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Barriers to program use

Paying prevailing wages to construction workers is an important public policy that we generally support in affordable housing production. However, requiring this as part of the small-scale decarbonization efforts that will be funded by the BUILD program will render BUILD unusable for the 50% or so of affordable housing developments that are not otherwise already subject to a prevailing wage requirement because the additional cost of paying prevailing wages on the much larger housing construction work will be so much greater than the BUILD incentives.

This is because California law requires that if any source of funding for a development, even a relatively small BUILD incentive, triggers prevailing wages, the entire development is subject to paying prevailing wages. According to a recent Terner Center at UC Berkeley report (see p. 9 and the chart on p. 21), prevailing wage requirements increase total development costs of affordable housing by 13.6% on average across the state.

If the BUILD incentive to affordable housing developers were structured as a below-market-rate 55-year deferred loan, under the exception in Labor Code Section 1720(c)(5)(E) it would not trigger prevailing wages. It is our understanding, however, that the CEC has determined it does not have statutory authority to offer the incentives as loans. Moreover, the proposed DIR letter requirement would render this ineffective due to the difficulty of obtaining such a letter in a timely manner. Other affordable housing lenders such as the Department of Housing and Community Development do not require such a letter and instead clearly state that it is the applicantâ€™s responsibility and risk to determine on their own whether or not they qualify for the Labor Code exemption.

The one thing the Commission can do to make BUILD more attractive to those affordable housing developers who already are subject to prevailing wage requirements is to make the incentive a general grant to the non-profit sponsor of the development rather than a reimbursement to the project owner (always a limited partnership) so that the sponsor can convert the incentive to a sponsor loan to the development and count the decarbonization costs in basis for Low-Income Housing Tax Credit purposes (only loans count). This will ensure that the development does not lose credits as a result of accepting the BUILD incentive.