

CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY
(“CEFA” or the “Authority”)

Qualified Scholarship Funding Corporations
PROPOSED PERMANENT REGULATIONS
Resolution No. 2006-06
July 27, 2006

INTRODUCTION

Staff is seeking Authority approval to file the documentation necessary with the Office of Administrative Law (“OAL”) to adopt permanent regulations. The regulations establish the Authority approval process for corporations before they can apply for allocation of a portion of the state’s annual private activity volume cap from the California Debt Limit Allocation Committee (“CDLAC”) to issue Qualified Scholarship Funding Bonds for Student Loan Programs. Pursuant to authorizing legislation, the Authority approval process became effective January 1, 2006 and pertains only to entities that have not previously applied for volume cap through CDLAC prior to this date. If approved, an entity would not need to seek Authority approval in subsequent years.

BACKGROUND

At the March 29, 2006 Authority meeting, staff presented proposed regulations that specify the criteria that the Authority must consider when making its determination whether to grant approval to a corporation. Please refer to Tab A to view a copy of the March 2006 staff report. At that meeting, the Authority authorized staff to proceed with the rulemaking process through the OAL, which opened the initial 45-day public comment period through May 30, 2006.

Public comments were received from one interested party, and changes were incorporated into the proposed regulations. In accordance with the OAL process, updated proposed regulations were re-posted on the CEFA website providing another public comment period. In response to further comments from the same source and after additional consideration, the process was repeated providing another 15-day public comment period, which concluded July 17, 2006. A final letter has been received from the interested party providing positive support for the regulation changes while restating that the inclusion of affiliates of for-profit entities [refer to Section 9072 *Definitions* subsection (b)(2)] is not necessary to achieve the intent of the enabling legislation.

The tentative timeline (see page 4 of this staff report) outlines the process and associated dates as described above and provides the remaining steps necessary to finalize the permanent regulations.

SUMMARY OF CHANGES

The proposed permanent regulations are similar to the proposed regulations the Authority approved in March 2006, but include a refinement of the requirements, updates to the definitions and various technical amendments. The following identifies the substantive changes to the initial proposed regulations:

Section 9071. Purpose. This Section has been expanded to clarify that approval will not necessarily be granted to any entity that applies to CEFA even if it is determined to be an Eligible Candidate. In addition, it states that the Authority will consult with CDLAC prior to making a final determination.

Section 9072. Definitions. In subsection (a) et al, the term “Applicant” has been changed to “Candidate” in order to differentiate between an entity that applies for volume cap through CDLAC, which uses the term “Applicant” in the CDLAC procedures and its application process.

“Eligible Candidate” has been added as a new term in subsection (b) and incorporates much of the language that had previously been in the original proposed regulation Section 9073(a) *Factors to Be Considered by the Authority*. Additional language has been integrated to further refine the necessary criteria including the requirement for an entity to be exempt from federal and state taxation under Internal Revenue Code Section 501(c)(3) and the Revenue and Taxation Code Section 23701d. The new subsection clarifies the minimum threshold qualifications that must be satisfied and better ensures that a Candidate meets the requirements under federal and state law. These additional conditions are consistent with other states nationwide, and provide for a higher level of oversight regarding the charitable purposes and structure of an entity.

Further, language has been added to exclude any nonprofit corporation that is established or affiliated with a for-profit corporation except under certain conditions. For an affiliate of a for-profit to be eligible, the entity must provide a public benefit(s) that is not already being met by an existing qualified scholarship funding corporation, such as a grant program for financially needy students or an outreach program encouraging high school students to attend college and obtain an undergraduate degree. Permitting for-profit affiliates to qualify as Eligible Candidates provides the Authority with flexibility to consider non-traditional entities. At the same time, the higher threshold should discourage entities that do not have a serious interest in promoting access to post-secondary education.

“Proper Notice” has been added as a new term in subsection (c) providing a means for potential Candidates to communicate their intent to seek Authority approval. A timeline between July 1 and August 31 (waived if no currently qualified scholarship funding corporation exists) is included to allow CEFA staff sufficient time to conduct a thorough review of potential Candidates’ qualifications in advance of the new calendar year, which is the cycle for state ceiling allocations. This timing will complement the CDLAC allocation schedule allowing Candidates sufficient time to seek Authority approval and if granted, the ability to prepare a CDLAC application to apply for volume cap in the upcoming year.

Section 9073. Factors to Be Considered by the Authority. The former subsection (a) has been moved to Section 9072 (b)(1) and included in the Eligible Candidate definition as described above. Consideration (a)(6) has been added to conform with Section 9074 *Information to Be Submitted by the Candidate* to the Authority, relating to an Eligible Candidate and whether the entity has significant presence in California’s student loan industry. Consistent with Section 9072 (b)(1), the remainder of this Section replaces the word “Applicant” with “Eligible Candidate”.

Section 9074. Information to Be Submitted by the Candidate to the Authority. In addition to the technical changes (i.e. – terms used in Section 9072 *Definitions*), (a) (8) and (9) have been added to provide verification of a corporation’s tax-exempt status as required.

Section 9075. Public Notice. This Section has been added to correspond with the new subsection (c) *Proper Notice* under Section 9072 *Definitions* and provides a means to communicate a list of potential Candidates seeking Authority approval.

All recommended changes can be viewed under Tab B.

The documents attached are as follows:

Tab A: Staff Report presented at March 29, 2006 Authority meeting

Tab B: Regulation Text (marked to show changes)

Tab C: Clean copy of recommended Regulation Text

Tab D: Original Proposed Regulation Text as presented in March 2006

Tab E: Public Comments received May 19th, June 8th, and July 17th

Tab F: Resolution 2006-06

RECOMMENDATION:

Staff recommends the Authority approve the permanent regulations relating to the Qualified Scholarship Funding Corporations for submission to the Office of Administrative Law.