

CITY OF OAKLAND REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

August 2013



JOHN CHIANG
California State Controller

August 21, 2013

Fred Blackwell, Assistant City Administrator
City Administrator's Office
1 Frank H. Ogawa Plaza, Suite 301
Oakland, CA 94612

Dear Mr. Blackwell:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the City of Oakland Redevelopment Agency (RDA) to the City of Oakland (City) or any other public agency after January 1, 2011. This statutory provision states, "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 the asset should be turned over to the 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 rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City or any other public agencies have been reversed.

Our review found that the RDA transferred \$729,858,270 in assets to the City, the Oakland Housing Successor, and the Successor Agency. Unallowable transfers included assets totaling \$341,852,498, which should have been turned over to the Successor Agency. However, on July 16, 2012, the Oversight Board retroactively approved the transfer of \$9,136,706 in housing properties and \$141,409,297 in loans receivable to the Housing Authority. Also, on March 18, 2013, the Oversight Board retroactively approved the transfer of \$21,307,885 in properties to the City by deeming the properties contractually obligated to a third party. Therefore, the remaining assets that are subject to H&S Code section 34167.5 is \$169,998,610, or 23.29%.

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/vb

cc: Steven Szalay, Local Government Consultant
Department of Finance
Patrick O'Connell, Auditor-Controller
Alameda County
Keith Carson, Chairperson
City of Oakland Successor Agency
Richard J. Chivaro, Chief Legal Counsel
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the City of Oakland Redevelopment Agency (RDA) 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 rights to payments of any kind from any source.

Our review found that the RDA transferred \$729,858,270 in assets to the City of Oakland, the Oakland Housing Successor, and the Successor Agency. Unallowable transfers included assets totaling \$341,852,498, which should have been turned over to the Successor Agency. However, on July 16, 2012 the Oversight Board retroactively approved the transfer of \$9,136,706 in housing properties and \$141,409,297 in loans receivable to the Oakland Housing Successor. Also, on March 18, 2013, the Oversight Board retroactively approved the transfer of \$21,307,885 in properties to the City of Oakland by deeming the properties contractually obligated to a third party. Therefore, the remaining unallowable transfers subject to Health and Safety (H&S) Code section 34167.5 is \$169,998,610 or 23.29%.

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 Code beginning with section 34161.

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 on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred after January 1, 2011, between the RDA, the City of Oakland, 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.

Objective, 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 Oakland City Council and the RDA.
- 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 between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the City of Oakland Redevelopment Agency transferred \$729,858,270 in assets to the City of Oakland, the Oakland Housing Successor, and the Successor Agency. Unallowable transfers included assets totaling \$341,852,498, which should have been turned over to the Successor Agency for disposition in accordance with H&S Code section 34167.5.

However, on July 16, 2012, the Oversight Board retroactively approved the transfer of \$9,136,706 in housing properties and \$141,409,297 in loans receivable to the Housing Successor. Also, on March 18, 2013, the Oversight Board retroactively approved the transfer of \$21,307,885 in properties to the City of Oakland by deeming the properties contractually obligated to a third party. Therefore, the remaining unallowable transfers subject to H&S Code section 34167.5 is \$169,998,610, or 23.29%.

Details of our findings are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

Views of Responsible Official

We issued a draft report on May 3, 2013. Deanna J. Santana, City Administrator/ORSA Administrator, responded by letter on May 17, 2013. The city's response is included in this final report.

On July 29, we conducted a follow-up telephone exit conference to inform the City that the report will include an amended finding for the Accounts Receivables transferred to the City. The City stated that it would not provide an additional management response for this amendment.

Restricted Use

This report is solely for the information and use of the City of Oakland, the Successor Agency, the Oversight Board, the Oakland Housing Successor, and the State Controller's Office. 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 as final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

August 21, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Oakland

The City of Oakland Redevelopment Agency (RDA) made unallowable asset transfers of \$191,627,495 to the City of Oakland (City). The asset transfers to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash and capital assets.

Unallowable asset transfers were as follows:

- On various dates, under various resolutions, the RDA transferred \$36,622,938 in cash to the City and to third parties to purchase various properties and the Kaiser Auditorium. However, \$1,461,000 of the cash was contractually committed to a third party prior to June 27, 2011. The remaining amount of \$35,161,938 is deemed to be an unallowable transfer to another public entity (See Schedule 1).
- On January 26, 2012, the RDA transferred \$69,190,000 in cash to the City to cover contractual obligations (RDA Resolution 2011-0027 passed on March 3, 2011). However, only \$27,734,443 of these obligations had signed contracts prior to June 28, 2011. The remaining amount of \$41,455,557 in cash is deemed to be an unallowable transfer.
- On January 26, 2012, the RDA transferred \$114,683,000 in properties to the City (RDA Resolution No. 2011-0025 passed on March 3, 2011). On March 18, 2013, the Oversight Board passed Resolution No. 2013-6 approving the transfer of \$21,307,885 in properties to the City for enforceable obligations. The remaining amount of \$93,381,115 is deemed to be an unallowable transfer.
- On March 3, 2011, the RDA transferred \$49,290,465 in Loans Receivables to the City (RDA Resolution 2011-0026 passed on March 3, 2011). A corresponding deferred revenue liability in the amount of (\$49,290,465) was also transferred to the City. Although the net effect is zero, the transaction is deemed to be an unallowable transfer and both the asset and corresponding liability must be returned to the Successor Agency.

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states:

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

- (a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the

dissolved redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset.

Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value.

Order of the Controller

Based on H&S Code section 34167.5, the City of Oakland is ordered to reverse the transfer of the above assets in the amount of \$169,998,610 and is ordered to transfer the assets to the Successor Agency (see Schedule 1).

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e), and 34181(a).

City's Response

1. The City disagrees with your characterization of \$341,852,498 in asset transfers between the City and the Redevelopment Agency as “unallowable since all these transfers were authorized by law at the time they were undertaken, all were carried out in accordance with applicable legal requirements, and all were undertaken pursuant to valid contractual commitments in effect prior to enactment of the dissolution statute.
2. The City disputes your order to reverse fund transfers of \$41,455,557 for work performed for the City under contracts with third parties, since the Controller has no authority to reverse the transfer of assets committed under third-party agreements.
3. The City requests that your final report specifically note that the transfers associated with the Oakland Army Base project were allowable. . . .

SCO's Comment

1. The State Controller's Office (SCO) understands the difficult issues that Successor Agencies are required to address due to the retroactive requirements of ABX1 26. Although ABX1 26 was signed into law on June 28, 2011, the bill states that the SCO shall order the return of any asset transferred after January 1, 2011, back to the Successor Agency.
2. H&S Code section 34167.5 states that Controller shall order the return of any asset transfer that was not committed to a third party, commencing on the effective date of the act June 28, 2011. On January 26, 2012, \$41,455,557 in cash was transferred to cover contractual obligations signed after June 28, 2011, and are therefore unallowable under ABX1 26.

3. An allowable transfer is not a finding and is therefore not reported in the body of the report. We have included Schedule 2, which does report the Army Base Project as an “allowable” transfer.

**FINDING 2—
Unallowable Asset
transfers to the
Oakland Housing
Successor**

As of January 31, 2012, the RDA transferred a total of \$150,546,003 (\$9,136,706 and \$141,409,297 for Loans Receivable and Housing Property, respectively) in assets to the City of Oakland as the Oakland Housing Successor. Pursuant to H&S Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e).

Order of the Controller

Based on H&S Code Section 34167.5 and 34177(e), the City of Oakland would have been ordered to reverse the transfer of the above assets in the amount of \$150,546,003. However, on July 16, 2012, the Oversight Board retroactively approved the transfer of those assets to the Oakland Housing Successor under Oversight Board Resolution No. 2012-7. Therefore, no further action is needed.

The Department of Finance (DOF) must approve the Oversight Board’s decision in this matter. If the DOF does not approve this decision, the City is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

City’s Response

1. The City disagrees with the characterization of \$150,546,003 in housing assets transfers to the City as designated housing successor as “unallowable,” since the dissolution statutes expressly authorize, and in fact required these transfers to be made to the housing successor.
2. The draft report reference to Oakland Housing Authority is incorrect since assets were transferred to the City of Oakland which elected to serve as the housing successor to the former Redevelopment Agency. We would like those misstatements corrected.

SCO’s Comment

1. The \$150,546,003 of housing assets did not transfer to the Successor Agency by operation of law on January 31, 2012. H&S Code section 34181(c) states that the Oversight Board shall direct the Successor Agency to transfer the housing assets pursuant to section 34176. This review identified any unallowable transfer during the scope period of January 1, 2011, to January 31, 2012. The subsequent approval of the Oversight Board on July 16, 2012, was corrective action after the review period that removes the clawback requirement but does not change the finding.
2. References to the Oakland Housing Authority have been corrected in the final report.

**Schedule 1—
RDA Assets Transferred to
the City of Oakland and the Oakland Housing Successor
January 1, 2011, through January 31, 2012**

Unallowable transfers to the City of Oakland/Housing Successor:

Current Assets

Cash transfer to the City (various dates)	\$ 35,161,938
Cash transfer to the City (January 26, 2012)	41,455,557

Accounts Receivables

Accounts receivables transferred to the City (March 2, 2012)	49,290,465
Deferred revenue transferred to the City (March 2, 2012)	(49,290,465)

Capital Assets

Properties transferred to the City (January 26, 2012)	114,689,000
Properties transferred to the Housing Successor (January 31, 2012)	<u>150,546,003</u>

Total unallowable transfers to the City of Oakland	<u>\$ 341,852,498</u>
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Oversight Board-approved properties deemed government use
(Oversight Board Resolution 2013-0 passed on April 15, 2013)

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Oversight Board-approved properties contractually committed to third parties (Oversight Board Resolution 2013-6 passed on March 18, 2013)	(21,307,885)
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Oversight Board-approved transfer to the Housing Successor
(Oversight Board Resolution 2012-7 passed on July 16, 2012)

(150,546,003)

Total transfers subject to Health and Safety Code section 34167.5	<u>\$ 169,998,610 ¹</u>
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¹ See the Findings and Orders of the Controller section.

**Schedule 2—
Summary of Assets Transferred to the
City of Oakland and the Oakland Housing Successor
January 1, 2011, through January 31, 2012**

Date	Description	Total	Allowable	Unallowable	Oversight Approval	Clawback
Various	Transfer of cash to city for property	\$ 36,622,938	\$ 1,461,000	\$ 35,161,938	\$ —	\$ 35,161,938
January 26, 2012	Army base transferred to city	83,627,000	83,627,000	—	—	—
January 26, 2012	Transfer of property to the city	114,689,000	—	114,689,000	21,307,885	93,381,115
January 26, 2012	Transfer of cash to the city	69,190,000	27,734,443	41,455,557	—	41,455,557
January 31, 2012	Army base transferred to city	444,691	444,691	—	—	—
January 31, 2012	Housing assets transferred to city	150,546,003	—	150,546,003	150,546,003	—
January 31, 2012	Assets transferred to successor RDA	274,738,638	274,738,638	—	—	—
March 3, 2011	AR assets transferred to city	49,290,465	—	49,290,465	—	49,290,465
March 3, 2011	AR deferred revenue liability	(49,290,465)	—	(49,290,465)	—	(49,290,465)
		<u>\$ 729,858,270</u>	<u>\$ 388,005,772</u>	<u>\$ 341,852,498</u>	<u>\$ 171,853,888</u>	<u>\$ 169,998,610</u>
			53.16%	46.84%		23.29%

The City of Oakland is contractually committed to the federal government for the redevelopment of the Army Base. Therefore, the transfer of those assets (\$48,940,000 property and \$35,131,691 cash) to the City has been deemed allowable and not subject to clawback under H&S Code section 34167.5.

**Attachment—
City's Response to
Draft Review Report**

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Deanna J. Santana
City Administrator

(510) 238-3302
FAX (510) 238-2223
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May 17, 2013

Mr. John Chiang
California State Controller
PO Box 942850
Sacramento, CA 94250-5874

Dear Controller Chiang:

This letter is in response to the State Controller's draft Asset Transfer Review for the former Redevelopment Agency of the City of Oakland prepared pursuant to Health and Safety Code Section 34167.5. We have reviewed the draft Asset Transfer Review and hereby transmit the following response on behalf of the City of Oakland and the Oakland Redevelopment Successor Agency.

The City disputes the following conclusions in your draft report:

- The City disagrees with your characterization of \$341,852,498 in asset transfers between the City and the Redevelopment Agency as "unallowable," since all of these transfers were authorized by law at the time they were undertaken, all were carried out in accordance with applicable legal requirements, and all were undertaken pursuant to valid contractual commitments in effect prior to enactment of the dissolution statute.
- The City disagrees with your characterization of \$150,546,003 in housing asset transfers to the City as designated housing successor as "unallowable," since the dissolution statute expressly authorized, and in fact required these transfers to be made to the housing successor.
- The City disputes your order to reverse fund transfers of \$41,455,557 for work performed for the City under contracts with third parties, since the Controller has no authority to reverse the transfer of assets committed under third-party agreements.
- The City requests that your final report specifically note that transfers associated with the Oakland Army Base project were allowable. In the Summary of Review that you supplied to the City at the March 28, 2013, exit conference (attached as Exhibit A), you specifically note that the transfer of funds and property for the Oakland Army Base redevelopment project were "allowable" – "Army Base is Deemed an Allowable Transfer (\$48,940,000 Property & \$34,687,000 Cash)" (see footnote (2)) and "Army Base is Deemed an Allowable Transfer (\$444,691 Cash)" (see footnote (5)). At the exit conference, your representatives indicated that the Asset Transfer Review report would include specific findings that the transfer of the Oakland Army Base property and funds were allowable

and not subject to "clawback." Given the importance of the Army Base project and the requirements of the developer, the title company, the state granting agencies, and other funders for assurances that the project can go forward under the auspices of the City, an explicit reference to the Army Base transfers consistent with your Summary of Review is vital.

- The draft report makes reference in several places to the transfer of housing assets to the Oakland Housing Authority. In fact, nothing was transferred to the Oakland Housing Authority. All housing assets were transferred to the City of Oakland, which elected to serve as housing successor to the former Redevelopment Agency. We would like those misstatements corrected.

We elaborate on the first three bullet points below:

ASSET TRANSFERS BETWEEN THE CITY AND THE REDEVELOPMENT AGENCY WERE NOT "UNALLOWABLE"

The draft report asserts that \$341,852,498 in asset transfers between the Redevelopment Agency and the City were "unallowable," implying that they were illegal or improper. The City disputes the characterization of these asset transfers as "unallowable." In fact, all of these transfers were legal, proper, and authorized at the time they were implemented and were, therefore, "allowable" under the law.

The Controller's position that all transfers between cities and redevelopment agencies going back to January 1, 2011 were illegal, has no basis in law. The bill that purported to ban such transfers was not even written on January 1, 2011; AB1X 26 was not introduced until May 19, 2011, and was not enacted into law until June 28, 2011.

The Oakland City Council authorized the transfers, and the Redevelopment Agency and City entered into contracts for the transfers in March of 2011, which was several months prior to the enactment of the dissolution legislation. Such agreements and related transactions between the Redevelopment Agency and the City are not unique or unusual. In fact, in Oakland, Agency-City contracts such as real property purchase and sale agreements, cooperation agreements, and repayment agreements, have been entered into numerous times over the years, and similar RDA-city agreements have been standard practice statewide.

Enactment of AB1X 26 did not immediately invalidate the Redevelopment Agency-City contracts. Any legally binding and enforceable contract, not otherwise void, in place at the time, was included within the statutory definition of "enforceable obligation." (See Health and Safety Code Section 34167(d)(5).) This definition applied to RDA-city agreements up until dissolution of California redevelopment agencies on February 1, 2012 -- the statutory definition of "enforceable obligations" that excluded RDA-city agreements (see Health and Safety Code Section



34171(d)(2)) only became effective on that date.¹ Thus, contracts between RDAs and their sponsoring cities were not excluded from the definition of "enforceable obligations" and were not invalidated prior to RDA dissolution on February 1, 2012. All of the Oakland transfers took place pursuant to authorized and valid contracts executed prior to February 1, 2012, and thus were legally "allowable."

TRANSFERS OF HOUSING ASSETS WERE "ALLOWABLE" BECAUSE THEY WERE AUTHORIZED, AND IN FACT REQUIRED, UNDER STATE LAW

The Controller's characterization that the \$150,546,003 in housing asset transfers to the City was "unallowable" contradicts the plain meaning of the dissolution statute. The transfer of housing assets to the City as designated housing successor was not only "allowable" but in fact was *required* by law. Furthermore, that transfer was approved by the Oakland Oversight Board and the California Department of Finance as required by the dissolution law.

The Redevelopment Agency did not actively transfer the housing assets to the City -- the transfer took place by operation of law when the Redevelopment Agency was dissolved. Prior to dissolution, the City elected to become the housing successor to the Redevelopment Agency, as permitted under Section 34176(a)(1). This statute provides that upon redevelopment agency dissolution, all housing assets of the dissolved RDA, as well as all housing functions and obligations, automatically transfer to the designated housing successor. The transfer of the Redevelopment Agency's housing assets to the City as housing successor therefore took place automatically per the statute on February 1, 2012, the day the Redevelopment Agency dissolved.

The draft report bases its conclusion that the housing transfers were "unallowable" on the fact that at the time the housing assets transferred to the City, the Oakland Oversight Board had not yet approved the transfer. However, the Oversight Board was not in existence on February 1, 2012, when the Redevelopment Agency dissolved and the transfer took place. The Oversight Board was not created until April of that year, in accordance with the timeline for oversight board establishment set forth in the statute. Obviously, the dissolution law could not have required prior approval of housing asset transfers by oversight boards since under the statute the transfers were required to take place prior to the oversight board establishment. However, as the report notes, the Oakland Oversight Board did validate the housing asset transfer by resolution in July of 2012 per Health and Safety Code Section 34181(c). Later, on August 31, 2012, pursuant to the process established by AB 1484 enacted in June of 2012, the California Department of Finance also approved (with some minor exceptions) the transfer of the housing assets to the City.

¹ Health and Safety Code Section 34170(a) provided that all provisions of Part 1.85, including the statutory definition of "enforceable obligations" in Section 34171, became operative on October 1, 2011, the original date scheduled for RDA dissolution. The California Supreme Court in the *CRA v. Matosantos* opinion extended all statutory deadlines in Part 1.85 arising before May 1, 2012, by four months; therefore, this October 1, 2011, effective date was extended by four months to February 1, 2012.



In short, the transfer of housing assets to the City as designated housing successor followed the statute to the letter, and there is no basis for the Controller to characterize this transfer as "unallowable."

THE CONTROLLER HAS NO AUTHORITY TO CLAW BACK ASSETS COMMITTED UNDER THIRD PARTY AGREEMENTS

The Controller has no legal authority to order reversal of \$41,455,557 in fund transfers that were committed by the City pursuant to contracts with third parties.

Under the clawback statute, the Controller only has the authority to order reversals of asset transfers if the assets are not contractually committed by the receiving agency to a third party for the expenditure or encumbrance of the asset. The City has committed most of the funds transferred from the Redevelopment Agency to third parties under contracts to undertake various streetscape projects and other public improvements. All of the contracts had long-standing commitments of Redevelopment Agency funds, and the uses of these funds were included in Redevelopment Agency capital budgets dating back to fiscal year 2006-07. Many of those projects have been successfully completed with funds fully disbursed to the third parties in payment for services rendered.

The Controller's report exempts \$27,734,443 in cash assets from clawback for those third party contracts entered into before June 28, 2011, but incorrectly orders the return of cash assets that were committed under third party contracts entered into by the City after June 28, 2011. There is no legal justification for this cutoff date; the June 28 date is nowhere to be found in Section 34167.5. Nowhere does the statute state that the third party commitments have to be in place by the date of the statute's enactment in order to avoid clawback. In fact, the statute refers to third party commitments in the present tense, i.e., as of the time of the Controller's review ("...and the government agency that received the assets **is not contractually committed** to a third party for the expenditure or encumbrance of those assets..."(emphasis added)). If the Legislature had intended to protect only third party commitments made prior to June 28, 2011, it could easily have qualified the statutory language to refer only to third party commitments entered into prior to the effective date of the legislation, as they did for other provisions.

The Controller first presented his position on the June 28, 2011, cutoff date in his April 20, 2012, "order" to successor agencies. Since then, we note that the Controller has reasserted his position on a number of occasions, e.g., on the Controller's website, in asset review reports for other successor agencies, and in accompanying press releases, but has never explained or justified this

State Controller John Chiang
Date: May 17, 2013
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position. We ask that the Controller provide a legal opinion explaining how the June 28, 2011, cutoff date can apply to third party contracts when the statute that governs the Controller's clawback powers includes no such date.

Thank you in advance for reviewing and considering these comments.

Sincerely,



DEANNA J. SANTANA
City Administrator/ORSA Administrator

Attachment

Exhibit A: State Controller's Office, City of Oakland Redevelopment Agency Summary of Review

**State Controller's Office
Division of Audits
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<http://www.sco.ca.gov>