CONCLUSION

Several complicated issues seem to be very apparent from the findings of this Audit, and should be resolved by a cooperative effort between the Bureau and the CMT. This is not simply a matter of compliance with laws and regulations—this situation involves addressing some structural problems unique to a Master Trust. Ultimately, the needs of the consumers with regard to pre-needs trusts should be examined and addressed, as some of the following issues will affect all pre-needs trusts in California:

a. There is a difference of opinion about the creation of the Disparity Resolution Plan and associated Promissory Note to offset the unrealized losses by the CMT in 2001.

b. There is a continuing problem either with the statute or the interpretation by the Bureau of its own regulations regarding the proper investments permitted by the CMT, and the definition of "corpus" plus income, which does not address short term losses that may be offset in later years. Essentially, this question requires expert opinion on whether a preneeds master trust could ever succeed if only invested in CD's or government bonds.

c. There is a dispute about what constitutes proper "administrative fees" under the statutes and regulations of the Bureau.

d. There is an issue related to the oversight of the CMT by the Bureau for the past ten years, and the failure by the Bureau to respond to or address valid questions raised by the CMT in the past regarding how to account for the investments in this type of trust, where accounting by book value will inevitably lead to an inequitable situation.

FDSC and Comerica Bank are hopeful that this response will assist the Bureau in better understanding the CMT and lead to a mutually beneficial resolution of the issues raised by the Bureau's audit.