

April 10, 2024

Agenda Item 7.a.

BAHFA's Regional Expenditure Plan – Labor Standards

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**Subject:**

Referral to the ABAG Executive Board as the Executive Board to the Bay Area Housing Finance Authority (Executive Board) and to the Bay Area Housing Finance Authority (BAHFA Board) to adopt BAHFA's Regional Expenditure Plan with labor standards and enhanced reporting requirement for permanent supportive (PSH)/extremely low income (ELI) housing; to direct the Executive Director or designee to bring forward a guideline regarding labor standards; CEQA Determination Exempt Pursuant to Public Resources Code § 21065; Government Code § 64523

**Background:**

At its February 14, 2024 meeting, the ABAG Housing Committee and the BAHFA Oversight Committee (the "Joint Housing Committees") approved a referral to the ABAG Executive Board as the Executive Board to BAHFA ("Executive Board") and to the Bay Area Housing Finance Authority ("BAHFA Board") – collectively referred to as "the Boards" – to adopt BAHFA's Regional Expenditure Plan subject to the condition that staff return to the Joint Housing Committees with recommended labor standards to include in the Plan.

On March 13, 2024, staff provided an informational presentation to the Joint Housing Committees that included:

- A summary of different labor frameworks currently in use in California.
- Background and contextual information regarding how, generally, developers apply various labor standards in the Bay Area.
- A reiteration of BAHFA's approved goals and guiding principles, including:
  - Ensuring that fair and equitable worker protections are integrated into regional housing bond investments.
  - Building and preserving affordable housing at scale, commensurate with need.
  - Preserving the ability to implement innovative finance and development strategies to deliver affordable housing more cost-effectively.

Staff also advised the Committees that labor negotiations would continue, with the goal of bringing written recommendations forward to the Joint Housing Committees' meeting on April 10<sup>th</sup>. This Summary Sheet fulfills the Committees' directive. The labor standards recommended below for inclusion in BAHFA's Regional Expenditure Plan reflect conclusion of staff-level negotiations with representatives of both labor and affordable housing developers and a general consensus regarding terms that will provide an acceptable path forward.

**Recommended Labor Standards for the Regional Housing Bond**

As discussed in further detail below, the proposed labor standards for production and larger preservation projects funded with BAHFA's 20% Regional Housing Revenue are consistent with the labor standards as set forth in AB 2011 (Wicks 2022). However, should BAHFA's enabling

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April 10, 2024

Agenda Item 7.a.

---

BAHFA's Regional Expenditure Plan – Labor Standards

---

legislation be amended to allow for BAHFA to adopt labor standards applicable to projects funded with both the 20% of bond revenue retained by BAHFA (“Regional Housing Revenue” or “the 20%”) and the 80% of bond revenue disbursed to counties and direct allocation cities (“County Housing Revenue” or “the 80%”), the proposed labor standards are intended to apply throughout the region on 100% of bond revenues. This would enable BAHFA to have a regional standard in place prior to the expenditure of the bond proceeds from the first issuance but after the certification of the election on the proposed ballot measure for an affordable housing general obligation bond (“Ballot Measure”).

Part 1: Regional Housing Revenue Standards (the 20%)

BAHFA's enabling statute, the San Francisco Bay Area Regional Housing Finance Act (“Act”) provides that BAHFA may retain up to 20% of general obligation housing bond revenue raised and must disburse the remaining 80% of revenue to counties and direct-allocation cities (“Direct Recipients”) based on a return to source formula. BAHFA and the Direct Recipients must spend their funds according to an expenditure plan (“Plan”). In the case of BAHFA, the Regional Expenditure Plan must be approved by the Boards. Counties' Plans must be approved by the Board of Supervisors; city councils must approve Plans for direct-allocation cities.

All Plans must comply with specified requirements of the Act, and any other applicable state law. BAHFA's authority over the Direct Recipients' expenditures may not extend beyond the powers granted to it by the Act. As currently written, the Act does not allow BAHFA to require that Direct Recipients implement any labor standards for their bond investments (the 80%). BAHFA may adopt labor standards only for Regional Housing Revenue expenditures (the 20%).

Based upon discussions with construction labor representatives and affordable housing developers, and pursuant to general guidance of the Boards, staff recommend that BAHFA's Regional Expenditure Plan include the labor standards provided in Part 5 of that document, attached as **Attachment B**. A summary of Part 5's detailed requirements follows.

- 1) Prevailing Wage. For all new construction developments over 10 units, construction workers employed shall be paid at least the general prevailing rate of per diem wages; apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.
  - a. Contractors and subcontractors must maintain and verify payroll records and make them available for inspection and copying.
    - i. Construction contractors shall submit monthly payroll records directly to BAHFA and, if required by law, to the Labor Commissioner, and the reports shall be considered public records, open to public inspection, with certain redactions to protect the personal identifiable information of individuals as allowed by the Labor Code.

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April 10, 2024

Agenda Item 7.a.

---

BAHFA's Regional Expenditure Plan – Labor Standards

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- b. Enforcement of prevailing wage standards for contractors and subcontractors may be enforced by:
  - i. The Labor Commissioner through the issuance of a civil wage and penalty assessment to the extent allowed by law.
  - ii. An underpaid worker through civil action or an administrative complaint to the extent allowed by law.
  - iii. Liquidated damages will apply if a civil wage and penalty assessment is issued by the Labor Commissioner to the extent allowed by law.
  - iv. BAHFA may seek either legal or equitable remedies as appropriate.
  
- 2) Training and Healthcare. New construction developments of 50 or more housing units shall require in contracts with construction contractors who employ craft employees or will let subcontracts for at least 1,000 hours, the following additional provisions:
  - a. Participation in an apprenticeship program approved by the State of California Division of Apprenticeship Standards.
  
  - b. A requirement to provide health care payments for each employee in an amount per hour worked on the development equivalent to at least the hourly pro rata cost of a Covered California Platinum level plan for two 40-year-old adults and two dependents 0 to 14 years of age for the Covered California rating area in which the development is located. Qualifying expenditures shall be credited toward compliance with prevailing wage payment requirements.
  
  - c. Provisions 2(a) and 2(b) above are deemed satisfied for contractors signatory to a valid collective bargaining agreement that requires utilization of registered apprentices and expenditures on health care for employees and dependents.
  
- 3) Preservation Projects. In acknowledgement of the degree of difficulty inherent in occupied building rehabilitation projects, the lack of available state and federal funds to finance rehabilitation projects, and the smaller-scale, community focus of affordable housing developers and community-based organizations that undertake Preservation Projects for the purpose of preventing displacement of community members, the labor standards provided above in Part 5.1-2 shall only apply to large Preservation projects with substantial rehabilitation scopes. For smaller Preservation projects, prevailing wage will be paid as required by state law. Preservation standards shall be further refined in funding guidelines submitted to the Boards for approval, including defining what constitutes a large and small Preservation project.

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April 10, 2024

Agenda Item 7.a.

---

BAHFA's Regional Expenditure Plan – Labor Standards

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Part 2: Direct Recipient Housing Revenue (the 80%)

As stated above, under the existing terms of the Act BAHFA cannot impose labor standards on the 80% of funds administered by Direct Recipients. However, some stakeholders and legislators have expressed an interest in amending BAHFA's enabling statute to authorize BAHFA to apply labor standards to 100% of revenue raised through the Ballot Measure. Staff recommend including an anticipatory provision in the Boards' authorizing resolutions that could expand the labor standards adopted in the Regional Plan to 100% of housing bond funds should the enabling legislation be amended.

In addition, workforce conditions and contexts vary widely among counties, and some counties may want to impose different labor standards than what is proposed for BAHFA's Regional Housing Revenue. An alternate standard that some counties may pursue is a Project Labor Agreement ("PLA"). Approval of such an alternate could happen county-by-county, with the BAHFA standard serving as a baseline applicable to every county. In this manner, BAHFA's labor standards would apply as a "floor" across the region, with Direct Recipients retaining the ability to adopt enhanced labor standards for their 80% of funds where desirable and appropriate.

To facilitate the implementation of a 9-county baseline labor standard, should the Act be amended, and to ensure that a baseline standard is not an obstacle for counties seeking to adopt an enhanced standard, staff recommend the following provision in the Regional Plan's Part 5 on labor standards:

- 4) Project Labor Agreements. Notwithstanding anything to the contrary included in the labor standards described above, contractors and subcontractors performing work on a development that is subject to an applicable project labor agreement ("PLA") that requires the payment of prevailing wages and provides for enforcement of that obligation through an arbitration procedure shall comply with the terms of the applicable PLA and not be bound by the labor standards included here. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

For the resolution, staff recommend including the following direction to staff:

Application of Labor Standards to County Housing Revenue. The Board directs the Executive Director or designee to return with an agenda item to adopt a guideline to implement the labor standards as articulated in the Regional Expenditure Plan for Regional Housing Revenue, and if state law is amended to allow BAFHA to impose labor standards for counties and cities receiving a direct allocation of bond proceeds and the Ballot Measure passes, then the guideline brought forward also should extend the labor standards to projects funded with County Housing Revenue portion of the bond proceeds. Such agenda item should be brought forward in a timely manner to allow for adoption of the guideline prior to the actual expenditure of the bond

April 10, 2024

Agenda Item 7.a.

BAHFA's Regional Expenditure Plan – Labor Standards

---

proceeds from the first issuance. Note that an amendment to the Act that permits BAHFA to set a 9-county standard could be made after the Boards have taken their actions to approve placing a bond measure on the ballot, and even after voter approval of a bond. The Ballot Measure does not have to reference the specific labor standards because the funds will be spent in accordance with all applicable state law at the time of expenditure, whether there be changes in state labor law, or changes in the California Constitution due to Assembly Constitutional Amendment No. 1 (2023).

But for implementation purposes, the Act must be amended and the Boards adopt a subsequent labor guideline applicable to the County Housing Revenue prior to the first bond issuance, which is expected no earlier than mid-2025. A bill introduced this year to amend the Act could be signed by the Governor in Fall 2024, with the new law effective January 1, 2025. This is sufficient time for the law to become effective, and for BAHFA to follow its own process for adopting a labor standard guideline, prior to expenditure of the bond proceeds from the first issuance.

### Recommended Reporting Amendment

In addition to discussions with labor representatives and affordable housing developers, staff continue to work with other stakeholders. At the request of advocates for households that are acutely low-income and people experiencing homelessness, staff also recommend an amendment to the Regional Expenditure Plan that highlights BAHFA's commitment to prioritize housing for those in greatest need whenever possible, especially unhoused people. The suggested amendment is included in Part 4.1.3, "Production": "BAHFA will report annually on PSH/ELI production achievement." While BAHFA is already committed to detailed reporting on the types of housing investments made and characteristics of the households served, the added language in the Regional Expenditure Plan serves as a point of emphasis for this commitment.

### Next Steps

Once the Boards have approved the value of the bond for the Ballot Measure (i.e., \$10 billion or \$20 billion), the Regional Expenditure Plan, with labor standards, can be finalized. As directed in the proposed resolutions, staff will bring forward a guideline to implement the labor standards as articulated in the Regional Expenditure Plan, and to expand them to projects funded with County Housing Revenue, if state law is amended.

### Issues:

None

April 10, 2024

Agenda Item 7.a.

**BAHFA's Regional Expenditure Plan – Labor Standards**

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**Recommended Action:**

Referral to the ABAG Executive Board as the Executive Board to the Bay Area Housing Finance Authority and to the Bay Area Housing Finance Authority Board to adopt BAHFA's Regional Expenditure Plan with labor standards and enhanced reporting requirement for permanent supportive (PSH)/extremely low income (ELI) housing; to direct the Executive Director or designee to bring forward a guideline regarding labor standards.

**Attachments:**

- A. Presentation
- B. Draft Bay Area Housing Finance Authority Regional Expenditure Plan
- C. Draft Regional Expenditure Plan Approval BAHFA Resolution
- D. Draft Regional Expenditure Plan Approval ABAG Executive Board Resolution

**Reviewed:**



Andrew Fremier