



April 27, 2013

Ms. Ruth Davidson-Guerra, Assistant Community Development Director  
City of Burbank  
150 North Third Street  
Burbank, CA 91502

Dear Ms. Davidson-Guerra:

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 Burbank 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 11, 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:

- The DDR indicates that \$19,357,000 is legally restricted. However, included in this amount is \$1,742,663 for the City Center 1993 Series A Tax Allocation Bond reserve account. The Official Statement and Indenture of Trust state that only \$525,706 is required to be restricted in the reserve account. During the Meet and Confer process, the Agency provided additional information showing that the reserve requirement is \$1,742,663. Therefore, Finance is reversing its adjustment of \$1,216,957.
- The Agency's request to categorize \$91,791,000 as a non-cash or cash equivalent asset is partially disallowed. In Finance's initial review, it was determined that \$39,777,775 was cash transfers and advances to the City of Burbank (City). During the Meet and Confer process, the Agency provided additional information showing that \$16,502,798 of the adjustments should be reversed. The \$39,777,775 that was in question is comprised of the following:
  - Forgivable loan to the City's Housing Authority to preserve affordable housing in the amount of \$1,327,404 in June 2011. Finance had included this adjustment twice. Therefore, Finance is reversing its adjustment of \$1,327,404.
  - Transfer to the City for the Police/Fire Water Intrusion Project in the amount of \$9,547,869. The cooperation agreement related to the Police/Fire Water

Intrusion Project was approved on March 1, 2011 between the City and the former Redevelopment Agency (RDA). The City also approved a contract with a third party for the project on March 1, 2011. Therefore, the former RDA's funds were committed to a third party and Finance is reversing its adjustment of \$9,547,869.

- o Transfer to the City's Youth Endowment Services Fund in the amount of \$3,669,000 in June 2011 and January 2012. It is our understanding the fund was established by the City of Burbank. The Agency did not object to this adjustment during the Meet and Confer process; therefore, Finance continues to increase the OFA balance available by \$3,669,000.
- o Lump sum payments to the City totaling \$14,120,525 were made pursuant to a 1970 agreement and Resolution Nos. 28,301 and R2246. Per review of the two resolutions, it references a 1985 agreement. Although promissory notes were provided, there was no established repayment schedule. Furthermore, the 1970 agreement is not a loan agreement, but merely an agreement to establish the City and Agency relationship.

During the Meet and Confer process, the Agency provided additional information showing that \$3,620,525 of the payments was made pursuant to Finance's letter approving the Recognized Obligation Payment Schedules (ROPS) for the January through June 2012 and July through December 2012 periods. Therefore, Finance is reversing \$3,620,525 of its adjustment.

However, Finance continues to increase the OFA balance available by \$10.5 million. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. These loans were issued after the first two years of the RDA's creation; therefore, the payments for these loans are not permitted. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

The repayment of these loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- o Transfer to the City for capital improvement projects in the amount of \$9,105,700 in March 2011. The Agency did not object to this adjustment. Therefore, Finance continues to increase the OFA balance available by \$9,105,700.
- o Cash advances or loans to the City totaling \$2,007,000. It is our understanding the amount comprises of \$679,596 for property acquisition on 10 W. Magnolia and \$1,327,404 for an affordable housing preservation loan.

The Agency committed to funding a portion of the land pursuant to Resolution No. 26,502 and a cooperative agreement between the City and Agency dated June 17, 2003. The Agency has a 25 percent interest in the property acquired. Therefore, the City should transfer the 25 percent interest back to the Agency to

be included for disposition in the Long Range Property Management Plan. Since this is a non-cash asset, Finance is not making an adjustment to the OFA balances available for distribution to taxing entities.

Pursuant to Resolution No. R-2255, the Agency agreed to loan \$1,327,404 to the City. The loan agreement specifies the funding sources to be used for repayment and the terms for repayment. Since this is a non-cash asset, Finance is not making an adjustment to the OFA balances available.

- The Agency's request to restrict \$52,000 in accounts receivable and \$13,000 in loans receivable is denied. It is our understanding these receivables have been collected, therefore retention of these balances as a non-liquid asset is denied and the amount to be distributed to the taxing entities will be adjusted by \$65,000. The Agency did not object to this adjustment. Therefore, Finance continues to increase the OFA balance available by \$65,000.
- It is our understanding the Oversight Board made adjustments totaling \$10,764,000 as an amount available to be remitted to the taxing entities. These adjustments consist of cash transfers for the Youth Endowment Services Fund in the amount of \$3,669,000, North San Fernando Infrastructure Project for \$4,950,000 and the Victory Blvd Corridor Project for \$2,144,700. These adjustments were already included in Procedures 2 and 3 of the DDR. As such, a decrease of \$10,764,000 was made to eliminate duplicity. The Agency did not object to this adjustment.

The Agency's OFA balance available for distribution to the affected taxing entities is \$24,303,977 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 11,728,000
Finance Adjustments	
Add:	
Disallowed transfers:	\$ 23,274,977
Accounts receivable recognized:	\$ 65,000
Adjustment to Oversight Board recommendation:	(10,764,000)
<b>Total OFA available to be distributed:</b>	<b>\$ 24,303,977</b>

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.

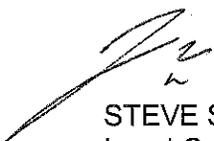
Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain 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 Mary Halterman, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Maribel Leyland, Housing Authority Manager, City of Burbank  
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller  
California State Controller's Office