

Memo

To County Judge of Williamson County, Texas

From Amanda Stephens, Orrick, Herrington & Sutcliffe LLP

Date May 11, 2023

Re Equitable Facilities Fund, Inc. loan

This memo provides information regarding Equitable Facilities Fund, Inc., a Delaware nonstock corporation described in Section 501(c)(3) of the Code (“EFF”), Equitable School Revolving Fund, LLC, a Delaware limited liability company affiliate of EFF that is disregarded for federal tax purposes (“ESRF”) and the Arizona Industrial Development Authority (the “Authority”) in connection with a loan to Valor Public Schools (the “Corporation”) for the purpose of financing the costs of the Project (as defined below) in the Williamson County, Texas.

I. EFF Loan Program Overview

Orrick represents a nonprofit organization called Equitable Facilities Fund, Inc. It is a Delaware nonstock nonprofit corporation that has received 501(c)(3) tax-exempt status as a public charity. EFF is initially funded by philanthropic contributions, and is organized to make low-cost, long-term, fixed rate loans to charter schools for facilities through either a direct lending program or the purchase of bonds (the “School Credit Facilities”). The EFF program is set up as a revolving loan fund, so that over time as existing School Credit Facilities are repaid, the loan repayment revenues can be used to make new School Credit Facilities. On August 29, 2019, EFF issued \$111,725,000 of tax-exempt bonds (the “Series 2019 Bonds”), on August 27, 2020 issued \$122,710,000 of tax-exempt bonds (the “Series 2020 Bonds”), on October 20, 2021 issued \$122,895,000 of tax-exempt bonds (the “Series 2021 Bonds”) and on August 30, 2022 issued \$153,525,000 of tax-exempt bonds (the “Series 2022 Bonds”) to leverage the revenue streams from the portfolio (or pool) of School Credit Facilities, and will continue to issue bonds pursuant to a multi-year plan of finance in order to originate more loans to charter schools (the “EFF Bonds”). As an example of how the revenue stream is leveraged, with \$200 million in original philanthropic contributions to the loan fund, plus about \$500 million in total issuance of EFF Bonds, EFF could make upwards of \$700 million in School Credit Facilities. Depending on the locations of the projects financed by the School Credit Facilities over time, EFF will issue the EFF Bonds using various conduit issuers in various jurisdictions, and possibly use a national conduit issuer that has authority to finance projects in multiple jurisdictions. EFF will use the proceeds of the EFF Bonds to reimburse itself for School Credit Facilities it previously originated, in order to make additional School Credit Facilities.

EFF’s goals are twofold: (1) directly save schools money by providing low-cost facilities financing, and (2) indirectly save schools money by transforming the public capital market for charter school financing through introducing competitive dynamics and catalyzing lower bond yields for all charter schools. To achieve the first goal, EFF hopes to issue the EFF Bonds with an “A” category credit rating and borrow at “A” category rates, which it accomplished with the Series 2019 Bonds, Series 2020 Bonds and Series 2021 Bonds. Then, EFF will pass on the “A” category borrowing rates through to its School Credit Facility borrowers

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(subject to certain spreads designed to cover operating costs of EFF and manage credit risks of the School Credit Facility pool).

EFF maintains headquarters in New York City, with about a dozen employees, and has all required regulatory approvals to act as a lender in the various jurisdictions where it makes School Credit Facilities.

II. Roles of EFF and ESRF

In order to obtain an “A” category rating on the EFF Bonds, the pool of School Credit Facilities must meet specific rating criteria established by the major credit rating agencies, which include a requirement that the School Credit Facilities be held in a bankruptcy-remote special purpose entity, separate from EFF. EFF created a subsidiary for this purpose, Equitable School Revolving Fund, LLC, a single member Delaware limited liability company whose sole member is EFF (“ESRF”), and that is a disregarded entity for federal income tax purposes. ESRF is organized exclusively to support EFF and, the board of ESRF is appointed by the board of EFF. ESRF will end up owning all School Credit Facilities, and ESRF will be the borrower on any EFF Bonds that may be issued from time to time to reimburse the costs of originating School Credit Facilities.

Even though EFF and ESRF are under common control and organized for the same purposes, the formality associated with each School Credit Facility closing is necessary for purposes of meeting the rating criteria and achieving the goal of issuing the EFF Bonds with the highest possible credit rating at the lowest possible borrowing rates.

III. Role of Charter School

The role of the charter school in any School Credit Facility transaction will be as borrower, or to the extent there is a family of related entities to the charter school that includes a separate property-owning entity, the charter school may be a tenant in a facility that is owned by a related party landlord, with the landlord entity serving as borrower on the School Credit Facility.

The Corporation applied to EFF for a loan. The loan to the Corporation will (i) finance and refinance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of educational facilities located at 11720 S. MoPac Expressway, Austin, Texas and 290 County Road 267, Georgetown, Texas (the “Project”), and (ii) pay costs associated with the closing of the loan.

IV. Role of the Authority

As stated above, EFF intends to raise additional funds (beyond the original philanthropic contributions) for the purpose of originating School Credit Facilities through the issuance from time to time of EFF Bonds. The EFF Bonds could be issued through any conduit governmental issuer that has requisite authority to finance the charter school projects for which the School Credit Facilities have been originated. It is anticipated that EFF will make School Credit Facilities in any of jurisdictions in the US that authorize public charter schools. Currently, 43 states and the District of Columbia authorize charter schools.

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The Authority has been identified as the conduit issuer for EFF Bonds because the proceeds of bonds issued by the Authority can be used to reimburse EFF for School Credit Facilities originated in any jurisdiction of the US. Thus, e.g., if EFF has made School Credit Facilities in Tennessee, California, Texas and Arizona, and then seeks to reimburse itself from EFF Bond proceeds for all of those School Credit Facilities, it could do so from a single issue of EFF Bonds through the Authority. This approach is more economically- and time-efficient than seeking to issue EFF Bonds through local conduit issuers in each of those states for the same purpose. Moreover, the sale of one large series of EFF Bonds garners more favorable bond pricing as compared to the sale of multiple smaller series of EFF Bonds through local conduit issuers.

EFF's revolving loan program is established through a Master Trust Indenture that will credit enhance ESRF's conduit revenue bond repayment obligations. The EFF Bonds can be issued through any duly authorized conduit governmental issuer. Thus, over time, EFF may or may not issue the EFF Bonds through the Authority. EFF may issue EFF Bonds through one or more other conduit governmental issuers. EFF will evaluate the alternatives and structure the issuance of EFF Bonds in due course, as the pool of School Credit Facilities takes shape over time. Several factors will guide that decision process.

In connection with the Corporation transaction, EFF has asked the Corporation to obtain local governmental approval (TEFRA) from the Williamson County, Texas for issuance of EFF Bonds by the Authority. It is possible, however, that EFF could issue EFF Bonds through a Texas conduit issuer to reimburse School Credit Facilities made in Texas.

V. TEFRA

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and Section 147(f) of the Internal Revenue Code of 1986 (the "Code") require public approval of tax-exempt obligations issued by a nonprofit corporation. Each governmental unit having jurisdiction over the area in which any project facility is located must approve the tax-exempt obligation. Such approval is solely for the purposes of compliance with TEFRA and Section 147(f) of the Code. Such approval is not (1) a representation or warranty by the governmental unit that the financing will be paid or that any obligations assumed by any of the parties under the instruments delivered in connection with the financing will in fact be performed; (2) a pledge of the faith and credit of or by the governmental unit; or (3) a representation or warranty by the governmental unit concerning the validity of the corporate existence of any corporation or the validity of the financing.

Since EFF and ESRF are nonprofit corporations expecting to issue tax-exempt obligations through the Authority in the future based off the School Credit Facilities, EFF and ESRF need to obtain TEFRA approvals from each governmental unit in each jurisdiction where they issue School Credit Facilities.

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In compliance with the Code, notice will be published that will provide that members of the public are invited to a hearing to be held by the Corporation. The public will be given the opportunity to present comments to the proposed financing at the hearing or in writing.

VI. Conclusion

I will conclude with a brief description (or case study) of the first EFF loan which closed in October 2018. The table below was prepared by EFF and shows (column titled "EFF Loan") the final terms of the School Credit Facility from EFF to Soulsville Charter School, in Memphis, Tennessee. Soulsville's story is, like many high performing charter schools, nothing short of amazing. Soulsville is a top performing public charter high school program, oriented around the history and culture of the southern portion of Memphis, known as "Soulsville", and in particular the Stax Records Studio (where Otis Redding, Isaac Hayes, Aretha Franklin and many others made their careers). I was fortunate to visit Soulsville Charter School and can't express how wonderful the facilities, staff and programs are.

The column titled "Tax-Exempt Bond Option" presents market-based assumptions about the school's potential alternative financing option using publicly offered bonds issued through a local conduit issuer. The comparison data is further validated by the fact that Soulsville engaged a bond finance team to explore and present projected bond terms prior to executing the EFF loan.

	Tax-Exempt Bond Option	EFF Loan	Savings
Project Cost	\$10,046,456	\$10,046,456	
Costs of Issuance	\$600,000	\$283,650	\$316,350
Debt Service Reserve Fund	\$851,256	\$0	\$851,256
Par Amount of Obligation	\$11,500,000	\$10,330,106	\$1,169,894
30 Year MMD - Day of Pricing	3.41%	3.41%	n/a
Coupon	6.16%	4.99%	1.17%
Spread to MMD	2.75%	1.58%	1.17%
*Average Annual Payment	\$820,200	\$664,986	\$155,213
*Total Debt Service	\$24,605,986	\$19,929,269	\$4,676,718

**Net of Debt Service Reserve Fund used to repay last maturity*

The bottom line is this: EFF and Orrick hope to deliver results like those shown above to Texas charter schools – saving them millions of dollars on facilities financing transactions, allowing those same dollars to be applied to their important work of providing education, instead of paying interest and transaction costs.