ABX1 26/AB 1484
Summary and Update

Prepared for FCMAT

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Overview

- Dissolution of RDAs (slides 2 through 7)
- Impacts on LEAs (slides 8 through 29)
- Implementation challenges for CBOs (slides 30 through 38)
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Dissolution of RDAs

- ABX1 26 became effective on June 29, 2011, and was upheld by Supreme Court on December 29, 2011
- ABX1 26 dissolved former RDAs on Feb. 1, 2012, and transferred all former RDA assets and obligations to Successor Agencies (SAs) (typically City for former City RDA, and County for former County RDA)
- Successor Agencies report to "Oversight Boards": One Oversight Board for each Successor Agency

Dissolution of RDAs

- While RDAs were dissolved, former RDA redevelopment project areas (Projects) continue to exist
- Tax increment from each former RDA Project now paid into Redevelopment Property Tax Trust Fund (RPTTF)—one RPTTF for each former RDA
- County Auditor-Controller (A-C) is only party authorized to make payments (deposits) into RPTF and payments (distributions) out of RPTTF

Dissolution of RDAs

- Most statutory deadlines in ABX1 26 between Oct. 1, 2011 and May 1, 2012 were “reformed” (extended) by Court
- Reformed deadlines had effect of compressing implementation of ABX1 26 for FY 2011-12 into last five months of fiscal year, which led to many unintended consequences, making FY 2011-12 a difficult transition year for implementation, accounting, and reporting

Dissolution of RDAs

- Because it's new and complex legislation, ABX1 26 has had many interpretation and implementation issues
- AB 1484, which became effective on June 27, 2012 was DOF's response to these issues
- AB 1484 also has many interpretation and implementation issues

Dissolution of RDAs

- In FY 2011-12, County A-C was supposed to make distributions into and out of RPTTF twice a year:
  - First 50% on May 16, 2012 (deadline “reformed” from Jan. 16, 2012)
  - Second 50% on June 1, 2012
- Starting in FY 2012-13, AB 1484 changed distribution dates to:
  - January 2 for first distribution
  - June 1 for second distribution

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Impacts on LEAs

- LEAs and other affected taxing entities (ATEs) previously received only one type of identified revenue from RDA Projects—pass-throughs—in most counties, generally via warrant from RDAs
- Under ABX1 26/AB 1484, LEAs and other ATEs now receive THREE types of identified revenues from RDA Projects, typically by electronic funds transfer from the County A-C:
  - Pass-throughs
  - Residual Distributions
  - Asset Liquidation Revenues

Impacts on LEAs

- Pass-throughs continue to include payments from multiple pass-through categories:
  - Statutory AB 1290 pass-throughs

    These include pass-throughs from post-1994 and pre-1994 Projects, and are subject to partial revenue level offset (e.g., for K-12 Districts):
    - *56.7 percent restricted to educational facilities*
    - *43.3 percent unrestricted for offset against State Aid*
  - Contractual and statutory 2 percent pass-throughs

    These are from pre-1994 Projects only, *and are 100 percent restricted to educational facilities.*

Impacts on LEAs

- ABX1 26 *broadens usage restrictions* on facilities portion of AB 1290 pass-throughs received by LEAs (e.g., 56.7% for K-12 Districts)
  - Under ABX1 26, facilities portion of AB 1290 payments may now be used for "***maintenance***"—in addition to "land acquisition, new construction, reconstruction, or remodeling, or deferred maintenance"
  - Using facilities portion of AB 1290 payments for maintenance can replace same amount of General Fund revenues currently used for this purpose
  - Broader usage restrictions in ABX1 26 start in FY 2011-12 and automatically sunset after five years, i.e., after FY 2015-16
- Broader usage restrictions do NOT apply to agreement or 2 percent payments

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Impacts on LEAs

- ABX1 26 allows for *potential* reduction of pass-through payments, but only:
  - If former RDA is "upside down," e.g., has annual obligations on the ROPS that exceed the amount of tax increment in the RPTTF
  - If and to the extent pass-through payments were previously *subordinated* to RDA debt service, and even then, based on *the terms of the subordination* (e.g., subordination to Bond A but not Bond B, subordinated payments must be repaid with interest)
- While many former RDAs have been "upside down, there have been very few pass-through reductions for subordination
- Where reductions have occurred, they may have violated pass-through subordination terms

Impacts on LEAs

- Initially there was much discussion among County A-Cs, and disagreement between the LAO and DOF, regarding potential reductions (i.e., "haircuts") in *non-subordinated* pass-throughs:
  - Even if former RDA is NOT upside down
  - If and to the extent pass-through payments per negotiated *agreements* are "overly generous" (e.g., more than 50 percent of District share, though even less generous payments could also be reduced)
- In most counties, few "haircuts" were applied to pass-throughs, particularly to LEAs

Impacts on LEAs

- AB 1484 includes uncodified Section 36 stating intent of Legislature that unsubordinated pass-throughs NOT be subject to “haircuts”
- However, some County A-Cs have tried to “haircut” unsubordinated pass-throughs anyway because “haircut” prohibition is not codified
- In some counties “haircut” is being applied to Residual Distributions, not pass-throughs

Impacts on LEAs

- AB 1484 also adds subdivision (b) to HSC 34187 that requires pass-throughs to end when:

  *"all of the **debt** of a **redevelopment agency** has been retired or paid off"*

- This creates possibility of premature termination of pass-throughs based on DOF's interpretation of HSC 34187(b) that pass-throughs end when:

  *"all of the **enforceable obligations** of the **successor agency** [as shown on the ROPS] have been retired or paid off"*

- Based on DOF's interpretation, this means that pass-throughs may end prematurely once last RDA bond or other non-pass-through obligation has been repaid, whenever that may be (e.g., in 1 year, 10 years, or 35 years)

Impacts on LEAs

- DOF's interpretation ignores fact that pass-through agreements and AB 1290 pass-throughs are ALSO debt of former RDAs, and that ABX1 26 requires County A-C to:
  - Remit pass-throughs in the amount "which would have been received . . . had the [RDA] existed at that time" (HSC 34183(a)(1))
  - "Determine the amount of property taxes that would have been allocated to each [RDA] had the [RDA] not been dissolved pursuant to the operation of [ABX1 26] using current assessed values . . . and pursuant to statutory [pass-through] formulas and contractual agreements with other taxing agencies" (HSC 34182(c)(1))

Impacts on LEAs

- PEI helped prepare clean-up language to ensure that pass-throughs continue as before (and as stated in ABX1 26), i.e., until former RDAs' tax increment cap or tax increment time limit (whichever is earliest) is reached for each Project
- Prospects are promising for passage of some sort of legislative or regulatory fix

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Impacts on LEAs

- Residual Distributions
  - Portion of RPTTF *remaining* AFTER payment of former RDA pass-throughs, debt service on RDA bonds and other debts, and certain administrative costs
  - Distributed as additional property taxes
  - *For non-basic aid LEAs, Residual Distributions are 100% offset against State Aid*

Impacts on LEAs

- Asset Liquidation Revenues
  - Proceeds of liquidation of assets on former RDA balance sheets, starting with unencumbered cash balances from Low-and-Moderate-Income Housing Fund (LMIHF) plus other fund and account (OFA) balances
  - Distributed in same manner as Residual Distributions, but as other local revenues (NOT property taxes)
  - *For non-basic aid LEAs, Asset Liquidation Revenues are 100% offset against State Aid*

Impacts on LEAs

- For Residual Distributions and Asset Liquidation Revenues received by K-12 Districts and COEs
  - Basic aid LEAs have ***direct stake*** in maximizing these additional revenues, which they get to keep without offset against State Aid
  - Non-basic aid LEAs have ***no direct stake*** in maximizing these additional revenues, which they must report for offset against State Aid—UNLESS State Aid is reduced *in anticipation of* receipt of additional revenues from County A-C, which is then *delayed,* or if additional revenues received are then *reversed* (e.g., due to litigation by Successor Agencies)
  - All LEAs have ***indirect stake*** in maximizing these additional revenues in the form of additional State Aid that may result in future from additional State Aid offsets now

Impacts on LEAs

- For Residual Distributions and Asset Liquidation Revenues received by CCDs
  - SB 1016 requires State to backfill CCDs if:
    - Residual Distributions for FY 2011-12 were less than DOF estimates (uncodified Section 95)
    - Residual Distributions or Asset Liquidation Revenues for FY 2012-13 are less than DOF estimates (uncodified Section 97)
    - These provisions also presumably protect CCDs against reductions in Residual Distributions and Asset Liquidation Revenues due to litigation by Successor Agencies, etc.
  - However, for reductions in Residual Distributions and Asset Liquidation Revenues after FY 2012-13, CCDs will presumably NOT be backfilled without new legislation

Impacts on LEAs

- DOF previously estimated LEA share of Residual Distributions for FY 2011-12 at $1.037 B statewide, including:
  - $887 M for K-12 Districts
  - $ 3 M for COEs
  - $147 M for CCDs

Impacts on LEAs

- Actual LEA shares of Residual Distributions and Asset Liquidation Revenues in FY 2011-12 were much lower than DOF estimates, due in part to following:
  - First distribution from RPTTF on May 16, 2012 was zero since tax increment for July 1, 2011 through January 31, 2012 was allocated to RDAs, not to RPTTF
  - Second distribution from RPTTF on June 1, 2012 was relatively small in many counties since it included tax increment for Feb. 1 through April 30 only
  - There were inadequate provisions for Asset Liquidation Revenues

Impacts on LEAs

- AB 1484 attempts to make up for these shortfalls, including:
  - One-time July 2012 True-Up of Residual Distributions by County A-C for first part of FY 2011-12
  - New code sections addressing Asset Liquidation Revenues and providing for accelerated implementation, starting with LMIHF distributions in November 2012
- July True-Up of Residual Distributions and liquidation of former RDA assets have resulted in many lawsuits filed by SAs against DOF and County A-C

Impacts on LEAs

- July 2012 True-Up of Residual Distributions per AB 1484

  Took place between July 9 and July 16, 2012, and focused mainly on "claw back" of additional Residual Distributions from tax increment apportioned to former RDAs for first half of FY 2011-12.

- Residual Distributions from July 2012 True-Up were much ***larger*** than June 1 distribution, including in San Diego County:
  - $155 M in July for first half of FY 2011-12, including $100 M for LEAs, compared to
  - $ 17 M in June for second half of FY 2011-12, including less than $9 million for LEAs

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Impacts on LEAs

- Distribution of Asset Liquidation Revenues per AB 1484
  - These distributions are based on due diligence review (DDR) reports by auditors retained by Successor Agencies or County A-Cs to identify former RDA assets that are encumbered or not encumbered
  - These distributions began with unencumbered LMIHF distributions in November 2012, which may continue for several months.
  - Distribution of Other Funds and Accounts not involving LMIHF distributions has already begun, though OFA distributions will be constrained by illiquidity of many former RDA assets
  - Unlike distributions from RPTTF, Asset Liquidation Revenues will occur at different times throughout fiscal year

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Impacts on LEAs

- On June 1, 2012 some County A-Cs made 100% of pass-throughs for FY 2011-12
- However, since RDAs already received tax increment for first seven months of FY 2011-12:
  - ***On June 1, 2012 many County A-Cs only made pass-throughs for last part of FY 2011-12***, whether or not RDA/SA actually paid for first part of year
  - ***Many RDA/SAs did NOT make pass-throughs for first part of*** FY 2011-12 (compared to 100% of pass-throughs *for* FY 2010-11, which also should've been paid *in* FY 2011-12)

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Impacts on LEAs

- As a result, AB 1484 (HSC 34183.5(a)) requires County A-Cs to true-up ALL pass-throughs for FY 2011-12 not previously paid or paid incorrectly
  - True-up of “first 50%” of pass-throughs NOT paid for FY 2011-12 to be paid with first distribution from RPTTF for FY 2012-13 on Jan. 2, 2013
  - True-up of “second 50%” of pass-throughs NOT paid for FY 2011-12 to be paid with second distribution from RPTTF for FY 2012-13 |on June 1, 2011

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Impacts on LEAs

- True-up of pass-throughs for FY 2011-12 is deducted from portion of RPTTF that would otherwise go to Successor Agency for ROPS beginning in FY 2012-13
- If RPTTF is insufficient to fund current pass-throughs, ROPS, admin costs *and* true-up pass-throughs, Co. A-C shall deduct any unpaid portion of true-up pass-throughs from future distributions from RPTTF to Successor Agency

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Impacts on LEAs

- January 2013 True-Up of pass-throughs
  - Should have taken place at first distribution from RPTTF on January 2, 2013
  - However, in many counties County A-C *combined* true-up amount for FY 2011-12 with "first 50%" paid for FY 2012-13, making it *impossible* to determine total amount actually paid for FY 2011-12
- LEAs should ask County A-C to separate true-up pass-throughs for FY 2011-12 from "first 50%" of pass-throughs for FY 2012-13 paid on Jan. 2, or from "second 50%"of pass-throughs for FY 2012-13 paid on June, etc.

Implementation Challenges

- Many County A-Cs:
  - Were not prepared for centralized and complex distribution process imposed by ABX1 26 and AB 1484
  - Have not generated detailed reports to support their distributions and calculations (other than summary reports provided to DOF)
  - Have not provided sufficient detail on journal vouchers to differentiate pass-throughs from Residual Distributions, or pass-throughs for one RDA, pass-through type, Project area, etc. from another
  - Have made errors in assigning revenue codes or objects that have caused facilities portions of pass-throughs to be misreported as Residual Distributions or Asset Liquidation Revenues

Implementation Challenges

- While having to deal with only County A-C rather than multiple RDAs may be a good thing:
  - County A-C practices are already showing major variation from one county to another
  - Some County A-Cs are relying on same former RDAs (and consultants) that used to calculate (or miscalculate) pass-through payments before

Implementation Challenges

- Except as noted above for AB 1290 pass-throughs, facilities portion of all pass-throughs are subject to ***functional restrictions*** in EC 42238(h)(6) *et al*
- Functional restrictions may be interpreted to include (i) capital outlay and (ii) certain non-capital outlay items
  - District buildings and infrastructure (e.g., District office, warehouse, corporate yard, parking facilities, utilities, HVAC)
  - Other furniture, fixtures, and equipment
  - Costs of relocation and interim housing
  - Capital or operating leases (e.g., for District office or store front space, computers, and office equipment)
  - District administrative costs; A&E costs; legal, planning, and consulting costs; and other project or program-specific soft costs

Implementation Challenges

- Facilities portion of agreement and AB 1290 pass-throughs may also be subject to ***geographic restrictions*** per:
  - HSC 33607.5(a)(5) for AB 1290 pass-throughs, which may require Board resolution
  - Potentially restrictive provisions in pre-1994 pass-through and facilities agreements
- 2 percent pass-throughs are NOT subject to geographic restrictions

Implementation Challenges

- LEAs need to know their pass-through entitlements by former RDA, Project, and pass-through category, in order to make sure they're correctly paid by County A-C and accounted for and reported by LEAs
  - Underpaid pass-throughs for FY 2011-12 are subject to True-Up in FY 2012-13 (and later years if needed)
  - Underpaid pass-throughs for FY 2010-11 and prior years should be placed on Recognized Obligation Payment Schedule (ROPS) for future payment by County A-C or Successor Agency

Implementation Challenges

- For K-12 districts and COEs, Taxes Report (Form J-29) provides three data fields to report:
  - State offset portion of AB 1290 pass-throughs (A-12)
  - Residual Distributions (A-13)
  - Asset Liquidation Revenues (A-14)
- For accounting purposes, all three data fields on Taxes Report have same object: 8047
- Some counties have adopted “local objects” to differentiate between three data fields
- However, certain objects (e.g., 8041 for secured property taxes) should not be used

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Implementation Challenges

- For CCDs, starting with FY 2012-13 Taxes Report (Form CCFS-329) provides three data fields to report:*
  - State offset portion of AB 1290 pass-throughs (line 4)
  - Residual Distributions (line 5)
  - Asset Liquidation Revenues (line 6)
- For accounting purposes, use these three account codes (objects):
  - 8818 for State offset portion of AB 1290 pass-throughs
  - 8819 for Residual Distributions
  - 8819.1 for Asset Liquidation Revenues

** Starting with FY 2012-13, Form CCFS-311 also provides separate lines for these three RDA revenue types.*

Implementation Challenges

- Facilities portion of all pass-throughs (100% for agreement and 2% payments, and for K-12 districts, 56.7% for AB 1290 payments) should NOT be reported on Taxes Report
- For accounting purposes, facilities portion of all pass-throughs use:
  - Object 8625 for K-12 districts
  - Account 8890 for CCDs

Implementation Challenges

- LEAs should work with County A-C to address underpayments of pass-throughs for FY 2011-12, if possible, in time to correct underpayments prior to second distribution from RPTTF for FY 2012-13 on June 1, 2013
- While only County A-Cs are now authorized to make pass-throughs, LEAs should also identify any underpaid pass-throughs (e.g., due to LAUSD Decision) for prior years, so they can be placed on the ROPS

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Sources of Additional Information

- For additional information see RDA Successor Agency link on website for Fiscal Crisis Management Assistance Team:
  - http://www.fcmat.org/stories/storyReader$18321

  or call or contact Dante Gumucio or Carly Simard at Public Economics, Inc.
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