



REVISED

February 21, 2013

Ms. Teri Baker, Assistant to the City Manager  
City of San Bernardino  
300 North D Street, 6<sup>th</sup> Floor  
San Bernardino, CA 94218

Dear Ms. Baker:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated January 11, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Bernardino Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on December 8, 2012. Finance issued a LMIHF DDR determination letter on January 11, 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 February 5, 2013.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising some of the adjustments made in our previous DDR determination letter. Specifically, we are revising the following adjustments:

- The total amount of assets held as of June 30, 2012 was originally adjusted by \$5,196,844 due to a lack of clarifying information. Finance was provided adequate supporting documentation to reverse the adjustment during the Meet and Confer process.
- The transfer of an infrastructure loan in the amount of \$110,901 was originally denied due to a lack of supporting documentation. The Agency later provided a copy of the 1995 loan agreement to support the reversal of this adjustment.
- The request to restrict bond proceeds in the amount of \$1,182,006 was originally denied by Finance because the Agency did not provide adequate supporting documentation. During the Meet and Confer process, the Agency provided general ledgers to tie the restriction to the 1999 Bond Issue.
- The request to retain \$606,347 for Recognized Obligation Payment Schedule (ROPS) items was originally denied because the ROPS provided for the period January through June 2013 only identified \$184,875 in funding requests from the LMIHF. However, after reviewing additional information presented during the Meet and Confer process, Finance was able to identify enforceable obligations supporting the reversal of the adjustment.

- Finance reviewed the DDR submitted by the Inland Valley Development Agency (IVDA) of which the former San Bernardino City Redevelopment Agency (RDA) was a member. According to IVDA records, transfers in the amounts of \$4,336,291 and \$2,594,368 were made to the former redevelopment agency (RDA) pursuant to HSC section 33334.2 in September 2011 and October 2011, respectively. Finance originally made an adjustment for these amounts because the transfers were not explicitly listed in the DDR. After further review, Finance is no longer adjusting for this item. Documentation received during the Meet and Confer process confirm that the amounts were deposited in the "Landsale" account, and subsequently transferred to the Debt Service account where an expense was recorded.

However, Finance continues to believe some of the adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. HSC section 34179.6 (d) authorizes Finance to make these adjustments. We maintain the adjustments continue to be necessary for the following reasons:

- The request to retain the deposit in escrow account in the amount of \$200,000 remains disallowed. The Disposition and Development Agreement between the former RDA and In-N-Out Burger was signed after June 27, 2011.
- Finance continues to object to all transfers from the LMIHF to Affordable Housing Solutions Inc. (AHS) totaling \$38,211,487; the Housing Capitalization Funding Agreement has been continuously denied by Finance during all ROPS reviews. Real property transfers to AHS total \$23,202,896, while transfers of cash and cash equivalents total \$15,008,591, according to the revenue amounts stated in the AHS trial balance.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$15,208,591 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed transfers to third parties	\$ 15,008,591
Disallowed transfers	200,000
<b>Total LMIHF available to be distributed:</b>	<b>\$ 15,208,591</b>

This is Finance's final determination of the LMIHF 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.

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 and Finance's Housing Assets Transfer letter dated August 31, 2013 do not in any way eliminate the Controller's authority.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Mr. Carey Jenkins, Director of Housing and Community Development, City of San Bernardino  
Mr. Mike Trout, Project Manager, City of San Bernardino  
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County  
California State Controller's Office