



January 17, 2013

Ms. Wendy Cosin, Deputy Planning Director
City of Berkeley
2118 Milvia Street, 3rd Floor
Berkeley, CA 94704

Dear Ms. Cosin:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated December 11, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Berkeley successor agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) to the California Department of Finance (Finance) on November 16, 2012. Finance issued a LMIHF DDR determination letter on December 11, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on January 9, 2013.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance continues to believe the adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. HSC section 34179.6 (d) authorizes Finance to make these adjustments. We maintain the adjustments continue to be necessary for the following reason:

Housing asset transfers in the amount of \$2,359,438, consisting of \$245,355 in Interest Receivable and \$2,114,083 in Notes Receivable. The amount was transferred on February 1, 2012 to the City of Berkeley as the housing successor entity. However, the transfers were not listed on the Housing Assets Transfer (HAT) form that was submitted to Finance as required by HSC 34176 (a) (1). Since Finance did not review and approve the transfers, the transfers are disallowed and the assets should be returned to the Agency. Furthermore, the amount was not cash; an adjustment of (\$2,359,438) was also made to the LMIH balance available.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$127,978 (see table below):

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 127,978
Finance Adjustments	
Add:	
Disallowed transfers	2,359,438
Adjustment for non-cash assets	<u>(2,359,438)</u>
Total LMIHF available to be distributed:	\$ 127,978

This is Finance's final determination of the LMIHF balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC section 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter and Finance's Housing Assets Transfer letter dated September 5, 2012 do not in any way eliminate the Controller's authority.

Ms. Wendy Cosin
January 17, 2013
Page 3

Please direct inquiries to Beliz Chappuie, Supervisor or Cindie Lor, Lead Analyst at
(916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long, sweeping underline that extends to the left.

STEVE SZALAY
Local Government Consultant

cc: Ms. Danita Hardaway, Associate Management Analyst, City of Berkeley
Ms. Carol A. Orth, Division Chief, Tax Analysis, County of Alameda
California State Controller's Office