



May 24, 2013

Mr. Farhad Mortazavi, Community Development Director
City of Millbrae Successor Agency
621 Magnolia Avenue
Millbrae, CA 94030

Dear Mr. Mortazavi:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The City of Millbrae 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 May 1, 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:

- Cash transferred to the Housing Successor Entity on January 31, 2012 totaling \$21,442 is not allowable. According to the DDR, \$15,580 was encumbered for payment of the LMIHF's outstanding accounts payable balance and \$5,862 was restricted for a loan repayment to the Agency.

These assets are not eligible to be transferred to the Housing Successor Agency and should be returned to the Agency. The Agency did not provide documentation to validate that these transfers were required by one of the Agency's enforceable obligations or other legal requirements. In addition, all future housing obligations that were liabilities of the former redevelopment agency will need to be placed and approved on a future ROPS pursuant to HSC section 34176 (g) (1) (B) before expenditure authority can be achieved. Furthermore, these transfers were not identified on the Housing Asset Transfer Form. Therefore, the LMIHF balance available for distribution to the taxing entities will be adjusted by \$21,442.

- Balances legally restricted in amount of \$653,462. Per Agency staff, this amount was erroneously reported as assets legally restricted for uses specified by debt covenants. Therefore, the LMIHF balance available for distribution to the taxing entities will be adjusted by \$653,462.

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 \$21,442 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (653,462)
Finance Adjustments:	
Add:	
Disallowed transfers:	\$ 21,442
Requested retained balance erroneously reported by the Agency:	\$ 653,462
Total LMIHF available to be distributed:	\$ 21,442

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.

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.

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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 23, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Wendy Griffe, Supervisor or Medy Lamorena, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Danielle Espinoza, Administrative Assistant, City of Millbrae
Ms. Shirley Tourel, Senior Internal Auditor, County of San Mateo
California State Controller's Office