DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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January 11, 2013

Ms. Teri Baker, Assistant to the City Manager
City of San Bernardino
300 North D Street, 6th Floor
San Bernardino, CA 94218

Dear Ms. Baker:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The City of San Bernardino 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 December 18, 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:

- Our review of the documents provided to verify assets held by the Agency as of June 30, 2012 indicates the total amount of assets held as of June 30, 2012 should be $9,885,081. As such, the amount has been adjusted by $5,196,844.

- Finance reviewed the DDR submitted by the Inland Valley Development Agency (IVDA), in which San Bernardino City is a member. According to IVDA records, transfers of $4,336,291 and $2,594,368 were made to the former redevelopment agency (RDA) pursuant to HSC section 33334.2 in September 2011 and October 2011, respectively. However, these transfers were not included in the DDR reported balance. Therefore, Finance is adjusting the June 30, 2012 asset balance by $6,930,659.

- A transfer for the infrastructure loan in the amount of $110,901 is disallowed. The Agency did not provide adequate supporting documentation to support the transfer.

- The request to restrict bond proceeds in the amount of $1,182,006 is disallowed. The Agency did not provide adequate supporting documentation to support the restriction of this asset.

- The request to retain the deposit in escrow in the amount of $200,000 is disallowed. The Disposition and Development Agreement between the former RDA and In-N-Out Burgers was signed after June 27, 2011.

- The request to retain $606,347 for Recognized Obligation Payment Schedule (ROPS) items has been adjusted. A review of the ROPS for the January through June 2013 period only identifies $184,875 in funding requests. Therefore, the remaining amount, $421,472, is disallowed.

Furthermore, Finance objects to the real property transfers to Affordable Housing Solutions, Inc. (AHS) totaling $23,202,896. The Housing Capitalization Funding Agreement does not allow for property fee title transfer without approval from the Community Development Commission, the City Council, and AHS. Documentation was not provided to support any other obligation for the transfers. Therefore, the transfers are disallowed.

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 $14,041,882 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments*		
Add:		
Adjustment to the June 30, 2012 balance		12,127,503
Disallowed transfers		110,901
Requested retained balances not supported		1,382,006
Denied ROPS items		421,472
Total LMIHF available to be distributed:	$	14,041,882

*Do not include real property transfers totaling $23.2 million objected to by Finance

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.

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.

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

Sincerely,

For

STEVE SZALAY
Local Government Consultant

cc: Mr. Carey Jenkins, Director of Housing and Community Development, City of San Bernardino
Mr. Mike Trout, Project Manager, City of San Bernardino
Ms. Vanessa Doyle, Property Tax Manager, San Bernardino County
California State Controller's Office