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SUMMARY OF AB 1484: REDEVELOPMENT DISSOLUTION/ UNWIND TRAILER BILL

JUNE 29, 2012

The laws described below could be impacted by future cleanup legislation. Goldfarb & Lipman intends to update this summary as appropriate, but please contact us to get the most up-to-date information on the status and content of this legislation.

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SUMMARY OF AB 1484: REDEVELOPMENT DISSOLUTION/UNWIND TRAILER BILL

PART I.
INTRODUCTION AND BACKGROUND

A. Introduction; Purpose of Summary.

ABx1 26 (the "Dissolution Act") was enacted in late June 2011 as part of the FY 2011-12 state budget package and was held by the California Supreme Court to be largely constitutional on December 29, 2012. Under the Dissolution Act, each of California's redevelopment agencies (each a "Dissolved RDA") was dissolved as of February 1, 2012, and the cities, counties, and city and county that formed the Dissolved RDAs, together with other designated entities, have initiated the process under the Dissolution Act to unwind the affairs of the Dissolved RDAs.

As part of the FY 2012-13 state budget package, on June 27, 2012, the Legislature passed and the Governor signed AB 1484, the primary purpose of which is to make technical and substantive amendments to the Dissolution Act based on experience to-date at the state and local level in implementing that act. As a budget "trailer bill," AB 1484 took immediate effect upon signature by the Governor.

AB 1484 will require those involved in the redevelopment unwind process to learn and implement some significant new rules of conduct just as they were beginning to adapt to and implement the complex rules mandated by the Dissolution Act itself. The purpose of this Summary is to highlight the key elements of AB 1484 for those involved in the redevelopment unwind process. Following a background synopsis of the Dissolution Act in this Part I, Part II of the Summary describes key features of AB 1484, while Part III provides a checklist Summary of major new upcoming milestones mandated by AB 1484.

We recommend particular attention to the Part III milestones checklist, as AB 1484 has added significant new or modified actions and deadlines, with major compliance consequences, that need to be implemented in the very near future and throughout the Summer and Fall of 2012.

Because AB 1484 was enacted less than two days after it first appeared in bill form, there has been no time for questions of interpretation and practice to be carefully evaluated by state and local officials charged with the redevelopment unwind process. Consequently, the highlights presented in this Summary represent a good faith initial understanding of the meaning and intent of AB 1484, with the expectation and plan that this Summary will be updated from time to time as further consideration and practice shed light on the proper interpretation of various elements of the bill. Please visit our website at www.goldfarblipman.com to review future updates of this Summary.

This document is a summary of complex legislation. Reference should be made to the actual statutory language before making decisions or taking actions pursuant to AB 1484. Unless otherwise noted, section references in this Summary are to sections of the Health and Safety Code as added or amended by AB 1484. Reference to a "Part" is to the referenced Part of this Summary.

B. Overview Of Dissolution Act.

Under the Dissolution Act:

1. The authority of Dissolved RDAs to undertake most new activities was suspended as of the effectiveness of the Dissolution Act.

2. Each Dissolved RDA went out of existence on February 1, 2012.

3. A successor agency (a "Successor Agency") was created for each Dissolved RDA and charged with winding down the Dissolved RDA's affairs, including making payments due for enforceable obligations (as defined in the Dissolution Act), performing obligations required pursuant to enforceable obligations, disposing of the Dissolved RDA's assets (other than housing assets), and remitting unencumbered balances of the Dissolved RDA to the county auditor-controller (the "CAC") for distribution to the affected taxing entities. Except for certain housing assets, the assets of the Dissolved RDA transferred to the Successor Agency for this unwinding process.

4. For all but eight of California's Dissolved RDAs, the city, county, or city and county that had formed the Dissolved RDA (the "Sponsoring Community") elected to take on the role of Successor Agency for its Dissolved RDA.

5. Housing assets (other than unencumbered fund balances in the Dissolved RDA's Low and Moderate Income Housing Fund (the "LMIHF") at the time of dissolution, which were instead transferred to the Successor Agency), housing obligations and housing functions of the Dissolved RDA were transferred to a designated housing successor entity (the "Housing Successor"), which in most cases is the Sponsoring Community (and in a limited number of cases is a local housing authority).

6. The CAC is charged with establishing a Redevelopment Property Tax Trust Fund (the "RPTTF") for each Successor Agency and depositing into the RPTTF for each six-month period the amount of property taxes that would have been redevelopment property tax increment had the Dissolved RDA not been dissolved. Semiannually, the CAC is required to make distributions from the RPTTF (a) to the affected taxing entities in the amount of the pass-through payments they would have received had the Dissolved RDA not been dissolved, (b) to the Successor Agency to pay amounts due on enforceable obligations for the upcoming six-month period, and (c) to various entities for specified administrative costs. Any amount left in the RPTTF after each semiannual distribution for the above purposes is distributed by the CAC to the affect taxing entities as normal property taxes.

7. An oversight board (the "Oversight Board") is established for each Successor Agency to approve specified actions and direct specified activities of the Successor Agency.

8. A recognized obligation payment schedule is prepared by the Successor Agency and approved by the Oversight Board setting forth the amounts due for each enforceable obligation during each six-month period (each, a "ROPS"). The Successor Agency is limited to making payments for items shown on an approved ROPS (except that, pending effectiveness of the first ROPS, a Successor Agency is authorized to make payments for amounts on an Enforceable Obligation Payment Schedule (the "EOPS") prepared by the Dissolved RDA prior to dissolution, and subject to update by the Successor Agency).

9. The Department of Finance (the "DOF") and the State Controller's office (the "SCO") are given specified review and approval responsibilities and are assigned certain other tasks in connection with the redevelopment dissolution and unwind process under the Dissolution Act.

PART II.
SUMMARY OF AB 1484

A. Affordable Housing.

AB 1484 significantly modifies and provides some clarifications to the treatment of housing assets under the Dissolution Act. Specifically, AB 1484 now includes a definition of housing assets, sets forth explicit procedures with respect to transfer of housing assets which must occur by August 1, 2012, provides some greater flexibility and procedural steps regarding the use of housing bond proceeds, establishes a new Low and Moderate Income Housing Asset Fund (the "Housing Asset Fund") to be administered by the Housing Successor, and clarifies that no future deposits are required to be made to the LMIHF.

1. Definition of Housing Assets. Section 34176(e) sets forth a list of assets that are considered housing assets. This is important because the Dissolution Act, as modified by AB 1484, treats both the Housing Successor and housing assets with more flexibility than the Successor Agency and non-housing assets. The list of housing assets in AB 1484 significantly expands the limited list of housing assets announced in the DOF Housing Frequently Asked Questions issued earlier this year (the "Housing FAQs"), due in large part to the efforts of several housing policy groups. The list of housing assets includes the following:

a. Real Property Assets. Housing assets include any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences, including furniture and appliances, all housing-related files and loan documents, office supplies, software licenses, and mapping programs, that were acquired for low- and moderate-income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.

b. Encumbered Funds. Housing assets include any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing,

as defined by the Community Redevelopment Law unless required in the bond covenants to be used for repayment purposes of the bond.

c. Loan or Grant Receivables. Housing assets include any loan or grant receivable, funded from the LMIHF, from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income as defined by the Community Redevelopment Law.

d. Rents and Payments from Operations. Housing assets include any funds derived from rents or operation of properties acquired for low- and moderate-income housing purposes by other parties that were financed with any source of funds, including residual receipt payments from developers, conditional grant repayments, cost savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

e. Rent and Payments from Operations Used to Maintain Affordability or for Affordable Housing-Related Enforceable Obligations. Housing assets include a stream of rents or other payments from housing tenants or operators of low- and moderate-income housing financed with any source of funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low- and moderate-income housing.

f. Amounts Owed to LMIHF. Repayment of amounts previously borrowed from, or owed to, the LMIHF (i.e. to make Supplemental Educational Revenue Augmentation Fund ("SERAF") payments in prior years), repayment of which had been deferred as of the effective date of the Dissolution Act, are considered housing assets. The repayments can only be made pursuant to a schedule that must be approved by the Oversight Board. The repayments cannot start before FY 2013-14 and the maximum annual repayment is strictly limited by statutory formula. The repayments related to the SERAF (as opposed to other amounts owed to the LMIHF for other reasons) must be made before specified loan repayments to the Sponsoring Community that are described in Part II.E.2.

g. Mixed Use Assets. If a development includes both affordable housing and other types of property, the Oversight Board determines if this mixed use property should remain intact or be split into affordable housing and non-affordable housing components. AB 1484 leaves to the Oversight Board (subject to the DOF review) the decision on whether to make an allocation and, if so, how to accomplish this allocation. The legislation directs the Oversight Board to consider the overall value to the community as well as the benefit to taxing entities of keeping the mixed use development intact or dividing the property in making its decision. The legislation also provides that the disposition of mixed assets may be accomplished by a revenue-sharing arrangement as approved by the Oversight Board on behalf of the taxing entities.

h. Housing Bond Proceeds. Housing bond proceeds from bonds issued prior to January 1, 2011 for affordable housing purposes and secured by a pledge of LMIHF, remaining after satisfaction of enforceable obligations approved on a ROPS (the "Excess Housing Bond Proceeds"), are considered housing assets. The legislation provides that an enforceable obligation may be satisfied by creation of reserves, for projects which are the subject

of that enforceable obligation, consistent with the contractual obligations for the project, or by expending funds to complete that project. See discussion in Part II.A.3 below regarding new process for use of Excess Housing Bond Proceeds.

i. Exclusion of Unencumbered LMIHF Balance. AB 1484 does not change the Dissolution Act treatment of the amounts in the LMIHF balance that were not encumbered by an enforceable obligation as of the effective date of the Dissolution Act. Those funds are to be distributed to the taxing entities pursuant to new audit and review procedures, described in Part II.D.2, and not retained by the Hosing Successor for affordable housing uses.

2. Transfer of Housing Assets. AB 1484 sets forth an explicit schedule related to the verification of housing assets transferred to the Housing Successor (Section 341676(a)(2)). By August 1, 2012, the Housing Successor is required to submit a list of all housing assets to the DOF in a format to be prescribed by the DOF. The list must include an explanation of why each asset qualifies as a housing asset, and include a list of assets that transferred between February 1, 2012 (when presumably all housing assets of a Dissolved RDA transferred to the Housing Successor by operation of law pursuant to 34176(a)(1)), and the date the list is made. The DOF has thirty (30) days after receipt of the housing asset list to object to any item on the list. The Housing Successor may request a meet and confer process with the DOF within five (5) business days of receiving any objection from the DOF. There is no timeframe set forth for completing this meet and confer process. Any asset ultimately determined not to be a housing asset is to be returned to the Successor Agency and is subject to clawback by the SCO under Section 34178.8 if not returned. Assets determined to be housing assets under this procedure are not subject to clawback by the SCO under Section 34178.8. The Successor Agency may retain a housing asset, and not transfer it to the Housing Successor, if that asset was previously pledged to pay bonds.

For the transfer of a housing asset that occurs after the date of the list, Sections 34181(c) and (f) provide that an Oversight Board must direct the transfer of housing assets after a 10-day public notice and the DOF then has five business days to review the proposed transfer with the option to extend the review period to up to 60 days. One possible example of this type of future transfer is a property acquired with LMIHF monies, which is in the process of undergoing Polanco Act clean-up and will transfer to the Housing Successor only upon completion of the remediation.

3. Use of Excess Housing Bond Proceeds. After the passage of the Dissolution Act, many practitioners considered any housing bond proceeds not yet committed to a specific project as housing assets to be used by the Housing Successor pursuant to the applicable bond documents with no oversight. AB 1484 significantly changes that practice.

Under Section 34176(g), the Housing Successor can use the Excess Housing Bond Proceeds (defined in subsection 1.h above) only after the following steps and approvals:

a. The Housing Successor must notify the Successor Agency of the intended use or commitment of Excess Housing Bond Proceeds at least twenty (20) days before the deadline to submit the ROPS to the Oversight Board.

b. The Successor Agency must list the proposed expenditure of Excess Housing Bond Proceeds as a separate line item on the ROPS prepared by the Successor Agency.

c. The Oversight Board must approve use of the Excess Housing Bond Proceeds on the ROPS.

d. The usual review period for the ROPS must be completed without objection to the use of the Excess Housing Bond Proceeds by the DOF, the CAC and the SCO.

e. Any review by the Successor Agency, Oversight Board and the DOF is limited to a determination that the use is consistent with the bond covenants and that sufficient funds are available.

f. No commitment or designation of use of the Excess Housing Bond Proceeds is valid until it is included on an approved and valid ROPS.

The Excess Housing Bond Proceeds must be used in a manner consistent with the purposes of the Housing Asset Fund (see subsection 4 below). The Successor Agency shall retain and expend the Excess Housing Bond Proceeds at the discretion of the Housing Successor; provided the Successor Agency ensures that the proceeds are expended in a manner consistent with the bond documents and any requirement relating to tax-exempt status of the bonds. The amount of the expenditures cannot exceed the amount of proceeds available.

4. Low and Moderate Income Housing Asset Fund. The Housing Successor must now create a new type of fund called the Low and Moderate Income Housing Asset Fund (the "Housing Asset Fund") in its accounting records pursuant to Section 34176(d). If the Housing Successor assumed the housing function of a Dissolved RDA with multiple projects areas, we suggest that the Housing Successor also account for the funds in the Housing Asset Fund on a project area basis for purposes of making applicable findings required under the Community Redevelopment Law. Any funds generated from housing assets (also known as program income by practitioners) and any funds transferred to the Housing Successor pursuant to the transfer provisions discussed in subsection 2 above (such as encumbered LMIHF monies) are required to be placed in the Housing Asset Fund. All payments made to repay amounts previously borrowed from, or owed to, the LMIHF, as of the effective date of the Dissolution Act, shall be placed in the Housing Asset Fund. In addition, twenty percent (20%) of all loan repayments made to the Sponsoring Community on loans described in Part II.E.2 will be deducted from those repayments and transferred to the Housing Asset Fund. All monies in the Housing Asset Fund must be used in accordance with the applicable housing-related provisions of the Community Redevelopment Law. This is a substantial change from the Housing FAQs and will provide a limited but on-going source of funds for low and moderate income housing activities in many communities.

5. Continuation of Community Redevelopment Law Housing Obligations. AB 1484 makes clear that no future deposits are required to be made to the LMIHF despite the assertion to the contrary by some housing advocacy groups. The legislation appears to make this requirement effective as of the effective date of the Dissolution Act therefore causing some ambiguity about whether LMIHF deposits were required for tax increment distributions made to Dissolved RDAs in December 2011 and January 2112.

AB 1484 fails to clearly address whether there are any continuing requirements with regard to redevelopment housing production and replacement housing obligations although the DOF has taken the position that those are no longer applicable except perhaps in the case of enforceable obligations. This may be an area for clean-up legislation in the future.

6. Housing Successors. AB 1484 clarifies many questions regarding affordable housing roles of the Housing Successor in the post- redevelopment era. However, some issues are not resolved. For instance, what happens in situations where the Sponsoring Community elects not to serve as the Housing Successor and the local housing authority also declines to take on that responsibility? Such a situation leaves the housing assets in limbo to the great distress, for instance, of a homeowner trying to refinance a home purchased under a first-time homebuyer program funded from LMIHF monies. Some practitioners had hoped AB 1484 would address this situation more directly. Presumably, the reluctance to act as the Housing Successor in those situations will be alleviated by the revised treatment of housing assets in AB 1484, which allows some flow of funds to the Housing Successor. However, further legislation may be required to address these situations, in particular, funding of administrative costs for Housing Successors where there is no stream of income derived from the Dissolved Agency's housing assets.

B. Successor Agency and Oversight Board Issues.

1. Successor Agency Legal Status. Under the Dissolution Act, the term "successor agency" was defined to refer to the Dissolved RDA's Sponsoring Community (the city, county or city and county that formed the Dissolved RDA), unless that Sponsoring Community adopted a resolution electing not to serve in that capacity. AB 1484 redefines "successor agency" to mean the successor entity to the Dissolved RDA pursuant to Section 34173.

Further, AB 1484 declares that "a successor agency is a separate legal entity from the public agency that provides for its governance," but then fails to directly address the relationship between the Successor Agency and that public agency that does provide for its governance. It appears that what AB 1484 is trying to establish is that: (a) unless the Sponsoring Community elected otherwise, the Sponsoring Community's governing body (e.g., city council or board of supervisors) and staff serve as the governing body and staff of the Successor Agency; but (b) the Successor Agency itself is a separate legal entity from the Sponsoring Community. AB 1484's apparent attempt to accomplish this result is ambiguous and imperfect at best.

As a separate legal entity, the Successor Agency will not merge with the public agency that provides for the Successor Agency's governance (Section 34173(g)). The Successor Agency retains the liabilities of the Dissolved RDA, as those do not transfer to the Dissolved RDA's Sponsoring Community (Section 34173(g)). The Successor Agency can sue and be sued in its own name (Section 34173(g)), and all litigation involving the Dissolved RDA is automatically transferred to the Successor Agency (Section 34173(g)).

The Successor Agency "retains" a separate collective bargaining status and the Dissolved RDA's employees do not automatically become employees of the Sponsoring Community (by

virtue of the Sponsoring Community's election to serve as the Successor Agency) (Section 34173(g)).

The Successor Agency succeeds to the organizational status of the Dissolved RDA but lacks the legal authority to participate in redevelopment activities except to complete work on enforceable obligations (Section 34173(g)).

AB 1484 further affirms that the Successor Agency is deemed to be a local public entity subject to the Ralph M. Brown Act (Section 34173(g)).

AB 1484 provides an opportunity for a Sponsoring Community that initially elected not to serve as a Successor Agency to reverse its decision and agree to serve as the Successor Agency (Section 34173(d)(4)). AB 1484 does not include a provision for a Sponsoring Community that initially elected to serve as a Successor Agency to later reverse the election and determine to no longer serve as the Successor Agency.

Although AB 1484 establishes the separate legal status of the Successor Agency and continues to limit the liability of the Successor Agency to the total sum of property tax revenues it receives pursuant to the Dissolution Act and the value of assets transferred to it (Section 34173(e)), several provisions of AB 1484 expose the Dissolved RDA's Sponsoring Community to penalties and other liabilities for the actions and inactions of the now separate and distinct legal entity that is the Successor Agency (see Part II.D.1. and 2. for additional discussion).

AB 1484 also provides that the Successor Agency is included in the definition of a "local public entity" required to participate in a neutral evaluation process pursuant to Government Code Section 53760.3 prior to filing a petition for federal bankruptcy.

2. Successor Agency Roles, Limitations, and Funding.

a. Authorized Activities. In addition to the activities authorized under the Dissolution Act, AB 1484 clarifies the authority of a Successor Agency to conduct certain activities, and also authorizes a Successor Agency to perform activities not previously authorized under the Dissolution Act.

AB 1484 clarifies that a Successor Agency may assume existing cleanup plans and liability limits under the Polanco Redevelopment Act[1] (Section 34173(f)), which was previously understood by most practitioners to be the legislative intent, but not expressly stated in the Dissolution Act.

In addition to previous authority granted under Section 34180(c), under AB 1484 a Successor Agency is authorized to hold reserves when required by bond indenture or when the next property tax allocation from the RPPTF will be insufficient to pay all bond debt obligations due in the following six-month period (Section 34171(d)(1)(A)).

[1] The existing cleanup plans and liability limits may also be transferred to the Housing Successor at that entity's request.

AB 1484 also more clearly sets forth a Successor Agency's authority to create enforceable obligations to conduct wind-down activities of the Dissolved RDA, such as hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance (Section 34177.3(b)).

Under AB 1484, a Successor Agency can, subject to Oversight Board approval, also enter into contracts, that will constitute enforceable obligations, with the Sponsoring Community to borrow from the Sponsoring Community to assist a Successor Agency to fund shortfalls for Successor Agency administrative costs, enforceable obligations, or project-related expenses (Section 34173(h)).

b. Annual Audit. A Successor Agency must also cause a certified public accountant to conduct a post-audit of a Successor Agency's financial transactions and records at least once annually (Section 34177(n)). AB 1484 is unclear on whether the cost of such post-audits may be shown as a separate enforceable obligation line item on a ROPS.

c. Additional Limitation on Activities. AB 1484 provides that a Successor Agency lacks the authority to enter into new enforceable obligations under the applicable portions of the Dissolution Act or begin new redevelopment work, except to comply with enforceable obligations that existed prior to June 28, 2011 (Section 34177.3(a)).

A Successor Agency has no authority and is prohibited from transferring any powers or revenues of a Successor Agency to any other party (public or private) except pursuant to an enforceable obligation listed on a DOF-approved ROPS (Section 34177.3(c)).

Under the Dissolution Act, a Successor Agency was authorized, with the approval of its Oversight Board, to re-enter into agreements with its Sponsoring Community pursuant to Section 34178(a) and Section 34180(h). AB 1484 narrows this authority, by providing that neither the Successor Agency or its Oversight Board has authority to restore funding for an enforceable obligation between a Successor Agency and the Sponsoring Community if the enforceable obligation was deleted or reduced by the DOF pursuant to Section 34179(h) (unless allowed as a result of the meet and confer process with the DOF, required by court order, or pursuant to new authority created by AB 1484 for certain Successor Agency/Sponsoring Community contracts as fully discussed in Part II.E.2 (Sections 34178(a); 34180(a), and 34180(h)).

d. Successor Agency Administrative Costs. The Dissolution Act established an administrative cost allowance for each Successor Agency, but did not specify which costs of a Successor Agency must be paid from the administrative cost allowance and which Successor Agency costs could be separately placed on a ROPS for payment in addition to and outside of the administrative cost allowance. AB 1484 only partially fills that void.

AB 1484 states that the administrative cost allowance excludes litigation costs related to assets or obligations, settlements and judgments, and predisposition carrying costs for property transferred to a Successor Agency. Furthermore, AB 1484 clarifies that project-specific employee costs (like employee costs for construction inspection, project management, and actual

construction) are excluded from a Successor Agency's administrative cost allowance. By excluding these costs from the administrative cost allowance, AB 1484 grants express authority to a Successor Agency to separately list enforceable obligations for such costs on a ROPS for payment in addition to and outside of the administrative cost allowance.

AB 1484 also provides for various mechanisms to reduce a Successor Agency's administrative cost allowance. As more fully discussed in Section II.B.3, the Oversight Board is authorized to reduce the administrative cost allowance below the $250,000 annual minimum required under the Dissolution Act (Section 34171(b)). Additionally, upon failure by a Successor Agency to submit a ROPS by October 14 and March 13 of each year, the maximum administrative cost allowance for the fiscal year can be reduced by 25% (Section 34177(m))[2].

e. Wind-Down of a Successor Agency. When all debts of the Dissolved RDA are retired or paid off, a Successor Agency is required to dispose of all remaining assets and terminate its existence within one year of the final debt payment (Section 34187(b)). AB 1484 is silent on which entity a Successor Agency is allowed to transfer its remaining assets to, how that transfer should be effectuated, or if the Oversight Board has a role in the process of terminating a Successor Agency's existence. Also unclear is what becomes of a Successor Agency's non-monetary obligations or duties.

3. Oversight Board Composition and Roles.

a. Composition. AB 1484 makes modifications to the determination of the members of the Oversight Board. Under the Dissolution Act, one member of the Oversight Board is to be selected by the largest special district, by property tax share, with territory in the territorial jurisdiction of the Dissolved RDA. Disputes arose in several jurisdictions related to making that determination and the Dissolution Act did not provide for an arbiter of the dispute. Under AB 1484, the CAC is given the authority to determine which special district is the largest special district, by property tax share, with territory in the territorial jurisdiction of the Dissolved RDA (Section 34179(a)(3(B)).

The Dissolution Act required that one Oversight Board member, representing the employees of the Dissolved RDA, be selected from the recognized employee organization representing the largest number of Dissolved RDA employees employed by a Successor Agency. AB 1484 clarifies that in the case where city or county employees performed the administrative duties of the Dissolved RDA, the appointment to the Oversight Board under 34179(a)(7) is to be made from the recognized employee organization representing the city or county employees that performed the administrative duties of the Dissolved RDA (Section 34179(a)(7)). AB 1484 further clarifies that no conflict of interest exists (under Government Code Section 1090) when the Oversight Board member, employed by a Successor Agency or the Sponsoring Community and appointed pursuant to Section 34179(a)(7), votes to approve a contract as an enforceable obligation (Section 34179(a)(7)).

[2] For the ROPS covering January 1, 2013 through June 30, 2013 this date is September 10.

b. Staffing. Under the Dissolution Act, a Successor Agency is charged with providing staffing to its Oversight Board. Under AB 1484, the Oversight Board can direct a Successor Agency to provide additional legal or financial advice independent from a Successor Agency staff (Section 34179(n)) and the Oversight Board is also authorized to contract with the county or other public or private agency for administrative support (Section 34179(o)).

c. Powers. Under the Dissolution Act, a Successor Agency was guaranteed an administrative cost allowance of not less than $250,000 for each fiscal year. Under AB 1484, the Oversight Board may reduce a Successor Agency's administrative cost allowance below the $250,000 statutory minimum (Section 34171(b)).

AB 1484 further provides that Oversight Board decisions on matters within its purview supersede decisions of a Successor Agency or Successor Agency staff (Section 34179(p)).

d. Immunities. Oversight Board members have the same immunities applicable to public entities and public employees (Section 34179(d)) when exercising the authority granted to the Oversight Board under the Dissolution Act and AB 1484.

e. Review of Oversight Board Actions. AB 1484 requires that all actions taken by an Oversight Board be adopted by resolution (Section 34179(e)). A Successor Agency must notify the County Administrative Officer, the CAC, and the DOF, at the same time the Successor Agency transmits a proposed action to the Oversight Board for its approval (Section 34180(j)).

All actions taken by an Oversight Board require transmittal of notice to the DOF by electronic means in a manner of the DOF's choosing. Under the Dissolution Act, the DOF had a period of three business days to request review of Oversight Board actions. AB 1484 extends that time for the DOF to request review of an action to five business days (Section 34179(h)). Actions of the Oversight Board are deemed effective if the DOF does not request a review within five business days of receipt of the notice by the DOF. If the DOF requests a review of a particular Oversight Board action, the DOF has 40 calendar days to approve the action or return it to the Oversight Board for its reconsideration, giving the DOF an additional 30 days to review actions of the Oversight Board beyond the deadline originally in the Dissolution Act. For Oversight Board actions taken pursuant to Sections 34181(a) and (c) related to the disposition of real property and to housing assets, the DOF may extend the review period to 60 calendar days (Section 34181(f)). As discussed in Part II.C.2.c, a slightly different review period applies to the DOF's review of a ROPS.

C. Enforceable Obligations and ROPS Issues.

1. Enforceable Obligations. AB 1484 contains numerous substantive changes to the definition of the term "enforceable obligation."

In recognition of the timing issues related to the implementation of the Dissolution Act, under AB 1484, a Successor Agency is granted authority to amend the EOPS to authorize

continued payments on enforceable obligations until the ROPS covering the period from January 1, 2012 through June 30, 2012 has been approved by the Oversight Board and the DOF (Section 34177(a)(1)-(2)). AB 1484 also deletes the prohibition on making payments on enforceable obligations after May 1, 2012 unless a ROPS was approved by the Oversight Board and the DOF and certified by the CAC. Instead, under AB 1484, a Successor Agency is allowed to make payments on enforceable obligations listed on the EOPS through the date that the initial ROPS is approved by the Oversight Board and the DOF, erasing any uncertainty for payments made after May 1, 2012 but before the ROPS was approved by the DOF, which for most agencies did not occur until later in May.

AB 1484 clarifies that costs incurred to comply with collective bargaining agreements for layoffs or terminations of employees that performed work for the Dissolved RDA are payable for any employees to whom the obligations apply (Section 34171(d)(1)(C)). If an employee is transferred to the Housing Successor, a Successor Agency is authorized to enter into a contract with the Housing Successor to reimburse the Housing Successor for any costs of the employee obligations, and that contract will constitute an enforceable obligation of the Successor Agency (Section 34171(d)(1)(C)).

AB 1484 clarifies that contracts for the administration or operation of the Successor Agency, including agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and predisposition asset carrying costs, are enforceable obligations of the Successor Agency(Section 34171(d)(1)(F)).

Contrary to published interpretations of the Dissolution Act posted by the DOF, AB 1484 establishes that amounts borrowed from and payments owing to the LMIHF (including SERAF loans) are enforceable obligations and are payable to the Housing Successor (Section 34171(d)(1)(G)) (see further discussion in Part II.A.1.f).

As discussed in other sections of this Summary, AB 1484 also allows a Successor Agency, subject to Oversight Board approval, to enter into an enforceable obligation whereby a Successor Agency borrows money from the Dissolved RDA's Sponsoring Community for administrative costs, enforceable obligations, or project-related expenses at the Sponsoring Community's discretion (Section 34173(h);[3]

AB 1484 also purports to retroactively declare as non-enforceable any contract entered into by a redevelopment agency after June 27, 2011 (Section 34177.3(d)). (See more detailed discussion in Part II.F.5.)

2. Recognized Obligation Payment Schedules.

AB 1484 makes several changes to the process and timing for preparation and approval of each ROPS.

[3] Technically, Section 34173(h) only gives authority to a city, not a county, to make such a loan, although there does not appear to be any policy reason why the Legislature would intend such a distinction.

a. Changes to the Initial ROPS (For the Period Ending June 30, 2012). AB 1484 deletes the requirement that the initial ROPS be certified by the CAC before it can take effect (Section 34177(l)(2)(A)). AB 1484 also reforms dates and payment requirements in the initial ROPS to reflect delays in implementing the Dissolution Act caused by litigation (i.e. a new requirement that the initial ROPS specify January payments and estimate payments through June 30, 2012). AB 1484 states that the Initial ROPS takes effect once it has been approved by the Oversight Board and the DOF.

b. Schedule for Adoption of ROPS. AB 1484 establishes a schedule for adoption of the ROPS for the period ending June 30, 2013 (the "Third ROPS") and all subsequent ROPS.

Although the schedule previously distributed by the DOF indicated that a Successor Agency and its Oversight Board would have until October 1, 2012 to approve the Third ROPS, under AB 1484 a Successor Agency is required to submit to the DOF and the CAC the Third ROPS, approved by the Oversight Board, no later than September 1, 2012.

The DOF will require that the ROPS be completed on a DOF-approved form. Moreover, AB 1484 now requires the Successor Agency staff to submit an electronic copy of the ROPS to the county administrative officer, the CAC, and the DOF at the same time as the proposed ROPS is submitted to the Oversight Board for approval (Section 34177(l)(2)(B)).

Beginning with the fourth ROPS (for the period ending December 31, 2013), a Successor Agency will be required to submit an Oversight Board approved ROPS to the CAC and the DOF no fewer than 90 days prior to the semiannual RPTTF property fund distribution (or October 4 for the January 2 distribution and March 3 for the June 1 distribution) (Section 34177(m)). If a Successor Agency fails to timely submit an Oversight Board approved ROPS within the specified deadlines, AB 1484 gives standing to creditors of a Successor Agency, the DOF and affected taxing entities to file suit for writ of mandate to compel a Successor Agency to adopt a ROPS (Section 34177(m)), and exposes the Successor Agency to additional penalties described below.

c. Review of ROPS. AB 1484 greatly expands this review period and authority of the DOF and significantly changes the ROPS review and approval process. Under the Dissolution Act, the DOF had a period of three business days to request a review of an enforceable obligation listed on a ROPS. AB 1484 extends the deadline to request review to five business days. It is presumed, pursuant to Section 34179(h) that if the DOF does not request a review of any items listed on a ROPS within the five business day review period, the ROPS will be deemed effective. The CAC's role in review of the ROPS is discussed in more detail in Part II.D.3.

Under AB 1484, the DOF is required to make its determination "of the enforceable obligations and the amounts and funding sources of the enforceable obligations" no later than 45 days after the ROPS has been submitted by a Successor Agency. The addition of Section 34177(m) appears to give the DOF authority not only to determine what constitutes an enforceable obligation, but also provides the additional authority to determine the amount and

funding source to meet enforceable obligations. Furthermore, amendments to Section 34179(h), give the DOF the authority to eliminate or modify any item on the ROPS being reviewed under Section 34179 prior to DOF approval (Section 34179(h)). In some respects, these changes appear to provide statutory authority for practices the DOF had already assumed for itself in the first and second ROPS reviews.

A Successor Agency may request additional review by the DOF and an opportunity to meet and confer on disputed items, but such a request must be made within five business days of the Successor Agency's receipt of a DOF determination (Section 34177(m)). The DOF is then required to notify a Successor Agency and the CAC of its review at least 15 days before the date of the property tax distribution (by December 18 for the January 2 distribution and May 17 for the June 1 distribution).

A Successor Agency and Oversight Board may approve amendments to a ROPS to reflect the resolution of a dispute between the DOF and a Successor Agency, but such amendments will not effect a past allocation of property taxes or create a liability to any affected taxing entity with respect to past allocations (Section 34179(h)).

d. Penalties. Failure to approve and submit a timely ROPS may result in the assessment of various penalties to a Successor Agency and/or to the Sponsoring Community.

If a Successor Agency does not timely submit a ROPS pursuant to the deadlines set forth in AB 1484, the Sponsoring Community may be subject to a $10,000 per day civil penalty for each day the ROPS is delinquent. In addition, failure of a Successor Agency to submit a ROPS within 10 days of the deadline (by October 14 for the January 2 distribution and March 13 for the June 1 distribution)[4] may result in a 25% reduction of a Successor Agency's maximum administrative cost allowance for the period covered by the delinquent ROPS (Section 34177(m)(2)).

If a Successor Agency fails to submit an Oversight Board approved ROPS pursuant to the requirements of AB 1484 within five business days after the April 1 and October 1 dates on which the CAC releases the estimated property tax allocations from the RPTTF, the DOF may determine if any amount should be withheld to pay enforceable obligations (Section 34177(m)(3)). Funds withheld pursuant Section 34177(m)(3) are to be distributed to affected taxing entities in accordance with Section 34183(a)(4). If the DOF orders the CAC to withhold funds to pay for a Successor Agency's enforceable obligations, those funds will only be disbursed to the Successor Agency pursuant to a ROPS approved by the DOF (Section 34177(m)(3)).

D. Flow of Funds and Financial Issues.

1. Near Term Payments to Taxing Entities. AB 1484 contains provisions that appear to be designed to assure payments are made to the taxing entities in the short term, including payment of the FY 2011-12 pass-through payments and the potential payment of residual

[4] For the Third ROPS, the date is September 10, 2012.

amounts pursuant to Section 34183(a)(4) for the first ROPS period although there was no distribution from the RPTTF for that period.

a. Fiscal Year 2011-12 Pass-through Payments. AB 1484 adds Section 34184.5 to the Dissolution Act to provide for the payment of the FY 2011-12 pass-through amounts to the taxing entities if such payments were not previously made.

Section 34184.5(a)(1) requires the CAC to make payments to the taxing entities for the FY 2011-12 pass-through amounts that were not previously paid, either by the former Dissolved RDA or by the CAC from the June 1, 2012 distribution from the RPTTF, by reducing the amounts that would be paid to a Successor Agency for enforceable obligations in subsequent distributions from the RPTTF, subject to any subordination of the payments owed to bond debt (as currently allowed pursuant to Section 34183(b)). The CAC will continue to reduce the amounts paid to a Successor Agency from the RPTTF during subsequent distributions until the full amount owed to the taxing entities for the FY 2011-12 pass-through payments have been made. Alternatively, a Successor Agency can use reserve funds to make these payments.

Pursuant to this section, if a Successor Agency did not have sufficient funds to pay the full amount of its pass-through payments for FY 2011-12, the unpaid amount effectively becomes a debt of a Successor Agency with a higher priority for payment from the RPTTF than other enforceable obligations in the next distribution from the RPTTF. The only exception will be if the Dissolved RDA, prior to dissolution, subordinated the pass-through payments to bond debt in which event the bond debt will have priority over the pass-through payments as currently allowed by Section 34183(b).

Under Section 34184.5(a)(2), if the Dissolved RDA did not make the FY 2011-12 pass-through payments but the CAC did, the CAC can offset up to one-half of the amount the CAC paid from the next distribution from the RPTTF to the Successor Agency. If the amount distributed to the Successor Agency is not sufficient to make the full deduction of one-half of the amount owed in the next distribution, the CAC is to continue to reduce the amounts allocated to the Successor Agency in subsequent distributions until one-half of the amount paid by the CAC is deducted. The CAC can also accept payments from the Successor Agency's reserve funds to cover the deduction provided for above.

b. Residual Distributions for FY 2011-12. Section 34183.5 also contains procedures for distributing any residual amounts of funds in the RPTTF that would have been available if the Dissolution Act had gone into effect when originally intended. If Dissolved RDAs had been dissolved effective October 1, 2011 under the Dissolution Act as originally set out in the statute (rather than on February 1, 2012 as modified by the Supreme Court), the first distribution from the RPTTF would have been in January 2012 and would have covered the initial ROPS period of January 1, 2012 through June 30, 2012. However, because of the Supreme Court stay, the funds that would have been available for deposit into the RPTTF for the January 2012 distribution were distributed to the Dissolved RDAs late in 2011 and used by most agencies to pay enforceable obligations on the EOPS incurred since July 1, 2011. The purpose

of Section 34183.5(b) appears to be to retroactively undo the Supreme Court stay and attempt expeditiously to collect funds from Successor Agencies[5].

The provisions of Section 34183.5 require the distribution of residual funds deemed to be owing to the taxing entities from the first ROPS period of January through June 2012. The amounts owed to the taxing entities pursuant to 34183(a)(4) are to be determined based on the initial ROPS approved by the Department of Finance. How the amount is to be determined since there was no distribution from the RPTTF for this period is not explained in the legislation.

If the taxing entities have not received the full amount owed under Section 34183(a)(4) by July 9, 2012, the CAC is to determine the amount, if any, owed by each Successor Agency and demand the funds from the Successor Agency by no later than July 12, 2012. Although this section does not appear to allow for any appeal of the CAC's demand, the DOF assured legislators prior to passage of AB 1484 that the meet and confer provisions elsewhere in the legislation are applicable to this section as well.

If the CAC fails to make the demand by July 9, 2012, the DOF or any affected taxing agency can request a writ of mandate to compel the CAC to make the required determination of the amounts owed. The CAC is subject to penalties of 10% of the amount owed plus 1.5 % of the amount owed to each taxing entity for each month that it fails to perform its duties under this section. Additionally, any county that fails to make the determinations required by July 9, 2012 or fails to distribute the full amount received from the Successor Agencies by July 16, 2012 will not receive the distribution of sales and use tax scheduled for July 18, 2012 or any subsequent sales and use tax distributions up to the full amount owed to the taxing entities.

If the Successor Agency fails to make the payment demanded by the CAC by July 12, 2012, the DOF or any taxing entity can bring a writ of mandate to require the payment. Failure to make the payment will subject the Successor Agency and the Sponsoring Community to penalties of 10% of the amount owed plus 1.5% for each month that the payments are not made. The Successor Agency also cannot make any payment other than bond debt until the amounts owed are paid.

Finally, if the amounts owed are not paid on July 12, 2012, the Sponsoring Community will not receive a distribution of sales and use tax on July 18, 2012 or any subsequent distributions up to the full amount owed to the taxing entities.[6]

2. Unencumbered Fund Remittances; Finding of Completion. Section 34179.5 provides new procedures for reviewing the available cash assets of the Dissolved RDA (the "Review"). This Review is to be conducted by each Successor Agency with the end goal of distributing what are determined to be available cash assets to the taxing entities during FY

[5] It should be noted that the DOF Exhibit H, *Distribution, Reporting and Transaction Period for the RPTTF*, shows that no residual distribution pursuant to Section 34183(a)(4) is due for the initial ROPS period. This appears to be the logical consequence of the fact that there were no deposits into the RPTTF for this reporting period so distributions of residual amounts appear to be impossible.

[6] The constitutionality of these offsets is questionable.

2012-13. At the conclusion of the Review, if the Successor Agency remits the cash assets to the CAC, and if the Successor Agency has also made the payments summarized in Part II.D.1, the DOF will issue a finding of completion for the Successor Agency (a "Finding of Completion"). As fully discussed in Part II.E, the issuance of the Finding of Completion makes the Successor Agency eligible to retain Dissolved RDA properties, reinstate loans between the Dissolved RDA and the Sponsoring Community, and spend unspent bond proceeds from bonds issued prior to January 1, 2011 for the purposes for which the bonds were issued (subject to restrictions).

Successor Agencies undertaking the Review will need to proceed carefully in instructing the accountant hired. The Review is governed by definitions contained in Section 34179.5 that are multi-layered and nuanced.

a. Timeline for Review. The Review as it relates to the LMIHF must be complete by October 1, 2012. The Review for all other funds must be complete by December 15, 2012.

b. Review Procedures. Section 34179.5 requires each Successor Agency to hire a licensed accountant with experience and expertise in local government accounting to review the unobligated balances available for transfer to the taxing entities. The legislation does not provide any funding source for paying for the accountant and does not indicate whether the costs of the Review are to be covered by the Successor Agency's administrative cost allowance. The selection of the accountant has to be approved by the CAC. Alternatively, an audit conducted by the CAC that provides the required information can be used to comply if the Oversight Board concurs. The nature of the Review differs significantly from the agreed-upon procedure audits currently under way (see further discussion in Part II.D.3), so it is unlikely that the agreed-upon procedures audits will provide the required information. The DOF can specify the form in which the Review is to be provided.

c. Contents of Review. The statute contains specific definitions to be used for purposes of complying with the Review requirement. Proper interpretation of these definitions is essential to ensuring that the Review is conducted correctly. A Successor Agency will want to work closely with the accountant hired to perform the Review on setting the parameters for the Review to ensure correct application.

(1) Enforceable Obligations. For purposes of the Review, "enforceable obligations" are considered primarily to be those contained in the definition of enforceable obligations that applies after dissolution as set forth in Section 34171(d) and thus would exclude most contracts or agreements between the Dissolved RDA and the Sponsoring Community even though under the Dissolution Act those contracts are considered enforceable obligations prior to dissolution (through January 31, 2012). Since the Review covers both pre-dissolution and post-dissolution periods, this definition appears to be a camouflaged attempt to retroactively disallow payments prior to dissolution made by a Dissolved RDA to its Sponsoring Community, even though such payments were valid at the time made.

(2) Cash and Cash Equivalents. For purposes of the Review, "cash and cash equivalents" are defined as cash in hand, bank deposits, LAIF deposits, deposits with

the Sponsoring Community treasury and any other pool, marketable securities, commercial paper, US Treasury bills, banker's acceptances, payables and amounts from other parties and any other money owed by the Successor Agency (presumably this section was intended to mean amounts owed to the Successor Agency).

(3) Transferred. The definition of "Transferred" presents numerous interpretation challenges. As the definition reads: "Transferred means the transmission of money to another party that is not in payment of goods or services or an investment or where the payment is de minimus. Transfer also means where the payments are ultimately merely a restriction on the use of the money" (Section 34179.5(b)(3)). The Review is required to include the dollar value of assets transferred from the Dissolved RDA or the Successor Agency to the Sponsoring Community or any other party. Based on the definition of the term Transferred and Transfer in the statute, it appears that the Review need only cover those instances where assets were transferred without consideration, for investment purposes or pursuant to agreements that merely restricted the use of the money.

The Review is required to include all of the following:

- The dollar value of assets transferred from the Dissolved RDA to the Successor Agency upon dissolution;

- The dollar value of assets and cash and cash equivalents transferred by the Dissolved RDA or Successor Agency to the Sponsoring Community between January 1, 2011 and June 30, 2012, including the purpose of any such transfer and the documentation for any enforceable obligation related to such transfer;

- The dollar value of any cash or cash equivalents transferred after January 1, 2011 through June 30, 2012 to any other public agency or private party and the purpose of those transfers including documentation of any enforceable obligations requiring the transfer;

- Expenditure and revenue accounting information and transfers and funding sources for the 2010-11 and 2011-12 fiscal years that reconciles the balances, assets, liabilities of the Successor Agency on June 30, 2012 to those reported to the SCO for FY 2009-10;

- Separate accountings for (i) the balance of the LMIHF, and (ii) for all other funds combined that includes the following:

  - A statement of value of each fund as of June 30, 2012;

  - An itemized statement listing any amounts that are legally restricted and cannot be provided to the taxing entities, including bond proceeds, grant funds or restricted funds provided by other governmental entities;

o An itemized statement of the value of any assets that are not cash or cash equivalents which can include land, records and equipment. Physical assets can be valued at purchase cost or estimated market value. Housing assets are to be listed separately;

o An itemized list of any current balances that are legally owed to fund an enforceable obligation with the specific enforceable obligation identified. The Successor Agency is also to provide a listing of all approved enforceable obligations that includes a projection of the annual payments needed to satisfy the obligation and the projected revenues available to pay the obligation;

o If the Review finds that the current balances are necessary to fund the enforceable obligations because available restricted funds and future revenues are insufficient, the Review must identify the amounts necessary to pay the enforceable obligations from the current balances;

o Additionally, if the Review determines that the Successor Agency will have insufficient property tax to pay the enforceable obligations, the Review is to include the projected property tax revenue and other revenues projected to be available to the Successor Agency along with the amount and timing of bond debt payments of the Successor Agency; and

o An itemized list of the current balances that will be needed to pay enforceable obligations to be placed on a ROPS for the current fiscal year.

The Review is required to total the net balances available after deducting the restricted funds, the physical assets and the balances necessary for payment of enforceable obligations where there are insufficient funds from the projected property tax revenues and other revenues to pay the enforceable obligations. The balance available is to include the value of any cash transferred between January 1, 2011 and June 30, 2012 if there is not an enforceable obligation for that transfer. It is a rebuttable presumption that cash and cash equivalents are available to disburse to the taxing entities.

If the Review determines that there are insufficient cash balances to pay the amount determined to be the available amount, that insufficiency is to be demonstrated in a separate schedule.

d. Oversight Board and DOF Role with Respect to Review. Upon completion of the Review, the Review is to be submitted to the Oversight Board for review and approval. Additionally, the Successor Agency is to submit a copy of the ROPS to the County administrative officer, the CAC and the DOF at the same time the Successor Agency submits the Review to the Oversight Board.

Upon receipt of the Review, the Oversight Board is to convene a public comment session to take place at least five business days before the Oversight Board votes on approval of the Review. The Oversight Board is to review, approve and transmit the Review by October 15, 2012 for the LMIHF and by January 15, 2013 for all other funds. The Oversight Board can

adjust amounts provided in the Review to reflect additional information and analysis. The Oversight Board can also authorize the Successor Agency to retain the restricted funds, the non-cash assets, and the cash balances that are contractually committed or needed for items to be placed on the ROPS during the fiscal year.

The DOF may adjust the amounts determined to be available for allocation to the taxing entities in the Review based on its analysis and information provided by the Successor Agency and others. The DOF is to complete its review by November 9, 2012 for the LMIHF and by April 1, 2013 for the remaining funds. The DOF is required to provide the Successor Agency and the Oversight Board with an explanation of the basis for overturning or modifying any findings or determinations of the Oversight Board.

The Successor Agency and the Dissolved RDA's Sponsoring Community can request a meet and confer with the DOF after the DOF has made its determination of the amounts available for allocation to the taxing entities within five business days of receipt of the DOF's determination (and no later than November 16, 2012 for the LMIHF portion of the Review). The request to meet and confer must include an explanation and documentation of the basis for the dispute. The DOF is required to meet and confer with the requesting party and make a decision within 30 days of the request to meet and confer.

e. Payments to Taxing Entities and Penalties for Noncompliance. Successor Agencies are required to transmit the funds determined to be available for allocation to the taxing entities within five business days of receipt of the notification of the amount determined by the DOF. Successor Agencies are required to make diligent efforts to recover money determined to be transferred without an enforceable obligation. If the Successor Agency fails to transmit the funds determined to be available for allocation to the taxing entities, there are a variety of remedies set forth in the statute including:

- If the Successor Agency cannot recover funds transferred to another public agency without an enforceable obligation, the DOF can order the Board of Equalization to offset the sales and use tax of the local agency that received the transferred funds, or the if the DOF does not order a sales or use tax offset, the CAC can offset property tax of the local agency that received the funds[7];

- The DOF and the CAC can demand the return of funds improperly spent or transferred to a private party and can recover those funds plus a 10% penalty and interest through any lawful means;

- If the Sponsoring Community is performing the duties of the Successor Agency[8], the DOF can order an offset of the Sponsoring Community's sales and use tax. If the DOF does not order such an offset, the CAC can offset property tax owed to the Sponsoring Community;

[7] As noted earlier, the constitutionality of these offsets is questionable.
[8] The statute does not address the fact that, pursuant to AB 1484, each Successor Agency is now a separate and distinct legal entity and is no longer the Sponsoring Community.

- As an alternative to all of the above, the DOF can order the CAC to offset the amounts owed against future distributions from the RPTTF to the Successor Agency pursuant to Section 34183.

If the DOF determines that the full payment of the amounts determined to be available for allocation to the taxing entities is not feasible or would jeopardize a Successor Agency's ability to pay enforceable obligations, the DOF can agree to an installment payment plan.

3. County Auditor-Controller Responsibilities; Redevelopment Property Tax Trust Fund Distribution Issues. AB 1484 contains numerous substantive changes to the role and responsibilities of the CAC in the redevelopment unwind process and to the instructions for administering and making distributions from the RPTTF. In addition to matters described in other parts of this Summary, key changes include:

a. The initial ROPS (covering January through June 2012) is no longer subject to certification by the CAC based on the results of the agreed-upon procedures audit that the CAC is required to conduct or cause to be conducted by an external auditor (the "AUP Audit") (Section 34177(l)(2)). This change raises questions about the continuing purpose of the AUP Audit.

b. The AUP Audit completion deadline is pushed back from July 1 to October 1, 2012, and related delivery dates are pushed back correspondingly (Section 34182(a)).

c. Instead of "certifying" a ROPS, the CAC is instead authorized under AB 1484 to review a ROPS and object to inclusion of any items that are not demonstrated to be enforceable obligations and/or the funding source proposed for any items. Such review and objection may occur before or after Oversight Board action on a particular ROPS. The CAC is directed to submit notice to the DOF, the Successor Agency, and the Oversight Board concerning any objection, generally at least 60 days prior to the distribution date for moneys from the RPTTF for the applicable ROPS period. If an Oversight Board disputes a CAC objection to a ROPS item, it may refer the matter to the DOF for determination of what will be approved for inclusion on the applicable ROPS (Section 34182.5). The AUP Audit presumably could be of use to a CAC in this role.

d. In calculating pass-through payment amounts that would have been owed had the Dissolved RDA not been dissolved, the CAC is directed to assume that the requirement still existed to deposit a portion of what would have been tax increment into the LMIHF (Section 34183(a)(1)).

e. The obligation of the CAC to make a distribution from the RPTTF on May 16, 2012 (as required by the Dissolution Act as modified by the Supreme Court) is deleted by AB 1484, thereby sanctioning the previously unauthorized practice implemented by most CACs (Section 34183(a)(2)).

f. The CAC is required to provide estimates of the amounts it will distribute from the RPTTF for the upcoming six-month period on October 1 (was November 1 in the Dissolution Act) and April 1 (was May 1 in the Dissolution Act) (Section 34182(c)(4)).

g. The date for distributions by a CAC from the RPTTF for the first six-month period of each calendar year (starting in 2013) is moved from January 16 to January 2. The distribution date for the second six-month period of each calendar year remains June 1 (Sections 34183(a) and 34185).

h. If there is a confirmed insufficiency of funds available to pay all of a Successor Agency's debt service enforceable obligations, the Dissolution Act established a procedure for reducing various distributions from the RPTTF to deal with such insufficiency, including giving priority of RPTTF distributions to such debt service payments over any statutory pass-through payments that had been subordinated under the applicable statutory procedure to the debt service payments. AB 1484 clarifies that contract pass-through payment obligations entered into prior to 1994 that were expressly subordinated to debt service payments on a particular enforceable obligation are also subordinated for purposes of distributions by the CAC from the RPTTF (Section 34183(b)).

i. Within 10 days after each semi-annual distribution from the RPTTF, the CAC must provide a report to the DOF on specified matters related to such distribution (Section 34183(e)).

j. AB 1484 establishes a procedure for a CAC to adjust the amounts distributed from the RPTTF to a particular taxing entity for a succeeding six-month period to the extent the amount of pass-through payment distributed by the CAC to that taxing entity for the preceding six-month period (based on estimates of the amount owed) varied from the actual amount of pass-through payment owed to that taxing entity (based on more complete subsequent information) (Section 34186(b)).

k. Once a Successor Agency pays off all the enforceable obligations of the Dissolved RDA, AB 1484 directs it to dispose of all remaining assets and terminate its existence within one year of the final debt payment. When the Successor Agency is terminated, all pass-through payment obligations cease and no further property tax is deposited in or distributed from the RPTTF, with the effect that all property tax that would formerly have been tax increment becomes normal property taxes distributed among the taxing entities as if the Dissolved RDA had never existed (Section 34187(b)).

l. Acknowledging that it had created inconsistency and uncertainty in the way it enacted related provisions of the Dissolution Act regarding calculation of the amount of pass-through payments owed, the Legislature in AB 1484 states its intent that the full amount of pass-through payments be made from the RPTTF, and that the apparent reduction in such payments mandated by one of the provisions at issue in the Dissolution Act would not be operative (uncodified Section 36 of AB 1484). Serious questions remain as to whether the payment of full pass-through amounts, as now clarified by AB 1484, violates various provisions of the California Constitution.

4. Reversal of Certain Successor Agency/Sponsoring Community Transactions. AB 1484 directs the SCO to review activities of each Successor Agency to determine if it transferred an asset on or after February 1, 2012 (when the Successor Agency was established) to the Sponsoring Community (city, county, or city and county that formed the Dissolved RDA) other than pursuant to an enforceable obligation contained on an approved and valid ROPS.[9] If such a transfer did occur other than in connection with an enforceable obligation, then the SCO is directed to order the return of the transferred asset to the Successor Agency (unless such return is prohibited by state and federal law), and the "affected local agency" (words used in the statute) is directed to effectuate such return of the applicable asset as soon as practicable. This provision does not apply to the transfer of housing assets (see discussion of housing asset definition in Part II.A) which, if held by the Successor Agency, are allowed and required to be transferred to a Housing Successor (which often will be the Sponsoring Community) for continued housing functions (Section 34178.8).

5. Refunding Bonds. AB 1484 provides much greater flexibility in the refunding of bonds than the Dissolution Act provided. The legislation recognizes the advisability of authorizing the refunding bonds to lower the long-term cost of financing in many situations. Section 34177.5 adopts in most respects the language prepared by a committee of bond counsel from around the State, although it did not include the suggested language to address greater flexibility in refunding variable rate bonds. We suggest consultation with bond counsel for details regarding possible restructuring of any bonds.

As with other actions in the post-redevelopment era, any bond refunding requires Oversight Board approval and DOF review. The statute also provides for subordination of pass-through payments by taxing entities in substantially the same manner as previously provided in the Community Redevelopment Law (Section 34177.5(c)). To provide greater certainty to bond holders and others, the Successor Agency may petition the DOF to provide written confirmation that a DOF approval of an enforceable obligation with payments over time is final and conclusive and reflects the DOF's approval of subsequent payments under that enforceable obligation. If such confirmation is granted by the DOF, DOF review in the future is limited to confirming the payments are required by that prior approved enforceable obligation (Section 34177.5(i)).

A validation action may be brought regarding any bond refunding within 30 days of the Oversight Board approval of the refunding (Section 34177.5(e)). The DOF is required to be notified of a validation action involving a bond refunding (Section 34177.5(d)).

E. Potential Local Benefits of AB 1484.

The following potential benefits to a Successor Agency and its Sponsoring Community are offered under AB 1484 once the Successor Agency has attained a Finding of Completion from the DOF, as further described in Part II.D.2.

[9] Presumably, the same treatment should apply to a transfer pursuant to an enforceable obligation listed on an approved Enforceable Obligation Payment Schedule in effect prior to the effectiveness of the first ROPS.

1. Property Disposition. The Dissolution Act calls for the Successor Agency, under the direction of the Oversight Board, to dispose of real property it received from the Dissolved RDA either for limited public uses, or for disposition into the private market expeditiously and with a view toward maximizing value, with the disposition proceeds ultimately made available for distribution to the affected taxing entities.

AB 1484 appears to suspend this process,[10] and to provide certain flexibility and local benefits in connection with property disposition for a Successor Agency that has received a DOF Finding of Completion (Section 34191.3). Within six months after receipt of a Finding of Completion, the Successor Agency must submit a long-range property management plan for the real property of the Dissolved RDA for approval by the Oversight Board and the DOF (Section 34191.5(b)). The property management plan must include an inventory (with specified information) about each property, and address the use or disposition of each property (Section 34191.5(c).

Permitted uses under a property management plan include:

a. retention of the property for governmental use;

b. retention of the property for future development;

c. sale of the property; and

d. use of the property to fulfill an enforceable obligation.

Upon approval of the property management plan, the properties of the Dissolved RDA are to be placed in a Community Redevelopment Property Trust Fund administered by the Successor Agency in accordance with the approved property management plan (Sections 34191.4(a) and 34191.5(a)). If the property management plan calls for use or liquidation (sale to obtain revenues) of a property for a project identified in an approved redevelopment plan, that property is to be transferred to the Sponsoring Community for that purpose. If the property management plan calls for the liquidation of the property or use of revenues from the property for purposes other than a project identified in a redevelopment plan or other than to fulfill an enforceable obligation, the proceeds from the sale are to be distributed as property taxes to the taxing entities (Section 34191.5(c)(2)(A) and (B)).

In short, use of property placed in the Community Redevelopment Property Trust Fund in accordance with an approved property management plan enables the Successor Agency and the Sponsoring Community to direct the use of specified properties and revenues generated from those properties for community development activities, including affordable housing, in a manner somewhat similar to the uses of property formerly implemented by the Dissolved RDA.

[10] It is not clear if a Successor Agency can continue to follow the Dissolution Act path and dispose of property under Oversight Board direction to maximize value received for distribution to the affected taxing entities, or is instead compelled to follow the alternative path set out in AB 1484.

2. Sponsoring Community Loans. Under the Dissolution Act, the repayment of many loans made in good faith by a Sponsoring Community to its now Dissolved RDA became unenforceable as of February 1, 2012 and not subject to repayment by the Successor Agency. Under AB 1484, upon application by the Successor Agency and approval by the Oversight Board (which approval in turn creates the opportunity for DOF review and disapproval as further described in Part II.B.3.e), loan agreements between the Sponsoring Community and the Dissolved RDA that were previously deemed not to constitute enforceable obligations as of February 1, 2012, can once again be deemed to be enforceable obligations if the Oversight Board finds that the loan from the Sponsoring Community to the Dissolved RDA was for legitimate redevelopment purposes (Section 34191.4(b)).

However, AB 1484 places several conditions on the repayment by the Successor Agency to the Sponsoring Community of a loan that is reinstated, including:

a. accumulated interest on the loan is recalculated from loan origination at the Local Agency Investment Fund ("LAIF") interest rate and supersedes any different interest calculation in the loan agreement;

b. going forward, interest is also limited to the LAIF rate;

c. loan repayments to the Sponsoring Community cannot begin until FY 2013-14 and are to be made according to a defined schedule over a "reasonable term of years", with the maximum annual repayment being strictly limited by statutory formula;

d. repayments received by the Sponsoring Community must first be applied to retire any outstanding amounts that had been previously borrowed by the Dissolved RDA from its LMIHF (e.g., amounts borrowed to make SERAF payments); and

e. 20% of any remaining repayments received by the Sponsoring Community are deducted and placed in the Housing Asset Fund maintained by the Housing Successor (see discussion of this fund in Part II.A.4) (Section 34191.4(b)).

Depending on circumstances, these conditions could significantly reduce the repayment amounts received by the Sponsoring Community under any loan that is reinstated under AB 1484 following Oversight Board approval (and lack of DOF disapproval) of such reinstated loan.

3. Bond Proceeds. The Dissolution Act was ambiguous about the authority for a Successor Agency to expend unencumbered bond proceeds. Under AB 1484, following receipt of a DOF Finding of Completion, a Successor Agency is clearly authorized to spend, in a manner consistent with the original bond covenants, excess bond proceeds (proceeds not already committed to satisfy approved enforceable obligations) from bonds issued prior to 2011. Such expenditures of excess pre-2011 bond proceeds are considered enforceable obligations to be separately listed on the ROPS submitted by the Successor Agency. If such excess bond proceeds cannot be spent in a manner consistent with the bond covenants, then those proceeds are to be used to defease or purchase bonds (Section 34191.4(c)). AB 1484 does not clarify the authority

to expend bond proceeds from bonds issued by a Dissolved RDA in 2011. AB 1484 contains additional provisions regarding expenditures of unencumbered bond proceeds of a bond issuance secured by deposits in the LMIHF (see discussion in Part II.A.3).

F. Other Provisions.

AB 1484 adds other provision, including the following:

1. Economic Development Corporations. AB 1484 adds Section 34167.10 to expand the definition of "city, county and city and county" to include independent entities that are reporting units, component units or controlled by the city, county or city and county. The expanded definition is declarative of existing law and thus applies retroactively to the adoption of the Dissolution Act.

For purposes of determining whether an independent entity is controlled by the Sponsoring Community, the statute list factors to be considered but does not indicate whether all factors must be met or how to weigh the factors. The fact that the independent entity is a separate legal entity is not relevant to the analysis. The factors to be considered include, whether:

a. the Sponsoring Community exercises substantial municipal control over the independent entity's operations, revenues or expenditures;

b. the Sponsoring Community has ownership or control over the independent entity's property;

c. the Sponsoring Community and the independent entity share common or overlapping governing boards or conterminous boundaries;

d. the Sponsoring Community was involved in the creation of the independent entity;

e. the independent entity performs functions customarily performed by municipalities and financed through levies of property taxes; and

f. the Sponsoring Community provides administrative support for the independent entity.

The expanded definition of city, county and city and county is an effort to subject asset transfers to economic development corporations and other types of corporations separate and distinct from the Sponsoring Community to the clawback provisions in the Dissolution Act (Section 34167.5), and make agreements between the Dissolved RDA and such corporations null and void, similar to Sponsoring Community/Dissolved RDA agreements (Section 34178(a)).

2. RDA Land Use Functions. AB 1484 authorizes the transfer of land use plans and land use functions of the Dissolved RDA to the Sponsoring Community at the request of the Sponsoring Community (Section 34173(i)).

3. Statute of Limitations. The Dissolution Act lengthened to two years the statute of limitations on bringing a challenge to a redevelopment plan adoption or amendment, a redevelopment bond issuance, and findings and determinations of a redevelopment agency or legislative body. AB 1484, in turn, completely tolls (suspends) the already lengthened statute of limitations on these matters until the DOF has issued a Finding of Completion (see further discussion in Part II.D.2) to the Successor Agency of the applicable Dissolved RDA. Once the DOF has issued a Finding of Completion, the statute of limitations reverts to the original pre-Dissolution Act 90-day period (which will have long expired at that point) (Sections 33500 and 33501).

Section 34177.5 provides that a Successor Agency may request that the DOF waive the two-year statute of limitations with regard to redevelopment plan adoptions and amendments and findings and determinations made by the Dissolved Agency or its legislative body for plan adoptions, plan amendment, findings and determinations made after January 1, 2011. The DOF may provide this waiver if it determines, in its discretion, that it is necessary for the Successor Agency to fulfill an enforceable obligation.

4. Validation Action Notices and Venue. The DOF and the SCO (and, for certain actions, the affected taxing entities) must be properly notified of any validation action with respect to any action of a Dissolved RDA or Successor Agency or with respect to any enforceable obligation or matter of title to an asset the belonged to a Dissolved RDA. Such notification is a condition to the proper filing of the action. All such actions must be filed in the County of Sacramento (Sections 34189.1 and 34189.2).

5. Post-Suspension Actions. AB 1484 declares that any action taken by a Dissolved RDA after June 27, 2011 does not create an enforceable obligation (Section 34177.3(d)). Serious questions remain as to when the Dissolution Act took effect in late June 2011 (at which time the power to enter into most new redevelopment agreements was suspended), and whether the Legislature can retroactively alter that point of effectiveness in a way that would impair contracts validly entered into at the time of entry (which could, in turn, constitute a constitutionally flawed retroactive impairment of such contract). Also, if a Dissolved RDA had entered into a valid enforceable obligation prior to June 28, 2011 (or whatever point the Dissolution Act actually became effective) that obligated it to enter into a subsequent agreement after the effectiveness of the Dissolution Act, this provision of AB 1484 would likewise seem to constitute a constitutionally flawed impairment of the initial valid enforceable obligation, by preventing the effectiveness of the subsequent contract.

AB 1484 also declares that redevelopment agencies that opted to participate in the Voluntary Alternative Redevelopment Program (ABx1 27, that was subsequently found unconstitutional by the Supreme Court) did not receive a grace period to undertake new activities after the suspension date in the Dissolution Act (Section 34177.3(d)).

6. DOF Budget and Consultants. AB 1484 appropriates $22 million to the DOF (of which up to $2 million may be allocated to the State court system) for work associated with applicable portions of the Dissolution Act (uncodified Section 38 of AB 1484). In addition, the DOF is authorized to hire auditors, lawyers, and other types of advisors and consultants to assist, advise and represent the DOF in matters related to the Dissolution Act, and in doing so may avoid certain State law procedures for hirings.

PART III.
AB 1484 MILESTONE ACTIONS

Following is a checklist of upcoming key milestone actions under the Dissolution Act as amended by AB 1484.

Date	Action
July 9, 2012	Successor Agency to receive from the CAC determination of amount owed, if any, for distributions pursuant to the Section 34183(a)(4) for the initial ROPS period (Section 34183.5(b)(2)(A)).
July 12, 2012	Successor Agency to pay to the CAC any amounts identified as owed to the taxing entities (Section 34183.5(b)(2)(A)).
July 16, 2012	The CAC distributes to the taxing entities amounts received from the Successor Agency on July 12, 2012 (Section 34183.5(b)(2)(A)).
July 18, 2012	The DOF can order offset of sales and use tax due to Sponsoring Community if the Successor Agency has failed to make payments due on July 12, 2012 (Section 34183.5(b)(2)(A)).
August 1, 2012	Housing Successor must submit to DOF list of all housing assets transferred to it by the Dissolved RDA, with explanation of how assets meet criteria set forth in law. DOF to prescribe format for list (Section 34176(a)(2)).
August 10, 2012	Housing Successor provides notice to the Successor Agency of any designations of use or commitments of funds specified in 34176(g)(1)(A) that the Housing Successor empowers the Successor Agency to retain (Section 34179.6(c)).
September 1, 2012	The Successor Agency submits the ROPS for January 1, 2013 through June 30, 2013 to the DOF after Oversight Board approval (Section 34177(m)). Note, the Successor Agency will be assessed a $10,000 per day penalty for failure to timely submit the ROPS (Section 34177(m)(2)).

Date	Action
September 11, 2012	If the Successor Agency has not submitted a ROPS, the maximum administrative cost allowance for the fiscal year covered by the ROPS will be reduced 25% (Section 34177(m)).
October 1, 2012	The Successor Agency to provide to the Oversight Board, the CAC, the DOF, and the SCO results of the 34179.5 review for the LMIHF balances of a Dissolved RDA conducted by a licensed accountant. Accountant must be approved by the CAC (Section 34179.6(a)).
October 1, 2012	The CAC to complete agreed-upon procedures audit of each Dissolved RDA (Section 34182(a)(1)).
October 1, 2012	The CAC to provide notice to the Successor Agency of any objections to items included on the Third ROPS (Section 34182.5).
October 1, 2012	The CAC to prepare and provide estimates to the DOF and fund recipients of amounts to be allocated and distributed from RPTTF on January 2, 2013 for Third ROPS period (Section 34182(c)(3)).
October 1, 2012	The CAC to report to the SCO and the DOF specified information about property tax distributions (Section 34182(d)).
October 5, 2012	The CAC to provide to the SCO and the DOF results of agreed-upon procedures audit of each Dissolved RDA (Section 34182(b)).
October 15, 2012	The Oversight Board to review, approve and transmit the results of the 34179.5 Review for the LMIHF account balances of the Dissolved RDA and notify the CAC and the DOF (Section 34179.6(c)). Note, that the Oversight Board must hold a public session at least five business days in advance of the meeting to consider approval of the Review (Section 34179.6(b)).
No later than November 9, 2012	The DOF completes review of 34179.5 Review of LMIHF balances and reports findings, determinations, and decisions to overturn Oversight Board decision to allow retention of Successor Agency assets (Section 34179.6(d)).

Date	Action
Within 5 days of receipt of initial determination from the DOF	Successor Agency/Sponsoring Community deadline to request meet and confer with DOF over any dispute regarding amount of the LMIHF to be distributed to Taxing Entities under the 34179.5 Review process (Section 34179.6(e)). The DOF must meet and confer with the Successor Agency and confirm or modify findings within 30 days of request (Section 34179.6(e)).
Within 5 days of receipt of final determination from the DOF	The Successor Agency to transfer to the CAC the LMIHF balances determined to be available pursuant to Section 34179.5 Review of the LMIHF. Sponsoring Community sales and use tax may be offset if funds are not transferred (Section 34179.6(f)).
December 1, 2012	The Successor Agency reports to the CAC if total amount of available revenues (including RPTTF, other revenues, proceeds from sale of assets) will be insufficient to fund enforceable obligations (Section 34183(b)).
December 1, 2012	The CAC provides the DOF report specifying amount remitted by the Successor Agency pursuant to the 34179.5 Review of LMIHF balances (Section 34179.6(g)).
December 15, 2012	The Successor Agency submits to the Oversight Board, the CAC, the DOF, and the SCO results of review required under 34179.5 with respect to all other fund and account balances of a Dissolved RDA (Section 34179.6(a)).
January 2, 2013	The CAC to make distributions from the RPTTF for the Third ROPS period (January-June 2012) (Section 34183(a)(2)).
January 12, 2013	The CAC to provide a report to the DOF regarding most recent distributions from the RPTTF (Section 34283(e)).
January 15, 2013	The Oversight Board to review, approve and transmit the results of the 34179.5 Review for all other fund and account balances of a Dissolved RDA and notify the CAC and the DOF of determination (Section 34179.6(c)). Note, that the Oversight Board must hold a public session at least five business days in advance of the meeting to consider approval of the Review (Section 34179.6(b).
March 3, 2013	Successor Agency submits ROPS for July 1, 2013 through December 31, 2013 to DOF after Oversight Board approval (Section 34177(m))

Date	Action
No later than April 1, 2013	The DOF completes reviews of 34179.5 Review of other fund balances and reports findings, determinations and decisions to overturn Oversight Board decision to allow retention of Successor Agency assets. (Section 34179.6(a)).
April 1, 2013	The CAC provides estimates to the DOF and all fund recipients of amounts to be allocated and distributed from the RPTTF on June 1 for the July 1, 2013 through December 31, 2013 ROPS period (Section 34182(c)(3)).
Within 5 days of receipt of initial determination from the DOF	Successor Agency/Sponsoring Community deadline to request meet and confer with the DOF over any dispute regarding amount of other fund balances to be distributed to the taxing entities under 34179.5 Review process. The DOF must meet and confer with Successor Agency and confirm or modify findings within 30 days of request (Section 34179.6(e)).
Within 5 days of receipt of final determination from the DOF	The Successor Agency to transfer to the CAC cash and other assets determined to be available pursuant to Section 34179.5 Review of other funds (if meet and confer process is complete). Sponsoring Community sales and use tax may be offset for unfunded amounts (Section 34179.6(f)).
April 20, 2013	The CAC provides the DOF a report specifying the amount remitted by Successor Agencies pursuant to the Section 34179.5 Review of other balances (Section 341796(g)).
May 1, 2013	The Successor Agency reports to the CAC if total amount of available revenues (including RPTTF, other revenues, proceeds from sale of assets) will be insufficient to fund enforceable obligations (Section 34183(b)).
June 1, 2013	The CAC to make distributions from the RPTTF for the ROPS period July-December 2013 (Section 34284(c)).