

SEPTEMBER 14, 2011

LAW ALERT

WHAT'S NEXT? Agency Administration during Uncertain Times.

Does my agency really have to do that?
When? Why?

These questions have come to pervade the minds of redevelopment agency staff throughout the State as a result of the adoption of AB x1 26 and AB x1 27 (the "Redevelopment Restructuring Acts"), which fundamentally altered the activities and obligations of redevelopment agencies. Further complicating matters, the Supreme Court issued an order staying the implementation of specified portions of the Redevelopment Restructuring Acts (on August 11, 2011 as modified on August 17, 2011, the "Stay"). This Law Alert is a brief reminder of two important administrative activities that all agencies must complete within the stated deadlines.

Preparation and Submission of Statement of Indebtedness by October 1, 2011:

Under existing law, all agencies must submit, to their respective county auditor-controller, a Statement of Indebtedness ("SOI") certified by the chief financial officer of the agency, no later than October 1 of each year. The requirement for all agencies to submit an SOI by *October 1, 2011* (the "2011 SOI") was unaffected by the adoption of the Redevelopment Restructuring Acts or the Stay. The terms of the Redevelopment Restructuring Acts place a special importance on the preparation of the 2011 SOI, assuming these Acts are found to be constitutional.

For agencies whose sponsoring communities will not be adopting a continuation ordinance, the 2011 SOI will be the last SOI those agencies will be required to submit. Dissolving agencies will want to make sure that their 2011 SOI includes all obligations listed in their Enforceable Obligation Payment Schedule ("EOPS").

For agencies whose sponsoring communities have or will adopt a continuation ordinance, the remittance payments the sponsoring communities will be required to make in fiscal year 2012-13 and beyond are adjusted for additional debt not listed on the 2011 SOI. For that reason, agencies should remember to include all existing debts on the 2011 SOI, including agreements with their sponsoring community for public improvements and other payments, as well as all obligations of the agency required for existing bonded debt, disposition and development agreements, owner participation agreements and loan agreements. Agencies should be thorough and precise in terms of both the obligations listed and the lifetime amounts of those obligations. Agencies should *not* limit the debts shown on the 2011 SOI to only those necessary to collect the full amount of tax increment generated next year.

Preparation and Transmittal of a Preliminary Recognized Obligation Payment Schedule:

Under the Redevelopment Restructuring Acts, only dissolving agencies were required

M David Kroot

John T. Nagle

Polly V. Marshall

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber

John T. Haygood

Dianne Jackson McLean

Michelle D. Brewer

Jennifer K. Bell

Robert C. Mills

Isabel L. Brown

James T. Diamond, Jr.

Margaret F. Jung

Heather J. Gould

Juliet E. Cox

William F. DiCamillo

Amy DeVaudreuil

Barbara E. Kautz

Erica Williams Orcharton

Luis A. Rodriguez

Xochitl Carrion

Rafael Yaquian

Josh Mukhopadhyay

Vincent L. Brown

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

to *prepare*, and transmit to their successor agency, a preliminary draft of the initial recognized obligation payment schedule ("Preliminary ROPS"), by *September 30, 2011*. Nonetheless, as a result of the Stay, all agencies, even those whose sponsoring communities have already adopted or plan to adopt a continuation ordinance, must prepare a Preliminary ROPS.

Unlike the Enforceable Obligation Payment Schedule ("EOPS") which all agencies were required to *adopt* at a meeting of an agency's governing board, the Preliminary ROPS need only be *prepared* by each agency. The Preliminary ROPS could therefore be *prepared* at a staff level and without formal meeting of an agency's governing board.

To minimally comply with this requirement during the "suspension" period in which dissolution of agencies is stayed and because there will be no practical use of the Preliminary ROPS during the suspension period, it is, recommended that agencies revise their recently adopted EOPS to:

- (1) Re-title the EOPS to call it a "Preliminary or Draft ROPS";
- (2) Expand the projected payments on enforceable obligations out (on a monthly basis) through June 2012 (the EOPS only covered payments through December 2011);
- (3) Add a column identifying the potential sources of funding which may include any combination of bond proceeds, reserve balances, administrative cost allowance, or any other revenue sources; and
- (4) Add any obligations not previously listed in the EOPS.

The re-titled and expanded document should be sufficient to serve as the Preliminary ROPS.

Agencies are required to provide the Preliminary ROPS to their *successor agencies* no later than *September 30, 2011*. But, the Stay has delayed the establishment of successor agencies and has also required agencies that, under the terms of the Restructuring Acts, would be exempted from ever having their sponsoring community designate a successor agency, to nonetheless prepare a Preliminary ROPS and transmit it to a non-existent successor agency.

Despite the inherent ambiguities caused by the Redevelopment Restructuring Acts and the Stay, we are recommending each agency's executive director transmit its Preliminary ROPS to the clerk of the agency's sponsoring community as an interim measure, since the sponsoring community would typically become the successor agency if the agency were ultimately dissolved.

The transmittal of the Preliminary ROPS should be accompanied by an explanation that: (1) the agency prepared the Preliminary ROPS to meet the requirements of Redevelopment Restructuring Acts and the Stay; and (2) that Preliminary ROPS is being sent to the clerk of the agency's sponsoring community because no successor agency exists at this time.

For more information on preparing the 2011 SOI or the Preliminary ROPS, please call any Goldfarb & Lipman attorney at 510-836-6336.



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