Redevelopment Successor Agencies

Frequently Asked Questions

Q-1:

We receive contractual pass-through checks from one of our cities based on an agreement. The contractual amounts have been accumulated in our RDA fund:

1. Will these contractual amounts continue to be paid directly to the district?
2. Can we continue to deposit these RDA funds into an RDA account?
3. Are there restrictions on how these funds can be spent now that RDAs no longer exist?

A-1:

1. Under ABX1 26, all the district's pass-throughs will continue as though the RDAs still existed. However, effective February 1, 2012, the county auditor-controller (A-C), not the former RDAs or successor agencies, will now be responsible for making pass-through payments.

   Some county A-Cs will make 100% of pass-throughs for FY 2011-12 by June 1, 2012. However, since RDAs received over 50% of the tax increment for FY 2011-12 prior to their dissolution on February 1, 2012, some county A-Cs have asked successor agencies to make the first 50% of pass-throughs for FY 2011-12 (compared to 100% of pass-throughs for FY 2010-11, which they or the former RDAs should have already paid in FY 2011-12). Other county A-Cs will make the second 50% of pass-throughs for FY 2011-12 by June 1, plus the first 50% if the successor agencies haven't paid already.

   Pass-through payments may only be reduced if (i) a former RDA is overcommitted (too many obligations, not enough tax increment), and (ii) the district previously agreed to subordinate its pass-throughs to RDA bonds. Even then, the subordinated pass-throughs should be repaid with interest, though this will have to be confirmed and/or negotiated with the county A-C.

2. Pass-throughs from the county A-C will presumably be received by electronic funds transfer, not by warrant as when payments were made by the RDA. This will require the county A-C to create new revenue codes and provide additional details on journal vouchers to differentiate between (i) regular property taxes, pass-throughs, and excess revenues (net tax increment); (ii) pass-throughs by former RDA, project, and pass-through type; (iii) pass-throughs by "for" year vs. "in" year.

3. Restrictions regarding use of pass-throughs are unchanged, except the facilities portion of AB 1290 payments only may now be used for ordinary maintenance as well.

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Q-2:

It has been said that 2011-12 excess revenues will likely be lower than what the state is budgeting. My question is: Is this one of the reasons for the $41 million property tax shortfall shown at P1 and, if yes, will this problem increase at the P2, forcing an even bigger local revenue deficit?

A-2:

DOF generated preliminary estimates of the total amount of excess revenues to be allocated statewide to LEAs for FY 2011-12, and the allocation of the statewide total to individual LEAs. We have inquired but don't yet know how DOF made its $1.049 billion statewide estimate. However, we have learned that the individual LEA amounts are top-down allocations, adjusting the $1.049 billion total to back out community colleges, and (2) prorating the remaining sum by the amount of supplemental educational revenue augmentation funding (SERAF) that the impacted school districts received in 2010-11.

DOF has allocated its $1.049 billion statewide estimate as follows: about $887 million to K-12 districts, $3 million to COEs, and $159 million to CCDs. Even if the preliminary $887 million K-12 total were correct:

- SERAF was allocated by RDA based on relative ADA inside and outside the RDA, where a K-12 district with even one tax rate area in one project (even with no share of tax increment) got SERAF, including in disproportionate amounts if that LEA's total ADA was large relative to total ADA of all other LEAs in the projects of that RDA
- Excess revenues will be allocated based on relative share of tax increment inside the RDA only, meaning if an LEA has no share of tax increment, it gets zero excess revenues even if it would have received most of the SERAF

PEI reviewed the 80 K-12 districts in LA County to which DOF had allocated its estimate of excess revenues for FY 2011-12. Eleven of the 80 K-12 districts did not receive SERAF allocations in 2010-11 (or in 2009-10) because they did not overlap any RDAs. However, DOF's preliminary estimates allocated excess revenues to the 11 districts.

COEs and CCDs did not receive allocations from SERAF. However, DOF also generated preliminary estimates of excess revenues to COEs, individually and collectively, and to CCDs collectively (see Q&A below).

PEI expects the amount of excess revenues LEAs actually receive statewide to be lower than DOF's preliminary statewide estimate. While actual excess revenues will probably be substantially lower for most LEAs, actual excess revenues may actually be higher for some LEAs. Hence, while most LEAs may receive larger cuts in state aid based on DOF's preliminary estimates, some LEAs will probably receive smaller cuts in state aid based on DOF's preliminary estimates.

Per ABX1 26, the first 50% distribution of excess revenues in FY 2011-12 will occur on May 16, followed by the second 50% on June 1. However, in every county, about half of RDA tax increment was already apportioned to individual RDAs prior to dissolution of the RDAs on February 1, 2012, and under ABX1 26 is not subject to distribution of excess revenues.

For example, in San Diego County the county A-C has determined that the first 50% distribution of tax increment and administrative cost allowances to successor agencies, and pass-throughs and excess revenues to affected taxing entities, will be zero. And out of the second 50% distribution, the county A-C plans to pay 100% of the pass-throughs for FY 2011-12 (except for the rare RDA that makes partial pass-through payments in the same year for which they're due).

Because DOF's numbers were preliminary, they clearly assumed two full 50% distributions in FY 2011-12. So even if there were no pass-throughs, and DOF's preliminary estimates were accurate, the likely amount of excess revenues would be about half of DOF's estimates, which may be further reduced after pass-throughs are netted out.

So if DOF requires CDE to reduce state aid by the amount of DOF's numbers, there will be a big shortfall at P1 for most LEAs (but not all). And there will probably be an additional shortfall at P2 for most LEAs (but not all).

Of course, in the long run, actual data for excess revenues will eventually replace DOF's preliminary estimates. However, under ABX1 26, "eventually" may not happen soon enough to avoid significant cash flow problems for many LEAs.

On p. 20 of "Unwinding Redevelopment" by the Legislative Analyst's Office, it's noted that "the administration estimates that $1.8 billion in [excess revenues] will be distributed to local governments annually in 2011-12 and 2012-13. [However,] this estimate ... may be high because it:

- Understates costs to pay enforceable obligations ...
- Assumes a full year of implementation ...
- Overlooks successor agency admin costs ...
- Assumes cooperation agreements [between an RDA and its city] are not repaid"

On the other hand, LAO notes that "other elements of the administration's estimate ... could result in gains that more than offset the costs [and] the administration's estimated does not account for:

- Distributions of unencumbered cash ...
- Distributions of [real property] and other redevelopment assets [including housing funds and assets transferred from RDAs to cities during the first half of 2011 ..."

While distributions to LEAs of other revenues (former RDA cash and assets) could offset any excessive reductions in state aid to LEAs resulting from DOF's preliminary estimates of excess revenues, it may take considerable time to liquidate enough assets to achieve that outcome. Assuming that process will take time, on p. 23 the LAO states: "If some or all of the assets are not distributed or successor agencies do not reduce their spending, the administration's estimate might be overstated by several hundred million to over $2 billion."

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Q-3:

I have heard there's a bill moving that would allow RDA successor agencies to declare bankruptcy - is that accurate?

A-3:

Yes. AB 1692 (Wieckowski). This bill was introduced on March 22, passed through the Assembly, but was not adopted.

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Q-4:

In response to a question posed to our P&L (and WC) insurance JPA, North Bay Schools Insurance Authority (NBSIA), their legal counsel provided the following information on potential liability exposure for oversight board members and their employers. Obviously other COEs and districts may need to check on the details of their coverage, but the general principles should apply to all LEA oversight board appointees.

A-4:

"Oversight boards are comprised of various individuals, including an individual appointed by the county superintendent of schools (if elected) or the county board of education (if the superintendent is appointed). H&S Code Section 34179(a)(4).

"Because the appointed individual is serving in his/her capacity as a COE employee or agent, and as a requirement of his employment, the employee would be covered under the existing SIA/NBSIA programs. Under the circumstances, I could not recommend (for cost reasons) having the oversight board purchase additional coverage. Here's why.

"Individuals serving on the oversight board are immune from personal liability for acts taken within the scope of their responsibilities as oversight board members per H&S Section 34179(d). If an employee of a public agency is immune from liability, so is the employing public agency per Government Code Section 815.2(b). ("Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.") Thus, neither the designated employee nor the employer (whether the county superintendent or the board of education) can face legal liability for acts arising from service on the oversight board for acts within the scope of statutory service.

"Given that conclusion, I see no reason to take additional protective action by using taxpayer funds to purchase additional coverage. Yes, there still remains a potential risk of suit (triggering defense costs, which could then be allocated among all parties who would be expected to agree to a joint defense arrangement), but there is no indemnity/settlement value to such cases given this broad grant of immunity.

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Q-5:

How does the oversight board obtain independent legal advice?

A-5:

ABX1 26 appears silent on the issue of legal counsel to the oversight board. However, please note the following:

The oversight board gets to approve or disapprove all items shown as enforceable obligations on the successor agency's (SA's) (i) amended EOPS (per HSC 34171(a)(1)), and (draft and amended and) certified ROPS (per HSC 34177(l)(2)(B))—including "any legally binding and enforceable agreement or contract," including with SA legal counsel. That is, even the SA's legal counsel serves at the pleasure of the oversight board.

This means:

"Nothing in this act shall prohibit ... the oversight board itself from terminating any existing agreements or contracts and provide any necessary and required compensation or remediation for such termination." (HSC 34171(d)(1)(E))

"The oversight board ... may approve any amendments to or early termination of ... any contracts, agreement, or other arrangements between the dissolved [RDA] and any private parties ... where it finds that amendments or early termination would be in the best interests of the taxing entities." (HSC 34181(e))

In most cases, (i) the SA's legal counsel is the same as legal counsel to the former RDA, and (ii) the SA's legal counsel has stated:

- "Like the successor agency staff, we will endeavor to assist the oversight board [however]
- "Our client is the successor agency staff, not the oversight board"

If the SA's legal counsel has recused itself from representing the oversight board, the board may either (i) amend or provide for early termination of the agreement between the SA and its legal counsel, which agreement should appear on the ROPS; or (ii) direct the SA to prepare an RFP for independent legal counsel for the oversight board, which the board will choose and which new agreement should also appear on the ROPS.

This is the approach taken in a number of other communities, including Riverside County (for the SA to the former county RDA) and San Mateo County (for all SAs to all former RDAs).

Accordingly, the oversight board may vote to hire independent counsel (as well as consultants, etc.) as an administrative expense of the successor agency, or utilize outside counsel (or consultants, etc.) hired by others (e.g., county counsel, special counsel hired by the county superintendent or another LEA or non-LEA). Of course, this would require a majority vote of the oversight board and could conceivably face opposition by the successor agency and/or its legal counsel (e.g., for political reasons).

Lacking a majority vote of the oversight board, another approach is for the entity represented by the oversight board member to utilize or hire its own counsel (or staff support) to provide independent advice to that board member (or other individual members wishing to receive it), but not to the entire oversight board.

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Q-6:
What funding source can an oversight board use to hire legal counsel separate from the successor agency's legal counsel?

A-6:
The same funding source as all other expenses of the successor agency (SA) and oversight board: the portion of the Redevelopment Property Tax Trust Fund (RPTTF) allocated to the SA (and held in the Redevelopment Obligation Retirement Fund (RORF)), as well as other revenues and any of several unencumbered fund balances. And arguably, the cost of legal counsel to the SA and separate legal counsel for the oversight board should both be funded as part of the SA's administrative cost allowance (minimum of $250,000 or 3% of annual payment to RORF).

The SA will almost certainly argue against funding the costs of either legal counsel from the administrative cost allowance. And the SA may even object to putting the cost of legal counsel for the oversight board on the ROPS. However, as noted above, it's ultimately up to the oversight board, which can direct the SA to put the cost of independent legal counsel on the ROPS, etc.

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Q-7:

Last time we heard, DOF could not tell us how they came up with their excess revenues estimate of $147 million for CCDs. LAO also didn't expect to have an estimate until May. Is there better information somewhere?

A-7:

As noted above, DOF has not yet stated how it determined its $1.049 billion statewide estimate of excess revenues (residual distributions) for FY 2011-12, nor its component estimates of $887 million for K-12 districts, $3 million for COEs, or $147 million (rather than $159 million) for CCDs.

In the May Revise budget, DOF reduced its previous estimates of excess revenues for FY 2011-12 to $818 million, including $116 million for CCDs and $702 million for K-12 districts and COEs. However, DOF has not given CCCCO an allocation by individual CCD for FY 2011-12, presumably because (unlike K-12 districts and COEs) CCDs are not backfilled for shortfalls in property taxes in a given fiscal year.

However, actual distributions of excess revenues for FY 2011-12 due on June 1 appear to be much lower than DOF's reduced estimates. CCCCO staff have advised that DOF has provided verbal assurances that it will rely on actual distributions of excess revenues (as reported by county A-Cs in June), not DOF estimates, as a benchmark for estimated property taxes for FY 2012-13.

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Q-8:

Does the distribution of funds have a specific order of preference, i.e., pass-through, bond and debt service and admin expense? If there are insufficient funds is there risk to LEAs?

A-8:

Yes. What would otherwise be tax increment to RDAs under prior law is calculated in the same manner as previously, but deposited into a redevelopment property tax trust fund (RPTTF or trust fund), less county A-C administrative costs allowed by statute. Per HSC 34183(a), the county A-C "shall remit from the [trust fund]":

1. "First, ... to each local agency and school entity, an amount of [pass-through payments] which would have been received under [all previous statutes] during that fiscal year, had the redevelopment agency existed at that time."

2. "Second, ... to each successor agency for payments listed in its [ROPS] for the ... fiscal period beginning May 1, 2012 (reformed deadline) ... and each January 16 and June 1 thereafter, in the following order of priority:

A. Debt service payments scheduled to be made for tax allocation bonds.

B. Payments scheduled to be made on revenue bonds ...

C. Payments scheduled for other debts and obligations listed in the [ROPS] that are required to be paid from former tax increment revenues.

3. "Third, ... to each successor agency for the administrative cost allowance, as defined in Section 34171 ... in an approved administrative budget for those payments required to be paid from former tax increment revenues.

4. "Fourth, ... any [excess revenues] remaining in the [trust fund] after the payments [per] paragraphs (1) to (3), inclusive, shall be distributed to local agencies and school entities in accordance with Section 34188."

Per HSC 34183(b), if there are insufficient funds to allocate to each successor agency, payments shall be reduced in the reverse order of priority shown above. However, only pass-through payments LEAs have previously agreed to subordinate to RDA bonds or other debt service may be reduced.

Nonetheless, some have interpreted HSC 34188 as allowing potential reductions (i.e., a "haircut") in non-subordinated pass-throughs even if the successor agency is not upside down, if and to the extent that pass-through payments (particularly pass-through agreements) are overly generous (e.g., 50% to 100% of an LEA's share of property tax increment), though even less generous payments could be reduced. Others have interpreted HSC 34187 (HSC 34187(a) as subsequently amended by AB 1484) as allowing premature reduction or termination of non-subordinated pass-throughs whenever a recognized obligation that had been identified in the [ROPS] is paid off or retired.

However, PEI and many others agree that these are misinterpretations of these code sections. Proposed clean-up language should avoid misinterpretations.

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Q-9:
Our RDA pre-committed capital debt that has prepayment penalties to lock in funding last year. How does the successor agency manage these unspent capital dollars?

A-9:
HSC 34175(a) states the intent of ABX1 26 that "pledges or revenues associated with enforceable obligations of the former [RDAs] are to be honored. It is intended that the cessation of any [RDA] shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge."

Accordingly, capital debt that is call protected, i.e., that may not be prepaid before a certain date, will presumably remain outstanding until it can be paid in conformance with the debt contract. On the other hand, capital debt that can be prepaid, albeit with prepayment penalties, may be prepaid if the oversight board determines that affected taxing entities will benefit therefrom.

What is less clear is the use of unspent debt proceeds as the source of prepayment of capital debt. For example, tax exempt bonds may be subject to conversion to taxable bonds if an excessive portion of bond proceeds is used for general government purposes, (e.g., for excess revenues). Oversight boards should seek advice on such matters from competent bond counsel, financial advisers, etc.

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Q-10:

What happens if the oversight board has already taken action on the ROPS before an audit is completed?

A-10:

Per HSC 34177(a)(1), the oversight board is required to approve an EOPS that has been adopted by the successor agency after February 1, 2012. And per HSC 34177(l)(2)(A), the successor agency must adopt a draft ROPS by March 1, 2012.

However, only the draft ROPS is subject to audit and certification under HSC 34182(a), for which the statutory deadline is July 1, 2012 (even though successor agency is required to submit an ROPS to the state by April 15, 2012). While the draft ROPS may be approved by the oversight board prior to certification, only a certified ROPS may be approved by the oversight board in fulfillment of its obligations per HSC 34177(l)(2)(B).

So if the oversight board has approved a ROPS that has not been certified, it will have to approve the certified ROPS once that becomes available.

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Q-11:

The oversight board does not make choices between projects, does it? It just decides whether pre-existing projects should be completed or not, isn't that right?

A-11:

If a project does not appear on the EOPS or ROPS, or if the oversight board determines that a project is not an enforceable obligation as defined in HSC 34167(d) for EOPS, or HSC 34171(d)-(e) for ROPS, the oversight board may decide that the project should not be completed or even undertaken.

Moreover, even if the project does appear in the EOPS or ROPS, the oversight board may terminate:

- Any contracts or agreements between the former RDA and other public agencies, including the city, if the oversight board finds that early termination would be in the best interests of the taxing entities per HSC 34181(d)
- Any existing agreements or contracts, but only in conjunction with "providing any necessary and required compensation or remediation for such termination," per HSC 34171(d)(1)(E)

So if the oversight board concludes early termination would be in the best interests of the taxing entities, even after "providing any necessary and required compensation or remediation," the oversight board is authorized to terminate any project agreement.

In addition, per HSC 34181(a), the oversight board may also direct the successor agency to transfer ownership of those [former RDA] assets that were constructed and used for a governmental purpose, such as ... school buildings ... to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset."

Finally, if a project does appear on the EOPS or ROPS, and (i) the project may have been partially completed, and (ii) at least some funding remains for the project, the oversight board may redesignate a replacement project if the remaining funding is insufficient to complete the project previously designated, and such redesignation does not violate existing contracts or agreements.

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Q-12:

Do we need to wait for the successor agency to call the first OS board meeting or can one member call it as long as there is a quorum? In our county, almost all RDA OS boards have a quorum appointed right now.

A-12:

The statute is silent on this question. However, it appears that the successor agencies themselves should call the first oversight board meeting, and seem to be doing so in the vast majority of cases. Absent the successor agency taking the lead, an individual oversight board member may ask the successor agency to call a meeting as soon as possible. The oversight board member may also ask the successor agency not to call a meeting unless LEA appointees have been officially named, and have an opportunity to participate in the first meeting.

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Q-13:

Will basic aid districts be required to treat excess tax increment as the equivalent of revenue limit offset, i.e. first fund ROPS and then restricted fund balance?

A-13:

Under current law, excess revenues received by basic aid K-12 districts and CCDs would appear to be received without offsets. However, for so-called basic aid COEs, the portion of excess revenues not designated for special education will be subject to the same offset requirements as additional regular property taxes.

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Q-14:

I need clarification on allowable costs that may be considered facilities-related expenditures. I need to expend money coming in under object 8625, community redevelopment funds not subject to RL deduction. (We already accounted for the property tax portion.)

A-14:

RDA pass-throughs are subject to different functional and geographic restrictions, depending on the type of pass-through entitlement:

- 100% of 2 percent and agreement payments are appropriately coded with object 8625, which functionally restricts them to the following five uses in EC 42238(h)(6):

  "Any amount received pursuant to [HSC] 33401 [pass-through agreements] or [HSC] 33676 (2 percent payments) [shall be] used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance."

These uses presumably include certain non-capital outlay items that may otherwise appear in a capital facilities budget, including but not limited to furniture, fixtures, and equipment; relocation and interim housing (e.g., leased portable classrooms); design and architecture services; legal, planning and financial consulting services; and other project or program-specific soft costs.

Agreement payments may be subject to:

- Additional functional restrictions set forth in the agreement itself
- Geographic restrictions stipulated in the agreement

Both these restrictions must be determined by evaluation of each individual agreement. For example, agreement payments may be functionally and/or geographically restricted to specific district facilities (say, a football stadium); or at given district site/sites; or within the RDA project; or so as to benefit the RDA project; or within the city, etc. However, the functional restrictions in the agreement may be effectively identical to the statutory restrictions, and there may be no geographic restrictions (meaning agreement payments may be used anywhere within the boundaries of the district).

Two percent payments are only subject to statutory restrictions: the functional restrictions described above and no geographic restrictions, meaning they, too, may be used anywhere within the boundaries of the district.

For K-12 districts, AB 1290 payments are functionally restricted by a different portion of EC 42238(h)(6):

"Any amount received pursuant to [HSC] 33607.5(a)(4), 33607.7, or 33492.15, i.e., AB 1290 payments], shall be allocated exclusively for educational facilities."

For K-12 districts, HSC 33607.5(a)(4) stipulates the restricted amount ("allocated exclusively for educational facilities") and the remaining unrestricted amount (for district operations - and for revenue limit districts, for revenue limit offset) as 56.7%-43.3%. The splits are different for COEs (81.0-19.0%) and CCDs (52.5%-47.5%).

Prior to ABX1 26, most LEAs received 100% of their AB 1290 payments from the RDA or county A-C. However, some LEAs received their AB 1290 payments on a pre-split basis (and in some cases they saw separate apportionments only for the facilities portion of the payment, with the offset portion buried with other property taxes).

With ABX1 26, starting with the second half of FY 2011-12, LEAs will receive all current year pass-throughs from the county A-C (it remains to be seen how prior year pass-throughs owed but not made will be paid, i.e., by the county A-C, successor agencies, or both). It appears pass-throughs made by the county A-C will be split into a facilities portion (designated portion of

AB 1290 payments plus agreement payments) and a tax portion (remaining portion of AB 1290 payments).

PEI recommends the district post the entire amount received using object 8625. If the payment is not pre-split, the district should transfer the revenue limit offset portion to the general fund using object 8047. If the payment is pre-split, then presumably nothing further need be done.

Unlike agreement and 2 percent payments, AB 1290 payments are subject to potential statutory geographic restrictions found in HSC 33607.5(a)(5):

"Local education agencies that use [AB 1290] funds ... for school facilities shall spend these funds at schools that are: (A) within the [RDA project], (B) attended by students from the [project], (C) attended by students generated by projects that are assisted directly by the [RDA], or (D) determined by the governing board of a local education agency to be of benefit to the [RDA project]."

Educational facilities that are not school facilities (e.g., district office, maintenance yard) are presumably not subject to this geographic requirement. Moreover, the requirement is of an either-or nature. Hence, the least restrictive requirement—usage of AB 1290 payments shall be "determined by the governing board ... to be of benefit to the" project, becomes effectively the only geographic restriction (except for COEs or other LEAs that do financial hardship applications to OPSC, and want to geographically restrict their AB 1290 payments to minimize offset against state facilities funding—but that's a separate discussion).

This board determination should be fairly easy to justify. For example, if the district has a facilities master plan, improvements to any one school site will have an indirect benefit to most if not all other schools sites (e.g., by increasing capacity at one site to relieve or prevent potential overcrowding at other sites).

While this may require some nexus analysis, the analysis will normally be minimal. PEI recommends the board make the required determinations by resolution. Upon request, PEI can prepare a draft board resolution (and corresponding agenda item) making the needed determinations for what should be a one time finding of benefit for any expenditure of AB 1290 payments received from any and all RDA projects generating such payments.

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Q-15:

Is it true that maintenance expenses may now be considered facilities-related expenditures?

A-15:

For AB 1290 payments only, ABX1 26 makes functional usage restrictions more explicit while broadening functional restrictions to include maintenance in addition to "land acquisition, new construction, reconstruction, or remodeling, or deferred maintenance" (see HSC 33607.5(a)(4)(A)-(D) and 33607.7(b)(2) as amended by ABX1 26). However, the broader functional restrictions in ABX1 26 only apply to AB 1290 payments, and sunset on June 1, 2016. While ABX1 26 does not specify ordinary, restrictive, or other maintenance, it was the intent of the sponsor of this addition to ABX1 26 to use the facilities portion of AB 1290 payments to pay salaries and benefits for custodians, repair personnel, landscapers, etc.

Initially, we thought LEAs could use prior year (as of July 1, 2011) AB 1290 capital fund balances for maintenance. However, when we revisited the actual statutory language, these more explicit functional restrictions, including the maintenance option, were clearly restricted only to the facilities share of AB 1290 payments received in FYs 2011-12 through 2015-16.

If LEAs wish to take maximum advantage of this change, they should use pre-July 1, 2011 AB 1290 capital fund balances to pay capital lease or lease revenue bond payments and other capital outlay or related expenses, so they can use as much of the facilities portion of their AB 1290 receipts as possible in FY 2011-12 (and subsequent years) for maintenance.

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Q-16:

When and how will pass-through payments will be made under ABX1 26?

A-16:

ABX1 26 authorizes only county A-Cs to make pass-through payments after former RDAs have been dissolved. However, because of the delay in internal implementation caused by the litigation of ABX1 26/27, what were supposed to be two annual distributions of pass-through payments by the county A-C, the first 50% +/- on January 16 and the second 50% +/- on June 1, were reduced in FY 2011-12 to one distribution on June 1.

Because the dissolution of RDAs was postponed by the Supreme Court until February 1, 2012, the first distribution of tax increment to into the RPTTF—and the first distribution of pass-throughs, etc. out of the RPTTF—was also postponed until May 16. By that time, former RDAs had already received 50% +/- of the tax increment for FY 2011-12; hence, the first distribution of tax increment into the RPTTF on May 16—and the first distribution by the county A-C of pass-throughs, etc. out of the trust fund—was zero.

Nonetheless, in some counties, county A-Cs advised former RDAs and SAs that the county A-C would make 100% of the pass-throughs for FY 2011-12 on June 1. However, in most counties where pass-through payments were generally made by RDAs in prior years, LEAs should have received AB 1290 payments:

- In FY 2011-12 for FY 2010-11 (and possibly prior years) directly from RDAs
- In FY 2011-12 for the first 50% +/- of FY 2011-12 (and possibly prior years) directly from at least some RDAs
- In FY 2011-12 for up to the last 50% +/- of FY 2011-12 (and possibly prior years) from the county A-C by electronic funds transfer (EFT) posted on or around June 1, 2012

Different county A-Cs have advised that:

- Former RDAs and/or SAs should make the first 50% +/- of pass-throughs for FY 2011-12 based on the portion of tax increment for FY 2011-12 RDAs received through January 30, 2012, with county A-Cs making the second 50% +/- of pass-throughs based on the portion of tax increment allocated to the redevelopment property tax trust fund for FY 2011-12

  In these counties, in some cases the SA put the unmade first 50% pass-through on the ROPS with or without a payment date showing (e.g., July through December 2012). In other cases, the SA did not put the unmade first 50% pass-through on the ROPS.

In these counties, the burden is on the LEAs (and other affected taxing entities) to determine (i) whether or not the former RDA or SA actually made the first 50% +/- pass-through for FY 2011-12; (ii) if not, whether and how it may appear (or not) on the ROPS; and (iii) who will pay the first 50% +/- pass-through, and how, and when.

- County A-Cs would make 100% of pass-throughs for FY 2011-12, unless the first 50% +/- pass-through was paid by the former RDA or SA

  In these counties, the burden is on the SAs to make sure the county A-C knows that the former RDA or SA already made the first 50% +/- pass-through, so they may deduct it from what would otherwise be the annual pass-through made by the county A-C on June 1, 2012.

In all counties even annual payments made by the county A-C on June 1, 2012 do not include actual tax increment generated during the month of June (May and June in some counties). Hence, remaining pass-through payments for FY 2011-12 based on tax increment for May (or May and June) will be paid by the county A-C on January 16, 2013 as a "true-up" for FY 2011-12, along with pass-throughs for the first 50% +/- of FY 2012-13.

(As noted above, it remains to be seen how prior year pass-throughs owed but not made will be paid in the future, i.e., by the county A-C directly out of a future RPTTF, by the successor agencies out of the portion of the RPTTF the SA receives for deposit into the RORF, or both).

* *

Q-17:

Can someone sit in as an "alternate" voting oversight board member if the appointed board member cannot attend the meeting?

A-17:

ABX1 26 does not directly address this possibility. In stating that the county superintendent or state chancellor shall each appoint one member for each oversight board, HSC 34179(a) does not say that an alternate (or joint member) may or may not be appointed. However, if an appointee wishes to have an alternate (or joint member), presumably that person must also be appointed by the county superintendent or state chancellor; the regular appointee is not at liberty to assign her voting rights to any person she designates, but only to a person (also) appointed by the county superintendent or state chancellor for that specific oversight board.

* *

Q-18:

One of the agenda items for the first meeting on 4/10/12 is to approve initial schedule of Enforceable Obligations (says must be done by 4/15 - although FCMAT/Public Economics spreadsheet says deadline "none specified"). What should an oversight board member look for/ have as documentation to approve (or not) the initial schedule of Enforceable Obligations?

A-18:

FCMAT/PEI has continued to refine and expand Exhibit A: ABX1 26 Deadlines (see Exhibit A on the FCMAT website at http://wwwstatic.kern.org/gems/fcmat/ExhibitADeadlinesforABX126.pdf).

As shown in Exhibit A, there are two types of schedules: (i) the Enforceable Obligation Payment Schedule (EOPS) previously adopted by the RDA (item B on p. 1), and subsequently adopted by the successor agency (item 4.A on p. 2) and (ii) the Recognized Obligation Payment Schedule (ROPS) adopted by the successor agency (item 5.A on p. 2).

First, re: the EOPS:

The initial EOPS approved by the successor agency pursuant to HSC 34177(a)(1) (item 4.A) "is the last schedule adopted by the [RDA] under Section 34169 [except that] payments associated with obligations excluded from the definition of enforceable obligations by [HSC 34171(d)(2)—the code mistakenly refers to HSC 34173(e)(2), which does not exist—shall be excluded from the last schedule adopted by the [RDA] prior to the successor agency adopting it as its [EOPS]." The initial EOPS approved by the successor agency "shall be subject to the approval of the oversight board as soon as the board has sufficient members to form a quorum."

It's important to note that Section 34171(e) defines "indebtedness obligations" as follows:

"Indebtedness obligations" means bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment agency in compliance with the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

Please note that enforceable HSC 34171(d)(2) refers to agreements, contracts, or arrangements between the city that created the [RDA] and the former RDA (e.g., city loans)—except for two carve-outs:

For purposes of this part, "enforceable obligation" does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part. Notwithstanding this paragraph, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations.

Section 34171(e) defines indebtedness obligations as follows:

"Indebtedness obligations" means bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment agency in compliance with the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

Hence, pursuant to the above cited code sections, which are the prevailing authority over EOPS adopted by the successor agency pursuant to 34177(a)(1), only city/RDA (or successor agency) loans used to pay back a third party investor or bondholder obligation or that were entered into within two years of the establishment of the RDA (not the project area) are deemed to be valid. It is important for you to request, and be given ample time to review, the loan agreements for each city loan listed in the ROPS. If these loan agreements are solely between the city and RDA, there is a solid argument that they should not appear on the ROPS.

Second, re: the ROPS:

The questioner is correct in noting there is no specific deadline in the statute for the oversight board to approve the draft ROPS pursuant to HSC 34177(l)(2)(B) (item 5.C), which the successor agency had to adopt by March 1 pursuant to HSC 34177(a)(3) (item 5.A). Moreover, the oversight board may not adopt the ROPS (item 5.C) until it has been certified by the county A-C pursuant to HSC 34182(1), which may not occur until July 1, 2012 (item 13).

The successor agency is indeed required to submit the ROPS to the state by a reformed deadline of April 15 pursuant to HSC 34177(l)(3) (item 8). Prior to the Supreme Court suspending Part 1.85 of ABX1 26, the ROPS to be submitted to the state was presumably a certified ROPS approved by the oversight board. However, in delaying by four months all deadlines in ABX1 26 that otherwise occurred between October 1, 2011 and March 1, 2012, the court has helped created inconsistencies between certain deadlines.

In most counties, the county A-C will not be able to certify the draft ROPS in time for the oversight board to approve a certified ROPS by April 15. Hence, the ROPS the successor agency submits to the state by April 15 will of necessity be the draft ROPS prepared by the successor agency by March 1 (or a draft ROPS subsequently amended by the successor agency).

Pursuant to HSC 34180(g), the oversight board shall approve "establishment of the [ROPS]." While this may include a draft or amended ROPS that has not been certified, the only ROPS the oversight board may approve in fulfillment of HSC 34177(l)(2)(B) is a certified ROPS.

While the successor agency may ask the oversight board to approve a draft ROPS to submit to the state (per item 8), the oversight board member should point out to the successor agency that it will have to bring back a certified ROPS—which may be much different from the draft ROPS—for future approval by the oversight board in fulfillment of HSC 34177(l)(2)(B).

* *

Q-19:

I have been appointed by the county superintendent to serve on the city successor agency board. As I understand, ABX1 26 is clear on the auditor-controllers' responsibility to certify the ROPS. My question is this: can we be asked to approve ROPS which the auditor-controller has <u>not</u> certified?

A-19:

You may be asked to approve an (amended) EOPS or a draft ROPS. If the former, it should say EOPS per HSC 34177(a)(1). If the latter, it should say draft ROPS per HSC 34177(l)(A)(2).

An amended EOPS uses more permissive, EOPS-based definitions of enforceable obligations per HSC 34167(d), except for ROPS-based restrictions on agreements between the RDA and city, where the only RDA-city agreements allowed are those (i) involving a third party (e.g., bond holder or developer) or (ii) any old RDA-city agreement (e.g., a city loan) executed within two years of formation of RDA itself. The amended EOPS is the only schedule from which successor agencies are to be making any payments from any source until a (draft) ROPS (per 34177(l)(2)(A)) becomes operative on May 1, 2012 (and maybe as late as July 2012).

A draft ROPS may use only less permissive, ROPS-based definitions of enforceable obligations per HSC 34171 and 34172, including caps on admin costs. The successor agency can ask the oversight board to approve a draft ROPS as a draft, i.e., that is not certified. However, to satisfy HSC 34177(l)(2)(A), the SA will have to bring back the certified ROPS (which may be quite different from the draft) for oversight board approval (again).

* *

Q-20:

It seems to me that we cannot, and really, must be directing the successor agency to terminate all these existing agreements that do not qualify as enforceable obligations.

A-20:

No matter which schedule you have been presented with, oversight board members should begin flagging any and all obligations that do not qualify as enforceable obligations under 34171(d)(1). Now is the time to help the successor agency appreciate the difference between EOPS and ROPS based enforceable obligations, and to make sure only obligations per HSC 34171 appear on draft ROPS submitted to the county A-C.

* *

Q-21:

I believe we could be asked to approve two sets of ROPS. I believe under ABX1 26 34181(b) we clearly cannot and shouldn't be asked to vote on non-certified ROPS.

A-21:

Per 34177(l)(2): A Recognized Obligation Payment Schedule shall not be deemed valid unless all of the following conditions have been met:

(A) A draft Recognized Obligation Payment Schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency by November 1, 2011 (March 1, 2012 as revised by Supreme Court). From October 1, 2011, to July 1, 2012, the initial draft of that schedule shall project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate property tax increment had such a redevelopment agency not been dissolved, and shall be reviewed and certified, as to its accuracy, by an external auditor designated pursuant to Section 34182.

(B) The certified recognized obligation payment schedule is submitted to and duly approved by the oversight board.

* *

Q-22:

Our district has an RDA pass-through agreement with the city. The pass-through payments are not subject to revenue limit reduction. The negotiated agreement is dated May 1, 1991.

Question 1: It appears that for the first five years of the RDA successor agency the county assessor will make the pass through payments to the district directly and that these payments will have no effect on the district's revenue limit as if the RDA still existed. Is this correct?

Question 2: I am getting conflicting information on what happens at the end of the five years. Some information appears to say that our negotiated pass-through agreement continues and remains not subject to revenue limit reduction. Other information implies that this kind of pass-through payment at that point may become subject to revenue limit reduction. This would make a huge cut to our district, so I need to get a clear understanding. Can you clarify?

A-22:

Effective with the second 50% distribution to and from the redevelopment property tax trust fund (RPTTF) on June 1, 2012, the county A-C—not the county assessor—will make all pass-through payments until such payments cease (e.g., when the redevelopment plan for the particular redevelopment project area from which the payments being generated reaches its tax increment time limit or its tax increment dollar cap). For an RDA project adopted in 1991, pass-throughs may continue through 2041, if not 2044 (or possibly later).

The five-year limit mentioned is the time limit for the oversight board itself. That is, each successor agency will have its own oversight board only through June 30, 2016. On July 1, 2016, individual oversight boards will be disbanded in favor of a single county-wide board to provide oversight to all successor agencies in the county.

ABX1 26 should not affect how pass-throughs are calculated or how long they last. Under HSC 34183(b), pass-throughs may only be reduced:

- If the former RDA is "upside down," e.g., has annual obligations from the RORF that exceed the amount of tax increment in the RPTTF
- If and to the extent that 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)

However, some have interpreted HSC 34188 as allowing potential reductions (i.e., a "haircut") in non-subordinated pass-throughs:

- Even if the former RDA is not upside down
- If and to the extent that pass-through payments—particularly agreement payments—are overly generous (e.g., more than 50 percent of district share, though even less generous payments could be reduced)

Others have interpreted HSC 34187 as allowing premature reduction or termination of non-subordinated pass-throughs whenever a recognized obligation that had been identified in the [ROPS] is paid off or retired.

PEI and many others believe these are misinterpretations of these code sections. We have proposed clean-up language that should avoid these misinterpretations.

The requirement for revenue limit offset of pass-through agreement payments is another matter entirely, and is not impacted by ABX1 26. Presumably, in this case (i) the pass-through agreement itself allows agreement payments to be used for district operations (not facilities), and (ii) the district was not at the time, nor has subsequently become, a basic aid district.

As an economist, I am not permitted to offer legal advice. However, please be aware of the following:

Education Code 422389h)(6)—originally EC 422389h)(7)—imposing statutory usage restrictions on agreement (HSC 33401) and 2 percent (HSC 33676) pass-throughs—was added to the law by SB 617 (Stats 1992 Ch 699 Section 1), effective September 14, 1992. (SB 617 also changed the allocation of property tax revenues, reducing county and other non-school property tax shares to fund the educational revenue augmentation fund.) Statutory usage restrictions on AB 1290 payments were added the following year by AB 1290 (Stats 1993 Ch 942 Section 1.3), effective January 1, 1994.

EC 42238(h)(6) requires a 100% offset against state aid for payments from RDAs:

"Except any amount received pursuant to Section 33401 [agreements] or 33676 [2 percent payments] of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, [and] except for any amount received pursuant to [AB 1290] that is allocated exclusively for educational facilities."

(This statutory restriction applies to revenue limit districts, but presumably not to basic aid districts, which receive no state aid.)

1. While a revenue limit district may initially use any or all RDA pass-throughs for district operations—i.e., salaries and benefits for teachers and staff— it appears the state is required to reduce state aid to the district by any amount of pass-throughs not used for the facilities purposes specified in this Ed Code section.

2. It's true that EC 42238(h)(6) does not mention pass-through agreements per se. But it does mention pass-through payments—"amounts received"— "pursuant to Section 33401 or 33676." Hence, ever since September 14, 1992, it would appear that EC 42238(h)(6) applies to payments received from agreements, even if the agreements were executed prior to September 14, 1992.

3. It's also true that uncodified section 33 of SB 617 states the following:

   "Notwithstanding any changes made by this act in the allocation of property tax revenues between local government entities, redevelopment agencies, school districts, and community college districts, mitigation [i.e., pass-through] agreements entered into prior to the operative date of this act pursuant to [HSC] 33401 ... shall not be affected thereby, and any payments required under these agreements shall continue to be made as if there had been no change in local property tax allocations pursuant to this act."

   A straightforward reading of this uncodified section suggests that pass-through payments "shall not be affected [by] changes ... in the allocation of property tax revenues between local government entities ... made by this act)." For example, pre-1992 pass-through agreements requiring payments to the county shall continue to be based on the county's (higher) pre-ERAF property tax share, while required payments to the schools shall continue to be based on schools' (lower) pre-ERAF property tax shares.

   Perhaps one could take an alternate reading of this section, i.e., if "agreements entered into prior to the operative date of this act" allow payments to be used for educational programs, then "[the permitted use of] any payments received under these agreements shall continue to be [valid] as if there had been no change to [EC 42238] pursuant to this act." However, I'm not aware that such an alternate reading has previously been suggested, much less litigated.

If this alternate reading is valid, then more power to a revenue limit school district that uses pass-through agreement payments for operations without revenue limit offset. If a pre-1994 agreement permits RDA pass-throughs to be used for educational programs, great! However, if this alternate reading ends up not being valid, then ABX1 26 does not change the previous statutory requirement that the state shall reduce state aid to a revenue limit district by the amount of pass-through payments not used for the facilities purposes specified in EC 42238(h)(6).

* *

Q-23:

What should an oversight board look for/ask for in approving a successor agency budget? Agenda attachments are just showing lists of allocated costs such as salaries and benefits or "financial management department allocated costs," "promotion of businesses in RDA." How would the board recognize these as legitimate proposed expenditures?

A-23:

Pursuant to HSC 34177(j), the successor agency is required to:

"(j) Prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget shall include all of the following:

"(1) Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.

"(2) Proposed sources of payment for the costs identified in paragraph (1)

"(3) Proposals for arrangement for administrative and operations services provided by a city, county, city and county, or other entity."

Pursuant to HSC 34177(k), the successor agency is required to:

"(k) Provide administrative cost estimates from its approved administrative budget that are to be paid from property tax revenues deposited in the redevelopment property tax trust fund to the county auditor-controller for each six-month fiscal period."

However, under Part 1.85:

Successor agencies must prepare ROPS for first six months of 2012, based on definitions of enforceable obligations in Part 1.85 (HSC 34171)

- ROPS statutes are less permissive regarding use of tax increment for city administrative costs and agreements between RDA and city (e.g., city loans)
- Distribution of second 50% of tax increment—i.e., successor agency income--for second half of FY 2011-12 will be based on ROPS
- However, under reformed deadlines, successor agency expenditures may not be governed by ROPS until May 1 or later

This reflects fact that under Part 1.85:

Successor agencies may amend former RDAs' EOPS.

- Under reformed deadlines, successor agency may only spend for obligations shown on its amended EOPS until the ROPS becomes operative on May 1, 2012 or later
- Amended EOPS adopted by successor agency are based on more permissive definitions of enforceable obligations in Part 1.8 (HSC 34169(d)), except for less permissive ROPS-based definitions regarding use of tax increment for agreements between RDA and city (e.g., for city loans)

So SAs could reasonably argue that their administrative budget for the second six months of FY 2011-12 should reflect their amended EOPS through at least May 1, 2012, and their draft ROPS for the months of May and June.

* *

Q-24:

One of the RDAs in this county is indicating that the city that we would interpret as being the successor agency has formed a successor agency to keep the liability away from the city. We say the city is the successor agency. One of the recommendations before the oversight board this evening is that the "Executive Director of the Successor Agency be designated as the official contact person for the Dept of Finance to Contact." That executive director was the RDA's executive director. I would think that the city can designate the RDA staff to be the city staff handling the RDA dissolution work, but there really is no separate successor agency. Can you please clarify?

A-24:

Under Part 1.85 of the Community Redevelopment Law created by ABX1 26, specifically, Health and Safety Code (HSC) Section 34171(j):

"(j) 'Successor Agency' means the county, city, or city and county that authorized the creation of each [RDA], or another entity as provided in Section 34173."

The "other entity as provided in Section 34173" is only relevant if "a city, county, city and county or the entities forming [a JPA] that authorized the creation of each [RDA] elect not to serve as a successor agency" pursuant to HSC 34173(d)(1). Otherwise, for a city RDA, the city is the successor agency, and the successor agency's liability is "limited to the extent of the total sum of property tax revenues it [the SA] receives pursuant to this part [1.85, i.e., the sum of the portion of the redevelopment property tax trust fund allocated to the SA (i) for the redevelopment obligations retirement fund {RORF} plus (ii) capped SA administrative costs, and [presumably] (iii) the city's portion of the excess revenues] and the value of assets transferred to it as a [SA] for a dissolved [RDA]." PEI understands that the consensus of legal counsel is that the SA is not a separate municipal corporation distinct from the city.

It is not the SA that must provide a contact person to DOF. Rather, per HSC 34179(h):

"Each oversight board shall designate an official to whom the [DOF] may make [a request for review] and who shall provide [DOF] with the telephone number and e-mail contact information for the purpose of communicating with [DOF] pursuant to this subdivision."

Because HSC 34179(h) appears in "Chapter 4: Oversight Boards" of Part 1.85, and not in "Chapter 3: Successor Agencies" of Part 1.85, not only is the designation an oversight board responsibility, but PEI has inferred that the designee should also be a member of the oversight board. While the word "official" could apply to an official of the SA as well, if the oversight board chooses to go in that direction, it sounds like in this case there is a good reason for the former RDA's executive director to not be the designee.

* *

Q-25:

Our RDA received notice from DOF that they have rejected the loan agreement for the RDA start up. The RDA was established in 1958 and the loan between the agency and the city (which occurred in 1988) does not comply with the two-year timeline to be considered an enforceable obligation. The city staff opinion, however, is that since the formal redevelopment project area was not established until 1989, the loan agreement does meet the two-year timeline and should therefore be accepted as an enforceable obligation. Formal redevelopment activity (including the establishment of the base tax year) could not have begun until the project area was established and therefore, they believe that the interagency loan agreement complies with the definition of an enforceable obligation. Is the defining point when the RDA was established or the project area?

A-25:

There are only two carve-outs for enforceable obligations involving city-RDA agreements: (1) any agreement executed within two years of establishment of the RDA, not the first project area, and (2) an agreement executed before January 1, 2012 and that secures or enables an obligation to a third party. DOF seems to disregard the second carve-out as an enforceable obligation, but the successor agency's position, while logical, disregards the plain language of the statute. The SA should shift focus to the second carve-out, though the fact that the SA hasn't already done so suggests their interagency loan agreement may not satisfy that carve-out either.

* *

Q-26:

I am wondering if you can offer any update or advice on the methodology being used for the calculation of residual RDA funds. Apparently there are two methods. In my county they are referred to as the DOF version or the LAO/AB8 version. Do you know if there will be some advice coming from the state level to straighten this out? Is there any advice for budgeting?

In my county the variance is large for my basic aid district that already has financial problems so I don't want to say use the LAO method and then later come back and say whoops, wrong choice, you are actually short another $2 million. I have asked them to use the DOF method at this point but they want to count the money. On the other hand, the fire district and county will lose $4 million each using the LAO method and are lobbying to have the DOF method the final choice.

A-26:

LAO Approach

PEI believes LAO's position regarding haircuts to pass-throughs, as well as calculation as excess revenues, is incorrect. PEI has determined an alternative way to utilize LAO's general approach without haircuts to pass-throughs. However, we believe most practitioners view LAO's approach as requiring haircuts to pass-throughs, which expressly conflicts with the language of HSC 34183(a)(1) and HSC 34182(c)(1).

DOF Approach

PEI believes DOF's position regarding haircuts to pass-throughs is correct in that it is consistent with the language of HSC 34183(a)(1) and HSC 34182(c)(1). However, this response is based on PEI's understanding of DOF's previous statement regarding haircuts to pass-throughs, excess revenues, and other revenues. There should be no haircuts for pass-throughs or excess revenues (from former RDAs' tax increment in the trust fund), but there may be haircuts to distributions of other revenues (from former RDAs' balance sheets).

DOF subsequently clarified its position on the matter, as found at:

http://www.dof.ca.gov/assembly_bills_26-27/documents/RDA%20Web%20Page_Pass%20Throughs.pdf.

DOF's reference to "'residual' pass through distributions made per Section 34183 (a) (4)" is actually the excess revenues (aka net tax increment or residual distributions from the trust fund). DOF's reference to "non-property tax revenues received by ATEs from the former [RDAs]" is a reference to other revenues (e.g., from asset sales), which will be distributed in the same manner as property taxes.

DOF's latest statement is even more clear that unsubordinated pass-throughs are not to be reduced, i.e., are not subject to haircuts. However, DOF's latest statement also clarifies that haircuts may be required for excess revenues and other revenues.

Per DOF's latest statement, the haircut takes the form of "the reduction required by Section 34188" [that] should only apply to [excess revenues or other revenues].

The "reduction" in this case is a reduction in the (gross) "share of property tax revenues in the tax rate area in that fiscal year" (HSC 34188, first paragraph).

It is not clear how the reduction should be calculated (not that the reduction is required). However, PEI has determined the correct reduction method, which will involve adjusted "share[s] of property tax revenues" based on what PEI calls "inverse proportion" shares.

Application of DOF Approach with No Other Revenues

As shown in Exhibits 1, 2, and 3 (see attached), we assume there are no other revenues to allocate (or that the amount of other revenues is not known or available).

- Exhibit 1 shows a sample redevelopment property tax trust fund (RPTTF) for illustration purposes

The assumed amount of enforceable obligations payable from the trust fund would be the amount shown on the ROPS, along with assumed allocations from the trust fund for successor agency (SA) and county A-C administrative costs. Case 1 shows lower amounts of pass-throughs (and a higher amount of adjusted gross revenues). Case 2 shows higher amounts of pass-throughs (and a lower amount of adjusted gross revenues).

- Exhibit 2 shows a sample distribution of pass-throughs from the RPTTF for illustration purposes, where county pass-throughs are relatively small (Case 1)

Pass-throughs are based on the gross (unadjusted) share of property tax revenues. However, excess revenues are based on inverse proportion shares, i.e., gross shares adjusted for pass-throughs the county and special districts are assumed to receive (and the LEAs and city are assumed not to receive).

- ATEs that receive pass-throughs get an adjusted share that is lower than their gross shares
- ATEs that don't receive pass-throughs get an adjusted share that is higher than their gross shares

As long as enforceable obligations on the ROPS payable from the trust fund are greater than zero, SA admin costs will also be greater than zero, and the combination of pass-throughs and excess revenues received by each ATE as a percentage of the trust fund will vary. In particular, ATEs with higher percentage pass-throughs will have a lower share of excess revenues (and vice versa), but will still have a higher combined share of pass-throughs and excess revenues than ATEs with lower (or no) percentage pass-throughs.

However, once enforceable obligations on the ROPS payable from the trust fund are zero (along with SA admin costs) – not shown in Exhibit 2 – the combination of pass-throughs and excess revenues will effectively converge and approach 100%.

- Exhibit 3 shows a different sample distribution of pass-throughs from the RPTTF, where county pass-throughs are relatively large (Case 2)

Pass-throughs are again based on the gross (unadjusted) share of property tax revenues. However, excess revenues are based on different inverse proportion shares. Absent other revenues to distribute:

- ATEs that receive even higher percentage pass-throughs get an adjusted share that is even lower than their gross shares
- ATEs that don't receive any pass-throughs get an adjusted share that is even higher than their gross shares

ATEs with even higher percentage pass-throughs will have an even lower share of excess revenues (and vice versa), but will still have a higher combined share of pass-throughs and excess revenues. But again, once enforceable obligations on the ROPS payable from the trust fund are zero (along with SA admin costs), the combination of pass-throughs and excess revenues will effectively converge and approach 100%.

Application of DOF Approach with Other Revenues

PEI is preparing new exhibits that show application of the DOF approach where there are other revenues to allocate. The new exhibits will still distribute excess revenues and other revenues based on inverse proportion shares:

- If excess and other revenues are allocated independently of each other (e.g., sequentially, with the amount of excess revenues allocated before the amount of other revenues is known or available), the inverse proportion shares for:
    - Excess revenues should be the same as the adjusted shares shown in Exhibits 2 and 3 above
    - Other revenues should be different from the adjusted shares for excess revenues
        - ATEs that receive relatively more pass-throughs and excess revenues should get an adjusted share of other revenues that is lower than their adjusted share of excess revenues.

- ATEs that receive relatively fewer pass-throughs and excess revenues should get an adjusted share of other revenues that is higher than their adjusted share of excess revenues

- If excess and other revenues are allocated simultaneously, the inverse proportion shares should be the same for excess revenues and other revenues

* *

Q-27:

My county A-C insists that haircuts to pass-throughs are required, in spite of AB 1484. Is this correct?

A-27:

Notwithstanding Q&A-26, Section 36 of AB 1484 contains uncodified language stating:

"(a) Certain provisions of [ABX1 26] are internally inconsistent … with regard to the calculation of the amount to be paid by a county auditor-controller … to meet passthrough payment obligations to local agencies and school entities."

"(b) … it was the intent of the Legislature … that the amount of the passthrough payments … be determined in the manner specified by paragraph (1) of subdivision (a) of Section 34183 of the Health and Safety Code [HSC], and that the amount so calculated NOT be reduced or adjusted pursuant to the operation of any other provision …"

As noted in Q&A-26, the Legislative Analyst's Office (LAO) interpreted ABX1 26 (HSC 34188) in such a way that even unsubordinated pass-through payments may have to be reduced (receive a "haircut") when excess revenues are insufficient. Others misinterpreted certain statements by DOF to lead to the same conclusion, albeit implemented in a different fashion. However, this declaration of Legislative intent should put an end, once and for all, to all discussions of potential haircuts to pass-through payments to LEAs or other ATEs.

* *

Q-28:

I just received an e-mail from my county A-C that includes the following:

"Please visit Department of Finance (DOF) website http://www.dof.ca.gov/assembly_bills_26-27/view.php regarding new information for Assembly Bill 1484 which may affect your successor agency (agency).

"For the July True-Up Process, the County Auditor and Controller (A&C) will use Column E of Exhibit 12 posted on DOF website as a basis for computing the 'residual' amount from January to June 2012. (Exhibit 12 is on the DOF website). A&C will then send a demand letter for the 'residual' amount no later than July 9, 2012 from which your agency will be responsible to make the payment no later than July 12, 2012."

What is this about?

A-28:

Executive Summary

The DOF spreadsheet shows adjustments to:

- First ROPS (for January through June 2012) for six of 17 successor agencies in the county
- Second ROPS (for July through December 2012) for five of 17 SAs in the county

Pursuant to AB 1484 (HSC 34183.5(b)), these adjustments (claw backs), if successfully implemented by the county A-C, will result in:

- Additional excess revenues (residual distributions) this month (as early as July 16) from the affected SAs, further resulting in:
  - Additional distributions of excess revenues (additional property taxes) to LEAs (and other affected taxing entities):
  - Potential for yet more additional distributions of excess revenues from the SA for the district, the amount of whose questioned ROPS obligations shown in the DOF exhibit is actually far less than the amount of questioned ROPS obligations shown in the most recent DOF letters

These additional property taxes will be included in the next Taxes Report for revenue limit offset for the affected LEAs. That is, LEAs should not accrue these July distributions as receivables for the final Taxes Report for FY 2011-12.

- Non-payment of $2.64 million to $2.97 million in pass-through or facilities agreement payments to a district by the former RDA during FY 2012-13

This appears to be only adjustment in pass-through/facilities agreement payments to an LEA resulting from these AB 1484 adjustments.

Background

Among other things, because of litigation delays in ABX1 26, the Supreme Court had to extend certain implementation deadlines for FY 2011-12. Hence, tax increment for the first seven months of FY 2011-12 was allocated to the former RDAs, not to the redevelopment property tax trust fund (RPTTF), leading to:

Problem 1: The first distribution from the RPTTF (originally scheduled for January 16 but delayed until May 16) was zero

- Many RDAs did not pay pass-throughs on tax increment they received through January 31, 2011
- There were no excess revenue allocations from the RPTTF for the first (approximately) one-half of FY 2011-12, including no excess revenue allocations to LEAs

These should equal more than 65% of total excess revenues post-ERAF.

Problem 2: Both ROPS 1 (for January through June) and ROPS 2 (for July through December) were still being reviewed by DOF when the second (approximately) one-half distribution from the RPTTF occurred on June 1

- Since the county A-C's June 1 distributions from the RPTTF depended on ROPS 2, he had to distribute based on what he had in hand

Ultimately, DOF concluded that ROPS 2 used for the second one-half distribution on June 1 showed $4.73 million in obligations to be funded from the RPTTF that DOF subsequently challenged (i.e., cell H24 in the attached spreadsheet). AB 1484 authorizes DOF to claw back $4.73 million in June 1 distributions from the SAs.

- Had the county A-C made the first one-half distribution on May 16, excess revenues would have been what was left over from tax increment (if it had been deposited in the RPTTF instead of given to the RDAs) after distributions to (i) the county A-C for admin costs, (ii) to all affected taxing entities as pass-throughs, (iii) to the successor agencies for ROPS obligations, and (iv) to the SAs for admin costs

Assuming (i) and (ii) above were paid and paid correctly (pass-throughs were not paid correctly, but per AB 1484, underpayments of pass-throughs won't be addressed until the next regularly scheduled distribution from the RPTTF on January 2), the SAs received not only (iii) and (iv) above, but what would have been excess revenues, too.

DOF now states that the SAs owe excess revenues for the first (unmade) distribution from the RPTTF for FY 2011-12 equal to the difference between the tax increment they received and the ROPS 1 obligations that DOF subsequently approved: $78.05 million (cell E24 in the attached spreadsheet) rather than the $84.20 million (cell C24) that SAs requested. Again, AB 1484 authorizes DOF to claw back $78.05 million in former RDA tax increment from the SAs.

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Q-29:

The successor agency has asked the district to escrow the district's share of additional residual distributions the district will receive from the July true-up, which the SA is paying under protest. Is this permissible?

A-29:

Numerous successor agencies are protesting the clawbacks of residual distributions by county A-Cs (the July true-up distributions). Some have filed litigation against the county A-C and DOF. Clawbacks from SAs were due to county A-Cs by July 9, who should have already allocated the clawbacks as residual distributions to affected taxing entities by July 16.

If protest letters and/or litigation are upheld, clawbacks will presumably have to be unwound. That means the county A-C will have to take back the residual distributions from the affected taxing entities, and refund the clawbacks to the SAs. If they're not upheld, then the clawbacks and residual distributions will remain as is.

There should be no problem with LEAs agreeing to escrow their share of the residual distributions from the clawbacks, pending the possibility that the county A-C may ask to have them returned. The escrow should not hurt the LEAs until they're required to report all their property tax distributions to CDE for offset against state aid. For a basic aid COE, that offset will not involve Special Ed and ROP funding form the state, since no state aid is received for core services provided through the County School Service Fund. Hence, the COE should only offer to escrow the residual distributions from the clawback until it must report the escrowed amounts for purposes of calculating state aid.

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Q-30:

The ROPS schedule has line items for both administrative support and salaries/benefits of former agency employees. In your FCMAT training materials, I can find the admin support item as allowable subject to limitations but not the salaries/benefits. Are salaries/benefits part of administrative support, and presumably subject to the cost allowance on admin support? If not, are salaries/benefits enforceable obligations themselves?

A-30:

Tab 6 of the FCMAT training materials includes "Selections from Part 1.85: ROPS and Amended EOPS Adopted by Successor Agency," which shows that:

- Per HSC 34171(b), Administrative Costs are subject to limitations (allowances), but are not defined
- Per HSC 34171(d)(1)(C), enforceable obligations include:

  "legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt services, and unemployment payments, or other obligations conferred through a collective bargaining agreement."

However, as verbally noted in PEI's FCMAT training sessions, under ABX1 26, the answer to the question is not clear. It presumably depends on (i) whether "the agencies' employees" are former or current employees, and (ii) if current employees, are working on a specific project or else part of overhead/management.

AB 1484 (passed by the Legislature and signed by the governor on June 27) deals with this lack of clarity by amending ABX1 26 as follows, with revisions to previous language shown in italics:

HSC 34171(b):

(b) "Administrative cost allowance" means an amount that, subject to the approval of the oversight board, is payable from property tax revenues of up to 5 percent of the property tax allocated to the successor agency for the 2011–12 fiscal year on the Recognized Obligation Payment Schedule covering the period January 1, 2012, through June 30, 2012, and up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter; provided, however, that the amount shall not be less than two hundred fifty thousand dollars ($250,000), unless the oversight board reduces this amount, for any fiscal year or such lesser amount as agreed to by the successor agency. However, the allowance amount shall exclude, and shall not apply to, any administrative costs that can be paid from bond proceeds or from sources other than property tax. Administrative cost allowances shall exclude any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition. Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs.

HSC 34171(d)(1)(C):

(C) Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than pass-through payments that are made by the county auditor-controller pursuant to Section 34183, or legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement. Costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly on behalf of the former redevelopment agency shall be considered enforceable obligations payable from property tax funds. The obligations to employees specified in this subparagraph shall remain enforceable obligations payable from property tax funds for any employee to whom those obligations apply if that employee is transferred to the entity assuming the housing functions of the former redevelopment agency pursuant to Section 34176. The successor agency or designated local authority shall enter into an agreement with the housing entity to reimburse it for any costs of the employee obligations.

While the new language doesn't address all potential questions, it does clarify that the cost of current employees working on a specific project "shall be considered project-specific costs and shall not constitute administrative costs."

Both ROPS for FY 2011-12 (for the first and second six months of the fiscal year, respectively) were approved by DOF prior to AB 1484. Nonetheless, the ROPS were approved with the following separate amounts to be funded from the Redevelopment Project Tax Trust Fund:

ROPS 1:

$ 21,000, salaries and benefits of former RDA
$ 88,680, administrative support (materials, services, and supplies)

ROPS 2:

$148,305, salaries and benefits of former RDA
$ 92,855, administrative support (materials, services, and supplies)

DOF clearly applied AB 1484's clarifications to both ROPS for FY 2011-12, in apparent anticipation of AB 1484.

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Q-31:
Our district has been named in a suit brought by a successor agency against the state re: AB 1484. We have turned the matter over to counsel and they are prepared to provide a responsive pleading on our behalf. What do you recommend we do?

A-31:
The litigation is largely a response to AB 1484's clawback (July true-up) of excess revenues (residual distributions) from the SA to the county A-C for the first seven months of FY 2011-12, for distribution to affected taxing entities, including the district. For any given SA, the total clawback is the sum of separate clawbacks based on ROPS 1 and ROPS 2. The litigation is challenging the legality of both clawbacks.

However, please note the following:

Basic aid LEAs have a direct stake in the outcome of the litigation because basic aid districts get to keep additional residual distributions because of the clawback.

Revenue limit LEAs have no direct stake in the outcome because revenue limit LEAs have to report additional residual distributions because of the clawback on their Taxes Report for offset against state aid. However, revenue limit LEAs do have an indirect stake in the outcome of the litigation.

This indirect stake takes the form of potential future additional state aid if the state has more general fund revenue as a result of LEAs including on the Tax Report additional residual distributions because of the clawback.

Revenue limit LEAs will have a direct stake only if the state withholds from state aid their share of additional residual distributions from the clawback in anticipation of the LEA's receipt from the county A-C of residual distributions, which is then delayed (or not forthcoming at all) because of the litigation.

In most counties, PEI expects no ROPS 2 residual distributions as part of the July true-up process.

Additional residual distributions for ROPS 1 are owed by all successor agencies ... except [SAs] that were "upside down" for the first half of FY 2011-12.

On or about June 1, 2012—i.e., prior to AB 1484, the district received residual distributions based on ROPS 2 from only one of its six SAs (for the former county RDA). That's because per ROPS 2, five of the district's six SAs were upside down, including the SA filing the lawsuit.

PEI will determine the amount of additional residual distributions the district received as part of the July true-up, and from which SA. The SA filing the litigation was presumably not deemed upside down for ROPS 1, and owed significant additional residual distributions based on ROPS 1.

The successor agency may have legitimate grounds for its litigation against DOF. In that case, the district would not be legally entitled to the additional residual distribution received from the clawback. Since it is a revenue limit district, PEI recommends the district let the city and DOF determine if additional residual distributions are owed based on ROPS 1 (or ROPS 2), and if so, the amount.

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Q-32:
What is the impact (if any) on pass-throughs resulting from litigation by a successor agency opposing the July 2012 true-up under AB 1484?

A-32:
The impact of the litigation on pass-throughs from the former RDA is zero. However, pursuant to the pass-through agreement, as amended by the settlement and implementation agreement, future pass-through payments may be reduced and/or delayed if there is insufficient tax increment to pay principal and interest on the former RDA's:

- 20% LMI housing set-aside (no longer applicable under ABX1 26)
- Bonded indebtedness (as defined in section 2.(b(i) of settlement agreement)
- Other required set-asides (e.g., for ERAF or SERAF—presumably no longer applicable under ABX1 26)

Part of the litigation involves the amount of former RDA obligations that are deemed enforceable under ABX1 26 (i.e., HSC 34171). Since the dispute does not appear to involve the amount of bonded indebtedness, litigation should not affect conditions under which district pass-through may be reduced and/or delayed. However, given ambiguous treatment of subordinated pass-throughs in HSC 34183(b), if litigation increases amount of other enforceable obligations, it could conceivably result in misapplication of subordination provisions of pass-through and settlement agreements in the case where tax increment is insufficient to fund all enforceable obligations, not just bonded indebtedness.

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Q-33:

Under AB1484, (i) are LEA pass-through payments still to be taken off the top by county auditor/controllers; (ii) absent a specific subordination agreement, are LEA pass-through payments primary over other successor agency obligations; and (iii) are pass-through agreements to be listed on the ROPS (previously, we were told that they should not be listed since the payments would be taken off the top by county A/C and sent directly to LEAs; then we heard that per AB1484, they should be included on the ROPS)?

A-33:

Regarding the first question (i):

Yes, but only after taking the July 2012 true-up (clawback) of residual distributions for ROPS 1 (and in some cases, ROPS 2) for FY 2011-12. That is, any additional residual distributions still owed for FY 2011-12 get first priority over all other distributions from the RPTTF for FY 2012-13 (and future years, if applicable), which will now take place on January 2 and June 1 of 2013. (Recall that non-basic aid LEAs' share of residual distributions is received for benefit of the state.)

There will also be a January 2013 true-up for pass-throughs still owed for FY 2011-12. Trued-up pass-throughs will be made at the expense of allocations from the RPTTF to successor agencies. However, if payment of trued-up pass-throughs cause the SA to go upside down, that may trigger the pass-through reduction/delay provisions of HSC 34183(b) for subordinated pass-throughs, both for the true-up year (FY 2011-12) and the current year (FY 2011-12).

Regarding the second question (ii):

Subject to the clawback of residual distributions for FY 2011-12, the answer is yes ... except that most pass-throughs have not been subordinated to former RDA bonds pursuant to a separate subordination agreement. Most pass-through agreements contain a subordination section or other subordination language, making a separate subordination agreement unnecessary. And some AB 1290 pass-throughs may be subordinated pursuant to the statutory process in HSC 33607.5(e), i.e., if the LEA did not respond to a previous subordination request from the RDA within 45 days of receipt. To determine subordination status, LEAs must not only look for a possible subordination agreement, but look for subordination language in their pre-1994 pass-through agreements and look for written subordination requests from RDAs re: post-1994 AB 1290 pass-throughs.

Regarding the third question (iii):

Pass-throughs paid by the county A-C pursuant to HSC 34183 are still not to be shown on the ROPS, which includes pass-throughs for FY 2011-12 and future years. However, by inference, pass-throughs not made by the county A-C should be shown on the ROPS.

In some counties, that will be an empty set since the county A-C has assumed the responsibility for making previously unpaid (or underpaid) pass-throughs for prior years, as well as current and future years. But in most counties, county A-Cs don't want to be caught in the middle of disputes between LEAs and former RDAs regarding prior year payments not made, and in the those counties such prior year amounts should be shown on the ROPS until paid—even though PEI believes the statutes now clearly state that only county A-Cs have the authority to make pass-throughs for any and all years.

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Q-34:

A district is using 100 percent of its pass-throughs for district operations. Is this permitted under ABX1 26 and AB 1484?

A-34:

The district in question should be receiving three kinds of pass-throughs pursuant to the Health and Safety Code (HSC):

- Two percent payments per former HSC 33676 previously paid by the county A-C for Project A
- AB 1290 payments per HSC 33607.7 previously paid by the county A-C, also for Project A
- AB 1290 payments per HSC 33607.5 previously paid by the city RDA for Project B

There are statutory usage restrictions on these pass-throughs, found in Education Code 42236(h)(6), and—for AB 1290 payments only and starting with payments made on or after July 1, 2011 only—by HSC 33607.5(a)(4)(A) and 33607.7(b)(2):

Note that the EC restrictions are not limited to capital outlay, but to any use that would properly be found in a capital facilities program or project budget, including soft costs like A&E costs, legal fees, consulting fees, and project management or administration costs, as well as operating leases (e.g., for interim housing) and most furniture, fixtures, and equipment for facilities being constructed or modernized. The EC restrictions on AB 1290 payments are slightly more broad, including operating leases for all portables, storefront leases, and most FFE for existing facilities as well (including telephone, computer, and copy equipment purchases and leases).

The HSC restrictions for AB 1290 payments are similar, except that maintenance, including 8150 restricted and other ongoing maintenance, is also permitted.

However, these restrictions exist primarily to prevent revenue limit LEAs from receiving pass-throughs outside the revenue limit (ostensibly for educational facilities) with no offset against state aid, but using the pass-throughs inside the revenue limit for general district operations and programs.

The state has a direct fiscal interest in making sure any RDA pass-through or non-pass-through payments received by revenue limit LEAs (including the residual distributions being received per ABX1 26 and AB 1484) that are used for revenue limit purposes are reported for revenue limit offset using object 8047. While pass-throughs for educational facilities (as described above) should be posted using object 8625, to the extent LEAs use facilities pass-throughs for revenue limit purposes, they, too should be posted using object 8047.

However, the state has no fiscal interest in how basic aid LEAs use RDA pass-throughs, non-pass-through residual distributions, or any other non-categorical revenues. That is, while the EC and HSC usage restrictions described above continue to apply, the state imposes no penalty for basic aid LEAs that disregard those restrictions. And now that RDAs have been dissolved, successor agencies to the former RDAs arguably have no reason to object if basic aid LEAs use pass-throughs to enhance educational programs rather than educational facilities. So as a practical matter, both EC and HSC usage restrictions on RDA pass-throughs effectively do not apply to basic aid LEAs.

However, it still seems proper to use the correct object codes. Consider an extreme example: if the district is going to use 100% of the facilities portion of its pass-throughs for non-facilities uses, then it should use object 8047, not 8625, for 100% of its pass-throughs. This will ensure that 100% of its pass-throughs get reported on the Taxes Report under ID A-12.

Of course, this may have adverse implications for collective bargaining agreements, i.e., pass-throughs may end up on the table for negotiating wages and benefits. However, the district can avoid such implications to the extent it is willing to use any portion of its pass-throughs for restricted, facilities purposes.

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Q-35:

We are a county with negative ERAF. This year our negative ERAF increased significantly. The county has four redevelopment agencies (none county-wide RDAs); however, the county auditor reported no excess revenues from RPTTF. Could anything from the RDA dissolution process have impacted the negative ERAF numbers this year?

A-35:

It would help to know which county is involved. However, assuming that “excess revenues from RPTTF” refers to what is also known as residual distributions, then note that ABX1 26 permits only six possible uses of (distributions from) the RPTTF:

1. County A-C admin
2. Pass-throughs to all affected taxing entities
3. Distribution to successor agency (SA) for the items on its ROPS funded from the RPTTF
4. Successor agency admin
5. State controller admin
6. Residual distributions

So the answer to the apparent question is:

Distributions of excess revenues (residual distributions) are made from the portion of the RPTTF left over after payment of all other claims. Accordingly, residual distributions do not depend on whether or not ERAF is negative, but only on whether claims 1 through 5—in particular claim no. 3 for the SA ROPS—are too large relative to the amount deposited into the RPTTF. When claims for distributions out of the RPTTF exceed the amount deposited into the RPTTF, the SA is upside down. (A special case of being upside down occurs when claim no. 3 alone exceeds the amount of the RPTTF.)

Since the county A-C apparently made no residual distributions from the RPTTF for all four SAs, apparently all four SAs were upside down.

However, the question may include a corollary question: Do residual distributions affect the amount of negative ERAF?

The answer to this question will depend on the individual county. ABX1 26 (HSC 34188(c) defines the "total school share" as "the share of the property taxes that would have been received by school entities, as defined in [RTC 95(f)], in the jurisdictional territory of the former [RDA]." i.e., "school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools." Hence, ABX1 26 requires that residual distributions are allocated on a post-ERAF basis.

In negative ERAF counties, the amount of property taxes shifted into ERAF from cities, counties, and special districts countywide is less than the amount of ERAF distributed to cities and counties for the triple flip and vehicle license fee subvention. That leaves negative ERAF countywide to be distributed to LEAs using the same formula that would apply if ERAF were positive.

Case 1:

In counties that do ERAF accounting at the local tax rate area level, including within RDAs, residual distributions to LEAs should include property taxes shifted into ERAF within the RDA. For example:

- In Orange County, what would otherwise be residual distributions to ERAF in an RDA are allocated not to ERAF itself, but to each LEA in the RDA based on its pro rata share of pre-ERAF property taxes within the RDA
- However, in most other tax rate area-level ERAF counties, what would otherwise be residual distributions to ERAF are in fact allocated to ERAF for subsequent redistribution to LEAs using standard ERAF allocation formulas

So in a negative ERAF county with tax rate area-level ERAF accounting:

- If the county A-C makes residual distributions as in Orange County, there will be no residual distribution into ERAF (since ERAF's share of the residual distribution is already allocated to the LEAs pro-rata based on their pre-ERAF shares), and the amount of negative ERAF left over countywide to be distributed to LEAs will be unaffected by residual distributions
- However, if a negative ERAF county makes residual distributions like many other counties, there will be residual distributions into ERAF, and the amount of negative ERAF left over to be distributed to LEAs should be less negative because of positive residual distributions to ERAF, meaning total taxes to LEAs on the Taxes Report should be larger.

Case 2:

In counties that do ERAF accounting at the countywide (jurisdictional) level, or at the tax rate area level but not within RDAs, residual distributions to LEAs should also include property taxes shifted to ERAF within the RDA. However:

- In many such counties, residual distributions are not based on post-ERAF shares, but on pre-ERAF shares in violation of HSC 34188(c)
- As a result, the school share of residual distributions will be a pre-ERAF share (e.g., 38 percent instead of 57 percent), again in violation of ABX1 26. Since no residual distributions are made to ERAF, the amount of negative ERAF left over to be distributed to LEAs, which should be less negative, will in fact be unaffected by residual distributions

Counties that have circumvented the intent of AB 1290 in the past (i.e., that AB 1290 pass-throughs be made on a post-ERAF basis) are, in many cases, the same counties circumventing the intent of ABX1 26 regarding residual distributions (and other revenues from liquidation of former RDA assets, for which we should see distributions in FY 2012-13). To the extent that counties under allocate residual distributions and other revenues based on pre-ERAF shares, they are depriving revenue limit LEAs of the additional property taxes (and depriving the state of the additional general fund relief) that was one of the primary purposes of ABX1 26 in the first place.

FAQs Answered During August 29 Training on ABX1 26 and AB 1484

Q-36:

Please provide clarification on whether pass-through payments are in or outside the ROPS.

A-36:

Under the statute, pass-throughs paid by the county A-C are outside the ROPS; that's unequivocal. Also under ABX1 26, only county auditors are authorized to make pass-through after February 1. That would suggest that, again, pass-throughs should not be on the ROPS.

However, many county A-Cs are interpreting the language authorizing them to make payments on a prospective basis only. So they're taking the position that if school districts have a problem with the RDA regarding pass-through payments for FY 07-08, they should work it out with the RDA.

When that is the position of the county A-C, DOF has advised to add the disputed amount from prior years to the ROPS, and presumably, it will be paid by the successor agency on behalf of the former RDA. For example, if there's a lawsuit, and a judgment has been entered, that judgment can be put on the ROPS even though it involves pass-throughs. That judgment can be put on the ROPS form payment by the successor agency.

AB 1484 expressly talks about true-up pass-throughs for FY 2011-12. However, any amounts before FY 2011-12 that were not paid or were underpaid or paid incorrectly are the responsibility of the county auditor to fix, starting with the January 2013 pass-through true-up. So even though FY 2011-12 is now a prior year, AB 1484 says that's definitely in the purview of the county A-C.

Some county A-Cs regard all prior years as being in their purview, in which case underpayment issues must be worked out with the county A-C, and that will not go on the ROPS. It will be the county A-C's job to make additional pass-throughs to you, even for an old year. But where the county A-C declines to be involved, then you need to identify the amount, file a claim, file a lawsuit if necessary, and get it on the ROPS for payment by the successor agency.

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Q-37:

My oversight board has been asked to approve ROPS that have pie in the sky costs. They made large increases in all of their contracts (e.g., attorneys, consultants, etc.). What happens if they don't actually spend the monies they have set aside for these costs that remain unspent? Does this have the potential of negatively impacting us and should we be concerned?

A-37:

All oversight board members should request documentation. If a successor agency has put an alleged obligation on the ROPS, you should not approve it until you've seen the underlying agreement, bond document, and lease. Whatever the obligation, you should ask to see the documentation.

Second, in clarifying what is an administrative cost and what isn't, AB 1484 has perhaps created a loophole where it may be legal to show certain costs, but may not be good policy. PEI has seen a flurry of additions to ROPS for admin costs. We review probably 10 to 15 ROPS a week, and since AB 1484 has been introduced, we've seen a marked increase in the way new employee costs on the ROPS. You'll now see successor agencies putting employee related costs back on the ROPS, which were previously disallowed by DOF. For example, they will cost out a particular employee or group of employees to a particular project using percentages, sometimes explicit, sometimes implicit. Sometimes they'll have a separate administrative worksheet showing the percentages.

PEI's initial reaction is that it's probably not illegal to do this. AB 1484 gives them permission to use these employees for specific project delivery items. For example, the statute specifically mentions construction, project oversight or management. But is it within the intent of the statute, which should be winding down the activities and the expenses of the former RDA?

If the successor agency is simply taking current employee costs and allocating them out to various projects, presumably they're not winding down the activities of the former RDA, but simply finding another place to put them. While it may not be illegal, be aware of it.

Again the overarching mission for oversight board members looking at ROPS is to wind down former RDA activities where possible. But are the projects being wound down? And are the contracts being closed, or increased?

For items like legal costs, the former RDA/successor agency may have to engage in new litigation relating to contracts or items on the ROPS. But contracts in general should be going down, not going up.

So oversight board members should first request documentation, then determine how this obligation is consistent with the wind down of the former RDA. Oversight board members should want to know the number of employees whose costs are shown on the ROPS, and should want a comparison to the number of employees (say) two years ago (before the law was changed).

If the successor agency can document that it's winding down, then oversight boards should probably be able to live with many of these cost allocations. But if the successor agency is not winding down, then you should want to know the reason why. Unless there's a very good reason, you should not approve this particular line item, or these particular obligations that you're being asked to approve.

No one wants to put anyone out of a job. However, in broadening a potential loophole, 1484 has implicitly put the responsibility squarely on the oversight board to ask how the new ROPS items are consistent with winding down the RDA.

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Q-38:

Can you address the DOF invoices sent to auditor-controllers that were greater than amounts available through excess taxes? In some cases, counties have not paid pass-throughs in order to leave enough to pay bonds and pay DOF invoices which included 10% penalties.

A-38:

There is no provision for DOF costs to be paid out of the trust fund. It's simply not in the statute. It's the State Controller's Office that could seek reimbursement for costs of audit and oversight.

What you may be referring to involves AB 1484's stiff penalties associated with the July true-up of residual distributions, including 10% of the amount owed to taxing entities plus 1.5% per month for every month that the residual distributions are not performed. For example, for successor agencies, HSC 34183.5(b)(2)(C) states:

"If a Successor Agency fails to make the payment demanded ... by July 12, 2012, the Department of Finance or any affected taxing entity may file for a writ of mandate to require the Successor Agency to immediately make this payment ... Any successor agency that fails to make payment by July 12, 2012, under this paragraph shall be subject to a civil penalty of 10% of the amount owed to taxing entities plus [1.5%] ... for each month that the payments are not made. Additionally, the city ... that created the redevelopment agency that fails to make the required payment ... shall not receive the distribution of sales and use tax scheduled for July 18, 2012 ... up to the amount owed to taxing entities, until the payment required by this paragraph is made."

So I think you're referring to these penalties that are being imposed on some cities and possibly counties under the AB 1484 clawback.

Now, there is a provision in HSC 34183.5(b)(2)(C):

"If the Department of Finance finds that the imposition of penalties will jeopardize the payment of enforceable obligations, it may request the Court to waive some or all of the penalties."

These penalties associated with the July true-up have priority over all other obligations of the successor agency. They have priority over bond payments, pass-throughs, residual distributions, county auditor-controller admin., successor agency admin cost, and the State Controller's Office reimbursement. So, if these penalties would jeopardize bonds, then the successor agency has to appeal to DOF and say the penalties will cause them to default, and DOF has to go to court to get a waiver of the penalty.

If, on the other hand, the only effect of these penalties is that there's less money in the pot to pay pass-throughs, then the subordinated pass-throughs may be reduced or eliminated for that distribution. However, the unsubordinated pass-throughs cannot be reduced or eliminated by law. Pass-throughs cannot be haircut if they are not subordinated.

Clearly, if these penalties are draining the Redevelopment Property Tax Trust Fund, there will be less in the trust fund left for residual distributions. A basic aid school district could find that very objectionable.

The idea behind these penalties likely was to get everyone to comply to avoid the penalties. But if compliance did not occur, then those penalties may trickle down and have unintended consequences on innocent parties.

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Q-39:

What should LEAs consider regarding the LMI housing audit required of successor agencies?

A-39:

To the extent the housing audit finds that, say, of $10 million in the low and moderate income housing fund (LMIHF), $2 million is committed to enforceable obligations on the ROPS, and DOF went along with it, then the question becomes, what to do about the remaining $8 million? The successor agency may have previously claimed that half or all of the remaining $8 million is encumbered and therefore protected from residual distributions. And there may have been much DOF/successor agency back and forth regarding ROPS 1 and 2 in which DOF forced the successor agency to remove some or all of the $8 million in alleged encumbered obligations from the ROPS. The housing audit is intended to determine what is encumbered and what is not.

If all $8 million is found to be encumbered, then the disposition of it must be consistent with the various encumbrances that the audit reveals. If none of the $8 million is found to be encumbered, then there are issues about transfer of funds to a local housing authority vs. a sweep of the $8 million in the form of other revenues arising from liquidation of former RDA assets.

A basic aid school district will want to maximize the amount of liquidated assets and other revenues derived therefrom.

A revenue limit district that is trying to keep in mind the indirect interest it has in helping the state balance its budget will likewise want to maximize the sweep of other revenues. Otherwise, revenue limit LEAs that focus instead on the absence of a direct fiscal impact on the LEA in the short run would presumably be indifferent about the disposition of $8 million.

The answer depends on the district's objectives and whether it is basic aid or revenue limit. In no case would the disposition of the $8 million in housing assets affect the pass-throughs one way or the other.

AB 1484 does contain an interesting provision regarding pass-throughs. The last sentence of HSC 34183(a)(1) now says that the amount of pass-through payments, including pass-through agreements, "shall be computed as though the requirement to set aside funds for the [LMIHF] was still in effect."

That's a factor because many pass-through payments are to be calculated net of the LMI 20% housing set-aside: AB 1290 payments and many pass-through agreements. Since ABX1 26 eliminated the housing set-aside, PEI had hoped to increase AB 1290 payments in this case, but the new law indicates that the state doesn't want pass-throughs to increase for that reason. So the disposition of the housing fund should have no effect on pass-throughs, but will affect other revenues in a way that will be of immediate interest to basic aid districts, though not revenue limit districts.

* *

Q-40:

We are allowed to transfer real estate for governmental use. Is there a guideline for an oversight board to approve real estate transfers to a city, for example, for park or police use? Would projected or future governmental use be an acceptable basis for approval of the transfer to the city?

A-40:

The answer is yes, but it would also be acceptable to transfer real estate to a park district, to a school or college district, or to a JPA of the city, college district, and school district for government use. Who should get the real property should presumably depend on the nature of the service that it provides. If it's a police station that is staffed by the city police department, it's common sense that the city should get that property. However, if it is a soccer field that is used largely by the school district, one could make a good case that it should be transferred to the school district. As form follows function, in this case transfer follows function. There is no statutory guidance on this.

* *

Q-41:

Our successor agency's bond debt service payments end in 2018-19, while our pre-1994 pass-through agreement calls for payments to continue through 2035-36, putting a great deal of funding at risk for three affected school districts. Is the draft language being considered to address this issue (in this legislative session or next) only seeking to protect districts that have the RDA revenue stream formally tied to long-term debt? The expectation of these payments (which only began last year) is of paramount importance to the district ($110 million for just our district).

A-41:

Language has been prepared and is presumably circulating that would fix the problem of premature termination of pass-throughs for all LEAs, whether or not they previously encumbered their future pass-throughs for COPs or lease revenue bonds, or would like to encumber their future pass-throughs. The proposed language will solve the problem for everyone.

While the language that actually gets adopted could be narrower in scope, the pitch has been made that the governor's office and DOF assured LEAs that pass through would continue with ABX1 26. Indeed, HSC 34183(a)(1) and HSC 34182(c) added by ABX1 26 state, respectively, that pass-throughs will continue as though the RDA continued to exist, and in the same amounts as if ABX1 26 had never been adopted.

So there is tension between what a couple of the code sections say and what HSC 34187(b) created by AB 1484 is interpreted as saying. There also is tension between saying that (i) pass-throughs should be protected, and (ii) residual distributions and other revenues that LEAs receive from former RDAs should be maximized for immediate benefit of the state.

Political decisions have to be made that hopefully will benefit all LEAs, not just those that already encumbered their future payments.

* *

Q-42:

All the conferences and webinars I've attended talk about how the dissolution of RDAs is good for schools; I am not seeing it. One local successor agency gave up its low income housing money with hope that the money would come back locally. The city received its share of additional revenue, the fire district received its share of additional revenue, and the school district share went to the state, which is no additional revenue. Another local successor agency had no bond indebtedness, so it's being shut down. The school district used to receive RDA money in two portions: capital facilities dollars and revenue limit dollars. Now that the successor agency will be shut down, all the school district's tax dollars will go toward revenue limits. School district loses the capital facility dollars. So, again, how is the dissolution of RDAs good for schools?

A-42:

At the macro level there has been a lot of discussion about how this is supposed to be good for schools.

For basic aid districts, the residual distributions and other revenues from liquidation of former RDA assets are directly beneficial. However, for revenue limit districts, the only benefit is indirect and in the future, and may not even occur. For revenue limit districts, the only direct impact could even be negative if the state somehow insists that the taxes report include residual distributions and other revenues that get tied up by litigation or otherwise not realized. This would allow the state to cut state aid even though there is no additional local revenue to cover it.

Regarding pass-throughs, the notion that when bond debt and other debts of the RDA shown on the ROPS are paid off, pass-throughs must cease within a year (which appears to be the standard interpretation of HSC 34187(b)) ignores the fact that those pass-throughs are themselves a debt of the RDA. It's conceivable that (i) if LEAs had to litigate this issue, they may prevail, and (ii) notwithstanding there are no obligations on the ROPS, the pass-throughs could be deemed a debt of the RDA that has to be honored as HSC 34187(b) says.

The better solution would be a legislative fix.

* *

Q-43:

I serve on an oversight board, and was surprised to see LMIHF obligations listed under the funding source heading of RPTTF and not LMIHF on the ROPS III. I was told the LMIHF funds were swept, there are no funds to pay for those obligations. My questions are, is this true and whether this is true or not, is it legally allowable for RPTTF to pay LMIHF obligations?

A-43:

Whether it's true is a factual question. Have the assets, the former LMI housing set aside funds, been liquidated and distributed as other revenues or not?

The answer will depend on the facts. Another variation of that factual question is, have the unencumbered LMI assets already been used up on enforceable obligations so that RPTTF doesn't have to pay for them? There should be an objective answer to that question, too.

Assuming the answer to either or both questions is yes, that money is gone, then the next question is: Is it legal to pay continuing housing obligations from the trust fund? The answer is yes.

Consider the case where there is a monthly mortgage assistance amount the former RDA obligated itself to pay to low and moderate income households. Let's say it's $500 a month and 10 LMI households are getting that subsidy, so that's $5,000 a month times 12 months for $60,000 a year for 30 years, for a total of $1.8 million.

The ROPS now shows $60,000 per year in monthly mortgage assistance having to be paid from the RPTTF, since there is no money left in the housing fund. Because it's on the ROPS and funded from the RPTTF, that means the affected taxing entities will not receive $60,000 per year in residual distributions because the monthly mortgage assistance is being paid from the RPTTF.

However, the RDA could have encumbered $1.8 million in the LMI housing fund to pay $60,000 a year for 30 years to these 10 households. In that case, the $1.8 million would not have been swept, and the affected taxing entities would not receive $1.8 million as other revenues.

In both cases, the ultimate fiscal impact on the affected taxing entities is the same. In the former case, the affected taxing entities received $1.8 million in other revenues because the RDA did not encumber the LMIH, but will not receive $1.8 million in residual distributions because the monthly mortgage subsidies have to be paid from the RPTTF. In the latter case, the affected taxing entities did not receive $1.8 million in other revenues, but will receive $1.8 million in residual distributions because the monthly mortgage subsidies are not paid from the RPTTF.

So in this case it's legal to pay the mortgage subsidies from the RPTTF, and except for the time value of money, the ultimate fiscal effect on the affected taxing entities is the same as if the mortgage subsidies were paid from encumbered LMIH funds.

* *

Q-44:

I heard that the audit procedures were just released for the LMI housing audit. What should I expect from the report and how do I use it as an OB member?

A-44:

First, let's talk about agreed upon procedures (AUP) audits. Per HSC 34182(a)(1)-(2):

"(1) The county auditor-controller shall conduct or causes to be conducted an agreed-upon-procedures audit of each [RDA] in the county."

Per ABX1 26, AUP audits were supposed to be completed by July 1. In a couple of counties they were delivered in April or May. However, most counties were having trouble making the July 1 deadline, so AB 1484 extended the deadline to October 1 (see HSC 34182(a)(1)).

"2) The purpose of the audits shall be to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's passthrough payment obligations to other taxing entities, and to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency pursuant to the initial [ROPS]."

Many AUP audits have already been released. They can provide good insight regarding a variety of issues, for example, when amounts shown on the ROPS don't match the documentation for the obligation. In that case, you should request the documentation itself.

AB 1484 also imposed a new requirement that "each Successor Agency shall employ a licensed accountant, approved by the county auditor-controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities. As an alternative, an audit provided by the county auditor-controller that provides the information required by this section may be used to comply with this section with the concurrence of the oversight board" (see HSC 34179.5). Per HSC 34179.6, this due diligence review ""shall be submitted to the oversight board for review."

Whereas the county A-C prepares or causes to be prepared the AUP audit, the successor agency is required to obtain the due diligence review of its unobligated fund balances. Some have informally called the portion of the due diligence review pertaining to LMIH fund balances a "housing audit" (though it's technically only a review). Per HSC 34179.6 and 34179.6(a), by October 1, 2012, each successor agency shall provide to the oversight board and the state the results of the housing audit "and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities."

We haven't seen any housing audits yet. But in looking at the housing audit, you're looking at the housing assets. In particular, you should look at the portion of the housing assets that are liquid (e.g., cash) vs. illiquid (e.g., real property). And you should look at which, if any, of both categories of assets have been encumbered, and what is the unencumbered balance of the remaining assets. Finally, for real property assets, you should look for restrictions that may govern disposition of the real property assets (e.g., that could prevent their being transferred or prevent their being liquidated). For example, some real property assets are subject to a conveyance agreement from the US Department of Defense regarding property on a former military base. Some of those conveyance agreements prevent reconveyance or prevent reconveyance without approval. So the housing audit should identify any obstacles or challenges to reconveyance and liquidation.

* *

Q-45:

On the FCMAT website there is a link that says new RDA exemption requests. Can you tell me about it?

A-45:

Early on in the process, FCMAT got involved in providing a process for school districts and county offices that may have been part of an RDA to submit exemption requests to the Department of Finance. You can still submit exemption requests, and we're still receiving them; we simply forward them to DOF and really have no information other than that. We know they accept them. We don't know if they're going to review them or act on them at this particular point.

The issue of exemption was particularly timely back in February and March when DOF had instructed CDE to reduce state aid to revenue limit districts based on DOF's estimates of upcoming residual distributions, when we knew the DOF estimates were far greater than the actual final numbers would be. But now, as long as any reduction in state aid corresponds to actual increases in residual distributions or other revenues to the LEA, there should be no net fiscal impact, including no cash flow impact, unless there is a disconnect between the timing of the distribution of the additional local revenue vs. the timing of the reduction in state aid.

If you believe there may be a disconnect for your district, and you are short on cash flow and don't have another means of bridging that shortage until the distribution of local revenues can catch up to the reduction in state aid, then you can still seek an exemption. There should be far fewer cases of that now than occurred back in the spring, but they could arise: for example, if your district's share of the residual distribution on June 1 and/or per the July true-up has already been received, but litigation by the successor agency results in the county A-C having to take back the distribution before state aid can be increased to compensate for the take back. That could cause a problem for your cash flow.

* *

Q-46:

In my capacity as an oversight board member, I received this morning the email shown below (the names of the former RDA and successor agency have been changed). In summary, the successor agency's legal counsel's opinion is that the former RDA assets can't be transferred to the sponsoring entity because AB 1484 prevents such transfers. I would appreciate any comments you might have regarding the soundness of this opinion, and what possible next steps should be taken in light of this new development.

Thank you!

> Dear Oversight Board,
>
> Counsel for XYZ and the Auditor Controller's office thoroughly reviewed the idea of transferring the bonds currently held by the XXX RDA Successor Agency to the XYZ along with the transfer of the assets. If allowed, this would eliminate the future need for the Oversight Board to meet. Unfortunately, XYZ Counsel has determined this cannot be done and the Auditor Controller's office agrees.
>
> Section 34173(g) states: "The liabilities of the former redevelopment agency shall not be transferred to the sponsoring entity and the assets shall not become assets of the sponsoring entity." The USDA bond is a liability of the former XXX RDA. Under this provision, the bond cannot be transferred back to the sponsoring entity, the XYZ.
>
> The original opinion was that there was nothing in the bond itself which would preclude transfer. Bond counsel concurs with this opinion. However, a closer look at AB 1484 revealed that the RDA laws prevent the transfer of the USDA bond back to the XYZ (as sponsoring agency). The XYZ currently has liability for the bond, but it does so in its role as XXX's Successor Agency. In its Successor Agency role, the XYZ has priority rights to the Redevelopment Property Tax Trust Fund which can be used to pay the bond debt. Even if section 34173(g) did not prevent transfer of the bond to the XYZ (as sponsoring agency), it would not be advisable to make the transfer because the XYZ, standing in the shoes of the sponsoring agency rather than the Successor Agency, would lose priority right to the funds it needs to pay the bond debt.

A-46:

We concur with the successor agency's legal counsel quoted above.

* *

Q-47:

Are GASB 45 retiree health expenses legitimate costs to be included on the ROPS as part of the administrative allowance?

A-47:

ABX1 26 (HSC 34171(d)(1)(C)) includes as enforceable obligations:

"Legally enforceable payments required in connection with the agencies' [i.e., former RDAs'] employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement."

According to http://www.gasb.org/st/summary/gstsm45.html:

"In addition to pensions, many state and local governmental employers provide other postemployment benefits (OPEB) as part of the total compensation offered to attract and retain the services of qualified employees. OPEB includes postemployment healthcare, as well as other forms of postemployment benefits (for example, life insurance) when provided separately from a pension plan."

So if GASB 45 retiree health benefits are part of the collective bargaining agreement for former RDA employees, then yes, such costs may be included on the ROPS as part of the administrative allowance.

However, starting with ROPS 2, the administrative allowance is the lesser of $250,000 or 3 percent of the ROPS amount payable from the RPTTF, unless the oversight board reduces this amount. So while GASB 45 costs may be included on the ROPS as part of the administrative allowance, that is ultimately up to the oversight board.

Moreover, in defining administrative cost allowance, HSC 34171(a) states:

"The allowance amount shall exclude, and shall not apply to, any administrative costs that can be paid from bond proceeds or from sources other than property tax."

Hence, if GASB 45 retiree costs can be paid from the successor agency's balance sheet rather than the Redevelopment Property Tax Trust Fund (RPTTF), ROPS 3 should show the funding source for such GASB 45 not as RPTTF, but as LMIHF, bond proceeds, reserve balance, or other.

Finally, per the last sentence added to HSC 34171(b) by AB 1484, GASB 45 employee costs presumably should not be shown for current employees, including:

"Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, [which] shall be considered project-specific costs [on the ROPS] and shall not constitute administrative costs."

* *

Q-48:

In one successor I found a large loan from the former RDA to the city for one of the enterprise funds that has insufficient cash to repay. I only found it looking at prior financial statements of the city. When and how do loans go back to the trust fund for prior loans out of prior RDAs? How do we uncover all assets?

A-48:

The ROPS and related ROPS statutes only address enforceable obligations of the successor agency, including city loans to the former RDA that the city would like to have repaid to the city. Enforceable obligations do not include loans from the former RDA (e.g., to the city, including its enterprise funds), which the city may wish to have forgiven.

Loans from the former RDA to the city appear not as enforceable obligations (liabilities) on the ROPS, but as assets on the former RDA's balance sheet, which should be shown in financial statements included in the annual independent auditor's report prepared for the city and former RDA. You can request all recent independent auditors' reports from the successor agency. Or as addressed in Q-44 above, you can look to either the agreed-upon procedures (AUP) audits prepared by or for the county A-C, or the due diligence reviews prepared for the successor agency to determine the amount of unobligated fund balances available for transfer to taxing entities.

FY 2011-12 was primarily concerned with ROPS approval, and DOF's attempts to reduce ROPS obligations shown as payable from the RPTTF, to increase residual distributions from the RPTTF to affected taxing entities (including LEAs). However, in FY 2012-13 we expect the distribution of other revenues from liquidation of former RDA assets to become a primary issue.

We don't believe ABX1 26 or AB 1484 authorizes oversight boards to approve forgiveness of loans from the former RDA to the city or other entities. However, if the city or other entities are unable to repay the loan as scheduled (or if there was never a repayment schedule), the oversight board may have to oversee a workout process to structure or restructure the repayment obligation, or deal with restructuring through a municipal or other bankruptcy proceeding.

As more loans from former RDAs to cities or other entities come to light, it may be determined that some of the loans were illegal or not otherwise authorized under the Community Redevelopment Law. In such cases, the oversight board will presumably be especially dependent on the advice of independent legal counsel, since legal counsel to the successor agency or city will presumably have an obvious conflict of interest.

* *

Q-49:

It appears that AB 1484 allows an SA to attempt reinstatement of city loans to be reviewed and approved by the Department of Finance. As an oversight board member, is it safe to rely on the DOF to effectively evaluate any proposals submitted by the SA? Is there something more I should be doing?

A-49:

AB 1484 created HSC 34173(h), which states:

"h) The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans."

This provision only applies to new city loans to the successor agency, not to reinstatement of prior city loans to the former RDA. Indeed, HSC 34171(d)(2) governing prior city loans is unchanged:

"(2) For purposes of this part, "enforceable obligation" does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part. Notwithstanding this paragraph, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations."

Per this provision, all prior city loan agreements continue to be unenforceable except for the same two carve-outs: (i) city loans to the former RDA entered into no later than December 31, 2010 "solely for the purpose of securing or repaying ... indebtedness obligations [that are] deemed enforceable obligations" (presumably to third parties); and (ii) city loans created "within two years of the date of the creation of the redevelopment agency" (not adoption of a redevelopment plan for a given redevelopment project area).

Nonetheless, some SAs have put back on ROPS 3 city loans to the RDA that were previously rejected by the oversight board and/or DOF. As an oversight board member, it may be safe to rely on the DOF to effectively evaluate any [city loan] proposals submitted by the SA. But the oversight board exists to evaluate any such proposals itself, and to comply with the provisions of:

- HSC 34180, which states: "All of the following successor agency actions shall first be approved by the oversight board: ... [including among other things]:

  "(g) Establishment of the Recognized Obligation Payment Schedule."

  "(h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the [RDA] that it is succeeding."

- HSC 34181, which states: "The oversight board shall direct the successor agency to do all of the following: ... [including among other things]:

"(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations."

Exhibit 1

ALLOCATION OF RPTTF
CASE 1 BASED ON FIGURE 4
IN LAO ANALYSIS DATED 02/17/2012

(Amounts in Thousands)

CASE 1

5,000	RPTTF
1,000	Pass-Throughs
700	Enforceable Obligations
250	Successor Agency Admin
50	Co. A-C Admin
3,000	Adjusted Gross Revenues

CASE 2 and 3

5,000	RPTTF
1,500	Pass-Throughs
700	Enforceable Obligations
250	Successor Agency Admin
50	Co. A-C Admin
2,500	Adjusted Gross Revenues

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Exhibit 2

**DETERMINING ALLOCATION OF EXCESS REVENUES PER HSC 34188
WITH RELATIVELY SMALL AND LARGE PASS-THROUGH PAYMENTS
USING RPTTF PER FIGURE 4 AND
INVERSE PROPORTIONAL SHARES NET OF PASS-THROUGHS
(Amounts in Thousands)**

CASE 1 **County Pass-Throughs Relatively Small**

(A)			(B)	(C=A*B)	(D=A-C)	(E)	(F)	(G=C+F)	(H=G/A)
RPTTF	Gross Shares	ATEs	P-T%	P-T$	RPTTF - P-T$	Inverse Proportion	Excess Revenues[1]	P-T$ + Excess	% of RPTTF
2,500	50.00%	LEAs	0.00%	0	2,500	62.50%	1,875	1,875	75.00%
1,250	25.00%	County	60.00%	750	500	12.50%	375	1,125	90.00%
750	15.00%	City	0.00%	0	750	18.75%	563	563	75.00%
500	10.00%	Spec Dist	50.00%	250	250	6.25%	188	438	87.50%
5,000	100.00%			1,000	4,000	100.00%	3,000	4,000	80.00%

1. Based on Inverse Proportions (Col E), i.e., for each taxing entity RPTTF minus P-T$ divided by $4,000.

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Exhibit 3

DETERMINING ALLOCATION OF EXCESS REVENUES PER HSC 34188
WITH RELATIVELY SMALL AND LARGE PASS-THROUGH PAYMENTS
USING RPTTF PER FIGURE 4 AND
INVERSE PROPORTIONAL SHARES NET OF PASS-THROUGHS
(Amounts in Thousands)

CASE 2 County Pass-Throughs Relatively Large: Adjust by Reducing Total Excess Revenues

(A) RPTTF	Gross Shares	ATEs	(B) P-T%	(C=A*B) P-T$	(D=A-C) RPTTF - P-T$	(E) Inverse Proportion	(F) Excess Revenues[1]	(G=C+F) P-T$ + Excess	(H=G/A) % of RPTTF
2,500	50.00%	LEAs	0.00%	0	2,500	71.43%	1.786	1.786	71.43%
1,250	25.00%	County	100.00%	1.250	0	0.00%	0	1.250	100.00%
750	15.00%	City	0.00%	0	750	21.43%	536	536	71.43%
500	10.00%	Spec Dist	50.00%	250	250	7.14%	179	429	85.71%
5,000	100.00%			1,500	3,500	100.00%	2,500	4,000	80.00%

1. Based on Inverse Proportions (Col E), i.e., for each taxing entity, RPTTF minus P-T$ divided by $3,500.

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