



March 21, 2007

To: CSAC Commissioners, Diana Fuentes Michel, Sam Kipp

From: Commission Ad Hoc Committee on Governance Roles and Responsibilities  
The Results Group Consultants

RE: Preparing for Next Friday's Commission Meeting

**The materials in the enclosed binder were developed by the Commission's Ad Hoc Committee on Governance Roles and Responsibilities to help you prepare for the Commission's Special Meeting next Friday, March 30<sup>th</sup>.**

### **Background – Why Develop Policies?**

As you know, as a Commission we have struggled in recent years to define “roles and responsibilities in oversight of EdFund.” In December we engaged consultants from The Results Group and Aurora Consulting to assist us. At our last Commission meeting, our consultants reported that oversight roles and responsibilities can best be defined in the context of Commission policies. We agreed as a Commission to follow the structure outlined by the consultants in the following diagram:



The circled item – developing policies – has been the focus of the Ad Hoc Committee in the four weeks since our last Commission meeting. It will also be the focus of the Commission at next week's meeting.

The Committee has conducted extensive research and read much about governance, and confirmed this approach. For example, perhaps the most succinct definition of “governance” we found was the following: *“Defining the organization's mission and providing overall leadership and strategic direction to the organization. Each board should:*

- 1) **actively set policy** and ensure that the organization has adequate resources to carry out its mission; *[emphasis added]*
- 2) *provide direct oversight and direction to the Executive Director and be responsible for evaluating his/her performance; and*
- 3) *evaluate its own effectiveness as a governing body, as a group of volunteers, and as representatives of the community in upholding the public interest served by the organization.”*<sup>i</sup>

### **Steps in the Commission's Process**

1. February 22 meeting: The commission decided to “put the fundamentals in place” by developing policies.
2. March 30 meeting: The Commission will discuss the draft outline of policies prepared by the Ad Hoc Committee (see tab one in the enclosed binder).
3. April 13 meeting by teleconference: The Commission will continue to discuss and refine the most important policies.
4. April 20 meeting: Finalize and adopt the most important policies.

After this process is completed, the Commission and EdFund will finalize the new Operating Agreement, which will further spell out the roles and responsibilities.

### **Materials in the Binder – How to Prepare for Next Week’s Meeting**

We suggest you begin by reading:

- Tab 2: Read the very brief Executive Summary of the consultants’ review of what other states are doing regarding oversight of their FFELP loan guaranty program.
- Tab 1: Thoroughly review the draft policies. It is important to note that this is not intended as a complete set of policies. The Commission as a whole body, with input from staff, must discuss and agree in concept on the policies. Therefore, the Ad Hoc Committee did not intend to present a complete policy manual. However, for the Commission to start from a blank page would be inefficient. So we developed the policy categories based on our research into policy governance models. We then developed some language for most of the policy areas to initiate our discussion.

If you have time, it would also be worthwhile to look through the research materials enclosed in the binder.

We look forward to seeing you on the 30<sup>th</sup> and discussing these very important foundational element of our responsibilities as Commissioners – our governance policies. If you have any questions or wish to discuss this, please contact Dean Johnston, Dennis Galligani, or Commission Chair Louise McClain.

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<sup>1</sup> The Minnesota Council of Nonprofits, [http://www.mncn.org/info\\_principles2.htm](http://www.mncn.org/info_principles2.htm)



**Materials for the Special Commission Meeting  
March 30, 2007**

**Table of Contents**

**Tab 1: Draft Policies**

NOTE: This is not intended as a complete set of policies. The Commission as a whole body, with input from staff, must discuss and agree in concept on the policies. Therefore, the Ad Hoc Committee did not intend to present a complete policy manual. However, for the Commission to start from a blank page would be inefficient. So the Committee developed the policy categories based on its research into policy governance models. The Committee then developed some language for most of the policy areas to initiate the Commission's discussion.

**Tab 2: Other States' Guaranty Agency Structures and Oversight**

This is the Executive Summary of the consultants' review of Student Loan Guaranty Agencies nationwide. In particular, it looks at the oversight approach used in states that have a structure similar to California's CSAC-EdFund structure.

**Tab 3: Reference Materials**

- Primary references used by the Ad Hoc Committee
- Definition of "governance" from the Minnesota Council of Nonprofits
- Internal Revenue Service "Good Governance Practices for 501 (c)(3) Organizations"
- Nonprofit Governance Indicator Guide (synopsis of a document from an organization called "Governance Matters")



## **California Student Aid Commission Policies**

***Initial Working Draft:***

***Partially Completed Policies in Key Areas  
for Discussion at the  
March 30, 2007  
Commission Special Meeting***

March 21, 2007

## Introduction

### Purpose and Types of Policies

The purpose of these policies is to enable the California Student Aid Commission to fulfill its oversight responsibility for the grant programs and loan guaranty programs for which it has been given responsibility by statute. There are five categories of policies:

**Ends Policies.** These set forth the outcomes to be achieved by the Commission's grant and loan guaranty programs.

**Commission Governance Process Policies.** These Governance Policies define how the Commission itself will operate (for example, the role of the Chair and committees).

**Authority and Delegation Policies.** These policies delineate the governance-related roles of the Executive Director and the EdFund Board and President.

**Parameters within which Executives Will Conduct Business** These Parameters Policies state the "do's and do nots" – what the CSAC Executive Director and EdFund President are expected to do, and not to do, as they work to accomplish the outcomes set forth in the Ends Policies.

**Monitoring Policies.** These define how the Commission will monitor organizational performance based on the policies in the other four categories.

Within each of these five areas, policies are written at three levels:

- First Level: A succinct, global statement as an "umbrella" covering the policy category.
- Second Level: Policies defining the major sub-categories within that policy category.
- Third Level: Specific policy statements delineating each sub-category in more detail.

### Entity and Program Names

Throughout this document, the California Student Aid Commission organization as a whole (including its auxiliary, EdFund) is referred to as "CSAC." The Commission's grant programs, including related outreach programs, are referred to as the "grant program." The Commission's loan guaranty programs, administered by EdFund, are referred to as the "loan program." The four CSAC sub-entities are referred to as: the "Commission," "grant program staff," the "EdFund Board," and "loan program staff." Members of the Commission or EdFund Board are referred to as "Commissioners" and "Board members" respectively.

### Reasonable Interpretation

Those being directed by these policies – the Commission, CSAC Executive Director, EdFund President, and the EdFund Board – are authorized to act based on a "reasonable interpretation" of the written policies. This is similar to the "reasonable person test" that has been utilized in law for generations.

## **Ends Policies**

### **Outcomes to Be Achieved by the CSAC Organization**

#### **Global Policy: Ends**

Students and families who would not otherwise be able to afford a postsecondary education will, as a result of California Student Aid Commission (CSAC) grant and loan programs, be able to do so.

#### **Ends Policy 1: Grants to California Students**

Eligible California students will receive financial assistance in the form of grants through Cal Grant A, B, and C Awards, California Community College Transfer Entitlement Awards, the California Chafee Grant Program, and other specialized programs approved by the Commission.

Students and families, particularly those who are low-income, will participate in the outreach programs offered by CSAC and will receive information about college planning and preparation, paying for college, and accessing financial aid.

*[More specific language regarding the grant program will be inserted here]*

#### **Ends Policy 2: Student Loans and Services**

Through the Commission's loan guaranty programs ("loan program"), administered by the Commission's auxiliary EdFund, students and families will receive financial assistance in the form of loans through the Federal Family Education Loan Program (FFELP) and other programs as approved by the Commission. In addition, borrowers will be able to refinance any or all of their outstanding federal student loans into a FFELP Consolidation Loan guaranteed by CSAC. California will be a primary focus for the loan program; however, given the national competitive nature of the FFELP programs, the loan program is available to students and families nationally, pursuant to an annual and strategic plan, approved by the EdFund Board and adopted by the Commission.

To assist students in reaching their educational goals, EdFund will provide a range of products and premier customer service to schools, lenders and borrowers that meet or exceed those provided by EdFund's competitors in this highly competitive national marketplace. EdFund will also:

- A. Continuously invest in the development of technology to enhance the effectiveness and efficiency of EdFund programs internally and for customers.
- B. Provide effective and responsive default aversion programs.
- C. Provide students and families with useful information on college planning and selection, career planning, financial aid, and debt management.
- D. Provide administrative, technical, and programmatic support to the Commission.

*[More specific language regarding the loan program will be inserted here]*

### **Ends Policy 3: Maximizing of Services and Revenues**

In order to provide the greatest range of services at the least cost to students, families, and institutions, and “to maintain the fiscal viability of the auxiliary,” Calif. Ed. Code Section 69526(b)(2), the Commission, EdFund Board, and loan program staff will take all reasonable steps to optimize EdFund revenues, within the limitations prescribed in other policies herein.

- A. EdFund will seek to generate annual loan program revenues net of expenses to:
  - 1) Meet the minimum reserve levels established by the Commission for the FFELP Federal Fund (pursuant to the Higher Education Act), Operating Fund, and EdFund Operating Reserve Fund.
  - 2) Provide reserves for future EdFund program investments and to support other EdFund activities approved by the Commission, and to enable EdFund to adjust to Federal changes that may occur in the funding formulas for guaranty agencies.

## **Commission Governance Process Policies**

### **How the Commission will Conduct Itself and Its Activities**

#### **Global Policy: Commission Governance Process**

The purpose of the Commission is to act as the governing body, which has statutory responsibility for the CSAC grant and loan programs. As such, it will see that the CSAC organization achieves the desired outcomes, while avoiding unacceptable actions and situations, set forth by the Commission in the policies herein.

#### **Commission Governance Policy 1: Governance Approach**

Integrity and sound stewardship are paramount in the governance of all Commission activities. The Commission will govern according to all applicable laws and based on policies set forth in this Commission Policy document, with a commitment to the following principles:

- Make the greatest possible contribution to the success of the Commission's programs, while making efficient use of organizational effort and resources to support the Commission itself.
- Maintain the highest ethical, legal, and accounting standards.
- Focus on outward vision and strategic leadership rather than administrative detail.
- Be proactive rather than reactive.
- Encourage diversity in viewpoints.
- Make decisions efficiently.
- As a Commission, make collective rather than individual decisions.

Specifically, the Commission's governance approach will include the following:

- A. The Commission will maintain its accountability and responsibility for the grant and loan programs. Although the EdFund Board, grant program staff, and loan program staff serve an important role in supporting the Commission as it fulfills its responsibilities, the Commission retains the ultimate authority and responsibility.
- B. The Commission, not the staff, will be responsible for excellence in governance. The Commission will be the initiator of policy, not merely a reactor to staff initiatives.
- C. The Commission will cultivate a sense of group responsibility. The Commission will not use the expertise of individual members to substitute for the judgment of the Commission, although the expertise of individual members may be used to enhance the understanding of the Commission as a body.
- D. The Commission will clearly delineate roles and responsibilities of the Commission, EdFund Board, grant program staff, and loan program staff. These roles and responsibilities will avoid duplication of effort, leverage the expertise of staff in the two organizations, and emphasize efficient use of all resources.
- E. The Commission will make decisions by majority vote. Once a decision is reached, all Commissioners will stand behind the decision and act according to it.

- F. The Commission will enforce upon itself whatever discipline is needed to govern with excellence, including attendance at meetings, preparation, policy-making principles, and respect of roles. The Commission will evaluate its governance effectiveness periodically and take steps to improve its effectiveness as a governing body.
- G. Continual Commission development will include orientation of new members, which will provide an understanding of the Commission's governance process and a working knowledge of key elements of the grant and loan programs. Commission development will also include regular discussion and presentations to further inform Commissioners regarding the workings of the grant and loan programs, and periodic presentations and/or Commission discussion regarding governance process improvement.

## **Commission Governance Policy 2: Commission's Role**

In furtherance of the Commission's fiduciary and oversight responsibilities over all Commission programs, the Commission will produce the necessary outputs and documentation to assure the State of California, the federal government, and other key stakeholders that CSAC is fulfilling its mission, as well as its statutory and regulatory obligations.

- A. Pursuant to California Education Code Section 69526 (b)(c), the Commission, in consultation with the Department of Finance and the Board of Directors of EdFund, shall do the following:
  - 1) Institute a standard accounting and reporting system for the management and operations of EdFund.
  - 2) Implement financial standards that will ensure the fiscal viability of EdFund. The standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.
  - 3) Institute procedures to ensure that transactions of EdFund are consistent with the mission of the commission.
  - 4) Develop policies for the expenditure of funds derived from indirect cost payments not required to implement paragraph 2 above. The use of those funds shall be regularly reported to the board of directors of EdFund.
  - 5) Ensure that EdFund shall not accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with the policies of the Commission.
- B. The Commission will conduct fiscal and programmatic oversight and will monitor organizational performance of the grants, loan guaranty, and ancillary Commission programs based on the policies herein.
- C. Pursuant to California Education Code Section 69522(c)(2), the Commission will conduct regular performance evaluations of the operation of EdFund in furtherance of its fiscal and fiduciary responsibilities for approved programs.
- D. The Commission will understand, accept, and hold the EdFund Board accountable for its fiduciary responsibilities as the board of a California non-profit corporation.
- E. The Commission will maintain aggressive internal audit units in the grants and loan guaranty programs and will seek to maintain and improve operating efficiency and effectiveness through continuous internal auditing.

- F. The Commission will maintain written governance policies that realistically address the broadest level of organizational decisions and situations.
- G. The Commission will maintain a working relationship with key elected and appointed officials in order to make policy decisions with an understanding of state and federal policy. The Commission Chair or an appropriate Committee Chair or Commission member will participate, as appropriate, in significant interactions with these officials, in collaboration with grant and/or loan program staff.

### **Commission Governance Policy 3: Commission Chair's Role**

The Commission Chair assures the integrity and fulfillment of the Commission's process and occasionally represents the Commission to outside parties.

*[More specific language will be developed and inserted here.]*

### **Commission Governance Policy 4: Commissioner Code of Conduct**

The Commission commits itself and its members to ethical, businesslike, and lawful conduct, including proper use of authority and appropriate decorum when acting as Commission members.

*[More specific language will be developed and inserted here.]*

### **Commission Governance Policy 5: Committees**

Commission committees, when used, are to help the Commission do its job by preparing policy alternatives and implications for Commission deliberation. This policy applies to any group that is formed by Commission action, whether or not it is called a committee and regardless of whether the group includes Commission members. It does not apply to committees formed under the authority of the CSAC Executive Director or EdFund President.

- A. Committees may not speak or act for the Commission except when formally given such authority for specific and time-limited purposes. Expectations and authority will be carefully stated in order not to conflict with authority delegated per the Authority and Delegation Policies herein.
- B. Committees cannot exercise authority over staff, except where specifically authorized by the Commission.
- C. Committees are to avoid over-identification with organizational parts rather than the whole, and will at all times act upon the whole of the policies herein.
- D. Standing committees will be used sparingly, making most effective use of the Commissioners' expertise.

*[Additional language will be developed and inserted here, including the Commission's existing policies re: advisory bodies.]*

## **Authority and Delegation Policies**

### **Role of the EdFund Board, CSAC Executive Director, and EdFund President**

#### **Global Policy: Commission-Board-Executive (C-B-E) Authority and Delegation**

In the case of grant programs, the primary official connection to the CSAC grant program organization's staff, its achievement, and its conduct will be through an Executive Director (or in the event of a vacancy, through the Deputy Executive Director). The sole exception will be an Internal Audit function that reports to the Commission's Audit Committee, and other audits or reviews ordered by the Commission, or as otherwise required by statute.

In the case of the loan program, the EdFund Board must fulfill its fiduciary role as the board of a California non-profit corporation. The Commission and its staff will coordinate activities with the EdFund Board and EdFund President, as appropriate. The primary connection to the loan program organization and staff, its achievement, and its conduct will be through the EdFund Board to the EdFund President (or in the event of a vacancy, through an appointment designated by the EdFund Board). The sole exception will be an Internal Audit function that reports to the Commission's Audit Committee and the EdFund Board, and other audits or reviews ordered by the Commission or the EdFund Board, or as otherwise required by statute.

In the case of administrative services performed for the grant programs by EdFund (e.g., information technology services), the Commission retains authority to determine the scope of those services, establish standards and service level agreements, and evaluate the delivery of services against those standards and agreements.

#### **C-B-E Policy 1: Unity of Authority and Control**

Only decisions of the Commission acting as a body are binding on the Executive Director or President, except as follows:

- A. Decisions or instructions of Commission officers or committees are not binding on the Executive Director or President unless they fall within the authority delegated by the Commission to that Commission officer or committee.
- B. Decisions or instructions of individual, non-officer Commissioners are not binding on the Executive Director or President, except in rare instances when the Commission has specifically authorized such exercise of authority.
- C. In the case of Commission officers or committees requesting information or assistance within the Commission's authorization, the Executive Director or President may appeal to the Commission such requests if the Executive Director or President can illustrate that fulfillment would require an undue amount of staff time or funds, or would be substantially disruptive to normal business operations. In the case of individual Commissioners requesting information or assistance within their individual authority, the Executive Director or President may refuse to fulfill requests that they, in their judgment, deem to require an undue amount of staff time or funds, or would be substantially disruptive to normal business operations. If the Commissioner nonetheless wishes to pursue the request, that Commissioner must make the request through the Commission Chair.

### **C-B-E Policy 2: Authority and Accountability of the CSAC Executive Director**

The CSAC Executive Director is the Commission's primary link to operational achievement and conduct of the grant program, so that authority and accountability of grant program staff, as far as the Commission is concerned, is considered the authority and accountability of the Executive Director. The sole exception is the Internal Audit staff, who report through the Internal Auditor to the Commission's Audit Committee, or other audits or reviews by third parties ordered by the Commission or otherwise required by statute.

- A. As long as the Executive Director operates within a reasonable interpretation of the Commission's policies herein, the Executive Director is authorized to establish operational procedures, make operational decisions, and conduct the organization's operational activities required for the administration of the grant program, including related outreach and information dissemination.
- B. The Commission will not hire, terminate, or formally evaluate any grant program staff other than the Executive Director and the Internal Auditor.
- C. The Commission may also direct the CSAC Executive Director to provide administrative support required to assist the Commission in its role in overseeing EdFund.
- D. Pursuant to Calif. Ed. Code Section 69522, in administering the grant and outreach programs, the Executive Director will ensure broad public input and consultation with representatives of the financial aid community, colleges and universities, and state agencies (per statute).
- E. The Commission will evaluate the Executive Director's performance based on organizational accomplishment of the Commission's Ends Policies and compliance with other Commission policies herein, as well as professional development, performance goals set annually by the Commission's personnel committee, and the duty statement established for the Executive Director.

### **C-B-E Policy 3: Authority and Accountability of the EdFund Board**

According to the statute that enabled the creation of EdFund, the EdFund Board is required to act as the governing board of the California non-profit corporation. As such, both the Board as a whole and individual Board members have certain fiduciary responsibilities and obligations with regard to the EdFund organization.

- A. EdFund Board members are appointed by the Commission and are accountable to the Commission.
- B. Pursuant to California Education Code Section 69526, the EdFund Board will approve all expenditures and fund authorizations of the auxiliary organization. Authorizations of expenditure of fund for use outside of the normal business operations of the auxiliary organization shall be approved by an officer of the Commission and in accordance with Commission policy.
- C. The Board has direct responsibility for the following, and will report regularly to the Commission regarding (see "Monitoring Policies"):
  - 1) EdFund's compliance with all applicable laws, regulations, and Commission or EdFund Board policies.
  - 2) The stewardship and management of loan program resources.

- 3) Review and approval of EdFund's strategic plan, annual operating plan and operating budgets.
- 4) Monitoring and reporting on EdFund's performance relating to its annual and strategic goals.
- 5) Monitoring and reporting on EdFund's performance relating to its annual operating budget.
- 6) Review and approval of EdFund's human resources policies including policies and procedures for establishing Executive Compensation to ensure compliance with IRS intermediate sanctions and safe harbor provisions.
- 7) Monitoring EdFund performance, within the context of the policies herein and the EdFund strategic and annual plans.
- 8) The hiring and evaluation of the EdFund President and other Senior Executives.
- 9) Reporting regarding EdFund's compliance with respect to the Operating Agreement.
- 10) Recommending to the Commission additional programs and services to be undertaken by EdFund.

#### **C-B-E Policy 4: Authority and Accountability of the EdFund President**

The EdFund President, through the EdFund Board, is the Commission's primary link to operational achievement and conduct of the loan program, as well as administrative services provided in support of the grant and outreach programs. As such, authority and accountability of EdFund staff, as far as the Commission is concerned, is considered the authority and accountability of the President to the EdFund Board and thus to the Commission. The sole exception is the Internal Audit staff, or other audits or reviews by third parties ordered by the Commission or the EdFund Board, or as otherwise required by statute.

- A. As long as the EdFund President operates within a reasonable interpretation of the Commission's policies herein and policies established by the EdFund Board, the President is authorized to establish operational procedures, make operational decisions, and conduct the organization's operational activities required for the administration of the grant program, including related outreach and information dissemination, under the direction of the EdFund Board.
- B. The Commission will not hire, terminate, or formally evaluate the EdFund President or any EdFund staff. However, the evaluation of the EdFund President by the EdFund Board will include an assessment of performance based on organizational accomplishment of the Commission's Ends Policies and compliance with other Commission policies herein, and the EdFund Board will provide the Commission with the annual goals and evaluation of the President.
- C. The EdFund President is authorized to enter into agreements on behalf of the Commission under certain circumstances ...  
*[Language will be added to clarify what agreements can be entered into by EdFund]*
- D. In administering the loan program, the President will ensure broad public input and consultation with representatives of the financial aid community, colleges and universities, and lending institutions and associations.

## **Executive Parameters Policies**

### **Global Policy: Executive Parameters**

Regarding the grant program, the CSAC Executive Director will, and regarding the loan program, the EdFund President will, ensure that all organizational practices, activities, and decisions are not unlawful, imprudent, in violation of commonly accepted business and professional ethics, or in violation of any federal or state laws or regulations.

### **Executive Parameters Policy 1: Strategic and Annual Planning**

GRANT PROGRAM. The Executive Director will annually update the CSAC strategic plan for the subsequent three to five years, and will develop an annual plan delineating specific action steps and a timeline to implement the strategic plan, for approval by the Commission.

LOAN PROGRAM. The EdFund President will annually update the EdFund strategic plan for the subsequent three to five years, and will develop an annual plan delineating specific action steps and timeline to implement the strategic plan, for approval by the EdFund Board and adoption by the Commission.

### **Executive Parameters Policy 2: Financial Planning and Budgeting**

Financial planning for any fiscal year, or the remaining part of any fiscal year, will conform to the Commission's Ends Policies and the Commission's annual budgeting guidelines, with timely notice to the Commission and, in the case of the loan program, the EdFund Board.

GRANT PROGRAM. The CSAC Executive Director will ensure that grant program financial planning, budgeting, and expenditures:

- A. Provide sufficient information to the Commission to demonstrate credible projection of revenues and expenses, capital expenditures, and cash flow, as well as clearly stating critical planning assumptions.
- B. Present a proposed operating budget for each fiscal year that supports the achievement of the strategic plans and annual goals approved by the Commission, including goals relating to further improvement of the cost effectiveness of the administration of the programs in relationship to the total amount of grants awarded.
- C. Incur or cause to incur annual expenses within the multi-year expense projections or efficiency targets established by the Commission. Such ratios compare the grant program administrative costs to funds awarded for the year.
- D. Incur or cause to incur expenditures that would result in a year-end variance of budget-to-actual by an amount exceeding the operating contingency established in the approved budget.
- E. Provide to the Commission and EdFund Board multi-year CSAC administrative cost projections. These projections will be provided in sufficient time for EdFund to incorporate them into its budget planning process, pursuant to the budget schedule adopted by the Commission.

*[Additional language will be developed and inserted here.]*

LOAN PROGRAM. The EdFund President will ensure that grant program financial planning, budgeting, and expenditures:

- F. Provide sufficient information to the EdFund Board and Commission to demonstrate credible projection of revenues and expenses, capital expenditures, and cash flow, as well as clearly stating critical planning assumptions.
- G. Market EdFund programs nationally pursuant to strategic and annual and plans, approved by the EdFund Board and adopted by the Commission, to maintain competitiveness in the national marketplace.
- H. Present a proposed operating budget for each fiscal year that supports the achievement of the strategic plans and annual goals approved by the Commission, including goals relating to further improvement of the cost effectiveness of the loan guaranty programs as a percentage of loans guaranteed.
- I. Project how EdFund programs will generate annual loan program revenues net of expenses:
  - 1) Meet the minimum reserve levels established by the Commission for the Federal Fund (pursuant to the Higher Education Act), Operating Fund, and Operating Reserve Fund.
  - 2) Provide reserves for future EdFund program investments and to support other EdFund activities approved by the Commission, including enabling EdFund to adjust to federal changes that may occur in the funding formulas for guaranty agencies.
- J. Incur or cause to incur annual expenses within the multi-year financial or efficiency targets established by the EdFund Board and Commission. Such ratios compare the loan guaranty program administrative costs to the dollar amount of loans guaranteed for the year.
- K. Incur or cause to incur expenditures that would result in year-end variance of budget-to-actual by an amount exceeding the operating contingency established in the approved budget.

It is anticipated that continued legislative and regulatory changes will likely occur and will alter and/or reduce revenues paid to guaranty agencies. EdFund will not fail to update its multi-year projections for the Federal Fund, Operating Fund and Operating Reserve Fund within 90 days of such changes.

*[Additional language will be developed and inserted here.]*

### **Executive Parameters Policy 3: Financial Condition and Activities**

With respect to the actual, ongoing financial conditions and activities of the CSAC grant program organization and the EdFund loan program organization, the CSAC Executive Director and EdFund President will not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from Commission priorities established in Ends Policies.

GRANT PROGRAM. The CSAC Executive Director will not:

- A. Enter into contracts or make a single purchase or commitment in an amount greater than \$xx,xxx, without the Commission's prior written approval.

- B. Use any long-term reserves to cover annual operating expenses, without the Commission's prior written approval.
- C. Fail to settle payroll and debts in a timely manner.
- D. Allow tax payments or other government-ordered payments to not be paid in a timely manner.
- E. Acquire, encumber, or dispose of real property, without the Commission's prior written approval.
- F. Fail to pursue receivables that can reasonably be collected and after a reasonable grace period.

LOAN PROGRAM. The EdFund President will not:

- G. Enter into contracts or make a single purchase or commitment in an amount greater than that established by the EdFund Board and approved by the Commission, without the EdFund Board's prior written approval and Commission's prior consent.
- H. Use any long-term reserves to cover annual operating expenses, without the EdFund Board's prior written approval and Commission's prior consent.
- I. Fail to settle payroll and debts in a timely manner.
- J. Allow tax payments or other government-ordered payments to not be paid in a timely manner including refunds to students as prescribed by federal, state or accreditation regulation.
- K. Acquire, encumber, or dispose of real property, without the EdFund Board's prior written approval and Commission's prior consent.
- L. Fail to pursue receivables that can reasonably be collected after a reasonable grace period.

#### **Executive Parameters Policy 4: Asset Protection**

The CSAC Executive Director and EdFund President will not allow the assets to be unprotected, inadequately maintained, or unnecessarily risked.

The CSAC Executive Director and EdFund President will:

- A. Insure against theft and casualty losses to a level that could materially affect the operations of the organization.
- B. Prevent unbonded personnel from having access to material amounts of funds.
- C. Avoid unnecessarily exposing the organization, the Commission, or CSAC/EdFund staff to claims of liability.
- D. Not permit any purchase:
  - 1) wherein prudent protection has not been given against conflict of interest;
  - 2) over \$xx,xxx without having obtained comparative prices and quality;
  - 3) over \$xx,xxx without a stringent method of assuring the balance of long-term quality and cost.

- E. Protect intellectual property, proprietary information, consumer identity (e.g., students and families), and confidential files from loss or significant damage.
- F. Receive, process, or disburse funds under controls that are sufficient to meet the Commission or EdFund Board-appointed auditor's standards.
- G. Invest or hold operating capital in secure instruments or in interest bearing accounts except when necessary to facilitate ease in operational transactions.
- H. Invest or hold long-term investment funds in investments that are in keeping with the Commission or EdFund Board approved investment philosophy and policies.
- I. Not endanger the organization's public image or credibility, particularly in ways that would hinder its ability to accomplish its mission.

### **Executive Parameters Policy 5: Treatment of Employees**

With respect to employees, the Executive Director and President will ensure that working conditions, procedures, and decisions are safe, dignified, fair, and provide appropriate confidentiality and privacy.

*[Additional language will be developed and inserted here.]*

### **Executive Parameters Policy 6: Compensation and Benefits**

#### **GRANT PROGRAM.**

With respect to employment, compensation, and benefits to employees, consultants, or contract workers, the CSAC Executive Director will not cause, or allow jeopardy to, fiscal integrity or public image.

*[Additional language will be developed and inserted here.]*

#### **LOAN PROGRAM.**

With respect to employment, compensation, and benefits to employees, consultants, or contract workers, the EdFund President will not cause, or allow jeopardy to, fiscal integrity or public image, or allow compensation and benefits to be the cause for unacceptable turnover in staff.

*[This section will be modified to incorporate compensation policies that are currently being updated]*

### **Executive Parameters Policy 7: Emergency Executive Succession**

In order to protect the Commission from sudden loss of CSAC Executive Director or EdFund President services, the CSAC Executive Director and EdFund President will ensure that at least one other manager is familiar with their respective duties, pending issues, and key processes.

### **Executive Parameters Policy 8: Internal Communications and Support to the Commission**

The CSAC Executive Director and EdFund President will keep the Commission adequately informed, in a timely manner, and provide the necessary support for the Commission to do its work.

#### The CSAC Executive Director and EdFund President will:

- A. Submit data required by the Commission Monitoring Policies in a timely, accurate and understandable fashion, directly addressing provisions of Commission policies being monitored.
- B. Cause the Commission to be aware of relevant trends, anticipated adverse media coverage, and material external and internal changes, particularly changes in the assumptions upon which any Commission policy or strategic or annual plan has been based.
- C. Advise the Commission if, in the opinion of the Executive Director or the President, the Commission is not in compliance with its own Governance Process Policies and Authority and Delegation Policies, particularly in the case of Commission behavior that is detrimental to the working relationship between the Commission and the Executive Director/President.
- D. Marshal for the Commission as many staff and external points of view, issues and opinions as needed for fully informed Commission choices and decisions.
- E. Present information in a form that emphasizes brevity and clarity, and identifies whether that information is for the purpose of monitoring (per the Commission's Monitoring Policies), supporting Commission decision/action, or other purposes.
- F. Deal with the Commission as a whole except when fulfilling individual requests for information or responding to Commissioners or committees duly charged by the Commission.
- G. Report in a timely manner an actual or anticipated non-compliance with any policy of the Commission, or state or federal law or regulation.

### **Executive Parameters Policy 9: External Communications**

In meeting or otherwise communicating with elected or appointed state or federal officials, the CSAC Executive Director and the EdFund President will not:

- A. Take an official position on issues, policies, or decisions upon which the Commission has not yet adopted a written policy or position.
- B. Take an official position contrary to that of the Commission, or represent interests contrary to those of the Commission, without making it explicit that such position or interests are not those of the Commission, and without informing the Commission Chair of such communications in advance whenever possible, or if not possible, within two working days thereafter.
- C. Discuss issues, policies, decisions, or programmatic information of any substance without appropriate representation by leaders of the other organization who have knowledge or expertise needed to fully and accurately represent the Commission and its programs.

In communicating with any external stakeholder (e.g., elected officials, the public, the media, representatives of financial or educational institutions or associations, etc.), the CSAC Executive Director and the EdFund President will not convey information that is proprietary or confidential, and will protect intellectual property and confidentiality of consumer identity (e.g., students and families).

**Executive Parameters Policy 10: Initiating and Terminating Programs**

- A. The CSAC Executive Director may not start a new CSAC program or terminate an existing one without Commission approval.
- B. The EdFund President may not start a new EdFund program or terminate an existing one without EdFund Board approval and adoption by the Commission.

*[Additional language will be developed and inserted here.]*

## **Monitoring and Oversight Policies**

**How the Commission will monitor organizational performance based on its policies.**

### **Global Policy: Monitoring**

Per (cite statute), the Commission has responsibility for oversight of its grant and loan programs. The Commission cannot delegate the ultimate responsibility for this oversight to Commission committees, the CSAC Executive Director, EdFund Board, EdFund President, or other staff. To fulfill this responsibility, the Commission will conduct monitoring to ensure that the grant and loan program organizations comply with all Commission policies.

### **Monitoring Policy 1: Overall Compliance with Commission Policies**

Twice annually, the CSAC Executive Director and EdFund Board/President will each present a report indicating their organization's compliance with the Commission's policies. This report will be signed by the Executive Director and EdFund Board Chair certifying its completeness and accuracy. It will identify any substantial lack of compliance, the reason for it, and steps that have been taken or that need to be taken, including any recommended Commission action, to achieve compliance.

### **Monitoring Policy 2: Ends**

On a quarterly basis, the Commission will review and accept a report of programmatic accomplishments according to the Ends policies herein from the CSAC Executive Director and EdFund Board.

### **GRANT PROGRAM.**

The CSAC Executive Director's report will include all relevant statistics, analysis of trends, and narrative information to encapsulate the most significant CSAC programmatic information, including at a minimum:

- A. The number of students, in total and by category, as specified by the Commission, receiving grants or services in each of the grant and outreach programs for the current quarter and fiscal year to date as compared to the same periods in the previous three fiscal years.
- B. The total amount and by category, as specified by the Commission, of grants awarded in each of the grant programs for the current quarter and fiscal year to date, as compared to the same periods in the previous three fiscal years.
- C. Information on any processing backlogs or other delays that are resulting or could result in a delay of the delivery of funds to students.
- D. Costs incurred in providing grant and outreach programs reported by major cost, as specified by the Commission, for the current quarter and fiscal year to date, as compared to the budgeted amounts and same periods in the previous fiscal year.

- E. Efficiency, processing performance, and quality metrics, as specified by the Commission, for the current quarter and fiscal year as compared to the same periods in the previous fiscal year.

*[Additional language will be developed and inserted here.]*

### LOAN PROGRAM.

The EdFund Board's report will include all relevant statistics, analysis of trends, and narrative information to encapsulate the most significant EdFund programmatic information, including at a minimum:

- F. The number of loans guaranteed by program and category, as specified by the Commission, for the current quarter and fiscal year to date, as compared to the same periods in the previous three fiscal years.
- G. The total dollar amount of loans guaranteed by program and category, as specified by the Commission, for the current quarter and fiscal year to date, as compared to the same periods in the previous three fiscal years.
- H. Information on any processing backlogs or other delays that are resulting or could result in a delay of the delivery of funds to students.
- I. Costs incurred in providing loan guaranty programs reported by major cost, as specified by the Commission, for the current quarter and fiscal year to date, as compared to the budgeted amounts and same periods in the previous fiscal year.
- J. Efficiency, processing performance, and quality metrics, as specified by the Commission, for the current quarter and fiscal year as compared to the same periods in the previous fiscal year.
- K. Financial statements in sufficient detail, as specified by the Commission, for the current quarter and fiscal year as compared to the same periods in the previous fiscal years. The financial information will also include information on the reserves established pursuant to Ends Policy 3.
- L. Portfolio performance data, as specified by the Commission, that will include default aversion, claims paid, collections on defaulted loans and consolidation and rehabilitation of defaulted loans held by the Commission.
- M. Information on the competitive and political actions that could i) negatively affect the availability of loans to students and families provided through the loan guaranty programs; and ii) have a negative affect on the revenues received by the Commission for the loan guaranty programs.

*[Additional language will be developed and inserted here.]*

### **Monitoring Policy 3: Commission Governance**

Twice annually, the Commission will review its compliance with Commission Governance policies herein. This review will include assessment of the Commission's application of the overall governance approach. It will also include assessment of compliance by the Commission Chair, Commissioners, and all Commission Committees. It will specify options for improving each of these aspects of governance.

#### **Monitoring Policy 4: Authority and Delegation**

Annual Executive Performance Reviews. At least annually, the Commission will conduct a performance evaluation of the CSAC Executive Director. At least annually, the Commission will receive and accept from the EdFund Board a summary of its performance evaluation of the EdFund President. This review will include assessment of compliance with Commission policies herein.

EdFund Board Performance Assessment. On an annual basis, the Commission will conduct an assessment of the EdFund Board's performance, in conjunction with the statutorily required Annual Report to the Legislature. This assessment will be based on the policies herein, and will include discussion with the EdFund Board regarding ways to improve governance practice and Commission and Board oversight of the loan program. This review will also include, based on input from the Executive Director, assessment of EdFund's performance with respect to the administrative services provided by EdFund to the grant program.

#### **Monitoring Policy 5: Strategic and Annual Planning**

GRANT PROGRAM. On an annual basis, the Commission will review and approve an annual update to the grant program strategic plan looking forward for the subsequent three to five years, and a grant program annual plan delineating specific action steps and timeline to implement the strategic plan.

LOAN PROGRAM. On an annual basis, the Commission will review and approve an EdFund Board-approved annual update to the loan program strategic plan looking forward for the subsequent three to five years, and an EdFund Board-approved annual plan delineating specific action steps and timeline to implement the strategic plan.

In addition, the CSAC Executive Director and EdFund Board/President will provide the Commission with quarterly updates reviewing progress in implementing the strategic plan, including whether annual plan objectives have been achieved in accordance with the specified timeline.

#### **Monitoring Policy 6: Financial Planning, Budgeting, and Financial Condition**

On a quarterly basis, the CSAC Executive Director and EdFund President will each present a report indicating compliance with the Commission's Financial Planning and Budgeting Policy, specifying that each of the steps in the budgeting process has been completed according to the annual budget schedule, or if not, the reason why and steps that have been taken or that need to be taken, including any recommended Commission action, to improve the process in the future.

In addition, to fulfill its fiduciary obligations and responsibility for oversight, the Commission will receive regular and accurate reporting on the financial status of its grant and loan programs. The CSAC Executive Director and Internal Auditor, as appropriate, and EdFund Board/President and Internal Auditor, as appropriate, will provide complete and accurate reporting to the Commission on a monthly, quarterly and annual basis as set forth below.

GRANT PROGRAM. The CSAC Executive Director and Internal Auditor, as appropriate, will provide:

- A. On an annual basis :
  - 1) The proposed operating budget for the grant program which complies with the Commission's Financial Planning and Budgeting Policy and which is consistent with the grant program strategic and annual goals adopted by the Commission.
  - 2) A financial, system, and compliance audit of the grant programs performed by an independent auditing firm approved by the Commission's Audit Committee, including audited financial statements.
  - 3) A schedule of planned internal audits and reviews of CSAC and its programs for the fiscal year.
- B. At each regularly-scheduled Commission meeting:
  - 1) A summary or "dashboard" report describing the organization's current financial condition, including summarized financial statements and any items of significance to the overall financial performance of the organization, including at a minimum:
    - a) Year-to-date expenditures, as compared to the annual budget, with projection for year-end results.
    - b) Any budget variances that exceed xx% of the original budget projection based on the categories determined by the Commission.
    - c) Year-to-date and projected use of the operating contingency established as part of the annual budget.
    - d) Progress toward the attainment of the cost efficiency metrics established pursuant to the annual plan.
- C. Periodically as appropriate:
  - 1) As scheduled, information on audits or reviews to be performed by the State or federal government.
  - 2) As completed, audits or reviews performed or required by the State or federal government.
  - 3) As completed, summary of internal audit findings and resolutions to the satisfaction of CSAC management and the Commission.

*[Additional language will be developed and inserted here.]*

LOAN PROGRAM. The EdFund Board/President and Internal Auditor, as appropriate, will provide:

- D. On annual basis:
  - 1) The operating budget for the loan program approved by the EdFund Board which complies with the Commission's Financial Planning and Budgeting Policy and which is consistent with the loan program strategic and annual goals adopted by the Commission.

- 2) A financial, system, and compliance audit of the loan program performed by an independent auditing firm approved by the Commission's Audit Committee, including audited financial statements.
  - 3) A schedule of planned internal audits and reviews of CSAC and its programs for the fiscal year.
- E. At each regularly-scheduled Commission meeting:
- 1) A summary report describing the organization's current financial condition, including summarized financial statements (or a "dashboard" report) any items of significance to the overall financial performance of the organization, including at a minimum:
    - a) Year-to-date expenditures, as compared to the annual budget, with projection for year-end results.
    - b) Any budget variances that exceed xx% of the original budget projection based on the categories determined by the Commission.
    - c) Year-to-date and projected use of the operating contingency established as part of the annual budget.
    - d) Progress toward the attainment of the cost efficiency metrics established pursuant to the annual plan.
  - 2) A report, reviewed and approved by the EdFund Board, on the balance in the Federal Fund, Operating Fund, and Operating Reserve Fund, and the projected ability to meet the minimum reserve levels established by the Commission during the remainder of the fiscal year.
- F. Periodically as appropriate:
- 1) As scheduled, information on audits or reviews to be performed by the State or Federal government.
  - 2) As completed, audits or reviews performed or required by the State or federal government.
  - 3) As completed, summary of internal audit findings and resolutions to the satisfaction of CSAC management and the Commission.

*[Additional language will be developed and inserted here.]*

### **Monitoring Policy 7: Asset Protection**

Twice annually, the CSAC Executive Director and EdFund President will each present a report indicating compliance with the Commission's asset protection policy, including:

- A. Verification of insurance against theft and casualty losses to a level that could materially effect the operations of the organization.
- B. Procedures to ensure that:
  - 1) Unbonded personnel do not have access to material amounts of funds.
  - 2) The Commission and the CSAC/EdFund organizations are not exposed to claims of liability.

- 3) Purchases have not been made without prudent protection against conflict of interest; purchases over \$xx,xxx have not been made without having obtained comparative prices and quality; and purchases over \$xx,xxx have not been made without a stringent method of assuring the balance of long-term quality and cost.
- 4) Intellectual property, proprietary information, and confidential files are protected from loss or significant damage.
- 5) Funds are received, processed, and disbursed under controls that are sufficient to meet the Commission/EdFund Board-appointed auditor's standards.
- 6) The organization does not invest or hold operating capital in insecure instruments or in non-interest bearing accounts except when necessary to facilitate ease in operational transactions; invest or hold long-term investment funds in investments that are not in keeping with the Commission/EdFund Board-approved investment philosophy.
- 7) Prevent any action that would endanger the organization's public image or credibility, particularly in ways that would hinder its ability to accomplish its mission.

### **Monitoring Policy 8: Treatment of Employees**

Compliance with this Executive Limitations policy will be part of the Performance Reviews conducted annually for the CSAC Executive Director and EdFund President.

### **Monitoring Policy 9: Compensation and Benefits**

*[Language will be developed and inserted here.]*

### **Monitoring Policy 10: Emergency Executive Succession**

*[Language will be developed and inserted here.]*

### **Monitoring Policy 11: Internal Communications and Support to the Board**

*[Language will be developed and inserted here.]*

### **Monitoring Policy 12: External Communications**

*[Language will be developed and inserted here.]*

### **Executive Limitations Policy 13: Initiating and Terminating Programs**

*[Language will be developed and inserted here.]*

# **Other Student Loan Guaranty Agency Structures and Oversight**

## **Executive Summary**

March 21, 2007

Prepared by Aurora Consulting Group  
and The Results Group

## Overview

To assist the California Student Aid Commission (the “Commission”) in defining roles and responsibilities for effective administration of the Federal Family Education Loan Programs (FFELP), we compiled information on other guaranty agency structures and oversight approaches. This included interviews with four entities that manage their guaranty agency functions under structures *similar* to that of the Commission (none of the guaranty agencies operate under an identical auxiliary or parent/subsidiary model). This Executive Summary presents a brief overview of a report that will be provided to the Commission in the near future.

### Agency Structures

- There are 35 FFELP guaranty agencies. Seven of these agencies have been designated as the guarantor for the remaining 15 states and the District of Columbia.
- Of the 35 guaranty agencies, 22 are state agencies and 13 are nonprofits.
- 20 of the guaranty agencies, either directly or through an affiliate, also administer grants and scholarship programs.
- 14 guaranty agencies provide other products or services (e.g., loan funding and/or secondary market services or loan origination and servicing activities) that generate other revenue to support borrower fee reductions and/or support the administrative costs required for the guaranty agency functions and/or grant administration.

### Use of Outsourcing

- To administer the FFELP, many guaranty agencies (as well as other participants such as lenders) contract with third-party servicers for all or a portion of the required program activities and functions.
- In the case of guarantors, 20 have service contracts or agreements for all or a portion of their activities, including the Commission. For all such guarantors, except CSAC, the contract relationships are between independent and unrelated organizations. In most cases, a fee or profit margin is paid for the services performed.

### Oversight

As FFELP experts, the Aurora team knows of no guarantor or lender that allocates the level of organizational resources – personnel or financial – to monitor or oversee their loan servicer as is currently allocated by the Commission.

- In most other cases, oversight consists of establishing policies and relying on audits performed by independent third-party auditors.
- In our interviews with four entities, we found the following:

*Agency 1 – State agency that contracts for all functions to an unaffiliated nonprofit.*

The nonprofit manages all aspects of the program including strategic planning, policy, and deposits/expenses from the reserve. Oversight includes:

- a. Annual approval of the budget.
- b. Independent financial and compliance audits required by federal statute.
- c. State audits.

- d. Program reviews and guarantor oversight conducted by the U.S. Department of Education.
- e. Other audits required by state or federal law.

The only other function performed by the state is investment of the Federal and Operating Funds.

*Agency 2 – State agency that recently transferred all guaranty agency functions to an unrelated for-profit under a revenue-sharing agreement.*

Personnel from the state agency who previously managed the program were hired by the non-profit and are recognized as the strategic, financial, and operational experts. They manage all aspects of the program. Oversight includes:

- a. Annual agreement on multi-year strategic and annual goals.
- b. Agency approval of policies as part of a joint Policy Task Force.
- c. Tracking of servicer performance based on the revenue sharing goals outlined in the contract.
- d. Independent financial and compliance audits required by federal statute.
- e. State audits.
- f. Program reviews and guarantor oversight conducted by the U.S. Department of Education.
- g. Other audits required by state or federal law.

*Agency 3 – National Nonprofit Guarantor that contracts with unaffiliated for-profit for services.*

Under a performance-based contract, income earned by the servicer is determined based on performance standards detailed in the service agreement. The guarantor establishes policy, and the servicer is responsible for implementing those policies. Oversight includes:

- a. Assessment of performance against the standards.
- b. Independent financial and compliance audits required by federal statute.
- c. Program reviews and guarantor oversight conducted by the U.S. Department of Education.
- d. Other audits required by state or federal law.

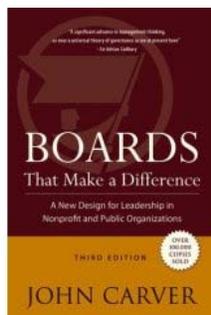
*Agency 4 – National student loan lender that is a subsidiary of a for-profit organization.*

While not a guarantor, this model illustrates roles and responsibilities between a parent and subsidiary.

- a. The parent establishes growth, financial/profitability, personnel, and expense policies.
  - b. The subsidiary, as the student loan experts, develops the annual and strategic plan based on the policy framework established by the parent.
  - c. Independent financial and compliance audits required by federal statute.
  - d. Program reviews conducted by the U.S. Department of Education.
  - e. Other audits required by state or federal law.
-

## Primary References Used by the Ad Hoc Committee

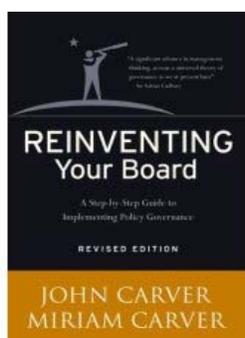
The CSAC Ad Hoc Committee developing Commission policies has drawn heavily upon multiple sources for “best practices” in governance. Each Committee member purchased the two Carver books described below, and we referred to them regularly in our discussions. The other materials included in this binder tab are examples of our other reference material.



### Book Description

In this revised and updated third edition, Carver continues to debunk the entrenched beliefs and habits that hobble boards and to replace them with his innovative approach to effective governance. This proven model offers an empowering and fundamental redesign of the board role and emphasizes values, vision, empowerment of both the board and staff, and strategic ability to lead leaders. Policy Governance gives board members and staff a new approach to board job design, board-staff relationships, the role of the chief executive, performance monitoring, and virtually every aspect of the board-management relationship. This latest edition has been updated and expanded to include

explanatory diagrams that have been used by thousands of Carver’s seminar participants. It also contains illustrative examples of Policy Governance model policies that have been created by real-world organizations. In addition, this third edition of *Boards That Make a Difference* includes a new chapter on model criticisms and the challenges of governance research.



### Book Description

In the second edition of this best-selling Policy Governance operating manual, John Carver and Miriam Carver make this exciting approach to effective governance even more accessible and user-friendly, gleaning lessons learned in years of practice to help readers understand and use this invaluable model.

Carver’s groundbreaking Policy Governance model is the best-known, respected, and talked about governance model in the world and has fundamentally influenced the way organizations are governed. *Reinventing Your Board*, second edition, is a hands-on, step-by-step guide that puts the

model to work in the meeting-to-meeting lives of board members. It includes new policy samples and a new chapter on monitoring performance, as well as other practical “put-the-model-in-motion” advice. This popular and highly successful companion to *Boards That Make a Difference* contains the nuts-and-bolts materials needed for implementing Policy Governance. The authors illustrate effective board decision making, show how to craft useful policies, and offer practical advice on such matters as setting the agenda, monitoring CEO performance, defining the board role, and more. Step-by-step instructions and sample policies make this a must-have resource for boards in the public and nonprofit sectors aiming to govern their organizations with excellence.

### Review and Commentary on the Carver Books

"After reading *Boards That Make a Difference* and studying the theory behind John Carver’s approach to improving the functioning of boards, this book is a natural next stage for a board committed to improving its capacity. *Reinventing Your Board* is a must."

-- Mike Whitlam, adviser, UK Office of Communications (Ofcom) and former director general, British Red Cross Society, London

"This book has been an invaluable resource for our board members as we have adopted the Policy Governance model. It is an excellent road map for the implementation of the model, answering many practical questions and providing numerous examples of applications in a variety of settings. I strongly

recommend it for any board wishing to improve its effectiveness."

--Sister Patricia Lorenz, CSJ, board chair, Carondelet Health, Kansas City, Missouri

"This clear and chair-friendly book is the ultimate how-to manual for a board determined to ensure the future as they would envision it. No chairman should be without it."

--George Dessart, former chair, board of directors, American Cancer Society, Atlanta

"What I value about John Carver's thinking is that it provides a logical and coherent base, a unifying theory of governance that covers both the corporate and voluntary sectors, a universal definition of the difference between governance and management rather than the more usual approach of attempting to allocate functions between them."

--Sir Adrian Cadbury, former chancellor, Aston University; former director, Bank of England; chairman, UK Committee on Financial Aspects of Corporate Governance (source of the "Cadbury Report"); recipient of the 2001 International Corporate Governance Network award; author of *The Company Chairman* and *Corporate Governance and Chairmanship*



## **Governance**

A nonprofit's board of directors is responsible for defining the organization's mission and for providing overall leadership and strategic direction to the organization. Each nonprofit board should: 1) actively set policy and ensure that the organization has adequate resources to carry out its mission; 2) provide direct oversight and direction for the executive director and be responsible for evaluating his/her performance; and 3) evaluate its own effectiveness as a governing body, as a group of volunteers, and as representatives of the community in upholding the public interest served by the organization.

Source: [http://www.mncn.org/info\\_principles2.htm](http://www.mncn.org/info_principles2.htm)

## **Good Governance Practices for 501(c)(3) Organizations**

The Internal Revenue Service believes that governing boards should be composed of persons who are informed and active in overseeing a charity's operations and finances.

If a governing board tolerates a climate of secrecy or neglect, charitable assets are more likely to be used to advance an impermissible private interest. Successful governing boards include individuals not only knowledgeable and passionate about the organization's programs, but also those with expertise in critical areas involving accounting, finance, compensation, and ethics.

Organizations with very small or very large governing boards may be problematic: Small boards generally do not represent a public interest and large boards may be less attentive to oversight duties. If an organization's governing board is very large, it may want to establish an executive committee with delegated responsibilities or establish advisory committees.

The Internal Revenue Service suggests that organizations review and consider the following to help ensure that directors understand their roles and responsibilities and actively promote good governance practices. While adopting a particular practice is not a requirement for exemption, we believe that an organization that adopts some or all of these practices is more likely to be successful in pursuing its exempt purposes and earning public support.

The following sections address these topics:

- Mission Statement
- Code of Ethics
- Due Diligence
- Duty of Loyalty
- Transparency
- Fundraising Policy
- Financial Audits
- Compensation Practices
- Document Retention Policy

### **1. Mission Statement**

A clearly articulated mission statement that is adopted by an organization's board of directors will explain and popularize the charity's purpose and serve as a guide to the organization's work. A well-written mission statement shows why the charity exists, what it hopes to accomplish, and what activities it will undertake, where, and for whom.

### **2. Code of Ethics and Whistleblower Policies**

The public expects a charity to abide by ethical standards that promote the public good. The board of directors bears the ultimate responsibility for setting ethical standards and ensuring they permeate the organization and inform its practices. To that end, the board should consider adopting and regularly evaluating a code of ethics that describes behavior it wants to encourage and behavior it wants to discourage. The code of ethics should be a principal means of communicating to all personnel a strong culture of legal compliance and ethical integrity. The board of directors should adopt an effective policy for handling employee complaints and establish procedures for employees to report in confidence suspected financial impropriety or misuse of the charity's resources. Such policies are sometimes referred to as *whistleblower* policies.

### **3. Due Diligence**

The directors of a charity must exercise due diligence consistent with a duty of care that requires a director to act:

- In good faith;
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances;
- In a manner the director reasonably believes to be in the charity's best interests.

Directors should see to it that policies and procedures are in place to help them meet their duty of care. Such policies and procedures should ensure that each director:

- Is familiar with the charity's activities and knows whether those activities promote the charity's mission and achieve its goals;
- Is fully informed about the charity's financial status; and
- Has full and accurate information to make informed decisions.

### **4. Duty of Loyalty**

The directors of a charity owe it a duty of loyalty. The duty of loyalty requires a director to act in the interest of the charity rather than in the personal interest of the director or some other person or organization. In particular, the duty of loyalty requires a director to avoid conflicts of interest that are detrimental to the charity. To that end, the board of directors should adopt and regularly evaluate an effective conflict of interest policy that:

- Requires directors and staff to act solely in the interests of the charity without regard for personal interests;
- Includes written procedures for determining whether a relationship, financial interest, or business affiliation results in a conflict of interest; and
- Prescribes a certain course of action in the event a conflict of interest is identified.

Directors and staff should be required to disclose annually in writing any known financial interest that the individual, or a member of the individual's family, has in any business entity that transacts business with the charity. Instructions to Form 1023 contain a sample conflict of interest policy.

#### **5. Transparency**

By making full and accurate information about its mission, activities, and finances publicly available, a charity demonstrates transparency. The board of directors should adopt and monitor procedures to ensure that the charity's Form 990, annual reports, and financial statements are complete and accurate, are posted on the organization's public website, and are made available to the public upon request.

#### **6. Fundraising Policy**

Charitable fundraising is an important source of financial support for many charities. Success at fundraising requires care and honesty. The board of directors should adopt and monitor policies to ensure that fundraising solicitations meet federal and state law requirements and solicitation materials are accurate, truthful, and candid. Charities should keep their fundraising costs reasonable. In selecting paid fundraisers, a charity should use those that are registered with the state and that can provide good references. Performance of professional fundraisers should be continuously monitored.

#### **7. Financial Audits**

Directors must be good stewards of a charity's financial resources. A charity should operate in accordance with an annual budget approved by the board of directors. The board should ensure that financial resources are used to further charitable purpose by regularly receiving and reading up-to-date financial statements including Form 990, auditor's letters, and finance and audit committee reports. If the charity has substantial assets or annual revenue, its board of directors should ensure that an independent auditor conduct an annual audit. The board can establish an independent audit committee to select and oversee the independent auditor. The auditing firm should be changed periodically (e.g., every five years) to ensure a fresh look at the financial statements. For a charity with lesser assets or annual revenue, the board should ensure that an independent certified public accountant conduct an annual audit. Substitute practices for very small organizations would include volunteers who would review financial

information and practices. Trading volunteers between similarly situated organizations who would perform these tasks would also help maintain financial integrity without being too costly.

**8. Compensation Practices**

A successful charity pays no more than reasonable compensation for services rendered. Charities should generally not compensate persons for service on the board of directors except to reimburse direct expenses of such service. Director compensation should be allowed only when determined appropriate by a committee composed of persons who are not compensated by the charity and have no financial interest in the determination. Charities may pay reasonable compensation for services provided by officers and staff. In determining reasonable compensation, a charity may wish to rely on the rebuttable presumption test of section 4958 of the Internal Revenue Code and Treasury Regulation section 53.4958-6.

**9. Document Retention Policy**

An effective charity will adopt a written policy establishing standards for document integrity, retention, and destruction. The document retention policy should include guidelines for handling electronic files. The policy should cover backup procedures, archiving of documents, and regular check-ups of the reliability of the system. For more information see IRS Publication 4221, *Compliance Guide for 501(c)(3) Tax-Exempt Organizations*, available on the IRS website.

**Synopsis of the**  
**GOVERNANCE MATTERS**  
*Nonprofit Governance Indicator Guide*

Nonprofit organizations are best served by boards of directors that understand and accept their role as the governing body of the organizations they serve. Boards ensure that organizations remain accountable to the community, providing needed services while adhering to rigorous ethical and professional standards. **Governance Matters** has developed this Nonprofit Governance Indicator Guide to help funders and non-profit boards of directors to determine what information is needed from nonprofits, how to evaluate the data received, and how to improve board performance.

The structure and functions of the board of a nonprofit organization should support the organization's strategic priorities, and allow roles and responsibilities to change as organizations move through their life cycles. For example, while small organizations may or may not have a board that is fully engaged (operationally and financially), their strategic priorities and performance objectives should be clearly stated. Larger, more-established organizations are likely to have made a decision to invest in strategic planning and board development, and to demonstrate board involvement in establishing the priorities that guide business decisions. In both cases, the need for ongoing board development should be seen as a way in which organizations can stay ahead of the curve in ensuring that they benefit from a cadre of informed, committed and forward-thinking trustees.

### **Governance Factors**

The Guide lists indicators for nine areas of organizational operation:

- Board effectiveness.
- Board operations.
- Strategic planning.
- Program effectiveness.
- Funding stability.
- Financial oversight.
- Constituent voice.
- External relations.
- Organizational evaluation.

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### **1. Board Effectiveness**

- The organization is well managed; it has a clear mission, policy and program goals, under the leadership of an able board of directors.
- The organization has a positive profile in the community as a result of effective, well-managed programs.

#### Indicators of Good Governance

- The board of directors is actively engaged in its oversight role and knowledgeable of the organization's key external and internal issues that affect its success. It focuses on policy development and on the strategic direction and evaluation of the organization, respecting the staff's responsibility for implementing policy directives.
- The board's effectiveness is apparent in well-run programs, well-managed operations, a stable funding base, and organizational sustainability/ longevity.
- The board has established clear leadership roles (officers and committee chairs) to drive its activities effectively; it fosters the development of new leaders to fill future roles as needed.
- The board understands its fiduciary and legal responsibilities.

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## **2. Board Operations**

- The board meets regularly to address matters of policy, strategic direction, organizational performance and community impact.

### Indicators of Good Governance

- The board meets regularly throughout the year, with a majority of directors in attendance.
- Board candidates are formally selected with an emphasis on the skills needed to advance the work of the organization.
- New directors receive comprehensive orientation after election to the board.
- Ongoing training is provided regularly to the board to ensure effective service by directors.
- The board maintains active involvement through rotation of duties and/or term limits.
- Meetings deal primarily with policy formulation, and the review and evaluation of the work of the organization. Routine matters, requiring board action, but little discussion, are handled with dispatch.
- The committee structure reflects the organization's strategic priorities, and changes, when necessary, to advance the mission. The absence of standing committees is not necessarily undesirable. Some boards operate well with ad hoc committees. The critical issue is the effectiveness of the board.
- The board understands its legal obligations. A conflict of interest policy is reviewed periodically and signed annually by board members. It is aware of all federal, state and local obligations (and liabilities) which are applicable to the organization.

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## **3. Strategic Planning**

- The board upholds the organization's mission, and can articulate a clear vision for its future and the values that will guide decisions and behavior. The board is integrally involved in setting strategic direction through strategic planning, organizational alignment and implementation.

### Indicators of Good Governance

- A strategic plan, with attainable goals, has been developed and approved by the board, with staff input and support.
- The board receives regular progress reports from the chief executive relative to the implementation of the plan.
- Board members can speak knowledgably about program goals and outcomes and client needs. When applicable, they have visited program sites and/or met clients.

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## **4. Program Effectiveness**

- All programs and services are aligned with the mission of the organization. Therefore, synergy from an integrated portfolio of programs provides clients with highly responsive services and results in cost savings for the organization and efficiencies in application of their grants.
- The clients are satisfied with the quality of services and programs provided
- Effective program methods are in place that can be sustained, even with changes in organization leadership. Program designs aimed at expansion or replication in other localities have clear systems in place (or in development) to support the process while sustaining the core program.
- When warranted, the organization seeks opportunities to collaborate with other organizations to ensure that client needs are met in ways that are sustainable for the organizations involved.

#### Indicators of Good Governance

- Program development is consistent with the organization's mission and strategic directions laid out by the board.
- The organization has in place well-structured programs with clear performance measures and expectations for staff.
- A system is in place for ongoing professional development for staff.
- Programmatic data gathering is built into the program; the information gathered (program processes, results, client satisfaction/ impact) is used to grow or improve programs and services.

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### **5. Stability of the Funding Base**

- The organization has an appropriately diversified funding base, and sufficient funding and financing to support the programs and organization.
- The various programs attract funders who are prominent in that field.

#### Indicators of Good Governance

- The organization is aware of the benefits of having a diversified funding base that promotes sustainability.
- An annual fundraising plan is approved by the board.
- The board is active in securing funding and other resources for the organization through identifying prospects, supporting donor cultivation and solicitation, and direct contributions.
- Where financing is appropriate, board members develop and/or approve proper financing strategies.
- Each board member makes an annual financial contribution to the organization, indicating that the board is engaged, supportive and committed.

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### **6. Financial Oversight**

- Grant funds are managed capably and resources allocated efficiently. Accurate financial reports enable the funder to track use of the funds.
- The organization appears to be in good financial health overall.

#### Indicators of Good Governance

- The board has established sound internal financial controls.
- The board approves an annual operating budget.
- The board reviews regular financial reports to monitor budget compliance and fiscal health.
- There is a finance/audit committee that engages the auditor, and maintains open and direct communication with the audit firm.
- The board approves the annual audit after it has been recommended by the audit committee and, preferably, presented by the auditor.
- The organization has financial reserves that cover at least 3 months of operation.
- The board actively oversees or manages the organization's investments.

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### **7. Constituent Representation**

- The composition of the organization's board, staff and clients reflects the interests, needs and concerns of the constituency it serves and the community in which it operates. The composition also reflects the distinct needs of the organization at its particular stage of development.

### Indicators of Good Governance

- The inclusion of diverse viewpoints and representation adds value to the organization's mission and work and furthers its success. (Fundors should be sensitive when exploring this area with grantees, as the definition of inclusion is the organization's prerogative – unless it is far off base.)
- The board and the organization have mechanisms in place, that facilitate input (skills, perspective, and resources) from constituent groups and stakeholders, to ensure that the organization understands and is highly responsive to its base of consumers.

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## **8. External Relations**

- The organization and its programs are publicly recognized for their quality and effectiveness. The funder, by association, is similarly acknowledged.
- The organization is involved in strategic alliances that enhance the quality or quantity of services provided to the community, yet remain true to the mission. The alliances are viewed positively by constituents of all types.

### Indicators of Good Governance

- Board members can describe the mission and key programs accurately, and demonstrate understanding of their competitive advantages and developmental needs.
- Board members readily identify opportunities to raise the organization's profile in the community and/or field.
- The organization has a public relations strategy that communicates its message compellingly and attracts support from the community.
- The board is prepared to manage crises responsibly. A designated team and communication strategy are in place for major public-relations needs.

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## **9. Evaluation of the Organization's Operations and Impact**

- The organization has identified meaningful performance measures and tools – for the program(s) and for the organization as a whole.
- Organizational performance is reviewed annually by the board in conjunction with an evaluation of the ED/CEO.
- The funder sees the results of this review in a progressive strengthening of the organization's work, in increased respect for the organization within its field, and in a broadening impact of the current or potential grant.

### Indicators of Good Governance

- Evaluation measures mentioned in the proposal exist and are used by the organization.
- Program performance is compared with that of leaders in the field.

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## **GOVERNANCE MATTERS**

307 Seventh Avenue, Suite 1603, New York, NY 10001 ■ 212-337-3264 ■ [www.governancematters.org](http://www.governancematters.org)

**Governance Matters** provides nonprofit leaders with the governance resources they need to develop boards that serve New York's communities better. Governance Matters, formerly the Alliance for Nonprofit Governance (ANG), was founded in 1999 by people serving New York City's nonprofits. Frustrated with the failure of boards to fulfill mission-critical objectives, they decided to create a unique organization, one that improves board governance by fostering an open exchange of ideas and information among a broad cross-section of the nonprofit community.

# G3. Questionnaire for Members of Governing Bodies and Advisory Boards

Please Return to: COA, 120 Wall Street, 11th Fl., New York, NY 10005, Fax 212-797-1428

Org ID#

Today's date:  /  /   
m m d d y y

Organization Name:

City:  State/Province:

Your name: \_\_\_\_\_ Committees on which you serve: \_\_\_\_\_

I have served on the governing body/advisory board for:  2 years or less  3-5 years  6 plus years

I have attended:  Less than 50%  Between 50% and 80%  More than 80% of scheduled meetings

**Instructions:** Your answers will be treated confidentially and presented in aggregate form to organizational leadership. Privately-held, for-profit advisory board members and public organizations need only complete items 7-12.

- |   | Strongly Disagree     |                       | Neutral               |                       | Strongly Agree        | NA                    |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| 1. As a member of the governing body, I:  |                       |                       |                       |                       |                       |                       |
| a. receive an orientation to my responsibilities as a governing body member.  | <input type="radio"/> |
| b. receive an up-to-date manual that specifies my fiduciary and other responsibilities to the organization.   | <input type="radio"/> |
| c. receive a formal orientation to the organization.  | <input type="radio"/> |
| d. am familiarized with the activities of the organization through a visit to one of the organization's sites.  | <input type="radio"/> |
| 2. I bring the following qualities to the governing body:   |                       |                       |                       |                       |                       |                       |
| a. ability to represent or advocate for the organization, community, and consumer interests.  | <input type="radio"/> |
| b. skills and experience in developing policy.  | <input type="radio"/> |
| c. leadership ability.  | <input type="radio"/> |
| d. ability to fundraise or to connect the organization with other resources.  | <input type="radio"/> |
| 3. The governing body is of sufficient size and structure to:   |                       |                       |                       |                       |                       |                       |
| a. engage in strategic planning.  | <input type="radio"/> |
| b. develop and adopt policy.  | <input type="radio"/> |
| c. develop resources.   | <input type="radio"/> |
| d. provide financial oversight.   | <input type="radio"/> |
| e. enhance and promote community-organization relationships.  | <input type="radio"/> |
| 4. As a member of the governing body, the organization informs me of the amount and type of insurance coverage related to my activities on the organization's behalf.   | <input type="radio"/> |
| 5. Communication between the governing body and the chief executive officer is excellent.   | <input type="radio"/> |
| 6. As a member of the governing body, I:  |                       |                       |                       |                       |                       |                       |
| a. am involved in the hiring of the chief executive officer.  | <input type="radio"/> |
| b. am involved in the annual evaluation of the CEO.   | <input type="radio"/> |
| c. formally accept the auditor's report.  | <input type="radio"/> |
| 7. The composition of the governing body/advisory board is sufficiently diverse to support the organization's mission and its defined service population.   | <input type="radio"/> |
| 8. The organization provides the governing body/advisory board with sufficient and timely information to meet responsibilities.   | <input type="radio"/> |
| 9. The organization follows conflict of interest policies.  | <input type="radio"/> |
| 10. Communication between the chief executive officer and personnel is excellent.   | <input type="radio"/> |
| 11. To your knowledge, within the last four years, have there been allegations or findings of professional misconduct, financial malfeasance, failure to comply with laws and regulations governing equal opportunity and personnel administration, or investigations by auditing, regulatory or monitoring bodies which have identified problems at the organization? <input type="radio"/> Yes <input type="radio"/> No |                       |                       |                       |                       |                       |                       |
| 12. Which programs/services or operations need strengthening, if any? (Please address issues related to item 11 here.)  |                       |                       |                       |                       |                       |                       |

I would like to speak with the peer review team at the time of the COA accreditation site visit.

Name: \_\_\_\_\_

Daytime phone: \_\_\_\_\_

Best time to call: \_\_\_\_\_

## Source of G3. Questionnaire for Members of Governing Bodies ...

### **The Hague Convention**

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) is an international treaty created to ensure that intercountry adoptions are in the best interests of children and to prevent abduction, exploitation, sale, or trafficking of children. The Convention generally requires that agencies and persons be accredited or approved to provide adoption services for intercountry adoptions when both countries involved are parties to the Convention. The United States signed this treaty in March 1994. For more information about the Convention and an up-to-date list of countries that are parties to the Convention, please visit the website for the Hague Conference on Private International Law at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69)

### **The Intercountry Adoption Act**

The Intercountry Adoption Act (IAA) was passed in October 2000, and serves as the implementing legislation for the United States. The IAA names the U.S. Department of State (State Department) as the Central Authority for the United States and the federal agency responsible for implementing the Convention. The IAA requires agencies and persons providing adoption services in cases involving Convention countries to be accredited or approved. The State Department is required under the IAA to develop agreements with accrediting entities to conduct the accreditation and approval of adoption service providers.

### **The Hague Regulations**

The Department of State issued the final rule (Hague Regulations) that govern the accreditation and approval process on February 15, 2006. The final rule establishes:

- the accreditation and approval standards for agencies and persons;
- requirements applicable to potential accrediting entities; and
- a framework for the Department's oversight of accrediting entities, agencies, and persons.