



REVISED

November 23, 2015

Mr. Bill Manis, Deputy City Manager  
San Bernardino City  
300 North D Street, 6th Floor  
San Bernardino, CA 94218

Dear Mr. Manis:

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 letters dated January 11, 2013, February 15, 2013, February 21, 2013, and March 21, 2014, respectively. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Bernardino Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on December 18, 2012.

Based on a review of additional or clarifying information provided to Finance during and subsequent to the Meet and Confer process, Finance revised some of the adjustments made in our previous DDR determination letters. Specifically, we revised the following adjustments:

- The total amount of assets held as of June 30, 2012 was originally adjusted by \$5,196,844 due to a lack of clarifying information. Finance was provided adequate supporting documentation during the Meet and Confer process to reverse the adjustment.
- The transfer of an infrastructure loan in the amount of \$110,901 was originally denied due to a lack of supporting documentation. The Agency later provided a copy of the 1995 loan agreement to support the reversal of this adjustment.
- The request to restrict bond proceeds in the amount of \$1,182,006 was originally denied by Finance because the Agency did not provide adequate supporting documentation. During the Meet and Confer process, the Agency provided general ledgers to tie the restriction of the funds to the 1999 Bond Issue.
- The request to retain \$606,347 for Recognized Obligation Payment Schedule (ROPS) items was originally denied because the ROPS provided for the period January through June 2013 only identified \$184,875 in funding requests from the LMIHF. However, after reviewing additional information presented during the Meet and Confer process, Finance was able to identify enforceable obligations supporting the reversal of the adjustment.

- Finance reviewed the DDR submitted by the Inland Valley Development Agency (IVDA) of which the former San Bernardino City Redevelopment Agency (RDA) was a member. According to IVDA records, transfers in the amounts of \$4,336,291 and \$2,594,368 were made to the former RDA pursuant to HSC section 33334.2 in September 2011 and October 2011, respectively. Finance originally made an adjustment for these amounts because the transfers were not explicitly listed in the DDR. After further review, Finance is no longer adjusting this item. Documentation received during the Meet and Confer process confirms the amounts were deposited in the "Landsale" account, and subsequently transferred to the Debt Service account where an expense was recorded.
- The request to retain the deposit in escrow account in the amount of \$200,000 remains disallowed. The Disposition and Development Agreement between the former RDA and In-N-Out Burger was signed after June 27, 2011. The Agency agreed with this disallowance.
- Finance continues to object to the transfers from the LMIHF to Affordable Housing Solutions Inc. (AHS); the Housing Capitalization Funding Agreement between the former RDA and AHS has been continuously denied by Finance in all ROPS reviews. Based on revenue amounts stated in the AHS trial balance, it was initially determined that the \$38,211,487 in transfers to AHS consisted of real property totaling \$23,202,896 and cash and cash equivalents totaling \$15,008,591.

Based on further information provided subsequent to the Meet and Confer process, \$11,838,584 of the \$15,008,591 initially determined to be cash and cash equivalents represents real property. The Agency identified 29 properties, some consisting of more than one assessor's parcel number, that were included in the transferred amount. The Agency also included all 29 properties on the Housing Asset Transfer (HAT) form submitted to Finance on August 1, 2012, to be transferred to the City of San Bernardino (City) as the housing successor entity. In Finance's HAT letter dated March 21, 2014, Finance determined sufficient documentation was provided during the Meet and Confer process to support these properties are housing assets pursuant to HSC section 34176 (e) (1) and are eligible for transfer from the Agency to the City as housing successor, not to AHS. We note that all 29 properties were also identified in the Asset Transfer Review report prepared by the California State Controller's Office (Controller) as unallowable transfers and should be returned to the Agency.

For the remaining \$3,170,007 of cash and cash equivalents from the \$15,008,591 in disallowed transfers, the Agency provided a breakdown of transactions for fiscal years 2010-11 and 2011-12 totaling \$3,215,875. The Agency identified 37 transactions totaling \$2,856,858 for fiscal year 2010-11, and 19 transactions totaling \$359,017 for fiscal year 2011-12.

Of the 37 transactions for fiscal year 2010-11, the Agency indicated that 7 transactions occurred prior to January 1, 2011, which would be outside of the scope of the DDR. Documents were provided for Items 1, 15, 22 through 24, 33, and 34 totaling \$1,917,609 that show the cash transfers or payments were made prior to January 1, 2011, and are therefore outside of scope of the DDR. Furthermore, it should also be noted that AHS sold the property associated with Item 23; however, no information was provided on the amount received or the disposition of the proceeds resulting from the sale. As such, these items are excluded from Finance's review.

The remaining transactions occurred from January 1, 2011 through June 30, 2012 and therefore, are appropriately included in the scope of the DDR. The items are further discussed in the following sections:

- For fiscal year 2010-11, the Agency provided supporting documents showing that Items 16, 21, and 35 from the transaction list totaling \$4,020 were obligations entered into by the former RDA with third parties. Additionally, Item 2 in the amount of \$650 is an accrual, not an actual cash transaction. Furthermore, the Agency provided documents showing that Item 6 totaling \$4,618 is program income for the federal Neighborhood Stabilization Program and is restricted for use in that program. The remaining \$929,961 (\$2,856,858 - \$1,917,609 - \$4,020 - \$650 - \$4,618) consists of ineligible payments on behalf of AHS or transfers to AHS that should be returned to the Agency for remittance to the County Auditor-Controller (CAC). Specifically, the following transactions are disallowed:
  - For Items 4 and 12 totaling \$1,082, the Agency did not provide any documents to support these transactions for us to determine these are obligations of the former RDA. The Agency did not dispute this determination.
  - For Items 5, 7 through 11, and 13 totaling \$5,335, the Agency provided checks that were payable to AHS, deposited by the former RDA into the former RDA's account, and subsequently transferred to AHS. The checks were from various escrow companies for the return of excess funds after close of escrow. Our review indicates the funds being returned were originally drawn from the former RDA's LMIHF. Therefore, these are former RDA funds, not AHS funds. The Agency did not dispute this determination.
  - For Items 14, 25 through 32, and 36 totaling \$834,902, the Agency provided checks or wire transfers, escrow statements, and purchase and sale agreements to support each of the property purchases. All of the checks and wire transfers were issued by the former RDA from the LMIHF; however, all of the escrow statements provided name AHS as the buyer and all of the purchase and sale agreements were between AHS and third parties. The former RDA was not named as a buyer on any of the properties, nor was the former RDA a party to any of the purchase and sale agreements. The Agency did not provide any other documents indicating that the former RDA is responsible for making the payments on behalf of AHS. Furthermore, in the Agency's June 15, 2015 letter to Finance, the Agency acknowledges that AHS entered into agreements with third parties for each of these items. Therefore, these transactions are the responsibility of AHS, not the former RDA.

It should also be noted that AHS sold the properties associated with Items 25 and 31; however, no information was provided on the amount received or the disposition of the proceeds resulting from the sale.

- For Items 17 through 20 totaling \$86,593, the Agency provided checks showing payments made and invoices from third parties. The checks were issued by the former RDA from the LMIHF; however, the invoices

provided either did not identify the entity being billed or were addressed to AHS. The Agency did not provide agreements with the third parties showing that the former RDA was responsible for making these payments. Furthermore, in the Agency's June 15, 2015 letter to Finance, the Agency states that AHS entered into agreements with third parties for each of these items. Therefore, these transactions are the responsibility of AHS, not the former RDA.

- For Item 37 in the amount of \$2,049, the Agency provided a check showing payment made and the invoice for the annual insurance premium for a property owned by AHS. However, the Agency did not provide any documents showing that the former RDA is responsible for payment of AHS's insurance premium. Furthermore, in the Agency's June 15, 2015 letter to Finance, the Agency states that this cost was a result of AHS acquiring and owning property. Therefore, this item is the responsibility of AHS, not the former RDA.
- Initially, the Agency did not provide any agreements or other documents showing that the \$359,017 is associated with obligations of the former RDA. For fiscal year 2011-12, the Agency provided various checks issued by the former RDA, invoices not addressed to the former RDA, and escrow statements listing AHS as the buyer. However, subsequent to the Meet and Confer process, the Agency provided supporting documents showing that Items 13 and 16 through 19 from the transaction list totaling \$257,555 were obligations entered into by the former RDA with third parties. The remaining \$101,462 (\$359,017 - \$257,555) consists of ineligible payments on behalf of AHS or transfers to AHS that should be returned to the Agency for remittance to the CAC. Specifically, the following transactions are disallowed:
  - For Items 1 through 12 totaling \$12,177, the Agency did not dispute that the funds are available for remittance.
  - For Items 14 and 15 totaling \$89,285, the Agency provided invoices from third parties and checks showing payments made by the former RDA; however, the Agency did not provide agreements with the third parties showing that the former RDA was responsible for making these payments. The agreements provided were entered into by AHS. Therefore, these transactions are the responsibility of AHS, not the former RDA.

Based on our review of information by the Agency, Finance is reversing \$11,838,584 initially identified as cash and cash equivalents to be distributed to the affected taxing entities; Finance determined this amount is associated with real property. However, we maintain the adjustment to the available balance of \$1,231,423 (\$200,000 + \$929,961 + \$101,462) is necessary. The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$1,231,423 (see table on following page).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed transfers	1,231,423
<b>Total LMIHF available to be distributed:</b>	<b>\$ 1,231,423</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 CAC 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.

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 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 sections 34167.5 and 34178.8, the 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 do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

  
JUSTYN HOWARD  
Program Budget Manager

cc: Ms. Lisa Connor, Project Manager, San Bernardino City  
Ms. Linda Santillano, Property Tax Manager, San Bernardino County