



April 9, 2013

Mr. Charles Adams, Finance and Administrative Services Director  
City of Albany  
Administration and Finance  
1000 San Pablo Avenue  
Albany, CA 94706

Dear Mr. Adams:

Subject: Other Funds and Accounts Due Diligence Review

The City of Albany Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on January 28, 2013. 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 January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 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 OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Disallowed cash transfer in the amount of \$1,050,000. The former redevelopment agency (RDA) made two cash transfers to the City of Albany (City): \$650,000 from the Capital Projects Fund and \$400,000 from the Debt Service Fund for various public improvement projects in accordance with a Cooperative Agreement between the City and the RDA, executed January 17, 2011. HSC section 34171(d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, Finance is disallowing this transfer and is making an adjustment for \$1,050,000 to the available OFA balance to be distributed to the taxing entities.
- Balances retained for fiscal year 2012-13 obligations in the amount of \$82,480. The Agency is requesting to retain \$87,201 for enforceable obligations included in Recognized Obligation Payment Schedule for the period January 1, 2013 through June 30, 2013 (ROPSIII). These obligations will be paid with the Redevelopment Property Tax Trust Fund (RPTTF) distribution the Agency received from the Alameda County Auditor-Controller's office in January 2013. Therefore, the retention of the amounts is not allowed. However, Finance noted that the county auditor-controller adjusted the

ROPS III January 2, 2013 distribution for the prior period by \$4,721 pursuant to HSC section 34186 (a). Therefore, Finance is allowing the retention of these funds in order to adequately fund approved ROPS III obligations. Consequently, we are adjusting the balance by \$82,480 (\$87,201 - \$4,721).

If you disagree with Finance's adjusted amount of OFA 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 OFA balance available for distribution to the affected taxing entities is \$1,169,178 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 36,698
Finance Adjustments	
Disallowed transfers	\$ 1,050,000
Disallowed balances retained for fiscal year 2012-13 obligations	82,480
<b>Total OFA available to be distributed:</b>	<b>\$ 1,169,178</b>

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. Upon submission of payment, it is requested you provide proof of payment to Finance within five business 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 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.

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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 do not in any way eliminate the Controller's authority.

Please direct inquiries to Beliz Chappuie, Supervisor or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Judith R. Lieberman, Projects Director, City of Albany  
Ms. Nicole Almaguer, City Clerk, City of Albany  
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County Auditor-Controller  
California State Controller's Office