



December 3, 2012

Ms. Jennifer Alfaro, Development Services Specialist  
City of Upland  
460 North Euclid Avenue  
Upland, CA 91786

Dear Ms. Alfaro:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The City of Upland 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 7, 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:

- Transfers to the fiscal agent in the amount of \$1.5 million; the Agency did not provide adequate documentation to support the transfer of funds for existing enforceable obligations.
- Transfers to the City in the amount of \$4.8 million. Per HSC 34176 (a) (1), amounts on deposit in the LMIHF are not eligible for transfer and must be kept by the Successor Agency. Therefore, funds commingled with the 20 percent set-aside beginning in 1999 must be included in the balance to be remitted to the affected taxing entities, and the transfer is disallowed.
- Bond reserves in the amount of \$566,451 were not found to be legally restricted as required; therefore, the request to retain funding from the LMIHF is disallowed.

Additionally, properties totaling \$7.6 million were denied by Finance our letter dated August 29, 2012 as inclusions to the Housing Asset Transfer Form. Subsequently, the Agency requested a Meet and Confer session regarding the disputed properties. As no Meet and Confer session has occurred, Finance continues to object to these transfers.

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/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's LMIHF balance available for distribution to the affected taxing entities is \$6,764,092 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (131,294)
Finance Adjustments*	
Add:	
Disallowed transfers to the fiscal agent	\$ 1,502,875
Disallowed transfers to the City	4,826,060
Requested retained balance not supported	566,451
<b>Total LMIHF available to be distributed:</b>	<b>\$ 6,764,092</b>

\*The adjustments do not include non-cash or cash equivalents objected to by Finance in the amount of \$7.6 million.

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

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city, county, or any other public agency. Determinations outlined in this letter and Finance's Housing Assets Transfer letter dated August 29, 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,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a small 'P.S.' written below it.

**STEVE SZALAY**  
Local Government Consultant

cc: Mr. Jeff Zwack, Development Services Director, City of Upland  
Ms. Liz Chavez, Housing Manager, City of Upland  
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County  
California State Controller's Office