

# OAKLAND OVERSIGHT BOARD

## MEMORANDUM

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|----------------------------------------------------------------------------------------|---------------------------------------------------|
| <b>TO:</b> Oakland Oversight Board                                                     | <b>FROM:</b> Fred Blackwell                       |
| <b>SUBJECT:</b> Status Report, Recognized Obligation<br>Payment Schedule (ROPS) 13-14B | <b>DATE:</b> December 16, 2013<br><b>ITEM:</b> #3 |

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### RECOMMENDATION

Staff recommends that the Oversight Board accept this Status Report on the State Department of Finance's response to Oakland's ROPS 13-14B submittal, and Oakland's subsequent request for a Meet and Confer process to reconsider State determinations with which Oakland disagrees.

### ANALYSIS

On November 7, 2013, staff from the State's Department of Finance (DOF) informed the City that it had determined that a number of the items in the ROPS 13-14 B did not qualify as enforceable obligations. Through the established Meet and Confer process, Oakland has submitted its arguments that the State's determinations were incorrect. At this writing, Oakland awaits word from the State about its response to Oakland's arguments.

The DOF initial determination and Oakland's Meet and Confer request and analysis documents are all included with this staff report.

For questions regarding this report, please contact Patrick Lane, Development/Redevelopment Program Manager, at (510) 238-7362.

Respectfully submitted,

\_\_\_\_\_  
/S/  
Fred Blackwell,  
Assistant City Administrator



EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 7, 2013

Mr. Jim Bondi, City Administrator Analyst  
City of Oakland  
1 Frank H. Ogawa Plaza, 3rd Floor  
Oakland, CA 94619

Dear Mr. Bondi:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Oakland Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14B) to the California Department of Finance (Finance) on September 25, 2013 for the period of January through June 2014. Finance has completed its review of your ROPS 13-14B, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations for the reasons specified:

- Item Nos. 16, 17, 18, 66, 67, 200, 201, 246, 247, 373, 376, 379, and 632 – Debt service in the amount of \$52,338,881. Our review noted that the Agency is requesting the full fiscal year 2014 debt service payments on ROPS 13-14B. Pursuant to HSC 34171 (d) (1) (A) reserves are allowed when required by the bond indenture or when the next property tax allocation will be insufficient to pay all obligations due under the provisions of the bond for the next payment due in the following half of the calendar year. Finance's review of the bond indenture and official statements did not identify a requirement to have the next debt service payment in a reserve account prior to the due date, and the Agency has not had a shortfall in any of their prior Redevelopment Property Tax Trust Fund (RPTTF) distributions. Therefore, only the debt service payments that are due during the ROPS 13-14B period totaling \$22,065,660 are approved; the funding request has been reduced by \$30,273,221.
- Item No. 426 – City loan repayment in the amount of \$2,704,747. The Agency received a Finding of Completion on May 29, 2013. As such, the Agency may place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes pursuant to HSC 34191.4 (b) (1). However, HSC section 34176 (e) (6) (B) specifies loan or deferral repayments shall not be made prior to the 2013-14 fiscal year. While ROPS 13-14B falls within fiscal year 2013-14, the repayment of this City loan is subject to the repayment formula outlined in HSC section 34191.4 (b) (2) (A).

HSC section 34191.4 (b) (2) (A) states maximum repayment amount in each fiscal year shall be equal to one-half of the increase between the ROPS residual amounts distributed to the taxing entities in that fiscal year and the ROPS residual amounts distributed to the taxing entities in the 2012-13 base year. Since the formula does not allow for estimates, the Agency must wait until the ROPS residual pass-through distributions are known for fiscal year 2013-14 before requesting funding for this obligation. Therefore, this item is not eligible for funding at this time.

- Item No. 631 – Pass-through payments in the amount of \$2,600,164. The Agency was not able to provide documentation such as a settlement agreement or an agreement between the Agency and the Oakland Unified School District to support the claimed amounts. Therefore, this item is not eligible for RPTTF funding at this time.
- Administrative costs claimed for RPTTF exceed the allowance by \$1,013,249. HSC section 34171 (b) limits the 2013-14 administrative expenses to three percent of property tax allocated to the Agency or \$250,000, whichever is greater.

|                                                                 |             |
|-----------------------------------------------------------------|-------------|
| Allowable administrative cost amount for fiscal year 2013-14    | \$2,091,745 |
| Administrative costs distributed for July through December 2013 | \$1,149,832 |
| Administrative costs claimed for January through June 2014      | \$1,961,162 |
| Overage                                                         | \$1,013,249 |

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14B form the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the below table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Except for the items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14B. If you disagree with the determination with respect to any items on your ROPS 13-14B, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

[http://www.dof.ca.gov/redevelopment/meet\\_and\\_confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's maximum approved RPTTF distribution for the reporting period is \$32,014,729 as summarized below:

| <b>Approved RPTTF Distribution Amount<br/>For the period of January through June 2014</b>    |                      |
|----------------------------------------------------------------------------------------------|----------------------|
| Total RPTTF requested for non-administrative obligations                                     | 65,372,065           |
| Total RPTTF requested for administrative obligations                                         | 1,961,162            |
| <b>Total RPTTF requested for obligations</b>                                                 | <b>\$ 67,333,227</b> |
| <b>Total RPTTF requested for non-administrative obligations</b>                              | <b>65,372,065</b>    |
| <b>Denied Items</b>                                                                          |                      |
| Item No. 16                                                                                  | (123,625)            |
| Item No. 17                                                                                  | (629,846)            |
| Item No. 18                                                                                  | (318,545)            |
| Item No. 66                                                                                  | (3,299,612)          |
| Item No. 67                                                                                  | (3,707,775)          |
| Item No. 200                                                                                 | (2,994,554)          |
| Item No. 201                                                                                 | (344,500)            |
| Item No. 246                                                                                 | (3,302,284)          |
| Item No. 247                                                                                 | (1,191,662)          |
| Item No. 373                                                                                 | (54,875)             |
| Item No. 376                                                                                 | (5,367,961)          |
| Item No. 379                                                                                 | (3,537,982)          |
| Item No. 426                                                                                 | (901,582)            |
| Item No. 631                                                                                 | (2,600,164)          |
| Item No. 632                                                                                 | (5,400,000)          |
|                                                                                              | (33,774,967)         |
| <b>Total RPTTF approved for non-administrative obligations</b>                               | <b>31,597,098</b>    |
| <b>Total RPTTF allowable for administrative obligations (see Admin Cost Cap table below)</b> | <b>947,913</b>       |
| <b>Total RPTTF approved for obligations</b>                                                  | <b>32,497,489</b>    |
| ROPS III prior period adjustment                                                             | (482,760)            |
| <b>Total RPTTF approved for distribution</b>                                                 | <b>\$ 32,014,729</b> |
| <b>Administrative Cost Cap Calculation</b>                                                   |                      |
| Total RPTTF for 13-14A (July through December 2013)                                          | 38,327,746           |
| Total RPTTF for 13-14B (January through June 2014)                                           | 31,597,099           |
| Less approved unfunded obligations from prior periods                                        | -                    |
| <b>Total RPTTF for fiscal year 2013-14</b>                                                   | <b>69,924,845</b>    |
| Allowable administrative cost for fiscal year 2013-14 (Greater of 3% or \$250,000)           | 2,097,745            |
| Administrative allowance for 13-14A (July through December 2013)                             | 1,149,832            |
| <b>Allowable RPTTF distribution for administrative cost for ROPS 13-14B</b>                  | <b>\$ 947,913</b>    |

Pursuant to HSC section 34177 (l) (1) (E), agencies are required to use all available funding sources prior to RPTTF for payment of enforceable obligations. Beginning with the ROPS 13-14B period, Finance required successor agencies to identify fund balances for various types of funds in its possession. During our ROPS 13-14B review, Finance requested financial records to support the fund balances reported by the Agency; however, Finance was unable to reconcile the financial records to the amounts reported. As a result, Finance will continue to work with the Agency after the ROPS 13-14B review period to properly identify the Agency's fund balances. If it is determined the Agency possesses fund balances that are available to pay approved obligations, the Agency should request the use of these fund balances prior to requesting RPTTF in ROPS 14-15A.

Please refer to the ROPS 13-14B schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS\\_13-14B\\_Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS_13-14B_Forms_by_Successor_Agency/).

Absent a Meet and Confer, this is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2014. This determination applies only to items where funding was requested for the six month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to HSC section 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Beliz Chappule, Supervisor or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD  
Assistant Program Budget Manager

cc: Mr. Patrick Lane, Redevelopment Program Manager, City of Oakland  
Ms. Carol S Orth, Tax Analysis, Division Chief, Alameda County  
California State Controller's Office



## MEET AND CONFER REQUEST FORM

**Instructions:** Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment\_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment\_Administration@dof.ca.gov.

### AGENCY (SELECT ONE):

☒ Successor Agency ☐ Housing Entity

**AGENCY NAME:** Oakland Redevelopment Successor Agency

### TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

☐ Housing Assets Transfers ☐ Due Diligence Reviews ☒ ROPS Period 2013-14 B

**DATE OF FINANCE'S DETERMINATION LETTER:** November 7, 2013

### REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

☐ Meeting at Finance ☒ Conference Call

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## DETAIL OF REQUEST

### A. Summary of Disputed Issue(s) *(Must be specific.)*

The Oakland Redevelopment Successor Agency ("ORSA") disputes DOF's conclusions outlined in its November 7, 2013 determination letter regarding the Recognized Obligation Payment Schedule 13-14B, Oakland Oversight Board Resolution 2013-17.

### B. Background/History *(Provide relevant background/history, if applicable.)*

There were four items or groups of items denied by the Department of Finance on the ROPS 2013-14B that are being disputed by ORSA, Including:

1. Item Nos. 16, 17, 18, 66, 67, 200, 201, 246, 247, 373, 376, 379, and 632- Debt service in the amount of \$52,338,881.
2. Item 426 - West Oakland Loan Indebtedness.
3. Item No. 631 -Pass-through payments in the amount of \$2,600,164.
4. Administrative costs claimed for RPTTF.

### C. Justification *(Provide additional attachments to this form, as necessary.)*

See Attachment.

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**Agency Contact Information**

Name: James Bondi  
Title: City Administrator Analyst  
Manager  
Phone: 510-238-6654  
Email: JBondi@oaklandnet.com  
pslane@oaklandnet.com  
Date: 11/14/13

Name: Patrick Lane  
Title: Redevelopment  
Phone: 510-238-7362  
Email:  
Date: 11/14/13

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**Department of Finance Local Government Unit Use Only**

REQUEST TO MEET AND CONFER DATE: ☐ APPROVED ☐ DENIED

REQUEST APPROVED/DENIED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

MEET AND CONFER DATE/TIME/LOCATION: \_\_\_\_\_

MEET AND CONFER SESSION CONFIRMED: ☐ YES DATE CONFIRMED: \_\_\_\_\_

DENIAL NOTICE PROVIDED: ☐ YES DATE AGENCY NOTIFIED: \_\_\_\_\_

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Form DF-MC (Revised 9/10/12)

Attachment  
Oakland Meet and Confer Request  
ROPS 13-14B

C. Justification

1. Item Nos. 16, 17, 18, 66, 67, 200, 201, 246, 247, 373, 376, 379, and 632- The Successor Agency has been advised by bond counsel and by the bond rating agencies that all available funds from the RPTTF at the beginning of the calendar year must be placed in a debt service payment fund until all of the debt service payments for the year are fully funded. Therefore, the "B" ROPS covering the first half of the calendar year must include debt service payments for the entire calendar year. Debt service in the amount of \$52,338,881 is required under the Indenture of Trust for the bonds. For the Central District Subordinated TAB Series 2003, Section 4.02 of this Indenture illustrates the need to deposit all available RPTTF funds into the special debt service fund until sufficient funds for the annual debt service payments are available. The exact language in this section is:

**Indenture of Trust, Central District Subordinated TAB Series 2003**

Section 4.02. Special Fund; Deposit of Tax Revenues. There is hereby established a special fund which is to be held by the Agency and which shall be known as the "Special Fund". Subject to the provisions of the Senior Bonds Resolution regarding the application of Tax Revenues, the Agency shall transfer all of the Tax Revenues received in any Bond Year to the Special Fund promptly upon receipt thereof by the Agency, until such time during such Bond Year as the amounts on deposit in the Special Fund equal the aggregate amounts required to be transferred for deposit in such Bond Year (i) for deposit into the Interest Account, the Principal Account, the Reserve Account and the Redemption Account in such Bond Year pursuant to Section 4.03 hereof and, if applicable, and (ii) with respect to any Parity Debt other than additional Bonds pursuant to the applicable Parity Debt Instrument. If the amount of Tax Revenues available in such Bond Year shall be insufficient to deposit the full amount required to be deposited pursuant to subsections (i) and (ii) of this paragraph, then the Agency shall transfer such Tax Revenues for deposit pro rata based on the full amounts required to be so deposited.

Please see the attached e-mail from the City's outside bond counsel, Steve Melikian of Jones Hall verifying this requirement. Bond counsel has advised us that "the Master Indenture, executed in 2003, has what I call the traditional flow of funds for a tax allocation issue – during each Bond Year, which includes both the March 1 interest payments and the September 1 principal and interest payments, all Tax Revenues received during the Bond Year, must be deposited in the Special Fund until such time as the Special Fund has an amount in it equal to the amount of debt service for such Bond Year prior to the Tax Revenues being used for any other purpose." Both bond counsel and Standard and Poors rating agency have been clear that this section of the Indenture requires all available revenue to be set aside as soon as they are available until sufficient funds to make the entire annual debt service payments are held in reserve.

Funding the annual debt service reserve will not affect the amount of revenue allocated to the taxing entities for the fiscal year. The various entities will either get the funds in January or June. But Finance's refusal to allow the Successor Agency to fund the debt service reserve may cause long term adverse impacts to both the Successor Agency and the taxing entities. If as a result of a breach of the Indenture and failure to fund the reserve due to Finance's denial of this ROPS item, rating agencies lower the rating for

ABx1 26 requires successor agencies to perform all obligations with respect to enforceable debt obligations. The Department of Finance believes this includes requirements for any special accounting, reserving, or annual set-aside payment priorities. With respect to uneven debt service payment schedules, ABx1 26 and AB 1484 clearly allow successor agencies to create reserves on the Recognized Obligation Payment Schedule for future bond payments that may be needed, and so that bond covenants can be met as required by ABx1 26. Further, many bond indentures require set-asides at the beginning of a fiscal year an amount to cover payments for the entire year, if not more. In order to comply with the bond covenants, this type of annual set-aside should be included on the Recognized Obligation Payment Schedule, thereby ensuring that enough revenues will be available when each semi-annual payment comes due. It is the Department's expectation that any needed reserves or required annual set-asides will be included in Recognized Obligation Payment Schedules.

Furthermore, DOF's published FAQ authorizes the funding of debt service reserves. The following is an excerpt from the DOF website:

**Q. What should happen to bonds with uneven payment schedules where one semi-annual payment is much larger than**

**Q. What should happen to bonds with uneven payment schedules where one semi-annual payment is much larger than the other?**

ABx1 26 requires successor agencies to perform all obligations with respect to enforceable debt obligations. The Department of Finance believes this includes requirements for any special accounting, reserving, or annual set-aside payment priorities. With respect to uneven debt service payment schedules, ABx1 26 and AB 1484 clearly allow successor agencies to create reserves on the Recognized Obligation Payment Schedule for future bond payments that may be needed, and so that bond covenants can be met as required by ABx1 26. Further, many bond indentures require set-asides at the beginning of a fiscal year an amount to cover payments for the entire year, if not more. In order to comply with the bond covenants, this type of annual set-aside should be included on the Recognized Obligation Payment Schedule, thereby ensuring that enough revenues will be available when each semi-annual payment comes due. It is the Department's expectation that any needed reserves or required annual set-asides will be included in Recognized Obligation Payment Schedules.

2. Item 426 - West Oakland Loan Indebtedness. HSC Section 34191.4(b)(2)(A) provides that, after a finding of completion is issued, the successor agency may start making payments to its sponsoring city for loan indebtedness starting in **Fiscal Year 2013-14**. ORSA followed the procedures outlined in HSC section 34191.4(b)(2)(A) and submitted the Oversight Board Resolution 2013-16 separately from the ROPS, link attached. Per HSC Section 34191.4(b)(2)(A) the payments were to start in the "2013-14 fiscal year" per the statute, with the maximum repayment amount equal to less than "one-half of the increase between the amount distributed to the taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012-13 base year." This is clearly shown in the report that accompanied the resolution, link also attached.

<http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042132.pdf>  
<http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042112.pdf>

Finance's position that loan repayments cannot start until Fiscal Year 2014-15 is at odds with the statute that expressly allows repayments starting Fiscal Year 2013-14. If the Legislature had intended for repayments not to begin until residual RPTTF

distributions for Fiscal Year 2013-14 were confirmed in the next fiscal year, it would not have made reference to repayments beginning in Fiscal Year 2013-14. Finance does not have the authority to ignore statutory language or rewrite statutes to conform to its policy preferences. If payments are made in this ROPS period, and it is later determined that payments exceeded the cap set by the statute based on a lesser increase in RPTFF than anticipated, the City and ORSA can then easily reconcile the payments.

3. Item No. 631 -Pass-through payments in the amount of \$2,600,164. ORSA received a demand letter from the Oakland Unified School District ("OUSD") and the Alameda County Board of Education on April 12, 2013, for underpayments of a prior year's AB1290 pass-through payments. ORSA has determined that the OUSD's demands are valid, and that the former Redevelopment Agency did in fact inadvertently underpay statutory pass-through payments due to a calculation error; therefore, ORSA included this debt in ROPS 13-14B. Obligations imposed by state law, such as statutory obligations, are considered "enforceable obligations" under HSC Section 34171(d)(1)(C), irrespective of whether the obligation has been reduced to contractual form. The debt to the OUSD for underpaid statutory pass through payments is an ORSA obligation under state law that has been fully documented to Finance. Finance's position that the debt is not an enforceable obligation because there is no settlement agreement is not valid.

Finance's FAQ regarding "Unfunded Obligations" addresses this situation and contradicts the rationale provided in the ROPS determination letter. The FAQ provides as follows:

**Question 6: How would an Agency pay a past due pass-through payment to an affected taxing entity (ATE) for periods prior to redevelopment agency dissolution?**

Response: The Agency can request funding for past due pass-through items on ROPS which is subject to Finance's review. However, the Agency

**Question 6: How would an Agency pay a past due pass-through payment to an affected taxing entity (ATE) for periods prior to redevelopment agency dissolution?**

ORSA Response: The Agency can request funding for past due pass-through items on ROPS which is adequate subject to Finance's review. However, the Agency should be able to demonstrate that the past due pass-through amount is still outstanding. Documents of proof may include signed and executed agreements, audits, legal documents, and financial records.

4. Administrative costs claimed for RPTTF. The additional amount requested for administrative costs is based on the inclusion of the three items discussed above. Approval of any of these items will automatically increase the administrative costs claimed for RPTTF.