

STAFF SUMMARY RECOMMENDATION

RESOLUTION OF THE CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS RELATED TO BOND FINANCINGS Resolution Number 2009-05

December 3, 2009

BACKGROUND: AB 1479, chaptered August 4, 2008. This bill authorized the Authority to delegate powers and duties deemed proper, including the power to delegate to the Executive Director or any other official or employee of the Authority, any powers and duties that the Authority deems proper.

PURPOSE OF THE RESOLUTION: From time to time a participating private college may desire to seek consent of the Authority relating to amendments to the Bond Documents; removing or replacing participants or agents in the transaction; the delivery of an alternate credit facility or alternate liquidity facility; the sale, encumbrance or transfer of project assets; or a merger or dissolution involving a participating private college. Absent a delegation of such powers to staff, Authority approval is necessary for the Authority to give its consent to many of these amendments. In the interest of streamlining the borrowing processes, the Authority desires to authorize the Executive Director and Deputy Executive Director to consent to various amendments without first obtaining approval of the Authority.

The 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, the power to perform the following, when consent or approval by the Authority is required by the applicable Bond Documents and such actions are made in accordance with the terms and conditions of the Bond Documents:

- (i) Sign and certify resolutions adopted by the Authority.
- (ii) Execute and deliver all Bond Documents previously or hereafter approved by the Authority.
- (iii) Execute, amend, supplement and deliver certain Bond Documents.
- (iv) Appoint, consent to, or approval of (or removal of the same) defined parties.
- (v) Approve or consent to the delivery of any substitute, alternate or replacement credit enhancement or liquidity facility for bonds of the Authority (or termination of the same).
- (vi) Approve or consent to the sale, encumbrance or other transfer of all or a portion of a project financed with bonds of the Authority.
- (vii) Approve or consent to a merger, dissolution, or the sale of substantially all assets by a participating party.
- (viii) Carry out any ministerial actions contemplated by any Bond Documents.
- (ix) Waive, on behalf of the Authority, any provision of any Bond Document that is expressly for the benefit of the Authority and has not been assigned by the Authority, including, but not limited to, deadlines for delivery of notices, certificates, reports and other items to the Authority.
- (x) Respond to any litigation or claim made against the Authority in connection with any bond issue, or any investigation of any bonds 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, the bondholders, or to effectuate the terms of the applicable resolution adopted by the Authority.

The resolution would replace resolution 2009-01 which had similar purposes.

RECOMMENDATION: Staff recommends the Authority approve Resolution No. 2009-05 authorizing the delegation of certain functions to the Executive Director and Deputy Executive Director.

STAFF SUMMARY RECOMMENDATION re MASTER DELEGATION RESOLUTION

(2009-05 for CEFA and 2009-11 for CHFFA)

December 3, 2009

The below table calls out the substantive proposed edits to the CEFA and CHFFA existing master delegation resolutions (CEFA Resolution No. 2009-01 and CHFFA Resolution No. 2009-02) and provides a brief explanation of the rationale underlying each of the proposed edits. If the Authority approves of these proposed edits, a new resolution will replace this existing resolution (CEFA Resolution No. 2009-05 and CHFFA Resolution No. 2009-11).

In the spirit of brevity, a number of stylistic and self-explanatory edits are not included in the below table. However, a track changes version of the resolutions showing all proposed changes is attached for reference so all proposed changes, substantive and stylistic alike, may be seen and appreciated.

RESOLUTION SECTION	PURPOSE
Section 2(a)	[CEFA only] The proposed edits make the delegations applicable to the Authority's commercial paper programs in a manner similar to its bond programs. [CEFA and CHFFA] The proposed edits also make clear delegates may execute not only documents referred to as "Primary Documents" (those documents previously approved by the Authority and common to a bond financing, such as loan agreements, indentures, BPAs, lease agreements, finance agreements, continuing disclosure agreements, etc.), but also all other related documents contemplated by the Primary Documents, such as instructions, directions, requisitions, certificates, etc. Clarifying this authority reduces the need to include this authority within the final resolutions for the individual bond transactions. The thought is that by approving Primary Documents, the Authority is automatically also approving delivery of all related documents required or contemplated thereby on or prior to closing.
Section 2(b)	This language eliminates redundancies within the final resolutions for each of the individual bond transactions and allows for execution by manual or facsimile signature. Including this language in these master delegation resolutions allows for the removal of such authorizing language from the individual final resolutions for each of the bond transactions.

RESOLUTION SECTION	PURPOSE
Section 2(c)	This language eliminates redundancies within the final resolutions for each of the individual bond transactions by authorizing the ED or Deputy ED to execute and deliver “deemed final” certificates for any preliminary disclosure document approved by the Authority (as well as to finalize the preliminary disclosure document with such insertions and changes therein as may be required). Including this language in these master delegation resolutions allows for the removal of such authorizing language from the individual resolutions for each of the bond transactions.
Section 2(d)	This language eliminates redundancies from the final resolutions and allows the delegates to attest the signature of the Chairperson or any Deputy of the Chairperson. Including this language in the delegation resolution allows for the removal of such authorizing language from the final resolutions for each of the individual bond transactions.
Section 3(a)	This language authorizes the ED and Deputy ED to deliver amendments or supplements to any disclosure document to state any material fact necessary to make any statements within the disclosure document not misleading or to correct any misstatement.
CEFA only	
Section 3(b)	This section describes amendments that are not included in the delegated powers. The previous master delegation resolution did not include language for CEFA's commercial paper programs. This language is added to include application to CEFA's commercial paper programs (Stanford and Cal Tech). The commercial paper programs would be treated similarly to the bond programs.
CEFA only	
Section 5(a)	This section authorizes the authority to deliver a substitution credit enhancement or liquidity facilities. Previous master delegation resolution did not include language for CEFA's commercial paper programs. This language is added to include application to CEFA's commercial paper programs (Stanford and Cal Tech). The commercial paper programs would be treated similarly to the bond programs.

RESOLUTION SECTION	PURPOSE
CHFFA only	
Sections 3(c) and 9(c)	<p>These two sections note that all prior delegation resolutions are rescinded with the exception of the two delegation resolutions previously adopted in 2009 (Resolution 2009-01 and Resolution 2009-03). Resolution 2009-01 authorizes certain responses to auction and variable rate market challenges. It will expire by its terms in February 2010 [check this date with Barbara] unless otherwise extended by the board. Resolution No. 2009-03 gives delegated authority for various CHW bond matters and does not have a sunset provision though these matters are near to completion as of this writing.</p>
Section 16	<p>This section makes clear the Chairperson or his or her deputy may execute and deliver documents signed by the ED or Deputy ED pursuant to the resolution.</p>
Section 17	<p>Though sections 3 and 9 make clear all previous authorizations of amendments and waivers are rescinded (with exceptions identified), this section makes clear the previous master delegation resolution will be rescinded in its entirety upon Authority approval of the new master delegation resolution.</p>
Section 18	<p>This section continues the one year sunset date for CHFFA and establishes a sunset date for CEFA (technically 13 months, but nevertheless established to achieve uniformity amongst certain other authorities housed in the Treasurer's office which are expected to revisit the issue of their master delegation resolution in January 2010 and provide for a January 31, 2011 sunset date for their delegation resolution.)</p>