

# **CITY OF FRESNO REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

*January 1, 2011, through January 31, 2012*



**JOHN CHIANG**  
California State Controller

March 2013



**JOHN CHIANG**  
*California State Controller*

March 14, 2013

Mark Scott, City Manager  
City of Fresno/Successor Agency  
2600 Fresno Street, Room 2064  
Fresno, CA 93721

Dear Mr. Scott:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the City of Fresno Redevelopment Agency to the City of Fresno or any other public agency after January 1, 2011. This statutory provision explicitly states that, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be returned to the City of Fresno Redevelopment Successor Agency.

Our review applied to all assets, including but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights and any rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Fresno or any other public agencies have been reversed.

Our review found that the Fresno Redevelopment Agency transferred \$73,626,861 in assets after January 1, 2011, including unallowable transfers of assets totaling \$41,469,835, or 56.32% of the transferred assets. Those assets must be turned over to the Successor Agency.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD, CPA**  
Chief, Division of Audits

JVB/sk

cc: Marlene Murphy, Executive Director  
City of Fresno Redevelopment Successor Agency  
Steven Szalay, Local Government Consultant  
Department of Finance  
Larry Westerlund, Vice Chair  
Oversight Board, City of Fresno  
Scott Freesmeier, Audit Manager  
Division of Audits, State Controller's Office  
Anita Bjelobrk, Auditor-in-Charge  
Division of Audits, State Controller's Office

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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the City of Fresno Redevelopment Agency after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review found that the City of Fresno Redevelopment Agency transferred \$73,626,861 in assets after January 1, 2011, including unallowable transfers of assets totaling \$41,469,835, or 56.32% of the transferred assets. Those assets must be turned over to the Successor Agency.

## Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*) upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the SCO is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the City of Fresno Redevelopment Agency, the City of Fresno, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

## **Objectives, Scope, and Methodology**

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City of Fresno RDA, City Council, and the Fresno revitalization Corporation.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred after January 1, 2011.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

## **Conclusion**

Our review found that the Fresno Redevelopment Agency transferred \$73,626,861 in assets after January 1, 2011, including unallowable transfers of assets totaling \$41,469,835, or 56.32% of the transferred assets. Those assets must be turned over to the Successor Agency.

Details of our finding and Order of the Controller are in the Finding and Order of the Controller section of this report.

## **Views of Responsible Officials**

At an exit conference on November 19, 2012, we discussed the review results with Marlene Murphy, Executive Director, former City of Fresno Redevelopment Agency; Debra Barletta, Finance Director of the former City of Fresno Redevelopment Agency; Douglas T. Sloan, Assistant City Attorney, City of Fresno; and Katie Stevens, Government Affairs Manager, City of Fresno. At the exit conference, we stated that the final report will include the views of responsible officials. The city responded on November 20, 2012, and the response is included in this final review report as an attachment.

**Restricted Use**

This report is solely for the information and use of the City of Fresno, the Successor Agency to the Redevelopment Agency of the City of Fresno, the Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

March 14, 2013

# Finding and Order of the Controller

**FINDING—  
Unallowable  
transfer to  
Successor Housing  
Agency**

The City of Fresno Redevelopment Agency (RDA) made an unallowable asset transfer of \$41,469,835 to the Successor Housing Agency on February 1, 2012, at the time it transferred other former RDA assets to the Successor Agency of the former RDA. The unallowable asset transfers are detailed in Attachment 1.

Pursuant to Health and Safety (H&S) Code section 34175(b) the RDA was required to transfer all assets, including housing assets, to the Successor Agency.

Pursuant to H&S Code section 34177(e) the Successor Agency is to “dispose of all former RDA assets. . . as directed by the oversight board. . .” Also, pursuant to H&S Code section 34177(g), the Successor Agency is to “[e]ffectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.” However, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to “[t]ransfer housing responsibilities and all rights, powers, duties, and obligations. . . to the appropriate entity pursuant to Section 34176.”

Until the transfer of the assets to the Successor Agency is made, the Oversight Board has been denied the opportunity to make a decision under H&S Code section 34181(c), and the original transfer to the Successor Housing Agency by the former RDA on February 1, 2012, is unallowable. Therefore, the assets must be turned over to the Successor Agency pursuant to H&S Code section 34167.5.

Regarding the consultant contract, the resulting software also is a housing asset and must be transferred to the Successor Agency under H&S Code section 34167.5 in order for the Oversight Board to make a decision under H&S Code section 34181(c).

The City of Fresno raised the issue of whether H&S Code section 34178.8 prohibits the State Controller’s Office (SCO) from requiring the housing assets transferred by the RDA to the Successor Housing Agency to be turned over to the Successor Agency of the former RDA. This prohibition applies only to housing asset transfers made by the Successor Agency as directed by the Oversight Board. As noted above, the Oversight Board has been unable to make such a decision.

Finally, if any of the cash assets listed on Attachment 1 are Low and Moderate funds, H&S Code section 34177(d) states, “Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of Low and Moderate Income Housing Fund of a former redevelopment agency . . . for allocation and distribution . . . [in accordance with] . . .Section 34188.”

### Order of the Controller

Based on H&S Code section 34167.5, the Successor Housing Agency is ordered to reverse the transfer of assets in the amount of \$41,469,835, and to turn over the assets to the Successor Agency. The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(e) and (d) and 34181(c).

### City's Response

Attachment 2 contains a copy of the City's response.

### SCO's Comment

#### **Transfer of Housing Assets**

The City has raised several arguments, some of which have already been addressed in the SCO's finding above. New arguments are as follows:

- That H&S Code section 34181(c) does not require approval by the Oversight Board of housing transfers to the designated housing agency because the introductory language of that section is that the "oversight board shall direct the successor agency to do all of the following. . . ."

**Response:** While the SCO believes the intent of this language is that the Oversight Board approve the transfer, the issue is immaterial. The Oversight Board was unable to approve or disapprove the transfer because the RDA made the transfer without any decision by the oversight board.

- That H&S Code section 34167.5 does not apply because the housing assets were transferred by the RDA on February 1, 2012, and this section applies only to transfers made by an RDA prior to February 1, 2012.

**Response:** While the review period was identified in the draft report as January 1, 2011, to January 31, 2012, in fact H&S Code section 34167.5 states that the unallowable asset transfers by an RDA are those that occur after January 1, 2011. Thus, the transfer of housing assets by the RDA on February 1, 2012, is subject to the provisions of this section.

- That all housing asset transfers, regardless of when they were made, are subject solely to approval by the Department of Finance (DOF) using the information on the report described in H&S Code section 34176(a)(2).

**Response:** The information required to be on this housing report relates solely to transfers made after February 1, 2012, by the Successor Agency with the approval of the Oversight Board. However, in this case the Successor Agency was denied the opportunity to make that transfer. We have discussed this issue with

DOF representatives and they concur that the report was not intended to include transfers made by the RDA. Thus the DOF's decision to not object to transfers by the RDA does not mean that they are approved by the DOF. Instead, such transfers are subject to review and decisions by the SCO under H&S Code section 34167.5.

In summary, the SCO disagrees with the City and the finding and order remain as stated.

### **Software License Asset Transfer**

After reviewing the City's response on this issue, we have determined that this expenditure on behalf of the housing assets does not constitute an asset allowable for return to the Successor Agency. Therefore, the SCO finding and order will be revised to remove this item.

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**Schedule 1—  
Unallowable RDA to the Successor Housing Agency  
January 1, 2011, through January 31, 2012**

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|   |                                     |
|---|-------------------------------------|
| Unallowable Asset Transfer to the Successor Housing Agency        | <u>\$ 41,469,835</u>                |
| Total Unallowable Asset Transfers to the Successor Housing Agency | <u>\$ 41,469,835</u> <sup>1,2</sup> |

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<sup>1</sup> See the Finding and Order of the Controller section.

<sup>2</sup> See Attachment 1.

## Attachment 1— Summary of Assets Transferred by the RDA to Successor Housing Agency

| Summary of Assets Transferred by the RDA to Successor Housing Agency<br>February 1, 2012 |                      |
|--|----------------------|
| <b>CASH</b>  |                      |
| CASH: HOUSING: CP  | 17,704,157           |
| CASH: SWF HSA: CP  | 256,799              |
| CASH: JEFFERSON HSA: CP  | 831,934              |
| CASH: FATRA HSA: CP  | -912,507             |
| <b>Total Cash</b>  | <b>\$ 17,880,383</b> |
| <b>RECEIVABLES AND ADVANCES</b>  |                      |
| A/ REC:HSA:FRC:CANYON CREST  | 44,992               |
| ADVANCES: HSA: NSP SALES   | 192,500              |
| NOTES RECEIVABLE:HSA-G   | 1,844,500            |
| N/ REC: HSA: FULTON PARK PLAZA   | 400,000              |
| N/ REC: HSA: FULTON VILLAGE  | 800,000              |
| N/ REC:HSA:H STR LOFTS   | 300,000              |
| N/ REC:HSA:BROADWAY LOFTS  | 650,000              |
| N/ REC:HSA:MAYFLOWER LOFTS   | 400,000              |
| N/ REC:HSA:FULTONIA  | 600,000              |
| NOTES RECEIVABLE:HSA-G   | 1,265,604            |
| N/ REC:HSA:PARC GROVE COMMONS  | 500,000              |
| NOTES RECEIVABLE:HSA-G   | 71,400               |
| N/ REC:HSA:VAN NESS/ MILDREDA  | 375,000              |
| N/ REC:HSA:FULTON 541  | 435,000              |
| N/ REC:HSA:122 N COLLEGE   | 69,000               |
| LOANS REC: MARIPOSA::HSA-G   | 500,000              |
| LOANS REC:HOUSING:W/ CITY  | 706,917              |
| LOANS/ NOTES RECEIVAB:HSA-G  | 720,000              |
| LOANS/ NOTES RECEIVAB:HSA-G  | 400,000              |
| N/ REC: SWFH:EAH:SEQUOIA   | 203,000              |
| N/ REC: SWFH:AMCAL:SUMMER HILL   | 2,000,000            |
| N/ REC: SWF HOUSING: WESTGATE  | 228,016              |
| N/ REC: SWF HSA: MLK SQ REHAB  | 500,000              |
| LOANS REC: SWF HSA: W/ CITY  | 149,795              |
| ALLOW FOR DOUBTFUL ACCTS:SWFH  | -500,000             |
| LOANS REC:JEFFERSON HSA:W/ CITY  | 50,774               |
| <b>Total Receivables and Advances</b>  | <b>\$ 12,906,497</b> |
| <b>PROPERTY HELD FOR RESALE</b>  |                      |
| PROP HELD-RESALE:HSA:BERKELEY  | 2,230,912            |
| PROP HELD-RESALE:HSA:CHINATOWN   | 411,347              |
| PROP HELD-RESALE:HSA:LOWELL  | 31,599               |
| PROPERTY HELD FOR RE:HSA-G   | 850,010              |
| PROP HELD-RESALE:HSA:HA/ RDA   | 485,958              |
| PROP HELD-RESALE:SWFH:HOPE6  | 3,059,276            |
| PROP HELD-RESALE:SWFH:CA TRIAN   | 2,665,827            |
| PROP HELD-RESALE:SWFH:INFILL   | 60,699               |
| PROP HELD FOR RESALE: SWF HSA  | 887,327              |
| <b>Total Prop Held for Resale</b>  | <b>\$ 10,682,955</b> |
| <b>Personal Property</b>   |                      |
| COMPLIANCE SERVICES/ SOFTWARE LICENSE *  | \$ -                 |
| <b>Total Assets</b>  | <b>\$ 41,469,835</b> |

\* The original amount of the contract was \$46,292; this amount has been fully liquidated.

**Attachment 2—  
City of Fresno’s Response to  
Draft Review Report**

---



Francine M. Kanne  
Interim City Attorney

November 30, 2012

Jeffrey V. Brownfield  
Chief, Division of Audits  
California State Controller's Office  
P.O. Box 942850  
Sacramento, California 94250-5874

Steve Mar  
Chief, Local Governments Audit  
California State Controller's Office  
P.O. Box 942850  
Sacramento, California 94250-5874

Re: City of Fresno Redevelopment/Successor Agency and Housing Successor

Dear Mr. Brownfield and Mr. Mar:

The City responds to your letter addressed to the Fresno City Manager dated November 20, 2012, that included a "draft audit report." The letter stated any comments concerning the draft report should be submitted within 10 days after receipt of the letter. It requested the City to address the accuracy of the findings. It also states the report may be modified based on our comments or additional data that develops as the review is completed, and that our comments will be included in the final report. We appreciate the opportunity to respond, and would also be pleased to speak with you about the issues prior to issuance of a final report.

The letter and draft report state certain assets from the former Fresno Redevelopment Agency (RDA) to the City as Housing Successor were improperly transferred after January 1, 2011. The amount deemed improper totals \$41,469,835. The letter states that the housing assets should have first been transferred to the Successor Agency. The City disagrees, as the assets were transferred to the Housing Successor on February 1, 2012, by operation of law and according to the books and records of the former RDA and Housing Successor.

The sole issue raised in your letter is the disagreement concerning the legal interpretation of ABX1 26 and AB 1484, the redevelopment dissolution laws. There are no allegations of accounting irregularities or improprieties. The former RDA, Successor Agency, and City as Housing Successor all acted based upon advice of counsel, and that same legal standard has been followed by many cities, agencies, and prominent law firms throughout the state.

#### Jurisdiction to Review Housing Asset Transfers

The State Controller's Office (SCO) lacks authority to review or make orders concerning the matters at issue.

The SCO letter referenced Health and Safety Code section 34178.8 (all statutory references are to the Health and Safety Code) as the authority for the SCO to conduct the review

and potentially order assets to be transferred back to the applicable Successor Agency for distribution. The letter states:

"Assembly Bill 1484 (AB 1484) was passed on June 27, 2012, adding Health and Safety Code section 34178.8, which states, ". . . the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012. . . ."The SCO has initiated the review associated with AB 1484."

However, the complete text of section 34178.8 includes an exception, as follows:

"34178.8. Commencing on the effective date of the act adding this section, the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012, between the successor agency and the city, county, or city and county that created a redevelopment agency, or any other public agency, that was not made pursuant to an enforceable obligation on an approved and valid Recognized Obligation Payment Schedule. If such an asset transfer did occur, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the successor agency. Upon receiving that order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the successor agency. This section shall not apply to housing assets as defined in subdivision (e) of Section 34176."

The above express and clear exception in section 34178.8 makes the statute inapplicable to the transfer of housing assets. The letter and draft report stated the concern is solely about the transfer of housing assets, which occurred on or after February 1, 2012. The final sentence of section 34178.8, combined with the extended detail contained in section 34176 granting the Department of Finance (DOF), rather than the SCO, authority to review housing asset transfers on or after February 1, 2012, deprives the SCO of authority to review or take action concerning the City of Fresno housing asset transfers referenced in the letter and draft report. Therefore, it is DOF, not the SCO, that has jurisdiction to review housing asset transfers on or after February 1, 2012.

Section 34176(a)(2), states:

"The entity assuming the housing functions of the former redevelopment agency shall submit to the Department of Finance by August 1, 2012, a list of all housing assets that contains an explanation of how the assets meet the criteria specified in subdivision (e). The Department of Finance shall prescribe the format for the submission of the list. The list shall include assets transferred between February 1, 2012, and the date upon which the list is created. The department shall have up to 30 days from the date of receipt of the list to object to any of the assets or transfers of assets identified on the list. If the Department of Finance objects to

assets on the list, the entity assuming the housing functions of the former redevelopment agency may request a meet and confer process within five business days of receiving the department objection. If the transferred asset is deemed not to be a housing asset as defined in subdivision (e), it shall be returned to the successor agency and the provision of Section 34178.8 may apply. If a housing asset has been previously pledged to pay for bonded indebtedness, the successor agency shall maintain control of the asset in order to pay for the bond debt."

The draft report, at page 1, also states:

"In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

\*\*\*

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate."

It should be noted the transfer of housing assets by the City occurred *after* January 31, 2012. This fact is well documented by the records provided the SCO. Copies of the relevant documents confirming the date of transfer was February 1, 2012, or later, are also attached. Therefore, section 34167.5 does not provide authority for the SCO to review or order transfer of assets back to the Successor Agency for housing asset transfers occurring after January 31, 2012. There is *no* evidence the transfer occurred prior to February 1, 2012. The draft report specifically stated the SCO mission was to review only those transfers between January 1, 2011, and January 31, 2012. Therefore, according to the law and the draft audit report itself, the review of these housing asset transfers is outside the authority and mission of the SCO.

Jurisdiction for review of transfer of housing assets rests solely with DOF, and DOF has already approved (not objected to) the transfers now questioned by and disallowed by the draft audit report. This jurisdictional issue is vitally important. DOF has, in fact, reviewed the housing asset transfers pursuant to section 34176(a)(2) and has not objected to the transfers, with one minor exception. Attached is the letter from DOF concerning review of the Fresno housing asset transfers.

Legal Authority to Transfer Housing Assets

Housing assets of the former RDA were transferred to or retained by the City as Housing Successor by operation of law as of February 1, 2012. Once the City made the election to assume the housing function, the transfer was mandatory and no agencies were granted discretion to approve the transfer.

Pursuant to section 34176 (a)(1), the City of Fresno did agree to accept the housing function of the former Redevelopment Agency by resolution on January 26, 2012, effective as of February 1, 2012.

The draft report states, at page 4:

"The City of Fresno Redevelopment Agency (RDA) made an unallowable asset transfer of \$41,469,835 to the Successor Housing Agency on February 1, 2012, at the time it transferred other former RDA assets to the Successor Agency of the former RDA. The unallowable asset transfers are detailed on Attachment 1.

Pursuant to H&S Code section 34175(b) the RDA was required to transfer all assets, including housing assets, to the Successor Agency."

The law states in several locations that the transfer of housing assets to the Housing Successor is authorized, in fact, mandatory:

"34176. (a) (1) The city... that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city... elects to retain the authority to perform housing functions previously performed by a redevelopment agency, all rights, powers, duties, obligations, and housing assets, as defined in subdivision (e), excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city...

\*\*\*

(d) Except as specifically provided in Section 34191.4, any funds transferred to the city..., together with any funds generated from housing assets, as defined in subdivision (e), shall be maintained in a separate Low and Moderate Income Housing Asset Fund which is hereby created in the accounts of the entity [the City] assuming the housing functions pursuant to this section. Funds in this account shall be used in accordance with applicable housing-related provisions of the Community Redevelopment Law ....

(e) For purposes of this part, "housing asset" includes all of the following:

(1) Any real property, interest in, or restriction on the use of real property, whether improved or not ... that were acquired for low- and moderate-income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.

(2) Any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing, as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)) unless required in the bond covenants to be used for repayment purposes of the bond.

(3) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000))."

"It is a well-settled principle of statutory construction that the word 'may' is ordinarily construed as permissive, whereas 'shall' is ordinarily construed as mandatory, particularly when both terms are used in the same statute." *Common Cause v. Board of Supervisors*, (1989) 49 Cal.3d 432, 443. "The word 'shall' is ordinarily 'the language of command.'" *Alabama v. Bozeman*, 533 U.S. 146, 153 (2011) (quoting *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947); *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935)). Both terms are used in section 34176. Since the statute states that the housing assets "shall" be transferred, no further approval was necessary.

All of the housing assets transferred meet the definition of 34176(e), and thus were proper transfers to the Housing Successor.

The law also mandates successor agencies to comply with the required transfer of housing assets.

Section 34177 states:

"Successor agencies are required to do all of the following:

\*\*\*

(g) Effectuate [not "approve"] transfer of housing functions and assets to the appropriate entity [the City] designated pursuant to Section 34176."

Oversight Board approval of the housing asset transfer is not required. ABX1 26 and AB 1484 detail a number of dissolution items requiring Oversight Board approval:

1. Section 34180 states:

"All of the following successor agency actions shall first be approved by the oversight board.

- (a) The establishment of new repayment terms for outstanding loans...
- (b) The issuance of bonds or other indebtedness or the pledge or agreement for the pledge of property tax revenues...
- (c) Setting aside of amounts in reserves as required by indentures...
- (d) Merging of project areas.
- (e) Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, if that assistance is conditioned upon the provision of matching funds...
- (f) (1) If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities...
- (g) Establishment of the Recognized Obligation Payment Schedule.
- (h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding.
- (i) A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues....

"Approval" of the transfer of housing assets is not listed.

2. Section 34179.6 states:

"(b) Upon receipt of the review, the oversight board shall convene a public comment session to take place at least five business days before the oversight board holds the approval vote specified in subdivision (c)...

(c) By October 15, 2012, for the Low and Moderate Income Housing Fund and by January 15, 2013, for all other funds and accounts, the oversight board shall review, approve, and transmit to the department and the county auditor-controller the determination of the amount of cash and cash equivalents that are available for disbursement to taxing entities as determined according to the method provided in Section 34179.5. The oversight board may adjust any amount provided in the review to reflect additional information and analysis. The review and approval shall occur in public sessions..."

Again, approval of transfer of housing assets is not listed, while approval of other actions is listed.

Again, the term "approve" is specifically used in many instances in the dissolution laws. However, the term "approve" is never used with respect to the transfer of housing assets to the housing successor upon the RDA dissolution.

In fact, the law specifically directs that oversight boards require that housing asset transfers take place.

Section 34181 states:

"34181. The oversight board shall direct the successor agency to do all of the following:

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(c) Transfer housing assets pursuant to Section 34176."

It is our understanding that the draft report relies upon section 34181(c) to mean that the transfer of housing assets must have been *approved* by the oversight board. That would not be correct. Comparing sections 34180 and 34181, 34180 sets forth successor agency actions that are subject to prior approval by the oversight board. Section 34181 sets forth mandatory actions. The point of 34181 is not to grant discretion to the Oversight Board *whether* to approve the housing transfer, but to ensure that it is done, if it had not already. However, by the time the Oversight Board had convened in May 2012, the housing asset transfer required in 34176 had already occurred. Nonetheless, in a Resolution dated August 20, 2012, the Oversight Board did acknowledge the mandatory transfer of the housing assets pursuant to section 34176 (Resolution No. OB-6, Section 4, attached).

Prominent law firms in the state agree with the City's position. Goldfarb Lipman, LLP., states in a legal advisory entitled "Summary of AB 1484: Redevelopment Dissolution/Unwind Trailer Bill," dated June 29, 2012:

"Transfer of Housing Assets. AB 1484 sets forth an explicit schedule related to the verification of housing assets transferred to the Housing Successor (Section 34176(a)(2)). By August 1, 2012, the Housing Successor is required to submit a list of all housing assets to the DOF in a format to be prescribed by the DOF. The list must include an explanation of why each asset qualifies as a housing asset, and include a list of assets that transferred between February 1, 2012 (when presumably all housing assets of a Dissolved RDA transferred to the Housing Successor by operation of law pursuant to 34176(a)(1)), and the date the list is made. The DOF has thirty (30) days after receipt of the housing asset list to object to any item on the list. The Housing Successor may request a meet and confer process with the DOF within five (5) business days of receiving any objection from the DOF. There is no timeframe set forth for completing this meet and confer process. Any asset ultimately determined not to be a housing asset is to be returned to the Successor Agency and is subject to clawback by the SCO under Section 34178.8 if not returned. Assets determined to be housing assets under this procedure are not subject to clawback by the SCO under Section 34178.8. The Successor Agency may retain a housing asset, and not transfer it to the Housing Successor, if that asset was previously pledged to pay bonds.

For the transfer of a housing asset that occurs after the date of the list, Sections 34181(c) and (f) provide that an Oversight Board must direct the transfer of housing assets after a 10-day public notice and the DOF then has five business days to review the proposed transfer with the option to extend the review period to up to 60 days. One possible example of this type of future transfer is a property acquired with LMIHF monies, which is in the process of undergoing Polanco Act clean-up and will transfer to the Housing Successor only upon completion of the remediation."

Published at [http://goldfarblipman.com/wp-content/uploads/2012/10/Law-Alert-Summary-of-AB-1484-6-29-12-1162879\\_71.pdf](http://goldfarblipman.com/wp-content/uploads/2012/10/Law-Alert-Summary-of-AB-1484-6-29-12-1162879_71.pdf).

In another legal advisory dated January 19, 2012, entitled "The Final Actions of Redevelopment Agencies and the Set-Up of Successor Agencies," page 1, Goldfarb Lipman states:

"As of February 1, 2012: All RDA assets (including properties, contracts, leases, books and records, buildings and equipment, and existing fund balances including the existing Housing Fund balance), other than housing assets (exclusive of the existing Housing Fund balance), transfer to the Successor Agency.

As of February 1, 2012: All RDA housing assets (excluding the existing Housing Fund balance) transfer to the successor to the RDA's housing function.

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All accounting records for properties, other physical assets and agreements of the former RDA (excluding the housing assets for the former RDA but including the former Housing Fund) should be listed on accounts of the Successor Agency as successor agency to the former RDA and not on the RDA's or Sponsoring Community's accounts.

Accounting records for all housing assets (excluding the former Housing Fund) should show the housing assets of the former RDA in the name of the entity assuming the former RDA's housing functions.

The successor to the former RDA's housing functions should create a new "housing fund" in its accounts where any loan repayments or receipt of funds from disposition of former RDA housing assets should be placed until used pursuant to redevelopment law provisions relating to the use of affordable housing funds."

Published at: <http://goldfarblipman.com/wp-content/uploads/2012/01/Law-Alert-The-Final-Actions-of-RDA-and-the-Set-Up-of-SA-Jan.-19-2012.pdf> (emphasis added).

The State of California Legislative Analyst Office states, in a document entitled "The 2012-2013 Budget: Unwinding Redevelopment":

"Successor Housing Agency Under ABX1 26, the former RDA's housing functions and most of its housing assets are transferred to a successor housing agency. Housing assets that transfer to the successor housing agency include property, rental payments, bond proceeds, lines of credit, certain loan repayments, and other small revenue sources.

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Unlike the successor agency, the successor housing agency's actions related to transferred redevelopment assets are not subject to the review of the oversight board or DOF."

Published at: [http://www.lao.ca.gov/analysis/2012/general\\_govt/unwinding-redevelopment-021712.pdf](http://www.lao.ca.gov/analysis/2012/general_govt/unwinding-redevelopment-021712.pdf), at pages 15, 17 (emphasis added). The LAO does not state that the housing assets transfer if approved by the oversight board. The assets simply are transferred upon dissolution.

Nowhere in AB X1 26 nor AB 1484 does the law provide *any* discretion for either the former redevelopment agencies, successor agencies, oversight boards, or any state agencies concerning transfer of the housing assets. It is mandatory and occurs by operation of law as of February 1, 2012. The key language in 34176 is that the City "retains" the housing function and assets – they are never transferred to the Successor Agency or anyone else. The City simply "retains" them as a matter of law.

All housing asset transfers from the RDA to the Housing Successor were listed on a report provided to the Department of Finance (DOF) on August 1, 2012. By law, DOF had 30 days to object. The only objection stated (due to the timing of the purchase) concerned a software licensing agreement having nominal value. DOF did not raise the issue of the City not having received Oversight Board approval, and DOF's 30 day time period to object has expired.

Therefore, the draft audit report incorrectly concludes the housing assets were improperly transferred to the City as Housing Successor.

#### The Software License Asset Transfer

Despite being relatively minor issue, the issue of the transfer of the Software License Agreement should be addressed. Both DOF and the SCO have objected to the transfer of a certain Software License Agreement to the Housing Successor. The objection by DOF concerned the timing of the former RDA approving the Agreement.

The Agreement was approved and entered into by the former RDA in November 2011, during the time period, July 1, 2011, to January 31, 2012, when certain actions of the redevelopment agencies were restricted by ABX1 26 (the "suspension period").

However, provisions of ABX1 26 allowed, even mandated, that agencies take certain actions during the suspension period.

Section 34169 states:

"Until successor agencies are authorized pursuant to Part 1.85 (commencing with Section 34170), redevelopment agencies shall do all of the following:

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(b) Perform obligations required pursuant to any enforceable obligations, including, but not limited to, observing covenants for continuing disclosure obligations and those aimed at preserving the tax-exempt status of interest payable on any outstanding agency bonds.

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(d) Consistent with the intent declared in subdivision (a) of Section 34167, preserve all assets, minimize all liabilities, and preserve all records of the redevelopment agency.

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(f) Take all reasonable measures to avoid triggering an event of default under any enforceable obligations as defined in subdivision (d) of Section 34167."

The former RDA over many years incurred numerous obligations to monitor and enforce affordable housing agreements, covenants and restrictions with respect to loans or grants made for construction or improvements for affordable housing. The California Redevelopment Law, section 33418, made the enforcement of these agreements and covenants mandatory. For the RDA to comply with these legal obligations, it required computer software, and training associated with the software. Prior software licenses were expiring. It was required and appropriate to obtain replacement software to do the job the RDA employees were tasked with doing. The above cited provisions of 34169 require agencies to take these types of actions to ensure legal compliance and preserving agency assets, the outstanding affordable housing loans.

Nonetheless, the software license agreement had little or no value as of the SCO review, and likely little or no book value as of the date of the housing asset transfer. It is a temporary, annual software license. It has since expired, subject to renewal. The asset list attached to the draft report appropriately shows no value for this item. Therefore, the City believes the issue is de minimus, but nonetheless believes it is appropriate to explain the circumstances.

#### Conclusion

The City of Fresno, Housing Successor, former RDA, and Successor Agency have strived to comply with the letter of the law during the dissolution process. We believe the law is very clear: under section 34176, the transfer of housing assets from the RDA to the Housing Successor was mandatory; it was not subject to any approvals other than review by DOF; and it occurred precisely as required by law. Further, the City respectfully submits the SCO has no jurisdiction to review housing asset transfers occurring after January 31, 2012, and since all of the housing asset transfers at issue here occurred on or after February 1, 2012, there is no authority for the SCO to review or make orders with respect to the housing asset transfers.

The legislative intent of the statutes granting the SCO authority to review and make orders with respect to improper asset transfers was to prevent agencies from moving assets to avoid appropriate liquidation or transfer to the county auditor-controllers for redistribution to the affected taxing entities. That has not occurred here. All of the housing assets were transferred to the appropriate entity, the Housing Successor, and none of those assets would be made available for redistribution to other taxing entities. The transfer of the housing assets is thus not within the mission and scope of the SCO review.

The City believes the resolution of this issue is vitally important. The Housing Successor has taken actions based upon the common interpretations of section 34176 that housing assets transferred as of February 1, 2012, and third parties have relied upon those actions. We believe given the clarity of the law and importance of the legal issues, we are prepared to recommend resolution of the issue in the courts, if necessary.

Thank you for considering our response. We would welcome to the opportunity to meet with you and discuss the matters prior to issuance of a final report.

Sincerely,

  
DOUGLAS T. SLOAN  
Assistant City Attorney

Attachments: Housing Asset Transfer Documentation  
DOF Housing Asset List Determination Letter  
Oversight Board Resolution OB-6

c: Scott Freesmeier, Audit Manager, Division of Audits, State Controller's Office  
Anita Bjelobrck, Auditor-in-Charge, Division of Audits, State Controller's Office  
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