



REVISED

December 20, 2012

Ms. Kristen Petersen, Assistant City Manager  
City of Duarte  
1600 Huntington Drive  
Duarte, CA 91010

Dear Ms. Petersen:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated December 13, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Duarte Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 11, 2012. Finance issued a LMIHF DDR determination letter on November 7, 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 December 5, 2012 and Finance's Meet and Confer Determination letter was issued on December 13, 2012. This letter further makes adjustments to the available LMIHF balance that should be remitted to the affected taxing entities.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising some of the adjustments made in our previous DDR determination letter. Specifically, we are revising the following adjustment.

- The Development and Disposition Agreement (DDA)/Option Agreement (Option) in the amount of \$1.2 million between the Agency and Southern California Presbyterian (Optionee). In Finance's ROPS III Meet and Confer Determination letter dated December 20, 2012, Finance no longer denies this item.

Finance's December 20, 2012 ROPS III Meet and Confer Determination letter specifically states:

*Finance previously denied this item because the DDA did not appear to be entered during the Option period. Finance notes the provision referenced in the Option for time extension is contingent on, "if, on or before, January 27, 2012, Optionee receives notice from the United States Department of Housing and Urban Development ("HUD") that Optionee's application for a fund reservation ... for the acquisition of the Property... has been approved, Optionee shall have the right by delivery of written notice to the Agency to extend the Option Period for an additional (6) six months to July 27, 2012." Based on Finance's reading of the Option, it appeared that the approval was not obtained by that date. However,*

*today Finance learned that on December 18, 2012, HUD sent an email explaining that HUD had provided the award on November 16, 2011. Thus, while this email had not been provided prior to the original determination dated December 18, 2012, Finance is now of the view that based on available information, the Option was timely exercised. Finance notes, while the Agency requested RPTTF funding for this item, the Agency also requested to retain Low and Moderate Income Housing Funds (LMIHF) for this same item. Further, Finance notes the Agency has available LMIHF; therefore, for all the reason listed above, Finance determines this item is an enforceable obligation eligible for LMIHF funding.*

As a result, Finance is allowing the retention of \$1.2 million for this purpose and \$4,598 for the associated legal fees.

However, Finance continues to believe some of 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:

- During the DDR Meet and Confer process, it came to our attention that Finance did not comment on the Oversight Board (OB) resolution no. OB 12-12 dated October 11, 2012 approving the LMIHF DDR. The OB 12-12 approved the cash transfer of \$8,363,104 to the Duarte Housing Authority (Authority) to carry out the obligations of improving, increasing, and preserving LMIHF housing in the City of Duarte. The OB 12-12 states the cash transfer was a legal and valid transfer of LMIHF that pre-dated the enactment and effectiveness of ABx1 26 and AB 1484 made pursuant to the Master Financing and Grant Agreement, dated April 12, 2011.

Contrary to the Agency's belief that the Authority is a separate public entity from the City, Finance believes the Master Financing and Grant Agreement is a contract between the City and Agency. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency (RDA) and the former RDA are not enforceable obligations.

The Master Financing and Grant Agreement grants to the Authority future housing set aside funds to pay for and/or assist in paying for housing for LMIHF and to fund ongoing administrative services for affordable housing projects and services to be carried out by the Authority. HSC section 34176 (a) (1) states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. Therefore, the administrative costs associated with these functions are now the responsibility of the housing successor.

Finance believes that OBs can only take actions that they are authorized to do under the law. OBs should read the law as a whole and not just those sections that may or may not fit their particular case while ignoring all other sections of the dissolution statutes. Therefore, if the OB takes a lawful action, and DOF does not object to the action, that action can be relied upon. However, under no circumstances can OBs take actions to override various RDA dissolution requirements including the definition of an enforceable obligation. If an OB takes an action, which clearly contradicts a particular requirement under law, and DOF for whatever reason failed to see the OB action or respond to it, we

would not consider that action to be valid and it would be very risky relying upon it when making decisions.

The DDR CPA firm made an adjustment of \$8,363,104 to the June 30, 2012 balance to account for asset transfers to the city or other parties for which an enforceable obligation to a third party requiring such transfer and obligating the use of the transferred assets did not exist. Finance concurs with the DDR CPA firm adjustment of \$8,363,104. The OB 12-12 and the Master Financing and Grant Agreement approving the cash transfer should not be used to circumvent the LMIHF DDR review process. Therefore, the \$8,363,104 cash transferred should be remitted as part of the unencumbered LMIHF balance available for distribution to the affected taxing entities.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$9,395,398 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 9,395,398
Finance Adjustments	
Add:	0
<b>Total LMIHF available to be distributed:</b>	<b>\$ 9,395,398</b>

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 August 31, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Kylie Le, Supervisor or Brian Dunham, Lead Analyst at (916) 445-1546.

Sincerely,



**STEVE SZALAY**  
Local Government Consultant

cc: Mr. Dan Slater, City Attorney, City of Duarte  
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller  
California State Controller's Office