

JULY 20, 2012

LAW ALERT

August 1st Deadline to Submit the Housing Assets List to the State Department of Finance

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Under AB 1484, the successor to the housing assets and functions ("Housing Successor") of a dissolved redevelopment agency ("Dissolved RDA") must submit a list of housing assets to the State Department of Finance ("DOF") by **August 1, 2012**. The list should include all housing assets received by the Housing Successor after February 1, 2012 until the date the list is prepared ("Housing Asset List"). Late on Wednesday, July 18th, the DOF posted the form of the Housing Asset List on its website. See: http://www.dof.ca.gov/assembly_bills_26-27.

AB 1484 provides a detailed definition of housing assets in Health and Safety Code Section 34176(e). These include: (i) real and personal property assets; (ii) encumbered funds; (iii) loan and grant receivables for assistance provided by the Low and Moderate Income Housing Fund ("Housing Fund"); (iv) rents and payments from operations of housing owned by third parties and funded with any source of financing assistance from the Dissolved RDA; (v) rents and payments from operations of housing on properties financed with any source of financing assistance from the Dissolved RDA (in which presumably the Housing Successor owns the property or an interest in the property which entitles the Housing Successor to such payments other than loan and grant receivables—for example,

ground leases), which rents and payments are used to maintain affordability of the housing or for affordable housing-related enforceable obligations; and (vi) amounts owed to the Housing Fund as a result of previously deferred or borrowed Housing Fund deposits.

The form of Housing Asset List provided by the DOF on its website generally follows the outline of the definition of housing assets found in Section 34176(e), but also requests substantially more information than required in the statute. For that reason, we suggest that the Housing Successor staff begin the process of assembling this information immediately. We also suggest that the Housing Successor list as many Housing Assets as possible on the form, since after these assets are confirmed as housing assets the Housing Successor will have sole authority to handle the assets (with a few exceptions related primarily to unspent housing bond revenues). Remember to include affordability covenants that are not connected to loans or grants on the Housing Asset List. We advise consultation with legal counsel before adding any asset that is undergoing environmental remediation or is the subject of litigation to the Housing Asset List.

The definition of housing assets in AB 1484 contains some confusing language

and some overlap of the categories of assets; consequently, determining where to list a specific housing asset on the DOF form can be challenging. We are prepared to offer additional specific guidance for particular circumstances as needed.

AB 1484 does not require the governing board of a Housing Successor to approve the Housing Asset List, and so it should be possible to meet the August 1 deadline even though many councils and boards of supervisors are on a summer recess. The DOF has thirty (30) days after receipt of the Housing Asset List to object to any individual items, presumably because they do not meet the housing asset definition in Section 34176(e). The Housing Successor has five (5) business days to dispute adverse DOF determinations by requesting a meet and confer process. AB 1484 fails to specify a specific

completion timeline for this meet and confer process. Housing assets not approved as such by DOF are required to be returned to the Successor Agency.

For housing assets that are not covered by Housing Asset List, AB 1484 provides an alternative procedure whereby the Oversight Board can direct a transfer of housing assets to the Housing Successor at a later date. This process takes considerably more time than the Housing Asset List process, and we recommend that all Housing Successors complete their Housing Asset Lists to be as inclusive as possible.

For more information, please contact Rafael Yaquian, Lynn Hutchins, Jack Nagle, Polly Marshall or any Goldfarb & Lipman attorney.



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