DEPARTMENT OF FINANCE

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REVISED

April 25, 2013

Mr. Sarah Schlenk, Agency Administrative Manager
Oakland Redevelopment Successor Agency
250 Frank H. Ogawa Plaza, #3315
Oakland, CA 94619

Dear Ms. Schlenk:

Subject: Other Funds and Accounts Due Diligence Review

The Oakland Redevelopment 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 February 5, 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:

- Cash transfers to the City of Oakland (City) in the amount of $128,820,367. Our review noted that the Agency transferred cash totaling $139,844,716 to the City of which $128,820,367 is not permitted for the following reasons:

    - Pursuant to a Purchase and Sale Agreement with a Leaseback Option (Purchase and Sale Agreement) between the City and the former Redevelopment Agency (RDA) dated March 3, 2011, the Agency transferred $35,161,938 to the City to acquire nine properties with a leaseback option by the City. HSC 34171 (d) (2) states that agreements between the City and RDA are not enforceable obligations. Therefore, the transfer of $35,161,938 from the RDA to the City of Oakland was not for a valid obligation and the cash and property transfers should be reversed. Of the $35,161,939, $15,877,394 of the transfers had originated from restricted cash/bond proceeds and is not available for disbursement to the taxing entities. Therefore, the available cash balance for distribution is adjusted for the disallowed cash transfer in the amount of $19,284,544.

- Pursuant to a Funding Agreement between the City and the RDA executed on March 3, 2011, the Agency transferred $104,682,778 to the City. The RDA agreed to pay the City an amount equal to the cost for the City to carry out and complete projects on behalf of the RDA. Pursuant to HSC section 34167.5, asset transfers after January 1, 2011, between the city or county, or city and county that created a redevelopment agency for which an enforceable obligation does not exist is not permitted. The Agency was able to support $11,024,349 of the transfers with third party contracts executed by the City after the effective date of the Funding Agreement and before June 27, 2011. The remaining balance of $93,658,429 ($104,682,778 - $11,024,349) was not related to enforceable obligations. Contracts issued prior to the Funding Agreement date of March 3, 2011 cannot be obligations of the RDA as RDA funds were not committed at the time of contract execution. Additionally, HSC 34163 (b) prohibits contracts to be entered into after June 27, 2011. Since $37,664,151 of the disallowed amount originated from restricted cash/bond proceeds and is not available for disbursement to the taxing entities, only the $55,994,278 of the adjustment impacts the available balance to be distributed.

  Additionally we note that the Agency has recently informed Finance that approximately $34.6 million of the amount mentioned above is restricted balances and cannot be remitted to the taxing entities. To the extent there is an additional $34.6 million in restricted balances that wasn't already accounted for in the restricted proceeds identified above, the Agency should provide the necessary documentation to support the restrictions during the meet and confer process. As it currently stands, no documentation was included in the DDR or made available to Finance at the time of this review that identifies such restrictions.

- Capital asset transfers to the City pursuant to a Purchase and Sale Agreement executed between the RDA and City on March 3, 2011. The RDA agreed to the sale of 103 RDA properties to the City for a purchase price of $1 each. Per HSC section 34191.3, the requirements in subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be suspended, except as those provisions apply to the transfers for governmental use, until Finance has approved a long-range property management plan (LRPMP). These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's LRPMP pursuant to HSC section 34191.5. Since these are non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities.

- Balances needed to satisfy fiscal year 2012-13 Recognized Obligation Payment Schedule (ROPS) obligations in the amount of $3,984,653. The Agency requested to retain $40,954,764 to satisfy ROPS obligations, up to the available asset balance remaining as reported in the DDR. Since the adjustments made by Finance above increased the available asset balance, the Agency is permitted to retain $44,939,417 to satisfy approved ROPS obligations. Therefore, Finance made an adjustment for difference of $3,984,653.

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/

The Agency's OFA balance available for distribution to the affected taxing entities is $71,294,169 (see table below):

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Disallowed transfers ($19,284,544 + $55,994,278)	$	75,278,822
Balances for ROPS 2012-13 obligations	$	(3,984,653)
Total OFA available to be distributed:	$	71,294,169

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.

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

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Patrick Lane, Redevelopment Program Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
California State Controller's Office