ABX1 26 AND DISSOLVED RDAS:
LEA PERSPECTIVE ON SUCCESSOR AGENCIES AND OVERSIGHT BOARDS

Prepared for FCMAT by Public Economics, Inc.

Introduction

The recent California Supreme Court decision upholding ABX1 26 renders Redevelopment Agencies (RDAs) dissolved as of February 1, 2012. The County Auditor-Controller will continue to calculate RDA tax increment as though RDAs continued to exist. However, as of February 1, 2012, tax increment will be deposited in a Redevelopment Property Tax Trust Fund (Trust Fund) for allocation to multiple parties.

All affected taxing entities, including County Offices of Education, school districts, and community college districts (local education agencies or LEAs) will continue to receive both contractual and statutory pass-through payments, except they will now be apportioned from the Trust Fund by the Auditor-Controller. Pass-through payments to LEAs will continue to be primarily for educational facilities, and received outside the revenue limit as under previous law.

The County Auditor-Controller will also apportion Excess Revenues (also called Net Tax Increment) from the Trust Fund, i.e., that portion of former RDA tax increment not needed to fund pass-through payments, RDA bond and other debt service, and allowed administrative expenses. For non-basic aid districts, Excess Revenues received by LEAs will be used for revenue limit offset for benefit of the State.

The County Auditor-Controller will apportion the remainder of the Trust Fund to Successor Agencies for continued payment of RDA bond and other debt service, and allowed administrative expenses.

Successor Agencies

ABX1 26 requires the responsibilities of dissolved RDAs to be administered by Successor Agencies, which are the city or county that sponsored the RDA, unless they choose to opt out. If a city or county elects not to be the Successor Agency, the Successor Agency will be a designated local authority with a governing board consisting of three county residents appointed by the Governor.

Among other things, these Successor Agencies will continue to make payments due for enforceable obligations not involving pass through payments. Successor Agencies will also utilize unencumbered reserves and dispose of former RDA assets and properties as directed by the Oversight Board.

Successor Agencies will receive only the portion of former RDA tax increment needed to pay enforceable obligations (including capped allowances for administrative costs). The remainder of the tax increment will be apportioned by the County Auditor-Controller to affected taxing entities (including LEAs) as pass-through payments and Excess Revenues. Where tax increment is insufficient to cover enforceable obligations and pass-through payments, the County Treasurer may loan the Successor Agency any amounts necessary to cover the deficiency. In FY 2011-12, payments to the Successor Agency and affected taxing entities are scheduled to be made May 16 and June 1. Starting FY 2012-13, such payments are scheduled for January 16 and June 1. However, some County Auditor-Controllers reportedly do not anticipate being able to comply with the compressed deadlines for FY 2011-12.

Oversight Board

Each Successor Agency will have a seven-member Oversight Board:

- For city RDAs:
  - LEAs receive two seats: one member appointed by the elected County Superintendent of Schools (if the County Superintendent is appointed, the County Board of Education appoints the Oversight Board member), and one member appointed by the Chancellor of the California Community Colleges
  - Non-LEAs receive five seats: (i) two members appointed by the mayor of the city that formed the RDA, including a member of the union employing the largest number of former RDA employees employed by the successor agency at that time; (ii) two members appointed by the County Board of Supervisors, including a member of the public appointed at large; and (iii) one member appointed by the largest special district by property tax share within RDA boundaries
- For a county RDA or RDA formed by a joint powers authorities (JPA):
  - If there is a city with acreage located within the county RDA or JPA RDA:
    - LEAs receive two seats as before
    - Non-LEAs receive five seats as before, except the mayor of the largest city by acreage gets the city appointment, and the mayor or County Board of Supervisors gets the union appointment, based on the largest number of former RDA employees employed by the Successor Agency at that time
  - If there is no city with acreage located within the county or JPA RDA:
    - LEAs receive three seats: two seats as before, plus the County Superintendent gets a second appointment in place of the former city appointment
    - Non-LEAs receive four seats: (i) two members appointed as before by the County Board of Supervisors, plus a member of the union employing the largest number of former RDA employees employed by the successor agency at that time; and (ii) one member appointed as before by the largest special district

Each Oversight Board shall select one of their members as chairperson, and the Oversight Board shall report the name of the chairperson and other members to the Department of Finance (DOF) by May 1, 2012. Positions not filled by May 15, 2012 shall be appointed by the Governor.

<u>Oversight Board Responsibilities</u>

Oversight Boards are the fiduciaries for former RDA obligations and for affected taxing entities that receive pass through payments and Excess Revenues. Oversight Board members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as Oversight Board members. Oversight Board members serve at the pleasure of the entity (e.g., the County Superintendent) that appointed such member.

No one person can sit on more than five Oversight Boards, but may simultaneously hold elected office in a city, county, special district, school district, or community college district. Oversight Board members serve without compensation or reimbursement for expenses by the Successor Agency, which shall, however, pay for the costs of Oversight Board meetings. Oversight Board members who are paid employees of a school district (for example), including the County Office of Education, may presumably have their responsibility as Oversight Board members included in their job description.

The Oversight Board is subject to the Brown Act, the California Public Records Act, and the Political Reform Act of 1974. A majority of the total membership of an Oversight Board, i.e., four persons, constitutes a quorum for the transaction of business. The vote of four members is required for the Oversight Board to take action, even if only four members are in attendance.

Successor Agencies may want Oversight Boards to meet as soon as four members have been appointed. This means that LEA appointments to Oversight Boards should be made as soon as possible to avoid situations in which four previously appointed non-LEA members are voting on matters of importance to LEAs without the participation of LEA members who have not been appointed yet. This also means that once appointed, LEA members will have the opportunity to build coalitions with other members of the Oversight Board to achieve a working majority on matters of special importance to LEAs.

The Department of Finance may review Oversight Board actions, which shall not be effective (i) for three business days pending a request for review by DOF, or (ii) for 10 days from the date of a DOF request to review a given Oversight Board action, which DOF may subsequently approve or return to the Oversight Board for reconsideration, or (iii) for any modified action taken by the Oversight Board, upon approval by DOF.

An Oversight Board for a given Successor Agency shall cease to exist when all the indebtedness of the former RDA has been repaid. In counties with more than one former RDA, Oversight Boards for all Successor Agencies will be replaced by a single county-wide Oversight Board on July 1, 2016.

Oversight Boards may direct the staff of the Successor Agency to perform work in furtherance of the Oversight Board's duties and responsibilities. In addition, the Oversight Board shall approve the following Successor Agency actions:

- Establishment of new repayment terms for outstanding loans if terms are not yet specified
- Refunding of outstanding bonds or other debts to provide savings or cover lump sum obligations (provided that no additional debt is created or debt service accelerated)
- Setting aside reserves as required by bond or other long term debt
- Merging of project areas.
- Continuing acceptance of federal or state grants or other forms of financial assistance, where such assistance is conditioned on provision of matching funds by the former RDA
- Approving compensation agreements with affected taxing entities to provide additional Excess Revenues in return for former RDA properties or other assets the city (or county for a county RDA) wishes to retain for future redevelopment activities, funded from its own funds and under its own auspices
- Establishment of the Recognized Obligation Payment Schedule (ROPS)

The Oversight Board shall also direct the Successor Agency to do all the following:

- Dispose of former RDA assets and properties that were funded by tax increment revenues, or alternatively, direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, or fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to construction or use of such assets
- Cease performance of, or terminate, all existing agreements that do not qualify as enforceable obligations
- Transfer housing responsibilities and all attendant rights and obligations, along with any amounts on deposit in the low-and-moderate-income (LMI) housing fund, to the appropriate entity
- Terminate any agreement between the former RDA and any local public entity for any debt service obligations of the public entity, or for construction or operation of facilities owned or operated by such public entity, where the Oversight Board finds that early termination is in the best interests of the affected taxing entities
- Determine whether any contracts, agreements, or other arrangements between the former RDA and any private parties should be terminated or renegotiated to reduce liabilities and increase Excess Revenues to the affected taxing entities, and present proposed termination or amendment agreements to the Oversight Board for approval, where the Oversight Board finds that amendments or early termination are in the best interests of the affected taxing entities

Process for Oversight Board Selection

ABX1 26 does not provide criteria or guidelines for selection of Oversight Board members. As noted above, the County Superintendent’s appointee to an Oversight Board may be a current (or former) member of an affected K-12 district school board or the County Board of Education. Alternatively, the appointee may be a current or former employee of an affected K-12 district or the County Office of Education.

In any event, the role of the Oversight Board is primarily financial in nature and requires knowledge of pass-through payments made to LEAs. Hence, the appointee should be familiar with K-12 finance generally, and the different types of pass-through payments former RDAs may have been required to make. This suggests that a current or former district superintendent or chief business officer may be an appropriate appointee.

In the case where multiple K-12 districts are affected by the same RDA, if the County Superintendent chooses to appoint a representative of a K-12 district, consideration may be given to the K-12 district with the largest financial interest in the RDA, unless another district affected by the RDA has requested the appointment and/or is determined by the County Superintendent to have more motivation, resources, and/or capability to serve. Alternatively, the County Superintendent may appoint a member of the County Board of Education or an employee of the County Office of Education. *However, the appointee must represent the interests of all K-12 districts affected by the RDA, as well as the County Office of Education, so that LEAs receive their appropriate share of pass-through funds as well as Excess Revenues.*

ABX1 26 does not indicate to whom individual appointments should initially be reported, who shall call for the initial meeting, how often the Oversight Board shall meet, etc. However, prudence suggests that the County Superintendent provide the name and affiliation of each appointee, by Oversight Board, to the County Auditor-Controller, the corresponding Successor Agency, and all corresponding K-12 districts.

Appointments to the Oversight Board must be made by no later than May 1, 2012. However, as noted above, LEA appointments to Oversight Boards should be made as soon as possible to avoid situations in which a quorum of four non-LEA members are voting on matters of importance to LEAs without the participation of LEA members.

Training and Ongoing Support for LEAs and Oversight Board Appointees

Public Economics, Inc. (PEI) will assist FCMAT in providing one-time training to LEAs and Oversight Board appointees, as well as additional ongoing staff support to the extent possible.

- One-time training will provide Oversight Board appointees with basic understanding of:
  - Former redevelopment law, practices, and terminology
  - Changes in redevelopment law, practices, and terminology resulting from ABX1 26
  - Responsibilities of Successor Agencies regarding former RDA assets and obligations, including ROPS
  - Responsibilities of Oversight Boards with respect to Successor Agencies ((e.g., fiduciary obligations regarding former RDA obligations)
  - Responsibilities of Oversight Boards with respect to affected taxing entities (e.g., fiduciary obligations to affected taxing entities that receive pass through payments and Excess Revenues)
  - Responsibilities of Oversight Board members representing LEAs with respect to other LEAs
  - Responsibilities of County Auditor-Controllers with respect to former RDA tax increment (i.e., distributions from Redevelopment Property Tax Trust Fund to Successor

Agencies for recognized obligations and administrative costs, and to affected taxing entities for pass-through payments and Excess Revenues)

  - Responsibilities of State Department of Finance and State Controller's Office

- Additional ongoing staff support will provide specialized technical assistance to the extent possible regarding:
  - Specific issues Oversight Board may need to address, or decisions it may be required to take, regarding individual obligations shown on ROPS, amendments to ROPS, and disposition of real property and liquid assets of former RDA
  - Educational perspective on specific Oversight Board actions, to ensure appropriate consideration of LEAs' needs and priorities as well as those of the Successor Agency

FCMAT and PEI anticipate that supplemental one-time training and staff support, in addition to that provided through FCMAT, may also be required to address certain needs unique to individual LEAs and/or individual Successor Agencies and Oversight Boards. This supplemental training and staff support will presumably be provided through County Offices of Education or individual LEAs contracting directly with PEI or others.

Additional Information

To obtain additional information on ABX1 26 and on FCMAT's one-time training and ongoing support to LEAs and Oversight Board appointees, contact FCMAT at (661) 636-4308, email Chief Management Analyst Michelle Plumbtree at mplumbtree@fcmat.org, or submit a question to FCMAT's online Help Desk at https://portal.fcmat.org/contact/helpdesk/Pages/default.aspx