

Association of Bay Area Governments

Executive Board

April 18, 2024

Agenda Item 10.b.

BAHFA's Regional Expenditure Plan

Subject:

Adoption of a resolution by the ABAG Executive Board as the Executive Board to the Bay Area Housing Finance Authority approving the Regional Expenditure Plan; direct the Executive Director or designee to bring forward a guideline to implement 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 ("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 context about developers' application of labor standards; and 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.

On April 10th, the Joint Housing Committees unanimously referred for approval to the Boards adoption of recommended labor standards for BAHFA's 20% Regional Housing Revenue, as well as the following directives:

- BAHFA should return to the Boards with an agenda item to adopt a guideline to implement the labor standards as articulated in the Regional Expenditure Plan for Regional Housing Revenue.
- If the San Francisco Bay Area Regional Housing Finance Act ("Act") 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 should also 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 proceeds from the first issuance.

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- Staff should work with the California State Legislature to amend the Act to have authority to impose labor standards for counties and cities receiving a direct allocation of bond proceeds.
- Staff should keep the BAHFA Advisory Committee, the Joint Housing Committees, and the Boards informed of progress.

Expenditure Plan Legal Framework

The San Francisco Regional Affordable Housing Finance Act ("Act") gives BAHFA the authority to raise, administer, and allocate funding for affordable housing in the San Francisco Bay Area.

BAHFA's Regional Housing Revenue must be spent according to a Regional Expenditure Plan adopted by the Executive and BAHFA Boards, with consultation from the BAHFA Advisory Committee.

The Act requires the Regional Expenditure Plan to include very specific content, as follows:

- 1) The share of Regional Housing Revenue and estimated funding values to be spent for each spending category defined in the Act:
 - a. Production
 - b. Preservation
 - c. Tenant Protections
 - d. Local Government Grant Program
- 2) The number of households served by income category.
- 3) The estimated number of homes expected to be produced and preserved with RHR.
- 4) Specific housing programs or projects, to the extent feasible.
- 5) Demonstration of how BAHFA will achieve specific spending requirements set forth in the Act for each spending category over a 5-year period (e.g., at least 52% of 2/3rds of RHR for production).

While this initial Regional Expenditure Plan is presented in concert with other documents related to the 2024 Ballot Measure, the Act requires BAHFA to submit a Regional Expenditure Plan on July 1st every year following. Subsequent Regional Expenditure Plans submitted shall include reporting on allocations and expenditures made and progress to date meeting the required minimum funding levels for each spending category.

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Regional Expenditure Plan Implementation

BAHFA's implementation strategies set forth in the Regional Expenditure Plan reflect the principals included in BAHFA's *Equity Framework* and *Funding Programs* and key spending decision points and recommendations previously approved by the BAHFA Advisory Committee and Boards.

Regional Expenditure Plan Assumptions

- 1) This action requests the Executive Board to approve a general obligation housing bond measure up to \$20 billion. The final value of the bond – either \$10 billion or \$20 billion – will be determined by the time of the BAHFA Board meeting of May 22nd, informed by final polling and research.
- 2) Depending on the value of the bonds, BAHFA is assuming between 5 and 7 separate issuances, though the actual number may vary, and counties and direct-allocation cities may request issuances at their own speed after the initial disbursement.
- 3) The initial Expenditure Plan covers the 5-year period of 2025-2030, and a total of two bond issuances.

The chart below shows relevant values for these assumptions:

Category / Activity	\$10 Billion Bond	\$20 Billion Bond
BAHFA's Total Regional Housing Revenue (20%)	\$2 billion	\$4 billion
First Regional Expenditure Plan Value Assumes 2 issuances (approx. 40% of funds for a \$10B bond and approx. 30% of funds for a \$20B bond) All funds shown are net of 5% Administrative Fees	\$800 million	\$1.1 billion
Production Spending, Minimum (61%)	\$460 million	\$671 million
Production Spending, Maximum (70%)	\$530 million	\$770 billion
Preservation Spending, Minimum (15%)	\$115 million	\$165 million
Preservation Spending, Maximum (24%)	\$182 million	\$264 million
Protections Spending, <i>if Constitutional</i> (5%)	\$38 million	\$55 million

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Local Government Grants (10%)	\$76 million	\$110 million
Homes Produced or Preserved (<i>assumes application of 5% Tenant Protections to Production or Preservation</i>)	Approx. 1,600	Approx. 2,400
Percentage of Homes Produced Serving ELI/VLI Households	Approx. 44%	Approx. 44%
Percentage of Homes Produced Serving LI Households	Approx. 56%	Approx. 56%
<i>TOTAL Number of Homes Produced or Preserved with Full RHR Funding, including 5% Tenant Protection Funding</i>	<i>Approx. 3,700-4000</i>	<i>Approx. 7,200-7,800</i>

Housing Bond Labor Standards

The 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%). Accordingly, the labor standards provided below, as approved by the Joint Housing Committees, apply to BAHFA's Expenditure Plan. Further discussion regarding setting BAHFA's standard as a regional "baseline" labor standard, should the Act be amended to allow such a provision, follows.

Expenditure Plan Labor Standards: Regional Housing Revenue (the 20%)

Recommended labor standards for BAHFA's 20% Regional Housing Revenue are summarized below and included in Section 5 of the Regional Expenditure Plan, attached as **Attachment B**.

- 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.

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- 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.
 - 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

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funding guidelines submitted to the Boards for approval, including defining what constitutes a large and small Preservation project.

Expenditure Plan Labor Standards: Direct Recipients Housing Revenue (the 80%)

Though the existing terms of the Act prohibit BAHFA from imposing labor standards on the 80% of funds administered by Direct Recipients, 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. As directed by the Joint Housing Committees on April 10, 2024, 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 Act be amended is included.

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 "baseline" 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 agree with the Joint Housing Committees direction to staff described above. 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 laws 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).

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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 final value of the bond for the Ballot Measure (i.e., \$10 billion or \$20 billion) is determined, the Regional Expenditure Plan, with labor standards, can be finalized. As directed in the proposed resolution, 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

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Recommended Action:

Adopt a resolution, CEQA Determination; Exempt Pursuant to Public Resources Code § 21065; Government Code § 64523:

- 1) Approving the BAHFA Regional Expenditure Plan
- 2) Directing the Executive Director or designee to return to the Executive Board 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 the 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 proceeds from the first issuance.
- 3) Directing the Executive Director or designee to work with the California State Legislature to amend the San Francisco Bay Area Regional Housing Finance Act to enable BAHFA to have the authority to impose labor standards for counties and cities receiving a direct allocation of bond proceeds and to keep the BAHFA Advisory Committee, the ABAG Housing Committee, and the BAHFA Oversight Committee informed of such progress.
- 4) Further, staff should keep the BAHFA Advisory Committee, the joint ABAG Housing Committee and BAHFA Oversight Committee, and the ABAG Executive Board and the Bay Area Housing Finance Authority Board informed on progress.

Attachments:

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

Reviewed:



Andrew Fremier