



REVISED

April 3, 2013

Tina Rodriguez, Administrative Services Officer
City of Santa Monica
1685 Main Street
Santa Monica, CA 90401

Dear Ms. Rodriguez:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated December 15, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6(c), the City of Santa Monica Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to Finance on October 11, 2012. Finance issued a LMIHF DDR determination letter to the Agency on November 9, 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 5, 2012. Finance issued a LMIHF DDR meet and confer determination letter to the Agency on December 15, 2012.

Based on a review of additional or clarifying information provided to Finance after our issuance of our December 15, 2012 LMIHF DDR determination letter, Finance is revising some of the adjustments made in that LMIHF DDR determination letter. Specifically, we are revising the following adjustments.

- The Agency contends that \$19,361,188 in transferred funds are restricted proceeds from a bank loan. While the DDR did not identify these funds as restricted assets, based upon additional review and further clarification from the Agency, Finance concurs that these funds were advances of proceeds to the redevelopment agency (RDA) from Bank of America and are restricted assets pursuant to the Line of Credit Agreement between the contracting parties. Therefore, we are reversing this adjustment, as the restricted assets are not eligible for remittance to the local taxing entities.
- Finance is reversing an additional \$3,500,000 related to the Finance approved Recognized Obligation Payment Schedule III, line item 19 – High Place East. Originally, DOF rejected this line item as an enforceable obligation but eventually approved it for payment from the LMIHF. The latter approval was not caught during our previous LMIHF DDR review. Because this item was approved as payable from LMIHF, the funds are not available for remittance to the local taxing entities.

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:

- Cash transfers to the City of Santa Monica in the amount of \$31,654,064. Finance denied the transfers as no evidence was submitted the funds were to be used for an enforceable obligation of the former RDA. The Agency contends the transferred cash was used to pay enforceable obligations as the former RDA transferred certain powers to the City via a Cooperation Agreement entered into on September 1, 2010, to carry out the affordable housing projects. However, HSC section 34171(d)(2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable; therefore, the Cooperation Agreement is not an enforceable obligation.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$31,654,064 million (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed transfers:	\$ 31,654,064
Total LMIHF available to be distributed:	\$ 31,654,064

This is Finance's 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 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 for which they were sold and allow 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 remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Finally, during the review of the DDR, DOF noted there have been many property transfers to the City of Santa Monica which may likely not have been proper transfers. For informational purposes, Finance reminds the Agency that non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent the non-cash transferred assets are not for a government purpose or pursuant to an enforceable obligation, these assets should be returned to the Agency and disposed of in a manner consistent to the Agency's Long Range Property Management Plan, pursuant to HSC section 34191.5. Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency.

Please direct inquiries to Kylie Le, Supervisor or Brian Dunham, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Andy Agle, Director of Housing and Economic Development, City of Santa Monica
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office