Bay Area Housing Finance Authority

Advisory Committee

March 28, 2024 Agenda Item 6.a.

BAHFA's Regional Expenditure Plan – Labor Standards

Subject:

Update on labor standards for inclusion in BAHFA's 20% regional funding Expenditure Plan

Background:

On January 25, 2024, the BAHFA Advisory Committee made a series of recommendations related to placing a $10-20 billion regional affordable housing on the November 2024 ballot. Among those actions was a recommendation to approve the Regional Expenditure Plan for BAHFA's 20% of bond proceeds that will be invested into local communities across the region.

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. This referral, however, was subject to the condition that staff return to the Joint Housing Committees with recommended labor standards to include in BAHFA's Regional Expenditure Plan.

Since the meeting, staff has continued discussions with stakeholders – including representatives from various subgroups of organized labor as well as nonprofit housing developers – to identify common ground for potential BAHFA labor standards. Those discussions are ongoing. Staff presented an informational update to the Joint Housing Committees on March 13, 2024, and the current report contains substantially the same information. Staff aims to present a labor standards recommendation for inclusion in the Regional Expenditure Plan at the Joint Housing Committees' April 10, 2024 meeting. Today's report is intended to keep the BAHFA Advisory Committee informed of the context and considerations involved in the discussions with stakeholders and policymakers prior to anticipated action in April by policymakers.

Regional Expenditure Plan Context:

The San Francisco Bay Area Regional Housing Finance Act, BAHFA's enabling legislation, (California Government Code Section 64500, *et seq*. (the "Act")), gives BAHFA the authority to raise, administer, and allocate funding for affordable housing through several mechanisms that require voter approval. One such mechanism is a general obligation (GO) bond, for which the Act prescribes that BAHFA pass through 80% of the revenue to counties and several cities based on a return to source formula ("County Housing Revenue" or "the 80%"). BAHFA retains the remaining 20% ("Regional Housing Revenue" or "the 20%"). Staff is currently planning towards a GO bond for the November 2024 ballot.

BAHFA's portion of the funds must be spent according to a Regional Expenditure Plan ("Plan"), which only governs Regional Housing Revenue. Counties and direct allocation cities are required to adopt their own expenditure plans for the 80%, a step required after voter approval.

The Plan must comply with specified requirements set forth in the Act, including an estimate of number of units produced and preserved, the share of funding for each spending category (Production, Preservation, Protection, and Local Government Grant Program), and a description of BAHFA's programs. The Plan reviewed by the BAHFA Advisory Committee in January and the Joint Housing Committees in February contains these elements, incorporating guiding principles from BAHFA's Business Plan's *Equity Framework* and *Funding Programs* as well as policy decisions affirmed by the BAHFA Advisory Committee and the Boards after multiple public meetings in the summer and fall of 2023.

On February 14, the Joint Housing Committees referred for adoption by the Boards all Plan elements proposed by staff to satisfy the statutory requirements and establish an initial set of investment priorities. The Joint Housing Committees also requested staff to return to provide information and recommendations regarding an outstanding issue – potential labor standards to include in the Plan.

Legal Limitations to Impose Labor Standards on Counties & Cities (the 80%)

Some labor stakeholders have requested that BAHFA impose labor standards on 100% of bond funds, including the 80% that will be administered directly by counties and direct-allocation cities. However, the Act does not grant BAHFA legal authority to impose any labor standards on direct recipients. Labor stakeholders with whom staff have been meeting over the past month have not disputed this.

State law could be amended to authorize BAHFA to impose labor standards on direct recipients. From a timing standpoint, it's important to note that such a change could be made *after* the Boards have taken their actions to approve placing a bond measure on the ballot, or even after voter approval of a bond. Some labor stakeholders have expressed an interest in pursuing legislation this year to allow BAHFA to impose labor standards. At the time this memo was finalized, staff was unaware of any bill in print related to BAHFA labor standards. Notably, even if state law were amended, federal law would prohibit BAHFA from requiring direct recipients to impose project labor agreements (PLAs) through regulation. Amendments to the Act would not override this prohibition given it is in federal law. Staff will update the Committees on any legislative efforts to modify the Act as it relates to allowing BAHFA to adopt labor standards applicable to the 80%.

This memo focuses on BAHFA's Regional Housing Revenue and aims to provide a strong foundation for the Committees' and Boards' consideration of labor standards for the Plan next month.

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Context for Labor Standards for Regional Housing Revenue (the 20%)

Addressing California's housing shortage, housing unaffordability and homelessness has been a top state and local legislative priority since at least 2016. This policymaking has included determination of appropriate labor standards to attach to housing legislation. Table 1, below, summarizes the relevant approaches that have been at the center of legislative debates. It is provided here not with the intent of making recommendations, but for the purpose of establishing a common vocabulary and understanding of the key terms in the negotiations.

Table 1: Landscape of Potential Labor Standards

Standard	Brief Description
Baseline (CA Labor Code)	**Prevailing wage with exceptions**
AB 2011 (Wicks, 2022)	1. Enforceable prevailing wage requirement (no exceptions) 2. For 50+ units, requires health care payments 3. For 50+ units, requires approved apprenticeship participation
SB 423 (Wiener, 2023)	• AB 2011 plus "skilled and trained" for projects over 85 feet • 100% affordable projects are exempt
"Skilled and Trained"	• Generally requires workers in apprenticeable occupations to be either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief of the Division of Apprenticeship Standards
Project Labor Agreements (PLAs)	• Could take many forms; likely scenario is BAHFA requires borrowers to sign PLAs with Building Trades Councils where project is located. • Set labor terms, e.g., wages, health care & pensions, contractor eligibility, dispute resolution, and worksite conditions.

Context and Considerations: Balancing Multiple Goals

Establishing appropriate labor standards for the Regional Housing Revenue requires balancing an interrelated set of goals. Based on feedback from the Committees last month and the guiding principles in BAHFA's Business Plan, these goals include:

1. Expanding the protection of workers in the Bay Area's affordable housing construction industry.
2. Production and preservation of affordable housing at a scale commensurate with the need.
3. Pursuit of innovative finance and development strategies to deliver affordable housing more cost-effectively.

Each goal is important but tension arises between them at times. Weighing trade-offs and creating a balanced approach requires consideration of three critical elements, described more extensively below: (1) affordable housing developer cohorts and their distinct approaches, (2) historical housing production trends and current goals, and (3) rising construction costs.

Affordable Housing Developer Cohorts

Generally speaking, two categories of developers build subsidized affordable housing and operate in different regulatory environments vis-à-vis labor standards. The first group is nonprofit developers that build most of the Bay Area's affordable housing. Nonprofit developers typically rely on low-income housing tax credits (LIHTC) administered by the California Tax Credit Allocation Committee (TCAC), private activity bonds from the California Debt Limit Allocation Committee (CDLAC), subsidy loans from the city and/or county in which they work, subsidy loans from the California Department of Housing and Community Development (HCD), and a variety of other sources. Given the requirements of most subsidy fund sources, nonprofit developers typically operate under enhanced labor standards that include, at a minimum, paying workers a prevailing wage. Some jurisdictions in the Bay Area attach additional labor standards such as a PLA.

The second group is for-profit, vertically integrated companies that typically rely solely on LIHTC, CDLAC, and deferred developer fees to finance their projects. Given their limited use of city and county financing (which serves as the linkage to construction labor standards), this second group of developers is typically not subject to the state's prevailing wage laws nor other labor standards imposed by local governments.

Common Development Practices & Expansion of Worker Protections

The first developer group, the nonprofits, are the likely borrowers of the vast majority of the proposed regional housing measure funds because these developers are accustomed to and competent at implementing the policies required by the jurisdictions in which they work, including labor standards. In this environment, labor practices tend to be more transparent through the oversight of nonprofit boards of directors and the community engagement typically conducted by Bay Area's nonprofit developers. These factors mitigate concerns about "bad actors" using bond funds to exploit workers.

Because the typical financing structure employed by the second developer group, for-profit developers, does not include local public sector funding, their use of regional bond funds may also be limited.

Inclusion of labor standards in BAHFA's Regional Expenditure Plan would cover projects in every Bay Area county, expanding worker protections to locations where enhanced labor standards are not common practice.

While the proposed labor standards for the Regional Expenditure Plan are still under discussion, they could exceed the Labor Code's "baseline" prevailing wage requirements by disallowing exceptions to prevailing wage and including additional worker benefits and protections. Further, should the second group of developers, the for-profits, apply for and secure bond funds to build and preserve affordable housing in a competitive funding process, there will be an expansion of labor standards to developments where there otherwise are none.

Actively expanding worker protections by engaging with the full range of affordable housing developers will require, however, that BAHFA's financial products balance sufficiently favorable terms and manageable regulatory burden. An overly rigid labor standard could be counter-productive, by disincentivizing for-profit developers from using BAHFA funds at all. This would forestall BAHFA's pursuit of partnerships with all developers able to bring quality projects forward in a cost-effective way for the region's benefit. Further, BAHFA's commitment to pursue alternative financing models when state programs (e.g., CDLAC and LIHTC) are competitive will require streamlined, accessible and efficient financing.

Production at Scale: Historical Trends and Current Targets

The significant lack of homes affordable to all Bay Area residents – the foundation for health, community, and cultural and economic regional vibrancy – fuels a web of social challenges:

- Approximately 37,000 residents are unhoused.
- The region has the highest *unsheltered* rate of unhoused people in the U.S. (over 70%)
- 1.4 million renters pay more than half their income on rent, with one-quarter paying more than 50% of their income on rent ("severely rent-burdened")
- High rents and home prices cause many residents to live far from work, making congestion and pollution much worse, and putting a major strain on working families.
- Too many Bay Area residents live in overcrowded and unsafe housing.
- Vital employees and community members are leaving the area.

Recently compiled data for the 5th Cycle of the Regional Housing Needs Allocation (RHNA) process (2015-2023) quantifies the slow progress the region has been making towards achieving our affordable housing targets. The 2015-2023 dataset contains highly detailed reporting from local governments via their Annual Progress Reports ("APRs"), enhanced by verification efforts by staff, on the number of new homes (units) permitted by income category.

The complete dataset from the eight-year RHNA cycle underscores that while market-rate housing is being developed at rates *double* the state's targets the number of homes under development that are affordable to lower- and moderate-income residents is well below the targets, as summarized below. The reasons for this are complex, but the high cost of housing and the lack of sufficient subsidy for the construction of affordable housing are major factors. Providing a robust source of funding to accelerate the construction (and preservation) of new affordable units is a fundamental aim of the Bay Area affordable housing bond.

Table 2: Bay Area RHNA Cycle 5 (2015-2023) Performance

Income Targets	2015-2023 RHNA Cycle 5	2015-2023 Units Permitted	% RHNA Permitted
Very Low-Income *(0-50% of AMI)*	46,680	18,751	**40%**
Low-Income *(50-80% of AMI)*	28,940	16,025	**55%**
Moderate-Income *(80-120% of AMI)*	33,420	20,071	**60%**
Above Moderate-Income *(above 120% of AMI)*	78,950	163,018	**203%**
Total:	187,990	217,865	116%

The Bay Area's state-mandated housing targets for the 6th RHNA Cycle (2023-2031) more than doubled the region's housing goals relative to the 5th RHNA Cycle, presenting an unprecedented challenge. Even if the region maintained the historical trend of over-producing market rate ("above moderate-income") homes, it would still fall short of permitting the total new units required in the 6th Cycle. Bay Area residents' needs for lower- and moderate-income housing, as compared to 5th Cycle targets and regional performance, are particularly stark, as summarized below.

Table 3: Bay Area RNHA Cycle 6 (2023-2031) Targets Compared to Cycle 5

Income Targets	2015-2023 RHNA Cycle 5	2015-2023 Units Permited	2023 – 2031 RHNA Cycle 6
Very Low-Income	46,680	18,751	**114,442**
Low-Income	28,940	16,025	**65,892**
Moderate-Income	33,420	20,071	**72,712**
Above Moderate-Income	78,950	163,018	**188,130**

Total:	187,990	217,865	**441,176**

A central tenet of BAHFA's Equity Framework is to operate at a scale that can truly meet the housing needs of the Bay Area's lower-income residents. The comparison of historical production trends (measured above in terms of units permitted) against RHNA's low-income housing targets underscores that to fulfill this mission, BAHFA and the entire housing industry in the Bay Area must build significantly more affordable housing, much faster. This will require partnering with every available segment of the construction workforce and growing that workforce over time.

Cost-Efficiency

Just as the need for affordable housing is increasing, so too is the cost of constructing it. Many affordable housing projects in the Bay Area now cost roughly $1 million per unit. For the regional housing bond to have the greatest impact in terms of the number of homes built, BAHFA must find creative solutions to bring down costs.

To better understand the cost landscape, staff has evaluated all Bay Area projects that submitted applications to TCAC and CDLAC between 2021 and 2023. The most salient characteristics that differentiate project costs are (1) location (which is a proxy for a variety of market conditions rather than simply the cost of land), and (2) whether the project received subsidy from a local government. The following table summarizes the findings, revealing the significantly higher per unit cost for projects that receive local public funds than those that don't in every county.

Table 4: Bay Area Total Development Costs for TCAC/CDLAC Applications, 2021-2023

County	# of Projects with Local Funds	# of Projects without Local Funds	Avg. Cost Per Unit *with Local Funds*	Avg. Cost Per Unit *Without Local Funds*	% Cost Increase with Local Funds
Alameda	11	4	$903,684	$491,500	84%
Contra Costa	3	4	$772,417	$513,140	51%
Marin	0	1	*n/a*	$767,873	*n/a*
Napa	0	0	*n/a*	*n/a*	*n/a*
San Francisco	10	1	$939,826	$734,585	28%
San Mateo	4	2	$972,512	$448,642	117%
Santa Clara	23	14	$782,945	$636,918	23%

Solano	1	4	$687,334	$355,303	93%
Sonoma	3	5	$568,732	$476,369	19%
Total:	**55**	**35**	**$835,406**	**$546,806**	**53%**

Unfortunately, isolating the data for 2023 shows a worsening trend in terms of increasing per-unit cost for projects receiving local funds. Table 5, below, summarizes the average per-unit costs of developments that applied for TCAC/CDLAC in 2023 that are also receiving local funds.

Table 5: Total 2023 Development Costs for TCAC/CDLAC Applications With Local Funds

County	2023 Average Per Unit Cost for Projects with Local Funds
Alameda	$984,300
Contra Costa	$998,250
San Francisco	$916,500
San Mateo	$998,400
Santa Clara	$1,016,500
Solano	$481,000
Sonoma	$661,600

This project cost data leads to several conclusions regarding labor standard considerations:

- A regional focus on construction costs is vital to addressing affordable housing needs.
- The cost differentials between counties cannot be attributable solely to prevailing wage obligations, which are typically born by nonprofit developers in all counties.
- Certain labor standards may increase construction costs.[1]

In this high-cost environment, rigorous attention to all cost drivers is necessary to effectively bring costs down. Strict labor standards are one cost driver, among others, that require careful balancing.

[1] A 2021 study by RAND of Los Angeles' Measure HHH bond is one of the most recent, California-specific studies of the impacts of project labor agreements on the construction of affordable housing. The study concluded that inclusion of a PLA requirement increased costs by 15% and ultimately resulted in approximately 800 fewer affordable units. See Ward, Jason M., The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH. Santa Monica, CA: RAND Corporation, 2021. https://www.rand.org/pubs/research_reports/RRA1362-1.html.

Next Steps

Staff will continue to work with organized labor and affordable housing partners on proposed labor standards and will return to the Joint Housing Committees in April with recommended standards for inclusion in BAHFA's Regional Expenditure Plan.

Issues:

The prospect of a state legislative amendment to BAHFA's Regional Housing Act regarding labor standards requires close scrutiny, as it would significantly impact counties' and direct-allocation cities' own expenditure plans and development programs. The imposition of a single labor standard through an amendment of the Act would lead to a "one-size-fits-all" approach that may raise concerns about local control.

Recommended Action:

Information

Attachments:

A. Presentation

Reviewed:

Andrew Fremier