

December 21, 2012

Ms. Dena Fuentes, Director  
San Bernardino County  
385 North Arrowhead Avenue  
San Bernardino, CA 92415

Dear Ms. Fuentes:

**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 15, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the County of San Bernardino Successor Agency (Agency) submitted an oversight board approved (LMIHF) (DDR) to the California Department of Finance (Finance) on October 18, 2012. Finance issued a LMIHF DDR determination letter on November 15, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer Session was held on December 6, 2012.

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

- Statutory pass-through payments totaling \$517,528. During the Meet and Confer process, the Agency provided general ledger documentation showing expenses of \$2,717,285 in pass-through payments for the Recognized Obligation Payment Schedule (ROPS) for the January 1, 2012 through June 30, 2012 period. After further review, Finance realized the Agency was approved to distribute \$2,367,417 from the LMIHF during the same period. Therefore, only \$349,867 (\$2,717,285-2,367,417) is disallowed.
- Redwood Terrace Housing Covenant in the amount of \$2,960,000. The total value of the project is \$3.7 million of which \$740,000 was funded by LMIHF. Finance made an adjustment of \$2,220,000 (\$2,960,000-\$740,000). During the Meet and Confer process Finance determined \$2,220,000 is funded by bond proceeds; therefore, Finance has reversed its original adjustment of \$2,220,000.

However, Finance continues to believe some of the adjustments 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 adjustments continue to be necessary for the following reasons:

- Replacement Housing Obligation in the amount of \$4,900,000 was not adequately supported. Finance continues to deny the transfer of LMIHF for this item. Obligations

associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former redevelopment agency'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. Therefore, the transfer of \$4,900,000 remains disallowed.

- Debt Service Reserve in the amount of \$6,868,616. During the Meet and Confer process the Agency requested this amount for "Cash Flow Smoothing", not Debt Service Reserve. The Agency did not provide the necessary documentation to support the legal requirement for the reserve.

The Agency contends these funds are necessary because pass-thru payments are subordinate to their bond obligations. AB x1 26 requires the county auditor controllers to make the pass-through payments prior to distributing the remaining Redevelopment Property Tax Trust Fund (RPTTF) monies to the Agency. However, Finance determined the distribution amount of the RPTTF, after pass-through payments, is sufficient to fund Agency bond payments. Therefore, Finance continues to make the necessary adjustment.

- The County General Fund Loan repayment in the amount of \$1,200,000 was denied as an enforceable obligation on the ROPS for the January 1, 2013 through June 30, 2013 period. Subsequently, the Agency requested a Meet and Confer Session. As communicated in the letter dated December 18, 2012, Finance continues to deny this item pursuant to HSC section 34171 (d) (2); however, per HSC section 34191.4 (b), upon obtaining a Finding of Completion from Finance, loan agreements entered into between the RDA and the city, county, or city and county that created the RDA shall be deemed to be enforceable obligations provided the oversight board makes a finding the loan was for legitimate redevelopment purposes.

Additionally, Finance reviewed the DDR submitted by the Inland Valley Development Agency (IVDA), in which San Bernardino County is a member. According to IVDA records, a transfer of \$1,928,896 was made to the former redevelopment agency pursuant to HSC section 33334.2 in June of 2012. Finance confirmed with IVDA that these funds were transferred to the Successor Agency. San Bernardino County representatives confirmed that these funds were not listed in DDR submitted to Finance. Therefore, Finance is adjusting the amount available for distribution by \$1,928,896.

The Agency's LMIHF balance available for distribution to the affected taxing entities is \$15,599,572 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 352,193
Finance Adjustments	
Add:	
Disallowed transfers	\$ 12,118,483
Denied ROPS items	1,200,000
Pass-through payments from MDA	1,928,896
	<u>15,599,572</u>
<b>Total LMIHF available to be distributed:</b>	<b>\$ 15,599,572</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 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 25, 2012 do not in any way eliminate the Controller's authority.

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Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long horizontal stroke extending to the left.

STEVE SZALAY  
Local Government Consultant

cc: Mr. Gary Hallen, Deputy Director of Community Development and Housing, San Bernardino County  
Ms. Vanessa Doyle, Auditor-Controller Manager, San Bernardino County  
California State Controller's Office