



August 8, 2013

Ms. Kelly McAdoo-Morariu, Assistant City Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541

Dear Ms. McAdoo-Morariu:

Subject: Other Funds and Accounts Due Diligence Review

The City of Hayward 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 May 24, 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:

- Transfers to the City of Hayward (City) in the amount of \$4,752,000. The Agency made several cash transfers to City during the fiscal year ended June 30, 2011. HSC Section 34171(d) (2) states an enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the Agency and the former redevelopment agency; therefore, the following transfers totaling \$4,752,000 are disallowed.
  - Repayment of advances to the City in the amount of \$2,220,000. The Agency entered into a Repayment Agreement with the City in 1975 for advances received for the Hayward Development Project. The Repayment Agreement has been amended and restated numerous times. The Agency contends this is not a loan; however, neither loans nor agreements between the City and Agency are considered enforceable obligations, unless the agreement was at the time of the issuance of indebtedness or within two years of the creation of the Agency pursuant to HSC section 34171 (d) (2). The Agency was established in 1969. The Agency made two \$800,000 installment payments in January and July of 2011 pursuant to the Amended and Restated Repayment Agreement entered into on July 1, 2008. Additionally, a partial payment of \$620,000 for prior year's installment payments was transferred to the City pursuant to a former RDA board

resolution RA 11-07 in March of 2011. Since these payments are not considered as an enforceable obligation, the balance to be remitted to the County Auditor-Controller (CAC) for disbursement to the affected taxing entities (ATEs) is adjusted by \$2,220,000.

- o Repayment of City loans totaling \$1,917,000. The former RDA board resolution RA 11-07 directed the RDA to make several cash transfers to the City on March 2, 2011 to repay loans funded by the City's Water Funds in 1990 and Sewer Funds in 2003. HSC 34171 (d) (2) states that enforceable obligations do not include any agreements between the city, county or city and county that created the redevelopment agency, unless the loan agreement was entered into between the RDA within the first two years of creation. Furthermore, the Agency could not provide loan agreements to support the payments. Therefore, the total transfer of \$1,917,000 for four payments (\$624,629 + \$416,446 + \$44,048 + \$831,877) is not allowed, and the OFA available balance has been adjusted by \$1,917,000.
- o Transfer of \$450,000 from the Redevelopment Agency Fund to the City's Street System Improvement Fund. Former RDA board resolution RA 11-14 dated June 28, 2011 authorized the transfer to cover the local match requirement for City's grant award from the California Department of Transportation. HSC section 34163 (b) prohibits the agencies to enter into any agreements after June 27, 2011. Furthermore, the grant documentation provided only requires a local match of \$121,000 not the \$450,000 the Agency committed to transfer. Therefore, the balance has been adjusted by \$450,000.
- o Transfers to the City's general fund in the amount of \$165,000. The Agency's general ledger lists a "supplemental to general fund" monthly expense in the amount of \$13,750. This reoccurring expense was incurred on the last day of each month during 2011 totaling \$165,000 (\$13,750 x 12). The Agency was unable to provide documentation or explanation for this monthly supplement transferred to the City's general fund. Therefore, the balance has been adjusted by \$165,000.
- Balances retained to satisfy fiscal year 2012-13 obligations in the amount of \$4,326,136. The Successor Agency requested to restrict a combined balance of \$7,338,068 for the July through December 2012 ROPS (ROPS II) and the January through July ROPS (ROPS III) expenditures. The Agency received \$2,868,913 in Redevelopment Property Tax Trust Fund (RPTTF) for the ROPS II. Since the Agency received the ROPS III RPTTF distribution in January of 2013, the Agency is not permitted to retain additional balances for the ROPS III period except for the \$143,019 in reserve balances requested for ROPS III period. Therefore, the Agency is only permitted to retain balances for the approved ROPS II items and the ROPS III items funded with reserves totaling \$3,011,932 (\$2,868,913 + \$143,019). The balance to be remitted to the CAC for distribution to the ATEs is adjusted by \$4,326,136 (\$7,338,068 - \$3,011,932).

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 \$7,312,178 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (1,765,958)
Finance Adjustments	
Disallowed transfers	\$ 4,752,000
Disallowed balances retained for fiscal year 2012-13 obligations	4,326,136
<b>Total OFA available to be distributed:</b>	<b>\$ 7,312,178</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, please 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 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Szalay for". The signature is written in a cursive style with a large initial "S".

STEVE SZALAY  
Local Government Consultant

cc: Ms. Tracy Vesely, Finance Director, City of Hayward  
Ms. Carol Orth, Tax Analysis Division Chief, County Auditor-Controller, County of Alameda  
California State Controller's Office