

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 2013-03

January 31, 2013

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 couple of years, the Authority has authorized a resolution delegating specific powers and duties to designated Authority staff. The existing delegation resolution expires January 31, 2013. 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, 2015.

PURPOSE OF THE RESOLUTION: From time to time, HELP II Loan Program borrowers seek consent from the Authority to amend various aspects of borrower loan documentation to accomplish such things as (1) changing the trustee on their deeds of trust, (2) selling, encumbering or transferring project assets, (3) merging, acquiring, dissolving, or changing the legal name of the borrower, (4) subordinating or otherwise altering the Authority’s security interests, and (5) prepaying HELP II loans. Absent a delegation permitting staff to grant consent to borrowers, staff must seek formal Authority board approval for many of these amendments. In the interest of expediting the approval process, staff requests the Authority authorize the Executive Director and Deputy Executive Director to consent to various amendments without first obtaining approval of the Authority board.

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, 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.

One notable addition to the proposed delegation resolution from the prior version is found at subpart (vi) below concerning the substitution of real property. This additional section has been added and is reflected, along with other minor changes, in an attached track changes version.

- (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, name change, or the sale of assets by a participating party.
- (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 issue, or any investigation of any loans 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, or to effectuate the terms of the applicable resolution adopted by the Authority.

RECOMMENDATION: Staff recommends the Authority approve Resolution No. 2013-03 authorizing the delegation of certain functions relating to the HELP II Loan Program to the Executive Director and Deputy Executive Director.

RESOLUTION NO. ~~2011-09~~2013-03

**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 and empowered by the provisions of the California Health Facilities Financing Authority Act (the “Act”) to issue bonds to finance or refinance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of a health facility operated by participating health institutions ~~(as defined in California~~ Government Code section 15432);

WHEREAS, the Authority ~~has previously~~ established the HELP II Loan Program (the “Program”) to make loans to finance or refinance, among other things, all or a portion of the cost of acquiring certain equipment or constructing certain capital improvements (the “Project”) as authorized by the Act;

WHEREAS, the Authority anticipates entering into future loan financed transactions for the benefit of participating health institutions;

WHEREAS, from time to time a participating health institution may desire to seek consent of the Authority relating to: amendments to the various loan documentation memorializing the loans between the Authority and the participating health institutions (“Loan Documents”); changes in trustees; the sale, encumbrance or transfer of project assets; a merger, acquisition, dissolution, legal name change, or the sale of assets by a participating health institution; 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: amendments to the Loan Documents; changes in trustees; the sale, encumbrance or transfer of ~~project~~Project assets; a merger, acquisition, dissolution, legal name change, or the sale of assets by a participating health institution; 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; ~~and~~

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 ~~delegation-resolution~~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. ~~[This Section intentionally left blank]~~

~~**Section 6.—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 borrowers have engaged in Authority board approved bond financing insured through OSHPD (whether through new issuance or refinancing); and/or

(B) financial institutions when borrowers are 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 new appraisal 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 borrowers have engaged in Authority board approved bond financing insured through OSHPD (whether through new issuance or refinancing); and/or

(B) financial institutions when borrowers are requesting that the existing HELP II loan be subordinated into the 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 borrowers have engaged in Authority board 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, consolidation or affiliation of a participating health institution, the dissolution of a participating health institution, a change to borrower's legal name, or the sale or other transfer of substantially all of the assets of a participating health institution 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 loans, or any investigation or audit or other review of any loans 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 resolution authorizing the loans adopted by the Authority. 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 board 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 formal board 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 ~~in any particular case~~, and the Executive Director and Deputy Executive Director may ~~in any instance~~ 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 issue of loans 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~~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 ~~is~~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~~Resolution shall take effect from and after its adoption, and shall expire on January 31, ~~2013~~2015, unless extended by action of the Authority prior to that date.

RESOLUTION NO. 2013-03

**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 and empowered by the provisions of the California Health Facilities Financing Authority Act (the “Act”) to issue bonds to finance or refinance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of a health facility operated by participating health institutions as defined in Government Code section 15432;

WHEREAS, the Authority established the HELP II Loan Program (the “Program”) to make loans to finance or refinance, among other things, all or a portion of the cost of acquiring certain equipment or constructing certain capital improvements (the “Project”) as authorized by the Act;

WHEREAS, the Authority anticipates entering into future loan financed transactions for the benefit of participating health institutions;

WHEREAS, from time to time a participating health institution may desire to seek consent of the Authority relating to: amendments to the various loan documentation memorializing the loans between the Authority and the participating health institutions (“Loan Documents”); changes in trustees; the sale, encumbrance or transfer of project assets; a merger, acquisition, dissolution, legal name change, or the sale of assets by a participating health institution; 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: amendments to the Loan Documents; changes in trustees; the sale, encumbrance or transfer of Project assets; a merger, acquisition, dissolution, legal name change, or the sale of assets by a participating health institution; 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 borrowers have engaged in Authority board approved bond financing insured through OSHPD (whether through new issuance or refinancing); and/or

(B) financial institutions when borrowers are 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 new appraisal 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 borrowers have engaged in Authority board approved bond financing insured through OSHPD (whether through new issuance or refinancing); and/or

(B) financial institutions when borrowers are requesting that the existing HELP II loan be subordinated into the 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 borrowers have engaged in Authority board 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, consolidation or affiliation of a participating health institution, the dissolution of a participating health institution, a change to borrower's legal name, or the sale or other transfer of substantially all of the assets of a participating health institution 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 loans, or any investigation or audit or other review of any loans 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 resolution authorizing the loans adopted by the Authority. 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

board 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 formal board 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 issue of loans 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, 2015, unless extended by action of the Authority prior to that date.

Date of Adoption: _____