December 15, 2012

Ms. Diane Perkin, Director of Administrative Services
City of Lakewood
5050 Clark Avenue
Lakewood, CA 90712

Dear Ms. Perkin:

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 November 8, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Lakewood Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 4, 2012. Finance issued a LMIHF DDR determination letter on November 8, 2012. Subsequently, the Agency requested a Meet and Confer session on item adjusted by Finance. The Meet and Confer Session was held on December 10, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance continues to believe the adjustment 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 adjustment continues to be necessary for the following reasons:

- The Agency contends retention of $3.2 million for fiscal year 2012-13 is necessary to maintain housing obligations for covenant monitoring, property maintenance and administrative costs of the successor housing entity. Finance originally denied the Agency's request to retain $3.2 million because the obligations were not listed on the Recognized Obligation Payment Schedule (ROPS) period of July through December 2012 and January through June 2013 and the ROPS did not identify any enforceable obligations to be funded by the LMIHF.

  During the Meet and Confer process, the Agency was unclear why the cash balances as of June 30, 2012 cannot be retained to satisfy the successor housing entity requirements as outlined in the HSC section, 33334.2, 33334.3, 33418 and 34176. Further, the Agency cited Section 4.4 of the Lakewood Redevelopment Agency Implementation Plan, which includes a Housing Production Plan that obligates the housing entity to monitor the covenant and rehabilitation program. In addition, the Agency transferred the Property Maintenance and Service Agreements to the housing entity.

  As of February 1, 2012; the entity that assumes the housing functions formerly performed by the redevelopment agency (RDA) and receives the transferred housing assets may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law, including, but not limited to, HSC section 33418. While the HSC sections referenced above allows the housing entity to continue those housing obligations, it was not intended to obligate the Agency's LMIHF cash balances. Therefore, the administrative costs associated with these functions are the responsibility of the housing entity. Pursuant to HSC section 34177 (d) the $3.2 million in unencumbered LMIHF cash balance must be remitted to the county auditor-controller for distribution to the taxing entities.

Additional supporting documents were submitted and evaluated after the meet and confer meeting. Analysis of these documents did not result in a change to the adjustment to the DDR. Obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that, "all rights, powers, duties, obligations and housing assets, ...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the successor agency could require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be $4,230,171 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	1,021,920
Finance Adjustments		
Add:		
Requested retained balance not supported:		3,208,251
Total LMIHF available to be distributed:	**$**	**4,230,171**

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 29, 2012 do not in any way eliminate the Controller's authority.

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

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Edianne Rodriguez, Senior Accountant, City of Lakewood
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office