



December 14, 2012

Ms. Tiffany Bohee, Executive Director  
City and County of San Francisco Successor Agency  
One South Van Ness Avenue, Fifth Floor  
San Francisco, CA 94103

Dear Ms. Bohee:

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 November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City and County of San Francisco Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 12, 2012. Finance issued a LMIHF DDR determination letter on November 9, 2012. 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 November 26, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, and pursuant to HSC section 34179.6 (d), which authorizes Finance to make any and all necessary adjustments, Finance has come to the following conclusions:

- The February 1, 2012 transfer of cash out of the LMIHF to the Mayor of Housing in the amount of \$195 million is not a valid transfer. Therefore, these funds must be returned to the Agency. Our review noted the Agency is eligible to retain \$88 million of the \$195 million as either a restricted balance or funding needed to satisfy approved fiscal year 2012-13 obligations. Specifically, the following is approved for retention:
  - Amount restricted by Federal and State Grant Funds totaling \$5,910,745.
  - Amount reserved for approved ROPS II and III obligations totaling \$82,345,272<sup>1</sup>.

As it relates to the remaining \$107 million balance that Finance is requesting to be remitted to the county auditor controller, the Agency asserted that the balance includes bond proceeds, which are restricted from being distributed. However, based on the information received, Finance continues to maintain its position that these funds should be remitted for the reasons noted below. Finance notes that it is a rebuttable presumption that cash and cash equivalents are available to disburse to taxing entities (HSC 34179.5 (c) (6)). The burden of proof is on the Agency.

---

<sup>1</sup> This amount reflects the ROPS III Meet and Confirm Determination letter dated December 14, 2012.

- Finance requested supporting documentation to trace the amount claimed as bond proceeds to the remaining balance listed in the accounting system; however, Finance was provided a PDF version of an Excel spreadsheet dated December 6, 2012. Spreadsheets are not considered accounting records nor do they demonstrate sufficient evidence to support ending balances. To further compound matters, it appears the Agency would need to employ outside auditors to perform a reconciliation of the spreadsheet to the accounting records, which could take a significant amount of time to complete.

It is our understanding that the Agency elected not to utilize a third party bond trustee to account for its bond proceeds, but instead tracks them with its own accounting system. It appears the Agency's accounting system is not designed to provide detailed accounting records (i.e., general ledgers) per project. As such, Finance is unable to obtain verification of the balance of bond proceeds by the Agency or a third party.

- Section 2.06 of the loan agreements related to the use of bond proceeds requires the bond proceeds to be deposited into a separate account. It is our understanding that the Agency is commingling all bond proceeds in the Agency's Operating Account. Therefore, it is not possible to determine the amount of bond proceeds included in the bank account balance.

The Agency provided Finance with a formal legal opinion on the matter of using separate accounts to track bond proceeds. The opinion did not disagree with section 2.06 of the loan agreement so long as the Agency's accounting allows it to track the bond proceeds separately. It is our understanding that the Agency would need additional time and resources to provide this separate accounting of bond proceeds by project.

- The Agency contests that all funds for all project areas are encumbered by enforceable obligations. HSC section 34179.5 (c)(5)(D) not only requires the Agency to submit a list of the enforceable obligations required for this amount, but to also include an analysis on the projection of annual revenues expected to be available in the future. This analysis shall include all future revenues received and demonstrate obligations being paid off over time. Finance requested a cash analysis from the Agency. Finance was told the spreadsheet (referred to above) was revised to include the cash analysis. However, this is not suitable evidence to demonstrate the Agency's cash flow or need to retain funds. The spreadsheet provided is not supported by any financial records or accounting documents. Therefore, it is not possible to determine if any amount is needed.
- HSC section 33334.3 requires that all funds to be used on low and moderate income housing are to be held in a separate account. As mentioned above, the Agency commingles all funds into its Operating Account.

The Agency's LMIHF balance available for distribution to the affected taxing entities is \$106,906,356 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	0
Finance Adjustments	
Add:	
Disallowed transfers:	\$ 106,906,356
<b>Total LMIHF available to be distributed: \$ 106,906,356</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.

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 September 7, 2012 do not in any way eliminate the Controller's authority.

Ms. Tiffany Bohee  
December 14, 2012  
Page 4

Please direct inquiries to Justyn Howard, Assistant Program Budget Manager at  
(916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Sally Oerth, Deputy Director, San Francisco  
Mr. James Whitaker, Property Manager, San Francisco  
California State Controller's Office