



May 7, 2013

Mr. Orlando Acevedo, Economic Development Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Dear Mr. Acevedo:

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 March 5, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Town of Apple Valley Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on February 6, 2013. Finance issued a LMIHF DDR determination letter on March 4, 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 22, 2013, based on an extension requested by the Agency.

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 request to retain funds in the amount of \$23,286 to fund the separation agreement for a former employee was disallowed; the Agency requested Redevelopment Property Tax Trust Funds (RPTTF) not LMIHF. However, during the Meet and Confer process, the Agency provided documentation to support that the item was funded by both RPTTF and LMIHF. Therefore, Finance is reversing its original determination.

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 adjustment to the total amount of assets held as of June 30, 2012 should be \$16,804,224, an adjustment in the amount of \$4,647,107 has been made to include the cash balances attributable to the Redevelopment Agency Project Area #2 (Low/Mod) Fund as of June 30, 2012. During the Meet and Confer session, the Agency stated that upon dissolution of the former redevelopment agency (RDA), the Agency combined all redevelopment funds, thus creating one Redevelopment Obligation Retirement Fund (RORF). The Agency combined the LMIHF and all other funds to cover negative balances in other funds.

HSC section 34163 (c) (5) prohibits an agency from transferring funds out of the LMIHF, except to meet the minimum housing-related obligations that existed as of January 1, 2011.

Additionally, according to accounting records provided by the Agency, actual obligations paid from the LMIHF during the January through June 2012 Recognized Obligation Payment Schedule (ROPS) period totaled \$216,456. Therefore, the Agency is prohibited from transferring \$4,647,107 from the LMIHF to cover a deficit in other Agency funds, and Finance maintains the adjustment. However, Finance will take this adjustment into consideration during the Other Funds DDR Meet and Confer.

- The transfer for the 2007 Tax Allocation Bond debt service payment in the amount of \$189,589 was disallowed by Finance because the Agency requested bond proceeds to fund the obligation on ROPS, not LMIHF. Documentation provided by the Agency during the Meet and Confer process confirms that the Agency actually spent RPTTF on this obligation; therefore, Finance maintains the adjustment.
- The request to retain funds in the amount of \$1,575,000 continues to be disallowed. The AMCAL Agreement was executed on June 28, 2011. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency believes this item is enforceable because it was signed on June 28, 2011, the same day as the legislation dissolving the RDA's. However, Finance maintains its original adjustment; the AMCAL Agreement was executed after June 27, 2011.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$11,815,362 (see table below):

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 5,403,666
Finance Adjustments	
Add:	
Adjustment to the June 30, 2012 balance	\$ 4,647,107
Disallowed transfers	189,589
Requested retained balance not supported	1,575,000
Total LMIHF available to be distributed:	\$ 11,815,362

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 29, 2012 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. Marc Puckett, Finance Director, Town of Apple Valley
Mr. Kofi Antobam, Assistant Finance Director, Town of Apple Valley
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office