

LAFAYETTE REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2013



JOHN CHIANG
California State Controller

October 7, 2013

Steven Falk, City Manager
City Of Lafayette Redevelopment/Successor Agency
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Dear Mr. Falk:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Lafayette Redevelopment Agency (RDA) to the City of Lafayette 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 it 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 of Lafayette or any other public agencies have been reversed.

Our review found that the RDA transferred \$52,513,934 in assets after January 1, 2011. These included unallowable transfers totaling \$4,280,357 (\$2,000,000 to the City and \$2,280,357 to the Successor Housing Authority), or 8.15%, that must be turned over to the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Tracy Robinson, Administrative Services Director
City of Lafayette Redevelopment/Successor Agency
Don Tatzin, Oversight Board Chairperson
City of Lafayette Redevelopment/Successor Agency
Robert Campbell, Auditor-Controller
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Lafayette 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 \$52,513,934 in assets. These included unallowable transfers totaling \$4,280,357 (\$2,000,000 to the City and \$2,280,357 to the Successor Housing Authority), or 8.15%, that 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 Code (H&S 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 Lafayette RDA, the City of Lafayette, 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 Lafayette 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 RDA transferred \$52,513,934 in assets. These included unallowable transfers totaling \$4,280,357 (\$2,000,000 to the City and \$2,280,357 to the Successor Housing Authority), or 8.15%, that must be turned over to the Successor Agency.

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 review report on July 30, 2013. Steven Falk, City Manager of the City of Lafayette, responded by letter dated August 8, 2013. The City's response is included in this final review report.

Restricted Use

This report is solely for the information and use of the City of Lafayette, Successor Agency, Lafayette Successor Agency Oversight Board, Lafayette Successor Housing Authority, 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

October 7, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfer to the City of Lafayette

The Lafayette Redevelopment Agency (RDA) transferred \$2,000,000 in assets to the City of Lafayette (City). All of 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.

Details of the unallowable asset transfer are as follows:

- On June 24, 2010, the City Council approved the City advance of \$2,000,000 to the RDA after staff proposed a line of credit to cover cash flow fluctuations. After additional council inquiry, staff projected that the full repayment of the advance would take over three years.
- On January 24, 2011, an agreement was entered into between the City and the RDA to formally establish a revolving line of credit. The agreement provided for repayment “on or before January 30, 2017” and allowed early repayment. The two subsequent amendments to the agreement did not change the intent of the payment provisions.
- On February 28, 2011, the RDA transferred \$2,000,000 in cash assets to the City. The transfer was made to satisfy the provisions of the revolving line of credit and was accomplished in accordance with the February 28, 2011 Meeting Agenda Item No. 9A.

Based on City Council and RDA Board minutes, the specific reason for early repayment of the full \$2,000,000 was related to concerns about pending legislation to dissolve RDAs. Thus the repayment is inconsistent with the intent of Health and Safety (H&S) Code Section 34167(a), which states:

This part is intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies... It is the intent of the Legislature that redevelopment agencies take no actions that would further deplete the corpus of the agencies’ funds regardless of their original source. All provisions of this part shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible.

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, the City of Lafayette is ordered to reverse the transfer of the above assets, described in Schedule 1, in the amount of \$2,000,000 plus any interest earned, and turn them over to the Successor Agency.

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

The Draft Report correctly states that the City of Lafayette advanced \$2,000,000 to the RDA in the form of a line of credit in order to cover cash flow fluctuations. The RDA repaid the outstanding amount owed under the line of credit on February 28, 2011. This repayment was made pursuant to an existing agreement between the City and the RDA, and was entirely consistent with the law in place at the time that the payment was made. This is not an "asset transfer," where no consideration was provided by the City for a transfer of assets from the RDA. The word "transfer" is used frequently in AB 1X 26 and AB 1484 to refer to conveyance of assets from redevelopment agencies to successor agencies; successor agencies to housing successor agencies; and successor agencies to other public agencies for a governmental purpose. Nowhere in these laws is the word "transfer" used to refer to the repayment of an existing debt. The repayment of \$2,000,000 owed to the City through the line of credit was therefore not a "transfer" of assets, but was the repayment of a legitimate loan, which was entirely permissible when completed on February 28, 2011. Note also that this repayment was included in the Due Diligence Review prepared for the Successor Agency pursuant to Health & Safety code section 34179.5 and was approved by the State Department of Finance.

The Draft report cites Section 34167(a), which states that "[i]t is the intent of the Legislature that redevelopment agencies *take* no actions that would *further deplete* the corpus of the agencies' funds regardless of their original source." (Emphasis added.) This section clearly indicates that the Legislature's intent was to restrict redevelopment agencies' actions prospectively and not retroactively. In this case, the RDA repaid its debt to the City long before AB 1X 26 was adopted. The legislative intent stated in Section 34167(a) bears no relation to the action taken by the RDA in this instance long before AB 1X 26 was enacted. This payment was reviewed through the Due Diligence Review process and was found to be a valid and legitimate repayment of an RDA debt. We therefore request that the State Controller reverse its finding.

SCO's Comment

The SCO disagrees with the City's response. Under H&S Code section 34167.5, the term "transfer" is to refer to assets transferring from the RDA to other public agencies. The term as it used here is broad enough to cover all modes of disposing of assets, including payments under agreements.

Also, the SCO would like to note that this repayment was not included in the Due Diligence Review report, nor was it approved by the California State Department of Finance.

The SCO finding remains as stated.

Note that the Successor Agency may take action to re-establish all or part of the agreements under the provisions of H&S Code section 34180(h).

**FINDING 2—
Unallowable asset
transfer to the
Successor Housing
Authority**

The RDA made an unallowable asset transfer of \$2,280,357 to the Successor Housing Authority. The asset transfer to the Successor Housing Authority occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

The unallowable asset transfer, made on February 1, 2012, consisted of \$1,115,757 in loans receivable, \$1,022,622 in encumbered cash, and \$141,978 in unencumbered cash.

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

H&S Code section 34175(b) states:

All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012.

Additionally, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to H&S Code section 34176.

Order of the Controller

Based on H&S Code section 34167.5, the Successor Housing Authority is ordered to reverse the transfer of the above assets, described in Schedule 2, in the amount of \$2,280,357, and turn them over to the Lafayette Redevelopment Successor Agency.

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

City's Response

At the time the RDA was dissolved on February 1, 2012, Section 34175 of the Health & Safety Code provided that the assets of the RDA be transferred to the Successor Agency. However, the next section of the law, Section 34176, provides that the city that authorized the creation of a redevelopment agency may elect to *retain* the housing assets of the former RDA, and that if the city did elect to retain those housing assets, the housing assets *shall be transferred to the city*. Section 34176

modifies the language in Section 34175 and thus, upon dissolution, the housing assets of the former RDA were consequently transferred to the City of Lafayette, which had elected to retain the housing assets.

The Draft Report notes that Section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to Section 34176. However, Section 34181(c) was added to the law by AB 1484, which was adopted over four months *after* the RDA had transferred the housing assets to the City as Housing Successor Agency. Nothing in AB 1484 suggested that this requirement for the Oversight Board direction should or must be applied retroactively, and therefore the Oversight Board did not do so.

Nevertheless, the Successor Agency plans to take a resolution to the Oversight Board confirming that those asset transfers are housing assets and affirming that the housing assets were properly transferred to the City as Housing Successor Agency in accordance with the requirements of Section 34176. Upon passage of the Oversight Board resolution, we will send a copy to the State Controller. This action should resolve any questions regarding the transfer of housing assets to the Housing Successor Agency.

SCO's Comment

We agree that the City of Lafayette should provide documentation that the transfer of assets to the housing Successor Agency has been approved by the Oversight Board.

The SCO finding remains as stated.

Note that the DOF must approve the Oversight Board's decision in this matter. If the DOF does not approve the decision, then the City of Lafayette is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

**Schedule 1—
Unallowable RDA Asset Transfer to
the City of Lafayette
January 1, 2011, through January 31, 2012**

Current assets	
Cash	<u>\$ 2,000,000</u>
Total unallowable transfer – City of Lafayette	<u>\$ 2,000,000</u> ¹

¹ See the Findings and Orders of the Controller section.

**Schedule 2—
Unallowable RDA Asset Transfers to
the Successor Housing Authority
January 1, 2011, through January 31, 2012**

Current assets	
Unencumbered cash	\$ 141,978
Encumbered cash	1,022,622
Loans receivable	<u>1,115,757</u>
Total unallowable transfer – Successor Housing Authority	<u>\$ 2,280,357</u> ¹

¹ See the Findings and Orders of the Controller section.

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



City Council

Mike Anderson, Mayor
Don Tatzin, Vice Mayor
Brandt Andersson, Council Member
Mark Mitchell, Council Member
Traci Reilly, Council Member

August 8, 2013

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

Re: Response to Draft Asset Transfer Review for the Lafayette Redevelopment Agency

Dear Mr. Brownfield:

This letter comprises the comments of the City of Lafayette Successor Agency on the Draft Asset Transfer Review Report (the "Draft Report") prepared by the State Controller's Office for the former Lafayette Redevelopment Agency (the "RDA"). In that report, the State Controller contends that the RDA made two unallowable transfers totaling \$4,280,357 (\$2,280,357 to the Successor Housing Agency and \$2,000,000 to the City of Lafayette). The City believes that the RDA's actions in both of these instances were proper and consistent with applicable law. The actions are both addressed in the paragraphs below.

Transfer of Assets to the Housing Successor Agency

At the time the RDA was dissolved on February 1, 2012, Section 34175 of the Health & Safety Code provided that the assets of the RDA be transferred to the Successor Agency. However, the next section of the law, Section 34176, provides that the city that authorized the creation of a redevelopment agency may elect to *retain* the housing assets of the former RDA, and that if the city did elect to retain those housing assets, the housing assets *shall be transferred to the city*. Section 34176 modifies the language in Section 34175 and thus, upon dissolution, the housing assets of the former RDA were consequently transferred to the City of Lafayette, which had elected to retain the housing assets.

The Draft Report notes that Section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to Section 34176. However, Section 34181(c) was added to the law by AB 1484, which was adopted over four months *after* the RDA had transferred the housing assets to the City as Housing Successor Agency. Nothing in AB 1484 suggested that this requirement for Oversight Board direction should or must be applied retroactively, and therefore the Oversight Board did not do so.

Nevertheless, the Successor Agency plans to take a resolution to the Oversight Board confirming that those asset transfers are housing assets and affirming that the housing assets were properly

transferred to the City as Housing Successor Agency in accordance with the requirements of Section 34176. Upon passage of the Oversight Board resolution, we will send a copy to the State Controller. This action should resolve any questions regarding the transfer of housing assets to the Housing Successor Agency.

Payment of \$2,000,000 to the City of Lafayette

The Draft Report correctly states that the City of Lafayette advanced \$2,000,000 to the RDA in the form of a line of credit in order to cover cash flow fluctuations. The RDA repaid the outstanding amount owed under the line of credit on February 28, 2011. This repayment was made pursuant to an existing agreement between the City and the RDA, and was entirely consistent with the law in place at the time that the payment was made. This is not an "asset transfer," where no consideration was provided by the City for a transfer of assets from the RDA. The word "transfer" is used frequently in AB 1X 26 and AB 1484 to refer to conveyance of assets from redevelopment agencies to successor agencies; successor agencies to housing successor agencies; and successor agencies to other public agencies for a governmental purpose. Nowhere in these laws is the word "transfer" used to refer to the repayment of an existing debt. The repayment of \$2,000,000 owed to the City through the line of credit was therefore not a "transfer" of assets, but was the repayment of a legitimate loan, which was entirely permissible when completed on February 28, 2011. Note also that this repayment was included in the Due Diligence Review prepared for the Successor Agency pursuant to Health & Safety Code section 34179.5 and was approved by the State Department of Finance.

The Draft Report cites Section 34167(a), which states that "[i]t is the intent of the Legislature that redevelopment agencies *take* no actions that would *further deplete* the corpus of the agencies' funds regardless of their original source." (Emphasis added.) This section clearly indicates that the Legislature's intent was to restrict redevelopment agencies' actions prospectively and not retroactively. In this case, the RDA repaid its debt to the City long before AB 1X 26 was adopted. The legislative intent stated in Section 34167(a) bears no relation to the action taken by the RDA in this instance long before AB 1X 26 was enacted. This payment was reviewed through the Due Diligence Review process and was found to be a valid and legitimate repayment of an RDA debt. We therefore request that the State Controller reverse its finding.

Summary and Conclusion

Based on the foregoing information, we respectfully request that the State Controller take two actions. First, once the Successor Agency provides you with a resolution from the Oversight Board affirming the transfer of the housing assets, please reverse the finding regarding the \$2,280,357 transfer to the Housing Successor Agency. Second, since it was a repayment of a valid existing debt of the RDA and not an "asset transfer," and is thus allowable according to Health & Safety Code Section 34167.5, we additionally request that you reverse your finding regarding the \$2,000,000 payment to the City of Lafayette.

Thank you for your consideration of our comments and requests.

Sincerely,



Steven Falk
City Manager, City of Lafayette

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