

## STAFF SUMMARY RECOMMENDATION

### RESOLUTION OF THE CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS RELATED TO BOND FINANCINGS Resolution Number 2011-03

December 1, 2011

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**BACKGROUND:** By statute, the Authority is authorized to delegate to the Executive Director or any other official or employee of the Authority, any powers and duties that the Authority deems proper. For the last several years, the Authority has authorized a resolution delegating specific powers and duties to designated Authority staff. The existing delegation resolution expires January 31, 2012. Authority staff seeks approval of a new resolution, identifying essentially the same (with some variances recommended by counsel to the Authority) powers and duties for delegation, with a proposed expiration date of January 31, 2013.

**PURPOSE OF THE RESOLUTION:** From time to time, a participating private college may desire to seek consent of the Authority relating to amendments to Bond Documents; removing or replacing participants or agents in a transaction; the delivery of an alternate credit facility or alternate liquidity facility; the sale, encumbrance or transfer of project assets; arranging for the redemption, prepayment or defeasance of Bonds; or a merger, consolidation, affiliation 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. All of the below actions, with the exception of subpart viii (now recommended by counsel to the Authority) were also contained in the Authority's prior delegation resolutions:

- (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) Execute and deliver escrow agreements and escrow instructions in connection with the redemption, prepayment, defeasance or discharge of Bonds.
- (ix) Carry out any ministerial actions contemplated by any Bond Documents.

- (x) 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.
- (xi) 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 proposed resolution will replace Resolution Number 2010-05, which had similar purposes.

**RECOMMENDATION:** Staff recommends the Authority approve Resolution No. 2011-03 authorizing the delegation of certain functions to the Executive Director and Deputy Executive Director.