November 30, 2012

Ms. Sarah T. Schlenk, Agency Administrative Manager
Oakland Redevelopment Successor Agency
250 Frank Ogawa Plaza, #3315
Oakland, CA 94619

Dear Ms. Schlenk:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The Oakland 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 November 5, 2012. 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:

- Asset transfers in the amount of $4,371,856. The list of assets transferred to the Housing Successor on February 1, 2012 is included in Attachment C of the DDR. Our review indicates the list includes the following assets that were not included on the Housing Asset Form submitted on August 1, 2012, and that were not approved by Finance.

    - Other Assets: lines 154 and 155 in the amount of $328,033
    - Pass –Through Loans in the amount of $4,043,823

  Since these assets are non-cash and cash equivalent assets, the balance available for distribution is not adjusted.

- The DDR Attachment F shows that the Agency proposes to retain $27,808,680 for the payment of enforceable obligations. However, additional documentation provided by the Agency demonstrates that only $19,328,617 is for payments listed on the Recognized Obligation Payment Schedules (ROPS) for 2012-13. Therefore, Finance has determined the Successor Agency should remit the difference of $8,480,063 to the county auditor-controller as an unencumbered balance.

- Balances retained for future obligations in the amount of $8,480,063. As discussed above, the Agency is allowed to retain balances to satisfy enforceable obligations on the ROPS for the 2012-13 fiscal year; however, the remaining balance of $8,480,063 ($27,808,680-$19,328,617) is not allowed. Our review of your DDR indicates the Agency has not adequately proven there will be insufficient property tax revenues to pay the future obligations. HSC section 34179.5 (c) (5) (D) states that a successor agency shall provide a listing of all approved enforceable obligations that includes a projection of annual spending requirements to satisfy each obligation and a projection of annual revenues available to fund those requirements.

  If a DDR review finds that future revenues together with dedicated or restricted balances are insufficient to fund future obligations and thus retention of current balances is required, it shall identify the amount of current balances necessary for retention. The review shall also detail the projected property tax revenues and other general purpose revenues to be received by the successor agency, together with both the amount and timing of the bond debt service payments of the successor agency, for the period in which the oversight board anticipates the successor agency will have insufficient property tax revenue to pay the specified obligations. It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not evident that future property tax revenues will be insufficient. Therefore, the request to retain current LMIHF balances for future obligations is denied.

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 $8,480,063 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments*		
Add:		
Requested retained balance not supported		27,808,680
Balances needed to satisfy ROPS for the 2012-13 fiscal year		(19,328,617)
Total LMIHF available to be distributed:	$	8,480,063

**The adjustments do not include non-cash or cash equivalents objected to by Finance in the amount of $4,371,856.

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

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

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Fred Blackwell, Assistant City Administrator, City of Oakland
Ms. Michele Byrd, Director of Housing and Community Development, City of Oakland
Mr. Gregory Hunter, Neighborhood Investment Manager, City of Oakland
Mr. Patrick Lane, Redevelopment Program Manager, City of Oakland
Mr. Jeffrey Levin, Redevelopment Program Manager, City of Oakland
Mr. Daniel Rossi, Deputy City Attorney, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
California State Controller's Office