

MINUTES

**CALIFORNIA EDUCATIONAL
FACILITIES AUTHORITY (CEFA)
5th Floor Conference Room
915 Capitol Mall, Room 587
Sacramento, California 95814**

Thursday, June 30, 2011

11:00 AM

Deputy Treasurer Patricia Wynne, serving as Chairperson, called the CEFA meeting to order at 11:02 a.m.

CEFA Roll Call

Members Present: Patricia Wynne for Bill Lockyer, State Treasurer, Chairperson
Dave O'Toole for John Chiang, State Controller, Vice-Chairperson
Jennifer Rockwell for Ana Matosantos, Director, Department of Finance
Sylvia Scott-Hayes

Member Absent: Michael Jackson

Staff Present: Ronald L. Washington, Executive Director
Rosalind Brewer, Deputy Executive Director

Chairperson Wynne declared a quorum present and thanked everyone for accommodating the schedule adjustment.

The minutes from CEFA's May 26, 2011 meeting were approved. Ms. Scott-Hayes moved for approval of the minutes; Mr. O'Toole seconded the motion. The motion was adopted with a 4-0 vote.

CEFA's Executive Director's Report

Mr. Washington reported as of May 31, 2011, the CEFA outstanding debt and fund balance reports for both the Educational Facilities and the Student Loan Fund Programs were available to the Board and affirmed there were no significant changes. Mr. Washington stated the Comprehensive Debt List Summary was also included in the Executive Director's report.

Mr. O'Toole inquired about the Department of Justice Attorney General Legal Services Year-to-Date amount versus the budgeted amount detailed on the Educational Facilities Fund Balance Report. Mr. Washington requested to delay responding in order to adequately research the information and report to a full Board. Chairperson Wynne accepted the request for delay and offered the Attorney General's Office as a collaborative resource.

Mr. Washington concluded his report with a summary of the Authority's Financial Advisor (FA) contracts stating that FA services are currently contracted with Public Financial Management Inc. Mr. Washington stated that recently, staff determined that a conflict of interest exists for the Issuer's FA to represent both the Issuer and the Borrower on a bond financing transaction (Chapman University). Because of this potential conflict, staff sent out a Request for Proposal to form a Financial Advisor Pool of three separate FA firms to be used as a Primary Firm, a Secondary Firm, and a Tertiary Firm, depending on determination of any conflicts of interest.

Mr. Washington stated staff has completed the preliminary review process and anticipated a mid-July 2011 approval from the Department of General Services of the Financial Advisor Pool.

In June 2011, CEFA received an application for bond financing from Chapman University with a FA conflict of interest. Because of the conflict of interest, CEFA needed immediate FA services for the bond transaction and entered into a short-term contract with the pending Secondary FA Firm, Fieldman, Rolapp & Associates Inc. The initial borrower has since postponed the financing and staff intends to reissue the short-term contract with more specific estimated cost detail. The short-term contract with Fieldman, Rolapp & Associates Inc. will be superseded upon approval from the Department of General Services of the Financial Advisor Pool.

Item #4 **Second Amendment to Resolution No. 262, California Institute of Technology**

Summer Nishio stated California Institute of Technology (Caltech) requested approval to amend the authorized project list of Resolution No. 262. In 2008, the CEFA Board approved Resolution No. 262, which authorized the issuance of tax-exempt and taxable commercial paper notes in an aggregate principal amount not to exceed \$100 million. Bond proceeds were authorized to be used to fund various capital projects. In 2009, the CEFA Board approved the first amendment to Resolution No. 262, which amended the authorized project list. Caltech sought the approval of a second amendment to Resolution No. 262, which amended its project list, executed a Dealer Agreement and amended the Loan Agreement. Representing Caltech: Ms. Madeline Lee, Caltech, Assistant Treasurer; Ms. Brooke Abola, Orrick, Herrington & Sutcliffe, LLP, Bond Counsel; and, Chris Cowen, Goldman, Sachs & Co., Commercial Paper Dealer.

Ms. Scott-Hayes inquired what portion of the total number of projects will be financed versus refinanced. Ms. Lee responded all projects would be financed. There were a few projects that were underway from the initial 2009 CEFA Bond proceeds. However, those funds have not been utilized, thus far.

Staff recommended the Authority approve the second amendment to Resolution No. 262.

Chairperson Wynne asked if there were any additional questions from the Board Members or any public comments on this matter. Hearing none, Ms. Scott-Hayes moved for the second amendment of Resolution No. 262 and Ms. Rockwell seconded it. The motion was adopted 4-0.

Item #5 **Resolution No. 284, Chapman University**
Removed from the Agenda.

Item #6 **Resolution No. 2011-02**
Post Issuance Tax Compliance Procedures

Ms. Brewer stated in April 2011, the Internal Revenue Service (IRS) revised Form 8038 in which the Authority executed immediately after a new issue of tax-exempt bonds or commercial paper notes closes. The IRS revised the form to include five additional lines, two of which directly affect the Authority. These two lines ask if the Authority has established written procedures to monitor post-issuance tax compliance. The procedures consist of Arbitrage Rebate and Yield, Use of Bond Proceeds and Bond Financed or Refinanced Assets and Record Keeping Requirements. Ms. Brewer stated the requested information was currently embedded within the Tax Certificate, which the Issuer and borrower were responsible to sign. Ms. Brewer acknowledged Orrick, Herrington & Sutcliffe, LLP's participation, as they were instrumental in preparing the written procedures.

Ms. Abola added informational context regarding the recent reports of the Internal Revenue Service Advisory Committee on Tax-Exempt and Government Entities (ACT). In June, the tenth report of the ACT had been released.

She noted the specific segment relating to conduit issuers provided recommendation to Issuers to adopt guidelines to support compliance with post-issuance tax requirements for tax-exempt bonds. Similar to the Authority's current recommendation, the ACT report recommended the best practice that conduit issuers adopt procedures that make inquiries regarding the tax compliance procedures and policies of a conduit borrower as of the date of issuance. The report acknowledged that in light of the great variety of bond issuers and borrowers, a one size fits all approach is not workable.

Ms. Abola stated the Issuers should have considerable flexibility on how to structure their policies. In accordance to Ms. Brewer's statement regarding Tax Certificates, Ms. Abola mentioned the ACT report acknowledged the majority of burden of post-issuance tax compliance does fall on the borrower and the conduit issuer is generally not required to monitor or assure compliance with federal income tax eligibility requirements that would apply to a conduit bond issue.

Ms. Abola concluded the ACT report recommended the IRS open a dialogue with the conduit issuers concerning its appropriate role in monitoring tax compliance post-issuance and eventually the tentative developments for any modification to the policy. Orrick, Herrington & Sutcliffe, LLP intends to assist the Authority in this transition.

Ms. Rockwell inquired whether the conduit issuer has any exceptions to the limited monitoring.

Ms. Abola explained, generally the conduit issuer's responsibilities are not considered rigid, in terms of staff activity the report indicated many have confirmed borrowers were within monitoring compliance.

Chairperson Wynne reiterated the distinction between two concerns, the Authority's responsibility to perform monitoring and the Authority's responsibility to assure compliance with federal income tax eligibility requirements.

Ms. Brewer added a post-issuance working group composed of CEFA/CHFFA staff, the State Treasurer's Office Counsel, the Attorney General's Office Counsel and Orrick, Herrington & Sutcliffe, LLP was formed to review the post-issuance compliance responsibilities as issuers. CEFA staff anticipates further revisions.

Staff recommended the Authority approve Resolution No. 2011-02 to authorize the adoption of the written procedures for post-issuance tax compliance.

Chairperson Wynne asked if there were any additional questions from the board members or any public comments on this matter. Hearing none, Ms. Scott-Hayes moved for approval of Resolution No. 2011-02 and Mr. O'Toole seconded it. The motion was adopted 4-0.

With no public comment, Chairperson Wynne adjourned the meeting at 11:20 a.m.

Respectfully submitted,

Ronald L. Washington
Executive Director