



March 1, 2013

Ms. Kelly McAdoo Morariu, Assistant City Manager
City of Hayward
777 B Street
Hayward, CA 94541

Dear Ms. Morariu:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The City of Hayward Successor Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund Due Diligence Review (DDR) to the California Department of Finance (Finance) on February 5, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the October 15, 2012 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the November 9, 2012 deadline pursuant to HSC section 34179.6 (d). However, Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of Low and Moderate Income Housing Fund (LMIHF) available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Disallowed cash transfers in the amount of \$6,740,026. Our review of the DDR report indicated that the former redevelopment agency (RDA) transferred housing asset funds to the City of Hayward's Housing Authority (Authority) pursuant to a cooperation agreement dated March 7, 2011. The transfer of funds to the Authority was not supported by an enforceable obligation as referenced by HSC section 34171 (d) (2), which states that agreements between the former RDA and the City that created the RDA are not enforceable obligations. Furthermore, HSC section 34176 (a) (1) states that if a city elects to retain the authority to perform housing functions previously performed by the RDA, all rights, powers, duties, and obligations *excluding any amounts on deposit in the LMIHF and enforceable obligations* retained by the successor agency, shall be transferred to the city. Therefore, the LMIHF cash should have been retained by the Agency. Since unencumbered cash in the amount of \$1,071,056 was returned to the Agency on February 1, 2012, the balance is adjusted for the difference of \$5,428,079 (\$6,740,026 - \$1,071,056).

If you disagree with Finance's adjusted amount of LMIHF balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's LMIHF balance available for distribution to the affected taxing entities is \$6,740,026 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,311,947
Finance Adjustments	
Add:	
Disallowed transfers:	\$ 5,428,079
Total LMIHF available to be distributed:	\$ 6,740,026

Absent a Meet and Confer request, 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.

Pursuant to HSC 34179.6 (h) (1) (B), 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.

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 Agency's failure to recover and remit those funds may result in offsets to its sales and use tax allocation or to its property tax allocation.

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 February 25, 2013 do not in any way eliminate the Controller's authority.

Ms. Morariu
March 1, 2013
Page 3

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Tracy Vesely, Finance Director, City of Hayward
Ms. Carol Orth, Tax Analysis Division Chief, County Auditor-Controller, County of Alameda
California State Controller's Office