Impacts on CCDs of Dissolution of Redevelopment Agencies Per ABX1 26 and AB 1484

Prepared for CCIA

October 4, 2012

(Updated January 25, 2013)

134 S. Glassell Street, Suite A, Orange, CA 92866 Tel: (714) 647-6242 FAX: (714) 647-6232

Overview

- ABX1 26: Background
- ABX1 26: Impacts on CCDs
- ABX1 26: Need for AB 1484

134 S. Glassell Street, Suite A, Orange, CA 92866   Tel: (714) 647-6242   FAX: (714) 647-6232

ABX1 26

- 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 RDAs, and County for former County RDA)
  - Successor Agencies report to “Oversight Boards”: One Oversight Board for each Successor Agency
  - Oversight Boards are fiduciaries for (i) former RDA obligations, and (ii) affected taxing entities that receive Pass-Through Payments, Residual Distributions, and Other Revenues

ABX1 26

- 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

134 S. Glassell Street, Suite A, Orange, CA 92866 Tel: (714) 647-6242 FAX: (714) 647-6232

www.Pub-Econ.com

ABX1 26

- 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

Impacts on CCDs

- CCDs 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, CCDs 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
  - Other Revenues from liquidation of former RDA assets (Asset Liquidation Revenues)

Impacts on CCDs

- 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 CCDs):
    - 52.5 percent restricted to educational facilities
    - 47.5 percent unrestricted for revenue level offset
  - Contractual and statutory 2 percent pass-throughs

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

Impacts on CCDs

- Facilities portion of pass-throughs includes (i) capital outlay and (ii) certain non-capital outlay items, including but not limited to
  - District or campus buildings
  - District or campus infrastructure (e.g., District office, warehouse, corporate yard, parking facilities, utilities, HVAC)
  - Other furniture, fixtures, and equipment
  - Relocation and interim housing (e.g., leased portable classrooms)
  - Other operating leases (e.g., for District office or store front space, computers, and office equipment)
  - Design and architecture services; legal, planning, and consulting services; and other project or program-specific soft costs
  - Debt service payments on capital leases (e.g., COPs or LRBs)

Impacts on CCDs

- ABX1 26 also *broadens usage restrictions* on facilities portion of AB 1290 payments received by LEAs (e.g., 52.5% of AB 1290 payments to CCDs)
  - 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

Impacts on CCDs

- 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 were “upside down, in FY 2011-12 there were few if any pass-through reductions for subordination, presumably because subordination of pass-throughs hadn’t been fully documented

Impacts on CCDs

- There's been 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 that pass-through payments per negotiated *agreements* are "overly generous" (e.g., more than 50 percent of District share, though even less generous payments could be reduced)
- However, in FY 2011-12 there appeared to be few "haircuts" applied to pass-throughs, particularly to LEAs

Impacts on CCDs

- CCDs 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 the County A-C and accounted for and reported by CCDs
  - Underpaid pass-throughs for FY 2011-12 will be subject to January 2013 True-Up
  - Underpaid pass-throughs for prior years should be placed on Recognized Obligation Payment Schedule (ROPS) for future payment by County A-C or Successor Agency
- Oversight Board members appointed by State Chancellor need to know:
  - When their pass-throughs are scheduled to end, so as NOT to accelerate payment of ROPS obligations in a way that may prematurely terminate pass-throughs
  - When there are underpaid pass-throughs for prior years, so they can be placed on ROPS

Impacts on CCDs

- Residual Distributions
  - Portion of RPTTF *remaining* AFTER payment of former RDA pass-throughs, debt service on RDA bonds and some other debts, and certain administrative costs
  - Distributed as additional property taxes
- Asset Liquidation Revenues
  - Proceeds of liquidation of former RDA assets (e.g., unencumbered cash balances and real property)
  - Distributed in same manner as Residual Distributions, but as other local revenues (NOT property taxes)
- CCDs' share of Residual Distributions and Asset Liquidation Revenues will be received by non-basic aid CCDs for offset against State Aid

Impacts on CCDs

- For Residual Distributions and Asset Liquidation Revenues
  - Basic aid CCDs have ***direct stake*** in maximizing these additional revenues, which they get to keep without revenue level offset
  - Non-basic aid CCDs have ***no direct stake*** in maximizing these additional revenues, which they must report for offset against State Aid
  - All CCDs have ***indirect stake*** in maximizing these additional revenues in the form of additional State Aid in the future that may result from additional State Aid offsets now
  - Non-basic aid CCDs have direct stake ONLY if State withholds from State Aid their share of these additional revenues in anticipation of receipt from the County A-C, which is then delayed—or not forthcoming at all (e.g., due to litigation by Successor Agencies)

Impacts on CCDs

2012 edition of Budget and Accounting Manual (BAM) accounts for two of three types of former RDA revenues in post-RDA world:

- Pass-Throughs and Residual Distributions
- No provision is made for Asset Liquidation Revenues

Impacts on CCDs

- Pass-Throughs
  - <u>Account 8890: Other Local Revenues</u>

    These include facilities portion of all pass-throughs (e.g., 100% for pass-through agreements and 2% payments, and 52.5% for AB 1290 payments), and are posted to Capital Facilities Fund.
  - <u>Account 8818: Redevelopment Agency Funds—Pass-Through Payments</u>

    These include property tax portion of AB 1290 pass-throughs only (e.g., 47.5% of AB 1290 payments), and are posted as unrestricted to General Fund

    With these account numbers, there is no need to differentiate between other Property Tax Accounts (e.g., secured, unsecured, supplemental, or prior years).

Impacts on CCDs

- Residual Distributions
  - Account 8819—Redevelopment Agency Funds—Residual

    These include 100% of Residual Distributions, and are posted as unrestricted to General Fund.

    With this account number, there is no need to differentiate between other Property Tax Accounts (e.g., secured, unsecured, supplemental, or prior years).
- Asset Liquidation Revenues
  - Account 8819.1—Redevelopment Agency Funds—Asset Liquidation Revenues

    Though not included in BAM, in December 2012 CCCCO added this new account number for Asset Liquidation Revenues

Impacts on CCDs

- In FY 2011-12, County A-C was supposed to make distributions into and out of RPTTF as follows:
  - First 50% on May 16, 2012 (deadline "reformed" from Jan. 16, 2012)
  - Second 50% on June 1, 2012
- However, since County A-C already paid more than 50% of tax increment for FY 2011-12 to RDAs by February 1, 2012, and since most County A-Cs had not finalized tax increment for deposit into RPTTF for May and June 2012:
  - First distribution into and out of RPTTF on May 16, 2012 was zero
  - Second distribution on June 1, 2012 was less than 50%

Impacts on CCDs

- Under ABX1 26, County A-C, not RDAs, is responsible for making all pass-throughs
- Some County A-Cs made 100% of pass-throughs for FY 2011-12 on June 1, 2012
- However, since RDAs already received over 50% of tax increment prior to Feb. 1, 2012:
  - ***Many County A-Cs only made "second 50%" (actually less than 50%)*** of pass-throughs for FY 2011-12 on June 1, whether or not RDA/SA actually made "first 50%"
  - ***Many RDA/SAs did NOT make "first 50%" (should have been more than 50%) of pass-throughs*** for FY 2011-12 before June 1 (compared to 100% of pass-throughs *for* FY 2010-11, which also should've been paid *in* FY 2011-12)

Impacts on CCDs

- DOF previously estimated LEA share of Residual Distributions and Asset Liquidation Revenues 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 CCDs

- Actual LEA shares of Residual Distributions in FY 2011-12 were much lower than DOF estimates, due in part to following:
  - First distribution (including Residual Distributions) from RPTTF on May 16, 2012 was zero since over 50% of tax increment was already allocated to RDAs before they were dissolved on Feb. 1, 2012
  - Former RDA debt service and enforceable obligations were much greater than DOF expected
  - Other Revenues were smaller than DOF expected, and will require additional time to be liquidated and distributed

AB 1484

- Because ABX1 26 is new and complex legislation, there have been many issues of interpretation and implementation
- AB 1484 was DOF's response to these issues
- Among other things, AB 1484 made numerous changes to ABX1 26, and imposed multiple new deadlines for FY 2012-13

AB 1484

- AB 1484 includes new code sections providing for:
  - "January 2013 True-Up" of pass-throughs by County A-C for:
    - "First 50%" (should be more than 50%) of pass-throughs for FY 2011-12 NOT paid by former RDA/SAs
    - "Second 50%" (or even 100%) of pass-throughs for FY 2011-12 NOT correctly paid by County A-Cs on June 1
  - "July 2012 True-Up" of Residual Distributions by County A-C

AB 1484

- July 2012 True-Up of Residual Distributions

  This took place between July 9 and July 16, 2012, focused mainly on "claw back" of additional Residual Distributions from tax increment apportioned to former RDAs through January 30, 2012.
- County A-Cs and Successor Agencies not complying with these deadlines faced draconian penalties, including loss of sales tax revenues for corresponding County and Cities
- Claw back of Residual Distributions has resulted in many lawsuits filed by SAs against DOF and County A-C

AB 1484

- Additional Residual Distributions from July True-Up were much, much ***larger*** than Residual Distributions on June 1, including (for example) in San Diego County:
  - $155 M in July, including $100 M for LEAs, compared to
  - Less than $17 M in June, including less than $9 million for LEAs

134 S. Glassell Street, Suite A, Orange, CA 92866 Tel: (714) 647-6242 FAX: (714) 647-6232

www.Pub-Econ.com

AB 1484

- January 2013 True-Up of pass-throughs

  This will take place at first distribution from RPTTF on January 2, 2013 (changed from January 16, 2013), with *estimates* of trued-up pass-throughs due from County A-C by Oct. 1, 2012

- CCDs should work with County A-C to address underpayments of pass-throughs for FY 2011-12, so County A-C will have sufficient time to correct underpayments prior to Jan. 2, 2013
- While only County A-Cs are now authorized to make pass-throughs, CCDs should also identify any underpaid pass-throughs (e.g., due to LAUSD Decision) for prior years, so they can be placed on the ROPS

AB 1484

- AB 1484 also 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

AB 1484

- AB 1484 also adds provision that may result in premature termination of pass-throughs within one year of repayment of "all of the debt of a redevelopment agency"
- 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)
- This ignores fact that pass-through agreements and AB 1290 pass-throughs are ALSO debt of former RDAs, and that ABX1 26 requires the County A-C to:
  - Remit pass-throughs in the amount "which would have been received . . . had the [RDA] existed at that time" and
  - "Determine the amount of [pass-throughs] that would have been allocated to each [RDA] had the [RDA] not been dissolved pursuant to the operation of [ABX1 26]"

AB 1484

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

Where We're Going: AB 1484

- For additional information see website for Fiscal Crisis Management Assistance Team at http://www.fcmat.org/stories/storyReader$18321