

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY (“Authority”)

STAFF SUMMARY RECOMMENDATION

**RESOLUTION OF THE CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY
DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS
RELATED TO LOAN FINANCINGS
Resolution Number 2014-06**

December 4, 2014

BACKGROUND: By statute (Government Code section 15436), the Authority is authorized to delegate to the Executive Director or any other official or employee of the Authority, any powers and duties the Authority may deem proper. For the past several years, the Authority has adopted resolutions delegating specific powers and duties related to loan financings to designated Authority staff and the Chairperson or his deputy. The existing delegation resolution expires January 31, 2015. Authority staff seeks approval of a new resolution, identifying essentially the same powers and duties for delegation, with a proposed expiration date of January 31, 2017.

PURPOSE OF THE RESOLUTION: From time to time, HELP II Loan Program borrowers seek consent from the Authority or an amendment to various aspects of borrower loan documents to accomplish such things as (1) changing the trustee on their deeds of trust, (2) selling, encumbering or transferring assets, (3) mergers, acquisitions, dissolutions, consolidations or affiliations, (4) changing the legal name or place of business of the borrower, (5) subordinating or otherwise altering the Authority’s security interests, and (6) prepaying HELP II loans. Absent a delegation to execute amendments or grant consent to borrowers, staff must seek formal Authority approval for many of these amendments or consents. In the interest of expediting the administrative process, staff requests the Authority authorize the Executive Director, Deputy Executive Director, and the Chairperson or his deputy to enter into various amendments or give consent.

The proposed resolution delegates to the Executive Director and the Deputy Executive Director, upon the Executive Director’s written authorization or when the position of Executive Director is vacant, and to the Chairperson or his deputy, the power to perform the below actions, when consent or approval by the Authority is required by the applicable loan documents and such actions are made in accordance with the terms and conditions of the loan documents¹.

- (i) Sign and certify resolutions adopted by the Authority.
- (ii) Execute and deliver all loan documents previously or hereafter approved by the Authority.
- (iii) Amend and supplement certain loan documents.
- (iv) Consent to changes in trustees.

¹ Please note that certain powers or authority, specifically i, ii, viii, are typically already included within the resolutions approving loans for borrowers.

- (v) Authorize and/or execute subordination agreements for changes to security interests (change in lien positions of gross revenue pledges and/or collateral).
- (vi) Substitute real property as collateral with other real property provided there is a current appraisal, the loan to value ratio is at least 95%, and the Authority's lien position remains as approved by the Authority or as authorized under Section 5 of the delegation resolution.
- (vii) Approve or consent to a merger, acquisition, dissolution, consolidation, affiliation, change in legal name or place of business, or the sale, encumbrance, or transfer of assets by a borrower.
- (viii) Carry out any ministerial actions contemplated by any loan documents.
- (ix) Respond to any litigation or claim made against the Authority in connection with any loan, or any investigation of any loan by any state or federal regulatory or law enforcement authority when such response is required by law and is necessary to protect the interests of the Authority, or to effectuate the terms of the applicable resolution adopted by the Authority.

RECOMMENDATION: Staff recommends the Authority approve Resolution No. 2014-06 authorizing the delegation of certain functions relating to the HELP II Loan Program to the Executive Director and Deputy Executive Director, and to the Chairperson or his deputy.

RESOLUTION NO. 2014-06

**RESOLUTION OF THE
CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY
DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS
RELATED TO LOAN FINANCINGS**

WHEREAS, the California Health Facilities Financing Authority (the “Authority”), a public instrumentality of the State of California, is authorized by the provisions of the California Health Facilities Financing Authority Act (the “Act”) to provide secured or unsecured loans to participating health institutions to refinance existing debt and finance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of a health facility;

WHEREAS, the Authority established the HELP II Loan Program (the “Program”) to provide loans to participating health institutions as authorized by the Act;

WHEREAS, pursuant to the Act, the Authority may delegate to the Executive Director or any other official or employee of the Authority any powers and duties the Authority may deem proper;

WHEREAS, from time to time a participating health institution may desire to seek consent of the Authority relating to amendments to the various loan documents memorializing the loan between the Authority and the participating health institution (“Loan Documents”); changes in trustees; the sale, encumbrance or transfer of assets; a merger, acquisition, dissolution, affiliation, or consolidation of a participating health institution; change in the participating health institution’s legal name or place of business; or subordination of security interests (gross revenue pledge and/or collateral);

WHEREAS, the Authority desires to authorize the Executive Director and Deputy Executive Director to consent to certain amendments to the Loan Documents; changes in trustees; the sale, encumbrance or transfer of assets; a merger, acquisition, dissolution, affiliation, or consolidation of a participating health institution; change in the participating health institution’s legal name or place of business; subordination of security interests (gross revenue pledge and/or collateral); and other related matters, including, without limitation, certifying resolutions, executing and delivering Loan Documents; responding to audits, investigations, claims, litigation or the threat of litigation; and other ministerial duties; and

WHEREAS, approval of the Authority is now sought;

NOW, THEREFORE, BE IT RESOLVED by the California Health Facilities Financing Authority, as follows:

Section 1. Certification of Resolutions. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director’s written authorization or when the position of Executive Director is vacant, the power to sign and certify resolutions adopted by the Authority.

Section 2. Loan Documents. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to execute and the power to deliver all documents previously or hereafter approved by the Authority in connection with the issuance, disbursements and prepayment of loans, including, without limitation loan and security agreements, consent of Community Service Obligation Certificates, disbursement memorandums, and loan closing documents.

Section 3. Amendments and Supplements. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to execute and the power to deliver any amendment to any Loan Documents, as may be necessitated by the sections in this Resolution, provided that such amendment (1) does not provide for any additional material duties of/or costs to the Authority, other than costs that will be reimbursed no later than the effective date of the amendment, and (2) does not modify any provision for indemnification of the Authority or any members, directors, officers, employees or agents of the Authority.

Section 4. Change of Trustee. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to approve or consent to a change in trustees as necessary.

Section 5. Subordination of Security Interests. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to approve or authorize subordination agreements that cause the Authority's security interest in:

(1) a gross revenue pledge to be subordinated to:

(A) the Office of Statewide Health Planning and Development, Cal-Mortgage Loan Insurance Division ("OSHPD") when the borrower has engaged in Authority approved bond financing insured through OSHPD (whether through new issuance or refinancing); and/or

(B) financial institutions when the borrower is requesting a line of credit (a) if the current outstanding loan to original appraised value is 75% or less, or (b) if the current outstanding loan to original appraised value is greater than 75% and the borrower provides a current appraisal, acceptable to Authority staff, demonstrating sufficient security as set forth in the original loan requirements;

(2) a property lien position as collateral to be subordinated to:

(A) OSHPD when the borrower has engaged in Authority approved bond financing insured through OSHPD (whether through new issuance or refinancing); and/or

(B) financial institutions when the borrower is requesting that the existing loan be subordinated to a 2nd lien position behind the financial institution's 1st lien position, provided that a current appraisal, acceptable to Authority staff, demonstrates that the combined loan (1st and 2nd loan) to value ratio does not exceed 75%;

(3) gross revenue pledge and collateral be subordinated to:

(A) OSHPD when the borrower has engaged in Authority approved bond financing insured through OSHPD (whether through new issuance or refinancing).

Prior to the authorization or approval of any subordination agreement, Authority staff will perform a financial analysis required of all new applications for financing, and engage in additional due diligence to determine the current fair market value utilizing appraisal tools such as Zillow, Loopnet, and/or County Assessor's assessed property value.

Section 6. Collateral Substitution. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to substitute real property as collateral with other real property provided there is a current appraisal, the loan to value ratio is at least 95%, and the Authority's lien position remains as approved by the Authority or as authorized under Section 5.

Section 7. Merger, Acquisition, Dissolution, Legal Name Change, etc. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to approve or consent to a merger, acquisition, dissolution, consolidation or affiliation of a borrower, a change to borrower's legal name or place of business, or the sale or other transfer of the assets of a borrower when such approval or consent by the Authority is required by the applicable Loan Documents and is provided in compliance with the applicable Loan Documents.

Section 8. Ministerial Actions. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to carry out any ministerial actions contemplated by any Loan Documents, including, but not limited to prepayment.

Section 9. Litigation, etc. The Authority hereby delegates to each of the Executive Director and the Deputy Executive Director, upon the Executive Director's written authorization or when the position of Executive Director is vacant, the power to respond on behalf of the Authority to any audit, investigation, litigation or claim or threat of litigation or claim made to or against the Authority or any of its members, directors, officers or employees in connection with any loan, or any investigation or audit or other review of any loan by any state or federal regulatory or law enforcement authorities when such response is required by law and is necessary to protect the interests of the Authority (hereinafter "Claims Made"), or to effectuate the terms of the applicable Authority resolution authorizing the loan. The Executive Director or the Deputy Executive Director, whenever the Executive Director is otherwise unavailable, shall provide

immediate notice (within three working days) to each of the members of the Authority regarding any Claims Made, prior to taking any action as permitted by this section, to provide all members with the opportunity to give any direction, including direction to convene a meeting to discuss the Claims Made.

Section 10. Exercise of Delegations Discretionary. Nothing in this Resolution shall require the Executive Director or Deputy Executive Director to exercise the powers delegated herein, and the Executive Director and Deputy Executive Director may instead bring a proposed action before the Authority for consideration.

Section 11. Supplemental Delegations. The Authority may in any future resolution delegate additional powers to the Executive Director, Deputy Executive Director or other officers or employees of the Authority, or eliminate, modify or restrict any delegation granted in this Resolution. Except as expressly provided in Section 3, the powers delegated in this Resolution shall be deemed to be in addition to, and shall not limit, any prior delegation of power or authorization. The authorization contained in this Resolution shall apply to any loan now or hereafter outstanding.

Section 12. Delivery. The power delegated under this Resolution to each of the Executive Director and the Deputy Executive Director to deliver executed documents extends to documents executed by either such officer or both such officers. Notwithstanding anything to the contrary in this Resolution, any document executed by the Executive Director in accordance with this Resolution may be delivered by the Deputy Executive Director, regardless of whether the Deputy Executive Director was authorized to execute such document.

Section 13. Reporting. Except as may be otherwise required within this Resolution, the Executive Director and the Deputy Executive Director, as applicable, shall report to the Authority monthly or, at a minimum, at the next scheduled meeting, all actions taken pursuant to the delegations of powers under this Resolution, unless such action is a subject for closed session pursuant to the Bagley-Keene Open Meeting Act, in which case the action will be reported in closed session or in writing to individual Authority members.

Section 14. Opinion of Counsel. The Executive Director or Deputy Executive Director, as the case may be, shall seek and rely upon a formal or informal opinion from the Authority's in-house legal counsel to confirm compliance with one or more of the provisions of this Resolution.

Section 15. The Chairperson of the Authority is hereby authorized to execute and deliver any document which may be executed by the Executive Director or the Deputy Executive Director pursuant to this Resolution. The Chairperson may act by and through a deputy in connection with the delegations and authorizations under this Resolution.

Section 16. This Resolution shall take effect from and after its adoption, and shall expire on January 31, 2017, unless extended by action of the Authority prior to that date.

Date of Adoption: _____