



April 27, 2013

Ms. Wendy Cosin, Deputy Planning Director
City of Berkeley
2118 Milvia Street, 3rd Floor
Berkeley, CA 94704

Dear Ms. Cosin:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated March 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Berkeley Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on March 22, 2013. 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 April 8, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Balances restricted for funding of enforceable obligations in the amount of \$1,560,000. The total outstanding obligation that was listed in the Recognized Obligation Payment Schedule (ROPS) for the January through June 2013 (ROPS III) period represents the principal and accrued interest on a \$1 million bond issued on December 1, 1997 between the City of Berkeley (City) and the former Redevelopment Agency (RDA). Finance reviewed this item during the January through June 2013 ROPS (ROPS III) period as a total outstanding obligation of \$1.6 million and denied the item although no payment was being requested for the ROPS III period. A Meet and Confer was held for ROPS III on November 29, 2012. In its December 18, 2012 letter, Finance stated that the item would be re-reviewed during the next ROPS period since there was no funding was requested at the time.

As payments have been placed on the July through December 2013 ROPS (ROPS 13-14A), Finance has re-reviewed this item to determine if it meets the definition of an enforceable obligation. The bond indenture was between the former RDA and the City and identifies the City as the sole bondholder. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that

created the former RDA. HSC section 34171 (e) defines indebtedness obligations as bonds, notes, and certificates of participation issued or delivered by the RDA to third party investors or bondholders. The City is not considered a third party, and therefore this item does not meet the definition of indebtedness. Additionally, 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, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. Therefore, the City's demand letter dated January 15, 2013, for the amount of \$1,554,265 does not obligate the Agency to make payments to the City. Consequently, the Agency's request to retain \$1,560,000 is not allowed. Therefore, OFA balances available will be increased by \$1,560,000.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- A loan receivable in the amount of \$275,000. The development loan agreement was executed between Jubilee Senior Homes and the City. Since the former RDA was not a party to the agreement, the loan is not considered an asset of the former RDA. Therefore, the \$275,000 loan is deducted from the DDR asset balance of \$5,174,477 and an offsetting adjustment is made to the non-liquid asset balance. The adjustments made have a net zero effect on the balance available to the taxing entities.

The Agency's OFA balance available for distribution to the affected taxing entities is \$786,102. (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (773,898)
Finance Adjustments	
Add:	
Requested retained balance not supported:	1,560,000
Total OFA available to be distributed:	\$ 786,102

This is Finance's final determination of the OFA 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. 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.

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 sections 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 Evelyn Suess, Supervisor or Danielle Brandon, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Danita Hardaway, Associate Management Analyst, City of Berkeley
Ms. Carol A. Orth, Division Chief, Tax Analysis, County of Alameda
California State Controller's Office