

CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY

Resolution No. 2005-02

**Delegation of Executive Director to Approve Certain Consents and
Amendments to Authority Bond Documents**

April 28, 2005

BACKGROUND:

Previous Authority resolutions have not specifically delegated authority to perform a number of functions. For example, a resolution approving a prior CEFA transaction stated:

“Each of the Authorized Signatories, acting alone, is hereby authorized and directed to do any and all things and to execute and deliver any and all documents which he or she deems necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds of each series including but not limited to, entering into a tax agreement and a continuing disclosure agreement with respect to each series of the Bonds, and entering into any agreements or executing any commitment letter with respect to the provisions of bond insurance and/or a liquidity facility for the Bonds of one or more series, and otherwise to effectuate the purposes of this Resolution, the Indentures, the Loan Agreements and the Purchase Contracts.”

This proposed resolution, No. 2005-02, would specifically authorize the Executive Director (or Deputy Executive Director) to execute certain amendments and other transactions, approve substitute credit and substitute liquidity facilities, and approve the replacement of certain agents performing designated functions under existing bond documents, under the following conditions (“Conditions of Approval”):

The requested action must:

- be made pursuant to and in accordance with the terms of the applicable bond documents which were previously approved by the Authority prior to April 28, 2005;
- be consistent with such bond documents; and
- not require bondholder consent pursuant to the terms of the bond documents.

Additional conditions of approval, as appropriate, are specified in each section below.

Amendments and other transactions

Authority staff asks that the Executive Director (or Deputy Executive Director) be delegated the authority to execute any written instrument (under the conditions of approval listed below) that is:

- required by the bond documents, or
- necessary to effectuate any liquidity or credit facility substitution, or
- is included in the listing of amendments or other transactions listed below.

Additional Conditions of Approval:

In addition to the general Conditions of Approval, a bond document amendment may be executed, provided that:

- the Authority is provided with an opinion of bond counsel that complies with the terms of the applicable bond documents and, if not otherwise required, provides that the bond document amendment does not, in and of itself, cause the interest on the bonds to be includable in gross income for federal income tax purposes, and
- the amendment does not provide for any additional material duties of, or material costs to, the Authority.

Listing of permitted amendments and other transactions:

- (i) to add to the covenants and agreements of the Participating Educational Institution or of the provider of any Facility Substitution,
- (ii) to assign or pledge additional security for any of the applicable bonds,
- (iii) to cure any ambiguity, inconsistency or omission or supplement any defective provision,
- (iv) to permit the qualification of any indenture or supplemental indenture under the Trust Indenture Act of 1939, or any similar federal statute,
- (v) to provide for any additional procedures, covenants or agreements necessary to maintain the tax-exempt status of interest on the applicable bonds,
- (vi) to modify or eliminate the book-entry registration system for any of the applicable bonds,

- (vii) to provide for the appointment of a co-trustee or the succession of a new trustee, tender agent or remarketing agent authorized pursuant to the terms of the bond document; or
- (viii) to provide for an extension of a liquidity facility or the provision of an alternate liquidity facility which meets the terms of the bond documents.

Facility substitutions

Authority staff asks that the Executive Director (or Deputy Executive Director) be delegated the authority to approve a credit or liquidity facility substitution.

In addition to the general Conditions of Approval, a substitution may be executed, provided that:

- it does not, in and of itself, result in a lower or withdrawn rating on the bonds, and
- the Authority is provided with a bond counsel opinion that complies with the terms of the bond documents and provides that the substitution, in and of itself, does not cause the interest on the bonds to be includable in gross income for federal income tax purposes.

Replacement of agents

Authority staff asks that the Executive Director (or Deputy Executive Director) be delegated the authority to approve an agent replacement.

In addition to the general Conditions of Approval, a replacement may be executed, provided that:

- it does not result in any additional cost to the Authority, and
- (with respect to replacement of a remarketing agent, broker-dealer, or market agent): the agent is listed on the State Treasurer's list of approved underwriters, and
- (with respect to replacement of any other agent): the agent has satisfactorily served in the same capacity in relation to Authority or State of California bonds within the past five years.

Staff Recommendation: Staff recommends that the Authority approve a resolution specifically delegating authority to effect amendments and other transactions, facility substitutions, and agent replacements, all as detailed in the attached Resolution.