priority, resulting in no one housing need effectively receiving priority under the current scoring system." We believe including multiple housing needs under the scoring system is valuable to the program because it effectively allows AHP to support disparate pressing needs in different parts of a district.

In responding to questions 36–38, we are pleased to note that the proposed rule does not retain member financial participation as a housing need, currently included among the eligible criteria under the First District Priority at Section 1291.5(d)(5)(vi)(D). Should the current scoring system be retained, we recommend elimination of this "housing need" from the criteria, as it leads to higher costs and inefficiencies elsewhere in the deal structure and development process. Members will often offer AHP sponsorship early in the development cycle in an effort to win a construction loan later. The timing of the AHP is such that the application is often submitted in advance of other sources like the Housing Credit and well before a project sponsor has identified the equity placement and whether the investor is a member of the appropriate Bank. As a result, sponsors might end up forfeiting a more attractive equity deal or preferred syndicator to keep the AHP funding. For CDFIs, such as our Loan Fund, the requirement to stay in some portion of the deal may also not be in the best interest of a project, since the cost of financing offered relative to other permanent sources is often higher. Similarly, our syndicators report that they spend a lot of time to build member participation into deals in order to retain the AHP funding in deals that need it. Altogether, it is estimated that this provision can cost up to 5–10 percent of the typical AHP award in fees, legal bills, and marginal interest.

The proposed scoring system eliminates the mandatory categories and district priorities and replaces them with an outcomes-based approach, incorporating the existing statutory and regulatory priorities through fund-level allocation requirements. This is a departure from the project-level scoring currently in place, but if implemented well could allow for a greater diversity of populations served and district needs met.

One area of concern in transitioning to the new scoring system is the need for each Bank to develop its own scoring methodology, a significant step beyond allocating points to pre-identified categories. Although the fundamental regulatory and statutory priorities have not changed, the need to be mindful of achieving four parallel requirements, enumerated in proposed Section 1291.48(a)–(d), across the range of AHP activities adds significant planning and operational complexity to the program, especially since meeting some of the requirements through the competitive allocation process will be partly contingent on the mix of uses of the homeownership set-aside funds.

Moreover, insofar as the new scoring system is a substantial departure from current practice, it could take a lot of time to get right. Detailed guidance on developing a workable scoring system for the competitively allocated funds (and regulatory forbearance in the event of unintended consequences) may go a long way to assuaging concerns about the transition to a new system. Similarly, providing detailed analyses to the Banks of how their 2016 and 2017 allocations might (or might not) have been compliant with the outcome requirements in 1291.48 would be useful in informing how Implementation Plans might need to change.

It is worth considering how the statutory and regulatory outcome requirements detailed in proposed Section 1291.48 are likely to be met and whether they represent a substantial departure from current AHP-funded activities.

The statutory requirement proposed in Section 1291.48(a) to award at least 55 percent of General and Targeted Funds to government or donated properties or to developments sponsored by a non-profit organization or government entity will likely be achieved through non-profit sponsorship of Housing Credit or other developments. (The proposed rule notes that between 2012 and 2016, "only 2.5 percent of total AHP funds were awarded to projects that used properties meeting the government properties priority.") Even with minimal points awarded to these two (currently separate) priorities in most competitive allocation programs, relatively few awards have been made to for-profit project sponsors. As such, the 55 percent requirement is unlikely to be difficult to meet and does not require changes to how Banks set district priorities.

Complying with the low- and moderate-income homeownership priority set at a minimum of 10 percent of AHP funds under proposed Section 1298.41(b) is also not likely to be difficult. The proposed rule notes that in 2016, more than a quarter of total AHP contributions across all the Banks went to Homeownership Set-Aside Programs and within that, the vast majority was for home purchases. With the proposed increase in the limit to 40 percent of each Bank's AHP allocation, compliance seems all but assured. (We discuss our perspective on that increase elsewhere in this comment letter.)

There is a potential impact on AHP grants because of the shift from project-level eligibility under Section 1291.5(d)(5)(iii)(A) to the fund-level requirement that a minimum of 55 percent of all rental units receiving AHP awards be reserved for very low-income (VLI) households, defined as those earning 50 percent of the area median income or less. We share concerns raised by others that 55 percent may be too high, even if it appears achievable because many QAPs incentivize deeper income targeting. Nevertheless, given that Housing Credit developments allow units to be set aside for incomes of up to 60 percent AMI (and we may see additional units for households at up to 80 percent AMI under income averaging rules), there is reason to worry that the goal of reserving 55 percent of units for VLI households may not be consistently met. Should FHFA deem it necessary to apply this regulatory priority at the fund level rather than construe project-level compliance with the 20 percent minimum set-aside for VLI households under proposed Section1291.23(a)(2) as the test for this regulatory priority, we suggest the final rule establish a significantly lower requirement.

The triple regulatory priorities included in proposed Section 1291.48(d) present the greatest uncertainty in the new outcome requirements. The uncertainty stems from the need to meet a minimum of two out of three priorities, but projects may only be counted towards one of the requirements. While Banks may have a sense of what kinds of projects they expect to apply for funding, it is impossible to know what the mix of projects might be and how they might ultimately count towards individual priorities. This in turn adds significant uncertainty to the process for the project sponsors.

Alternatively, we might also speculate that the new requirements could be easily met and do not entail a significant change from current practices, even if they are evaluated differently. If we assume that 45 percent of all AHP funds will meet the Creating Economic Opportunity priority by the Homeownership Set-Aside and Housing Credit properties offering eligible programs, that leaves only 10 percent of the total AHP allocation to meet either the underserved communities and populations or the affordable housing preservation priority. Given the broad range of target populations and property types that count towards the requirement, it seems that, despite the appearance of complexity and added uncertainty, little may change in practice. It is fair to question, however, what is functionally gained by the shift towards the outcome-based regime and whether there may be a way to incorporate the need for additional flexibility into the current structure.

Should the new outcomes regime be implemented, we offer the following comments on the regulatory priorities as requested by the NPR. Within the underserved communities and populations regulatory priority in proposed Section 1291.48(d)(1), FHFA makes significant changes to the threshold share of units in a development designated for target populations to be eligible for counting towards the corresponding regulatory priority. In most cases, the previous 20 percent set-aside has been replaced by a 50 percent floor. We believe that a requirement to set aside half the units for a specific population runs counter to current efforts to increase diversity and foster greater integration within projects and may not be compatible with the priorities established by other funding sources, most notably the Housing Credit. Moreover, for certain target populations, a 50 percent set-aside within a development may not be compliant with HUD and Department of Justice guidance on Olmstead implementation.

Deep income targeting for extremely low-income (ELI) households, those earning 30 percent of AMI and below, is expected to become easier to achieve in Housing Credit properties with the implementation of income averaging for new allocations. As a result, projects with 20 percent of units designated for ELI households may become more common. Even without income averaging, many QAPs have incentivized deep targeting. We note, however, that deep targeting may not always be achievable in jurisdictions without additional funding sources.

We suggest a minor revision to the definition of mixed-income in proposed Section 1291.48(d)(2)(ii), as the requirement to set aside at least 20 percent of units for households earning above 80 percent AMI may be hard to achieve. If the definition were expanded slightly to include those households at 80 percent AMI and not just those above it, projects that income average units at 80 percent AMI would be eligible for inclusion in the residential economic diversity subcategory.

Given the complexity introduced by the move to an outcomes-based regime, we suggest the adoption of more a flexible scoring process. FHFA might consider moving away from the fixed 100-point system with strict rank ordering of applicants (and the potential to trigger reranking to meet all four statutory and regulatory priorities at the program level) in favor of establishing a threshold score for consideration of an application and giving Banks discretion to select the mix of projects above the threshold that would be most impactful and minimize the risk of non-compliance with one or more of the priorities' minimum funding requirements. This threshold scoring approach is currently in use in several state QAPs.

If the rank-ordered allocation of funds is retained in the final rule, the issue of tie breaking in the case of insufficient AHP subsidy in a funding period must also be addressed. We suggest that proposed Section 1291.25(d) be revised to allow any potential shortfall in the case of tied applications to draw from available homeownership set-aside funds to allow equally ranked projects to be funded. If the final rule includes an increase in the cap for the homeownership set-aside (which we oppose), our recommendation would potentially offset part of that shift away from supporting renters' needs.

We are pleased to see in the proposed rule that Banks may not exclude all out-of-district projects in their scoring criteria, but we believe the rule could do more to encourage out-of-district projects. (We also note that there is no similar restriction on Targeted Funds, even though members' footprints may extend beyond district boundaries and that needs identified by Targeted Funds may be common across districts. This may be particularly true where Targeted Funds are designated for disaster recovery.) Encouraging AHP funds to be allocated more closely in alignment with members' banking presences would also help overcome some of the disparities in per capita funding across districts, below.

Federal Home Loan Bank District	2017 Statutory Contributions ($M)	$ per Severely Cost Burdened Renter HH	$ per Renter HH	$ per VLI Household	$ per VLI Renter Household
Atlanta	$31.0	$13.97	$3.57	$5.58	$9.75
Boston	$19.4	$39.06	$9.64	$15.37	$24.07
Chicago	$37.0	$61.44	$15.14	$21.63	$35.26
Cincinnati	$30.2	$43.19	$9.90	$14.97	$25.03
Dallas	$8.8	$7.06	$1.65	$2.56	$4.35
Des Moines*	$74.5	$73.07	$16.17	$25.43	$43.22
Indianapolis	$13.3	$27.77	$6.80	$9.19	$16.12
New York*	$44.8	$34.70	$9.87	$15.53	$22.73
Pittsburgh	$28.9	$64.13	$15.58	$20.29	$37.47
San Francisco	$85.8	$41.48	$11.63	$20.50	$30.36
Topeka	$18.0	$40.92	$9.49	$15.13	$25.40

*Per capita calculations exclude data for US territories and thus overstate the per capita contributions in these two districts.
Source: Enterprise Community Partners analysis based on FHFA data and 2016 American Community Survey 1-year sample Public Use Microdata, as made available by IPUMS-USA, www.ipums.org.

The proposed scoring system also introduces the possibility of re-ranking projects to ensure compliance with the new outcomes-based approach detailed in proposed Section 1291.48. In response to question 19, the potential for re-ranking introduces a significant amount of uncertainty into the application process, particularly in early years of the new system when the odds of re-ranking and losing funding are unknown. Rather than mandate development of an alternate scoring system to address re-ranking, FHFA might consider allowing Banks an opportunity to correct any shortfalls in a particular category during the following plan year. A Bank would be required to increase its target for a missed regulatory priority by the percentage of the missed amount (i.e., achieving 8% in one year would require hitting a 12% minimum the following year). This would give Banks an opportunity to structure their scoring to prioritize the missed priority. (As an aside, there is some ambiguity in proposed Section 1291.48(d) as to whether the 10 percent minimum for "each" priority applies to all three priorities or only two, in the event that a Bank selects only two priorities to count towards the 55 percent requirement.)

Through this discussion, we have addressed the series of questions on proposed Subpart E, Outcome Requirements for Statutory and Regulatory Priorities.

Alignment between AHP and other funding sources

We are pleased that the NPR simplifies the compliance regime when AHP is used in conjunction with federal funding sources like the Housing Credit and various HUD programs. The NPR recognizes at multiple points that AHP funds are often only a small part of the overall financing stack in the development of affordable housing, and where other programs offer substantially similar targeting and rigorous oversight, the NPR is content to allow other programmatic reporting requirements to be acceptable to AHP. While the proposed rule accepts other programs' compliance regimes, the deference offered to those programs does not flow forward to the development or even pre-development phases of a project. Ideally, Banks would be authorized to participate in a streamlined underwriting and closing process for AHP applications where the funding is in a subordinate position to one or more other public funding sources like LIHTC. (We provide examples of states that have developed a coordinated approach to reduce the impact of layered financing for Housing Credit developments in *Giving Due Credit: Balancing Priorities in State Low-Income Housing Tax Credit Allocation Policies.)*

Because QAP priorities are the primary determinant of the types of applications that are likely to come to AHP's General and Targeted Funds, we do not believe adopting a per project sponsor limit is appropriate. (This responds to question 18.) QAPs often award points for developer experience, in part to minimize compliance risk. Moreover, a project sponsor working in multiple states may receive Housing Credit allocations under the QAPs of each state; there is a public benefit from funding those projects even that allows a project sponsor to receive multiple AHP grants in a single funding cycle. (Keep in mind that the issue would only arise if multiple applications each ranked high enough to merit a grant on its own.)

Another opportunity for greater alignment with other funding sources relates to the treatment of relief available around incomes, rent, and targeted populations in the event funding is lost through no fault of the sponsor. Many projects rely on annually appropriated subsidies, so flexibility is needed to change targeting requirements if the subsidy source disappears. (We discuss the rescoring provisions triggered below.) This is particularly important when serving homeless populations, where 15-year contracts are non-existent and long-term subsidy contracts are subject to annual appropriations. Many states explicitly recognize this risk and offer relief to sponsors under these circumstances. Should the proposed increases in thresholds for target populations be adopted, this problem will be exacerbated. As such, we recommend that the final rule adopt relief provisions similar to those offered by other funding sources.

We recommend encouraging Banks to bring AHP funding rounds into greater alignment with state Housing Credit allocation schedules. While this could be complicated in a district with as wide a coverage area as FHLB Des Moines, in districts with a small number of states, two funding periods per plan year may allow AHP plans to mirror QAP priorities.

Underwriting and the Reliability of Funds

More generally, the NPR does little to address the concerns developers (and we as underwriters) have about being able to draw funds that have been awarded because of changes in cost that trigger differences in the way the "need for subsidy" may be reevaluated at various points in the development process. If FHFA is comfortable relying on the oversight of entities like state housing finance agencies and HUD to ensure compliance with program requirements, it is a reasonable step to rely on the compliance regimes of other programs that a project's need for subsidy remains valid after the AHP grant or loan is authorized. Eliminating subsequent reassessments of the need for subsidy would make the release of AHP funds more reliable. Program rules should recognize that the financial structure of a project almost always changes in predevelopment; these changes should not affect the ability of a project to receive AHP funding that was awarded.

We have direct experience with AHP awards being withdrawn during construction and upon completion. (Our syndication team now has a standing requirement to directly review and confirm with the Bank that their underwriting is fully in sync with the deal in question to eliminate delays and uncertainty at closing, as well as minimize the risk that a deal will go out of balance after closing due to a rescinded award.)

Uncertain funding under AHP has meant that project sponsors will sometimes identify other potential sources of debt or equity as a contingency to offset the risk that a Bank may decide at the time of a draw request during the construction period that the AHP subsidy is not needed. AHP is at risk of becoming a funding source of last resort—entirely counter to the intent of the program—when sponsors include AHP funds purely to demonstrate to state allocators that a project is fully funded but have every intention of finding a less costly and burdensome source prior to closing. Greater reliability would reduce the number of funding sources, streamline the development process, and lower costs.

A related issue with underwriting is AHP's unique approach to supportive services in a project's operating budget. Proposed Section 1291.24(b)(4) intends to codify current practice that precludes the use of AHP funds to provide supportive services (which is presumably based on the limited eligible uses of AHP funds defined in Section 1291.5(c)(1)(ii)). As applied, the rule has meant that project sponsors providing supportive services to special needs populations must maintain two separate operating budgets to isolate supportive service expenses, rather than adopting the more common practice (used by other funders) of simply backing out those costs in any pro forma analysis. Maintaining multiple financial statements adds unnecessary complexity and runs counter to the NPR’s efforts at simplification and alignment with other affordable housing capital sources.

We recognize that there is a tension as a regulator between taking a narrow approach to program rules and compliance and broad approach to maximize policy intent. Ongoing assessment of the need for AHP subsidy allows for greater regulatory oversight, but that comes at the expense of increasing the cost of affordable housing development or reducing the number of units able to be created or preserved. Rescinding an award for lack of “need for AHP subsidy” rarely means that no subsidy is required. Rather, it triggers a search for other subsidy sources and as such should be a rarely used provision. By giving Banks—and by extension all stakeholders—the certainty that a determination of need made at the time of approving a competitive application is compliant with AHP program rules, project sponsors would have more confidence in the reliability of the funding and allow the program to be more impactful. Indeed, offering flexibility in the need for additional funds, comparable to what other funders offer as a matter of routine, would make AHP more impactful. (This could be achieved by reserving a small amount, say 5 percent, of the General or Targeted Fund in any year to cover increased draws from approved projects. Any unspent funds could be added to the following year’s allocation.) We encourage FHFA to move in the direction of supporting Bank AHP funding that reliably and efficiently fills critical financing gaps. (This discussion addresses question 16.)

Monitoring and Compliance

The NPR asks several questions with respect to the monitoring and compliance regimes for AHP. We believe (responding to question 39) that the obligation to notify the Bank in the event of a project’s falling out of compliance with Housing Credit program rules is a reasonable one. We would, however, like to see more flexibility with respect to curing noncompliance at the project level. Depending on the nature of the compliance failure, the amount of the AHP award, and the time remaining in the AHP contract, the appropriate cure may vary, and may include modification. We suggest that to the extent the FHFA authorizes certain activities as resolutions for a deficiency, it retain Banks’ discretion to work with all to resolve the issue most efficiently.

When subsidies for supportive services are eliminated, the request for relief in the form of a modification will trigger a rescoring. As proposed, the rescoring would be relative to the lowest-scoring alternate approved for funding in that funding period. Since the lost subsidies are a reflection of a systemic challenge, rather than a property-based problem, it would be most equitable to apply the same rescoring to all other projects reliant on that funding stream at once. Doing so, however, highlights the complexity of rescoring under the new priority structure, since the rescoring under a non-special needs application might trigger a case where the Bank falls out of compliance with the 55% test at the General/Targeted Funds level or cause a retroactive need to re-rank multiple, compliant projects. It would, therefore, be far better to retain the current discretion offered to Banks to address this issue, particularly when the reason for the shift away from serving a special needs population is because of realized appropriations risk. We note the NPR's concern elsewhere with tenant displacement and suggest similar care prevail under these circumstances as well.

The proposed certifications for project sponsors and contractors may not be implementable as drafted. Depending on timing, a project sponsor may not have a general contractor selected at the time of the AHP application. Indeed, in some instances, other programs' rules require an open bid process that precludes having the complete development team selected in advance. We also note that there is a measure of ambiguity in proposed Section 1291.21(b)'s inclusion of "all affiliates and team members such as the general contractor" in the project sponsor qualifications. No guidance is offered on the definition of affiliate or team member. It is unclear whether there are other partners besides a general contractor that are intended to be included. If so, a list should be provided. If this requirement only applies to the general contractor, then the rule should be revised to specify that. Alternatively, the rule could set a threshold, either in dollars or percentage of total development cost, for which the certification applies.

Applicability of Duty to Serve regime for AHP

In seeking to apply a Duty to Serve-like (DTS) regime on the AHP program, FHFA is implicitly recognizing the FHLBs' status as government-sponsored enterprises. And while it is important to keep that critical status in mind in the context of discussions of systemic risk, increased access to credit, and dedicated support for affordable ownership and rental homes most frequently associated with housing finance reform, we believe it would be more fruitful for FHFA to apply a complementary set of obligations on the FHLBs rather than try to graft DTS activities onto the AHP program.

DTS in the context of Fannie Mae and Freddie Mac (collectively, and popularly—to the exclusion of the FHLBs—the GSEs) is about ensuring complete market coverage and capital flows in high-need areas and to product types; it is about directing business lines and growing lending relationships. AHP, in stark contrast, is primarily a grant program to expand the supply of affordable rental housing and support expanded homeownership opportunities. It is also worth noting that the DTS statutory requirement was included in Title I, Reform of Regulation of Enterprises, in the Housing and Economic Recovery Act of 2008, while oversight of the Federal Home Loan Banks is largely contained in Title II. It may be inferred that Congressional intent was not to mandate a parallel set of statutory obligations for the FHLBs as it imposed on the GSEs.

In the comments Enterprise submitted on the DTS rule, we noted that "we do not believe that FHFA should restrict the definition of 'preservation' for DTS eligibility to existing buildings. Instead, we urge FHFA to provide DTS credit for activities that preserve the affordable housing stock broadly, regardless of whether it requires recapitalization, rehabilitation or new construction. For example, if a GSE decides to expand its purchases of loans that support moderate rehabilitation or new construction of affordable multifamily properties – whether subsidized or naturally affordable – FHFA should allow those loan purchases to be eligible for DTS credit." In the final DTS rule, financing for unsubsidized affordable rental housing with significant preservation needs was not included.

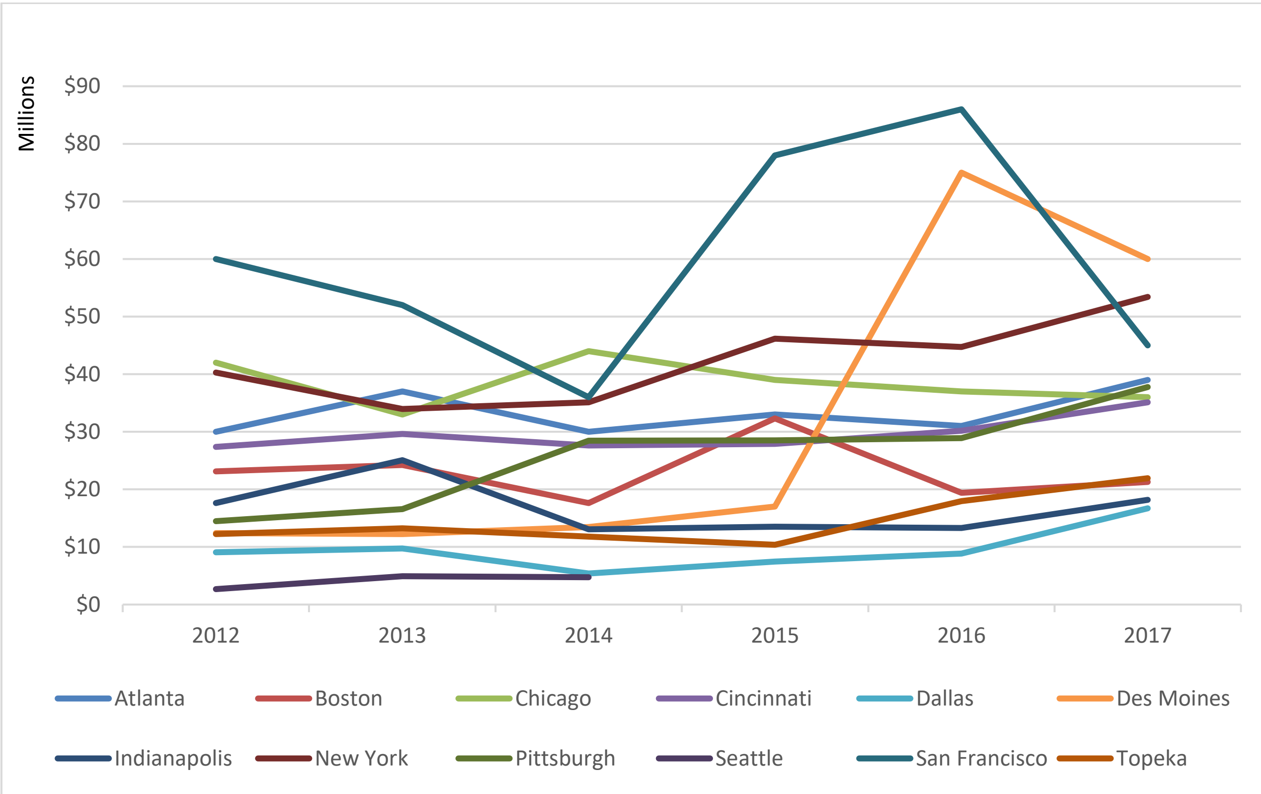
We would urge FHFA to take the opportunity presented by the current NPR to expand support for these activities rather than replicating the DTS criteria.

We appreciate the opportunity to provide comments at this time and look forward to ongoing engagement with FHFA as the rulemaking advances. If you have any questions regarding these comments, please contact me at (202) 403-8012.

Sincerely,

Andrew Jakabovics
Vice President, Policy Development
Enterprise Community Partners, Inc.

Appendix 1: Statutory AHP Contributions by Year ($Millions)



	2012	2013	2014	2015	2016	2017	Average	Standard Deviation
Atlanta	30	37	30	33	31	39	33.3	3.83
Boston	23.1	24.2	17.6	32.3	19.4	21.3	23.0	5.16
Chicago	42	33	44	39	37	36	38.5	4.04
Cincinnati	27.4	29.6	27.6	27.9	30.2	35.1	29.6	2.92
Dallas	9.1	9.8	5.4	7.5	8.8	16.7	9.5	3.84
Des Moines*	15.1	17.2	18.2	17	75	60	33.7	26.59
Indianapolis	17.6	25.1	13.1	13.5	13.3	18.2	16.8	4.65
New York	40.3	34.0	35.1	46.2	44.8	53.4	42.3	7.35
Pittsburgh	14.5	16.6	28.4	28.5	28.9	37.8	25.8	8.72
San Francisco	60	52	36	78	86	45	59.5	19.31
Topeka	12.3	13.2	11.8	10.4	18.0	21.9	14.6	4.44

*The Seattle and Des Moines FHLBs merged in 2015; data for 2012–14 reflect combined contributions.
Source: AHP assessments taken from 10-K filings for each Bank.