

Action/Information Item

California Student Aid Commission

Update and Consideration of Portions of the Operating Agreement between the Commission and EDFUND that May Include Discussions of the Roles and Responsibilities of the Commission, EDFUND and Their Respective Staffs

At its November 29-30, 2006 meeting, the Commission approved an amendment/extension of the Operating Agreement to June 30, 2007 to allow sufficient time for the development of a new agreement.

The Commission has been working closely with a consultant group hired to assist with the delineation of roles and responsibilities between the Commission and EDFUND. During this time, staffs of both organizations have been working diligently and collaboratively to revise portions of the Operating Agreement that did not depend on roles and responsibilities, until the Commission would be able to provide further direction.

A draft version of the proposed new Operating Agreement will be sent separately.

Recommended Action: To Be Determined.

Responsible Staff:

Janet McDuffie
Chief, Management Services
and Acting Chief, Federal
Policy & Programs

David Reid
General Counsel and
Vice President
EDFUND Government Relations

**MATERIALS FOR THE FRIDAY
APRIL 13, 2007**

COMMISSION MEETING

**New Operating Agreement
Issue #1 – Loan Program Business Goals
EDFUND Staff Perspective and Recommendation**

EDFUND’s Position and Recommendation:

EDFUND staff support the development of Annual Goals that are consistent with the Commission’s General Goals for EDFUND. We believe these Annual Goals should be developed in coordination with the Annual Loan Business Plan and Budget process. EDFUND staff also support the continuation of the Commission’s General Goals for EDFUND that have been in the Operating Agreement since 2002 and which we propose to be moved from Exhibit C to the main body of the Agreement (see below). We believe that this is the most efficient process in developing meaningful goals that can be realistically accomplished and insure appropriate review and approval by the Commission and the EDFUND Board. EDFUND needs flexibility in the development of the Annual Loan Business Plan and Budget and believes that the development of Annual Goals outside of that process is neither a wise nor prudent course of action due to the highly volatile conditions that exist in the student loan industry.

EDFUND’s Proposed Language *(please note that language in blue are EDFUND’s proposed changes):*

4.7 Annual Loan Program Business Plan, ~~and~~ Budget ~~and~~ Goals.

EDFUND shall develop an annual Loan Program Business Plan, ~~and~~ Budget ~~and~~ Goals for the administration of the FFEL Program that ensures the fiscal viability and continued success of such program. EDFUND agrees to provide a high level conceptual presentation for CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan, ~~and~~ Budget ~~and~~ Goals no later than the fifteenth day of May of each year and prior to any significant document development. EDFUND agrees to consult with CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan, ~~and~~ Budget ~~and~~ Goals no later than the fifteenth day of July of each year and provide any requested information associated therewith. The EDFUND Board shall approve the annual Loan Program Business Plan, ~~and~~ Budget ~~and~~ Goals no later than the thirty-first day of August of each year and submit such documents to the Commission by the first day of September of each year for review and approval. Such dates may be altered by mutual agreement between the Commission and the EDFUND Board. Any significant change in strategy by EDFUND following any of the above referenced meetings shall be communicated to CSAC staff and/or such other individual(s) identified by the Commission.

[paragraphs on business plan and budget that were omitted]

The annual goals shall provide high level objectives for activities within the FFEL Program for which EDFUND has a reasonable but not easy ability to accomplish given current industry and regulatory trends and shall be consistent with the Commission’s General Goals. The Commission’s General Goals for EDFUND are:

- A. Provide premier customer service to schools, lenders and borrowers that meets or exceeds that of EDFUND’s competitors.**

- B. Provide a reliable and sustainable revenue stream to ensure the continuation of a strong competitive loan program.**
- C. Provide the most efficient and effective service while controlling company costs.**
- D. Increase California and national loan volumes.**
- E. Provide a range of products that meet the needs of schools, lenders and borrowers.**
- F. Continuously invest in the development of technology solutions that enhance the effectiveness and efficiency of both customers and the company.**
- G. Be a source of public outreach and information to allow students to achieve their educational goals.**
- H. Provide effective and responsive default aversion programs.**
- I. Provide administrative, technical and programmatic support to the Commission in accordance with detailed support plans mutually developed and agreed to by both organizations.**

**New Operating Agreement
Issue #1 – Loan Program Business Goals
CSAC Staff Perspective and Recommendation**

Issue

As set forth in the California Education Code, the Commission has the ultimate authority and responsibility for the State's FFEL Program participation. This responsibility includes policy formulation, information development, administration, operation and evaluation of the Commission's loan program. This authority and responsibility remains with the Commission and cannot be delegated or assigned to EDFUND or any other organization. In contracting with EDFUND, via the Operating Agreement, for the administration of the FFEL Program, the Commission must ensure that ultimate loan program authority and responsibility which includes setting the goals remains with the Commission. The business plan, annual budget, goals and major policies are key business drivers for the State's participation in the FFEL program. Given this responsibility, it is incumbent upon the Commission to actively formulate and articulate both overall loan program and business goals for the FFEL Program. The Commission must consciously avoid having the goals developed by another organization, including EDFUND. The Commission should develop and set its loan program business goals and provide them to EDFUND. This would enable EDFUND to develop a business plan focused on achieving the Commission's goals.

Background

The Commission's strategic plan which expired in 2005 set the high-level goals for EDFUND and the FFEL Program. In addition, Exhibit C of the current Operating Agreement includes FFEL Program guiding principles, governance policies and goals for EDFUND. As in previous years, it was expected that the goals in the Operating Agreement would be reviewed and revised annually. However, the Commission only extended the Operating Agreement and until now there has been no opportunity to review the goals. The Commission did amend the Operating Agreement in 2004 to indicate that EDFUND's strategies to meet the Commission Goals would now be contained in the "High-Level Organizational Metrics" contained in the business plan. In absence of the Commission reviewing and providing updated goals, EDFUND has developed and set goals in the annual Loan Program Business Plan as a means to measure performance for incentive compensation.

Recognizing the variety of issues, options, and factors to be considered, it is both reasonable and likely that the Commission will consult with individuals and organizations, including EDFUND, in formulating goals. However, as the governing body, the Commission has ultimate responsibility to plan, develop and set the goals for its loan program. By merely reviewing and approving goals developed by EDFUND the Commission is in essence delegating the its responsibility of setting the State's Loan Program goals to EDFUND.

The Commission developing and setting the goals for the State's participation in the FFEL Program provides EDFUND a clear understanding of what the Commission wants EDFUND to accomplish for the Commission's loan program. It also allows EDFUND to develop a Loan Program Business Plan focused on achieving the Commission's goals.

As indicated in the current Operating Agreement, EDFUND's strategies for fulfilling the Commission's goals are to be included in the business plan and should include specific, measurable goals.

The goals for the loan program are key business drivers. Delegating the Commission's responsibility for developing the Commission's loan program goals to EDFUND incorrectly invests the responsibility to a nongovernmental entity and its personnel who do not have an accountability to the State or an obligation to perform in the public interest, but instead have an incentive to act in the business interests of EDFUND, which may differ from those of the State.

CSAC Staff Recommendation

Given the importance of the Commission developing and setting goals for the Commission's Loan Program, CSAC staff recommends the following language for inclusion in the new Operating Agreement:

5.3 Commission's Annual Loan Program Goals

The Commission shall annually provide EDFUND with a set of goals for the Commission's Loan Program for the next contract year. These goals will be provided to EDFUND at least six months prior to the start of the next contract year. The Commission may elect to consult with EDFUND in preparing the goals. However, responsibility for preparing the goals shall be the responsibility of the Commission. EDFUND shall develop an Annual Loan Program Business Plan and Budget to achieve the Commission's goals.

**New Operating Agreement
Issue #2 – Loan Program Oversight
EDFUND Staff Perspective and Recommendation**

EDFUND’s Position and Recommendation:

EDFUND supports the Commission’s goals and objectives in determining Roles and Responsibilities in order to streamline and eliminate unnecessary duplication of activities in the student loan program. EDFUND believes that an oversight structure can and should be created through the use of independent certified public accountants to provide comprehensive reviews and assurances to the Commission, including the testing of system and non-system controls that will be more comprehensive and reliable than the current oversight structure.

External auditors who are independent certified public accounts express their independent opinions without bias or pressure from internal or external influences. They follow professional generally accepted auditing standards which focus their work on areas of risk to the organization and its oversight bodies. EDFUND staff supports the use of external auditors and consultants to support the Commission in its oversight responsibilities.

EDFUND proposes to take a major step in expanding the scope and breadth of the auditing process to insure that the Commission has the most complete and reliable analysis of EDFUND and its operations through the use of an annual SAS 70 – Type II audit. The SAS 70 – Type II audit, while not required by federal or State law, is one of the most comprehensive and reliable audits that exist. During a SAS 70 – Type II examination, the auditor spends a significant amount of time reviewing documentation on control processes; conducting inquiries with personnel; observing the existence and performance of controls; and inspecting evidence that supports the operating effectiveness of the controls being tested. An annual SAS 70 – Type II audit will provide a detailed report and opinion by an independent certified public accounting firm on EDFUND’s key control activities and processes. The audit will demonstrate that EDFUND’s controls have been reviewed and deemed effective by an independent third party.

The combination of (1) legally required audits; (2) an annual SAS 70 – Type II audit of key internal controls; (3) EDFUND’s internal audit activities; and (4) detailed financial and operational reports that are provided to the Commission and/or a Commission designee will provide the assurances that the Commission needs in its oversight of EDFUND. EDFUND respectfully disagrees with CSAC staff that additional and duplicative on-site observations and reviews of EDFUND’s operations by CSAC staff will produce any additional or meaningful information that is not already being produced and analyzed by external independent auditors for the Commission and in fact would be wasteful of employee time and efforts.

EDFUND’s Proposed Language (*please note that language in blue are EDFUND’s proposed changes; section 8.5 is still being discussed among CSAC and EDFUND staff and is contained herein for purposes of context*):

ARTICLE VIII OVERSIGHT

8.1 Commission Oversight. The Commission has certain statutory and fiduciary responsibilities for oversight of CSAC, EDFUND and the FFEL Program, as administered by EDFUND, consistent with its role as a designated guarantor, and

cannot delegate such responsibilities to other individuals or entities. While the Commission may prescribe through policies certain functions and responsibilities to CSAC staff, EDFUND, EDFUND staff, the EDFUND Board, and/or other individuals or entities to assist the Commission, all final decisions that involve the Commission's statutory and fiduciary responsibilities shall be made by the Commission. The Commission shall conduct its oversight responsibilities through independent audits and reports from individuals and/or entities designated by the Commission. All audits required by Section 8.2 of this Agreement shall be reviewed by the Commission and EDFUND Audit Committees and be presented to the Commission and EDFUND Board. All reports required by Section 8.5 of this Agreement shall be provided to individuals and/or entities designated by the Commission.

8.2 Audits Supporting the Commission's Oversight Responsibilities. The following audits shall be performed in accordance with California Education Code Sections 69522 (c)(2) and 69527 (a); Title IV of the Higher Education Act of 1965; and/or any other applicable state or federal statutory provisions:

- A. Annual Operating Fund and Federal Fund Financial Statement Audit – An independent certified public accountant shall provide to the Commission and the EDFUND Board the annual audited financial statements of the Operating Fund and Federal Fund.
- B. Annual Audit of Internal Controls – An independent certified public accountant shall provide to the Commission and the EDFUND Board an annual SAS 70 – Type II audit of key system and non-system internal controls affecting the initiation, authorization, recording, processing and/or reporting of transactions including, but not limited to, the Operating Fund and Federal Fund. The Commission and EDFUND Audit Committees will work with the independent certified public accountant to determine the specific control objectives that shall be tested.
- C. Annual EDFUND Financial Statement Audit – An independent certified public accountant shall provide to the Commission and the EDFUND Board the annual audited financial statements of EDFUND.
- D. Annual EDFUND 401(k) Plan Financial Statement Audit – An independent certified public accountant shall provide to the EDFUND Board the annual audited financial statements of the EDFUND 401(k) Plan.
- E. Annual FFEL Program Compliance Audit – The Bureau of State Audits shall provide to the Commission the annual FFEL Program compliance audit findings issued by the Bureau of State Audits.
- F. United States Department of Education Audits – The United States Department of Education shall provide to the Commission all audit findings issued by the United States Department of Education.
- G. EDFUND Internal Audits – EDFUND shall provide to the Commission and the EDFUND Board the audit results of all internal audits conducted by EDFUND's

Internal Audit Department as identified in the Annual Internal Audit Plan approved by the Commission and EDFUND Audit Committees.

- H. Other Audits & Evaluations – Any other review, audit or evaluation approved by the Commission Audit Committee in consultation with the EDFUND Audit Committee and approved by the Commission in consultation with the EDFUND Board. Such reviews, audits or evaluations shall be conducted by an independent certified public accountant, independent consultant or such other individuals or entities designated by the Commission.
- 8.3 Availability and Access. EDFUND staff shall work with such individuals designated pursuant to this Article and be available for meetings within a reasonable period of time. CSAC and EDFUND shall provide full access to their facilities for any purpose associated with an audit upon forty-eight (48) hours notice or as otherwise agreed to by the parties.
- 8.4 Audit Issues or Findings. EDFUND agrees to respond to audit issues or findings in a timely manner.
- 8.5 Reports. EDFUND agrees to provide the following reports to the Commission or such individual(s) designated by the Commission; provided that the Commission may, in their discretion, discontinue any report due to obsolescence:

A. Annual Reports

- (1) **End of Federal Fiscal Year Loan Program Statistics which shall include:**
- (a) **Guarantees**
 - (b) **Defaults**
 - (c) **Collections**
 - (d) **Claims**
 - (e) **Outstanding loans**
- Due the 1st week of December.**
- (2) **Listing of all Participating Schools and Lenders.**
Due the 1st week in November.
- (3) **Annual Internal Audit Schedule.**
Due after the Joint Audit Committee reviews and approves the plan at its first meeting of the new federal fiscal year.

B. Quarterly Reports

- (1) **Updates to the Listing of Participating Schools and Lenders sorted by name. The listing will include the following:**
- a) **name of the institution**
 - b) **school/lender codes**
 - c) **location**
 - d) **number and dollar volume of loans sorted by loan program type (i.e., Stafford)**
- Due the end of the 1st week of the following quarter.**

- (2) Cash Flow Statements for the Federal and Operating Funds.**
Due the 10th of the second month after the end of the quarter.
- (3) Loan Program Statistics to include, but not limited to:**
 - (a) guarantees**
 - (b) defaults**
 - (c) collections**
 - (d) claims**
 - (e) outstanding loans**Due by the end of the 3rd week of the following month.
- (4) Balance Sheet, Statement of Revenues, Expenditures and Changes in Fund balance for the Federal and Operating Funds**
Due the 10th of the 2nd subsequent month following the EDFUND month-end close.
- (5) Budget Variance and Projection Report.** The report includes the following categories:
 - (a) approved annual budget**
 - (b) annual reprojection**
 - (c) year-to-date budget**
 - (d) year-to-date actuals**
 - (e) monthly projections**
 - (f) monthly actuals**Due the 10th of the 2nd subsequent month following the EDFUND month-end close.

**New Operating Agreement
Issue #2 – Loan Program Oversight
CSAC Staff Perspective and Recommendation**

Issue

The Higher Education Act (Section 436) specifies that a guarantee agency that delegates the performance of any of its FFEL Program functions to another entity shall not be relieved of its duty to comply with the requirements of the Act, and is still required to monitor the activities of the other entity for compliance.

In contracting with EDFUND, via the operating agreement, for the administration of the FFEL Program, the Commission must ensure that ultimate Loan Program control, oversight, leadership, and business decision-making remain with the Commission. In other words, the Commission must manage the Commission's Loan Program.

As stated in the BSA audit report, federal law and regulations make it clear that the Commission is responsible for ensuring compliance. EDFUND's performance towards the State's loan program requires independent oversight and evaluation. This oversight and evaluation must be independent from direct or indirect influence by EDFUND.

Background

Commission oversight of EDFUND and EDFUND services is present in the current Operating Agreement in Article 7.2. However, this present discussion is based upon a need for the new Operating Agreement to clearly articulate for both the Commission and EDFUND the nature and extent of Commission's management and oversight responsibilities for both the overall Loan Program and the EDFUND services in support of that program.

The Operating Agreement must not be structured so as to specifically transfer or inevitably cause to be transferred the Commission's FFEL Program responsibilities from the Commission to EDFUND. Recognizing this requirement, the operating agreement must clearly present a business relationship that preserves and promotes the Commission's Loan Program management and oversight responsibilities. Consistent with that responsibility, the Commission must oversee and manage its Loan Program and continuously monitor and evaluate the services contractually provided by EDFUND, the results of those services, and the overall status of the Loan Program.

This management and oversight cannot be achieved by merely receiving periodic, after-the-fact reports of activities and outcomes. State oversight must also not be limited to verifying whether EDFUND accomplished its planned goals and auditing after-the-fact. Oversight should also include than performing any oversight in terms of determining and directing EDFUND to carry out its delegated operational duties in the best interest of the State. Commission management of the Commission's Loan Program requires regular, consistent involvement in its Loan Program, involvement and interaction with affected and/or involved individuals, organizations, institutions, and agencies, and continuing assessment and evaluation of policies, goals, actions, and results.

Appropriate oversight includes 1) access to the auxiliary's systems and records for the purposes of closely monitoring its activities; 2) review and analysis of the auxiliary's performance and achievement of goals; 3) proper validation of information and reports

submitted by the auxiliary; and 4) timely and engaged involvement in the development of key performance drivers such as the Loan Program Business Plan and Budget in order to ensure that the State's interest in the loan program are fully addressed and protected.

The Commission is the designated guaranty agency for the State under the FFEL Program. While EDFUND provides services to the Commission under the Operating Agreement, any potential liability solely resides with the State. Equally important, the ultimate responsibility for the overall success or failure of the Commission's FFEL Program participation rests solely with the Commission. Therefore, on behalf of the State, the Commission must independently exercise appropriate oversight and leadership.

CSAC Staff Recommendation

Given this need and responsibility, the following language is strongly proposed for inclusion in the new Operating Agreement:

8.1 Commission Oversight

The Commission shall provide on-going oversight of EDFUND and its services to the Commission under this Agreement, Exhibit, and SLA's. The Commission or its designee will participate in regularly scheduled and as needed meetings with the EDFUND Contract Manager or other EDFUND staff. In addition to the regularly scheduled and ad hoc reports set forth in this Amendment, Exhibit, SLA, the Commission Contract Manager and his/her staff may, at their discretion, perform on-site observations of EDFUND operations under this Agreement, Exhibit, and SLA's. The Commission will try to inform the EDFUND Contract Manager of such on-site observations or meetings, within a reasonable time frame, prior to the meeting. In addition, the Commission may conduct periodic contract performance reviews and audits of EDFUND's operations in order to evaluate the efficiency and effectiveness of EDFUND's administrative and operational systems, including analyzing EDFUND's compliance with this Agreement, applicable state and federal laws, regulations, and with Commission and EDFUND internal policies. EDFUND shall provide access to the Commission or a designee of the Commission to its premises and staff for monitoring, review, and testing of EDFUND's operations. EDFUND shall also provide any information requested by the Commission or a designee as part of any review or audit. The Commission shall provide reasonable notice to EDFUND prior to any such reviews and audits.

8.2 Audits Supporting the Commission's Oversight Responsibilities.
Commission staff concurs with the EDFUND proposed language.

8.3 Availability and Access.
Commission staff concurs with the EDFUND proposed language.

8.4 Audit Issues or Findings.
Commission staff concurs with the EDFUND proposed language.

8.5 Reports.
This section is still being discussed.

**New Operating Agreement
Issue # 3 – Dispute Resolution
EDFUND Staff Perspective and Recommendation**

EDFUND's Position and Recommendation:

Since the first Operating Agreement in October 1998, through the present, there has been some form of arbitration clause agreed to by the parties. It is EDFUND's position that a dispute resolution process that includes arbitration remain in the Operating Agreement.

Many factors contribute to the preference for arbitration, including: (1) arbitration is less formal and more flexible; (2) the parties can choose neutral(s) who will arbitrate the dispute; (3) avoiding unpredictably large judgments that can sometimes include punitive damages; (4) avoiding runaway discovery costs; (5) avoiding destruction of business partnerships; (6) avoiding negative publicity; and (7) avoiding loss of employee productivity.

Unlike litigation, arbitration encourages the parties to select a knowledgeable decision maker, narrow the scope of the issues to be addressed, thus, restricting potential outcomes and significantly reducing discovery. In litigation, application of res judicata and collateral estoppel may result in the Commission, EDFUND or the student loan industry losing more than the issues contained within a particular case. In arbitration, an adverse decision is restricted solely to a particular claimant and is confidential.

A 2004 survey of corporate general counsel by *Corporate Legal Times* reported that 59.3% indicated that arbitration was less expensive than litigation; 78% found that arbitration leads to faster resolution; and 83% felt that arbitration was either equally fair or fairer than the tradition adjudication process. In addition to the statistics favoring arbitration, the California Attorney General's office prefers arbitration.

EDFUND's Proposed Language (*please note that language in blue are EDFUND's proposed changes*):

9.14 Dispute Resolution. The parties will attempt in good faith to resolve through informal negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that cannot be so resolved, shall **first be presented to the respective contract managers for the Commission and EDFUND. If the respective contract managers cannot resolve the issue within five (5) business days, the issue shall be presented to the Executive Director of CSAC or a designee of the Commission and the President of EDFUND. The Executive Director or designee and the President shall make every good faith effort to resolve the issue. In the event the dispute, claim or controversy cannot be resolved by the Executive Director or designee and the President within five (5) business days of receipt, the Chairs of the Commission and EDFUND Board shall be notified and a joint meeting of the Commission and Board shall be noticed and shall take place within twenty (20) business days of notification to attempt to resolve the issue.**

Mediation: If a dispute arises out of or relates to this Operating Agreement, or the breach thereof, and if said dispute cannot be settled in a manner as described above, the parties agree to first endeavor to settle the dispute in an amicable

manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration.

Arbitration: Any unresolved controversy or claim arising out of or relating to the Operating Agreement, or breach thereof, not resolved by mediation, shall be settled by arbitration administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules including Optional Procedures for Large, Complex Commercial Disputes, Supplementary Procedures for Large, Complex Disputes and Optional Rules for Emergency Measures of Protection, unless otherwise specified in this Agreement, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in Sacramento County, California, unless otherwise agreed to in writing by both parties.

In compliance with AAA Commercial Arbitration Rules (numbers 13, 14 and 15), if the parties fail to agree upon a single arbitrator, each party shall appoint an arbitrator within fifteen (15) days of the transmittal of the list of persons from the AAA panel. Said party-appointed arbitrators are required and authorized to appoint a neutral arbitrator pursuant to AAA Commercial Arbitration Rule 15.

The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. Reimbursement of EDFUND's costs of court actions will, in the absence of court order, be determined by agreement of the parties or arbitration. Both parties agree that the venue for any such action shall be Sacramento County, California.

No more than **thirty (30)** days before the arbitration, a party may serve a document request calling for any document that would be discoverable in civil litigation. The party served with this request shall deliver the requested documents and any objections within five (5) business days of said notice or no later than five (5) days prior to the arbitration hearing. The arbitrator may resolve any dispute over the exchange of documents. Thereafter, each party may take no more than three (3) depositions, each of which shall last no more than four **(4)** hours each. The arbitrator may resolve any dispute over the depositions, as they would be resolved in civil litigation.

The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators necessary to determine the controversy, including a finding of whether or not EDFUND acted in bad faith in the subject action. EDFUND costs of arbitration shall be reimbursed except in the event of a finding of bad faith on the part of EDFUND in the subject action.

**New Operating Agreement
Issue #3 – Dispute Resolution
CSAC Staff Perspective and Recommendation**

Issue

Dispute resolution is a good business practice. Dispute resolution can involve any number of steps including negotiation, mediation, arbitration and judicial review. Not all disputes, even those in which skilled intervention occurs, end in resolution.

The Department of General Services (DGS) provides guidelines on contracts to state agencies in the State Contracting Manual. These guidelines include recommended language on dispute procedures that typically end with the agency director. The State Contract Manual is silent on mediation and arbitration.

Both CSAC and EDFUND staff are in agreement that additional language should be added to the Operating Agreement to delineate the steps in a dispute resolution process, but have slightly different steps to recommend.

Any additional language concerning alternative dispute resolution processes, such as mediation and arbitration, should be considered from the policy perspective that the Commission has ultimate authority for the FFEL Program and oversight of EDFUND and that the only EDFUND assets are those that ultimately belong to the Commission.

Background

Prior to 1999, the Operating Agreement contained the following arbitration clause:

“To the extent allowed by law, any claim or controversy arising out of the AGREEMENT shall be settled by arbitration in accordance with the California Arbitration rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.”

The current Operating Agreement contains “Binding Arbitration” language that states “The parties will attempt in good faith to resolve through informal negotiation any dispute, claim or controversy arising out of or relating to this agreement.” However, this informal negotiation process has not been defined. The Binding Arbitration clause then indicates a very detailed process to be followed in the event the informal negotiation does not resolve the claim.

While EDFUND is a not-for-profit 501(c)(3) corporation and is subject to the Nonprofit Public Benefit Corporation laws (with the provision that in case of conflict the California Education Code prevails), EDFUND was created for the sole purpose of providing services for the Commission. Therefore, the Commission has the right to determine what services EDFUND provides and how to conduct oversight of the FFEL Program and EDFUND.

Disputes that arise out of the Operating Agreement are most likely to occur between CSAC and EDFUND staff regarding programs for which the Commission administers through its decision making responsibilities. The Commission, as a state agency

responsible for state financial aid programs, should not relinquish its administrative authority to a third party either through mediation or arbitration.

CSAC Staff Recommendation

The Commission should, per state contracting guidelines, establish a process for dispute resolution in the new Operating Agreement that begins with informal good faith attempts to resolve the issue at the lowest level up to a decision by the Commission. Therefore, staff recommends that the following language be included in the Operating Agreement and that there be no language regarding binding arbitration.

9.14 Dispute Resolution.

The parties will attempt in good faith to resolve through informal negotiation any dispute, claim or controversy arising out of or relating to this Agreement, Exhibit, SLA. Any controversy or claim arising out of or relating to this Agreement, Exhibit, SLA or the breach thereof, that cannot be so resolved, shall first be presented to the respective Contract Managers for the Commission and EDFUND. If the Contract Managers cannot resolve the issue within five (5) business days, the issue will be presented to the Executive Director of the Commission and the President of EDFUND. They shall utilize resources within their organizations in a good faith effort to reach resolution. In the event that the Executive Director of the Commission and the President of EDFUND cannot resolve the issue, dispute, claim or controversy within five (10) business days, the Commission's Executive Director shall bring the matter in dispute to the Commission no later than the next scheduled Commission meeting. The Executive Director shall ensure that the Commission is provided with adequate information to fully understand the issue. The Commission's decision shall be final.

OPERATING AGREEMENT

This Agreement is made and entered into this first day of July 2007, between the California Student Aid Commission (CSAC), a public agency of the State of California and EDFUND, a nonprofit public benefit corporation organized under the laws of the State of California.

AGREEMENTS

ARTICLE I

Term

- 1.1 Term. The term of the Agreement shall be for a _____ year period from the effective date, unless sooner terminated under Article VII.

ARTICLE II

Definitions

- 2.1 Definitions. In this Agreement, the following words and terms shall have the following meanings:
- A. California Student Aid Commission or CSAC is the primary State agency responsible for the administration of state-aid programs, key among them the Cal Grant Program. CSAC is also the designated State guaranty agency responsible for the Federal Family Education Loan (FFEL) Program.
 - B. Commission is the governing body of the California Student Aid Commission.
 - C. EDFUND is the auxiliary corporation of the California Student Aid Commission, founded on January 1, 1997, as a nonprofit 501(c)(3) public benefit corporation.
 - D. EDFUND Board of Directors (the Board) is the governing body of EDFUND.
 - E. "FFEL Program" is the Federal Family Education Loan Program
 - F. SLA(s) are service level agreements that define the parameters pertaining to services agreed to between the Commission and the Board.

ARTICLE III

FFEL Program Administrative Policies

The Commission is responsible for developing and approving policies for the administration of the FFEL Program. Nothing in this Agreement, Exhibits, SLAs or any policy shall be construed as delegating to EDFUND the Commission's fiduciary responsibilities as required under California statute. However, EDFUND shall provide research and policy analysis and make policy recommendations to the Commission, as appropriate or as requested by the Commission. CSAC and EDFUND staff and the Board shall adhere to all FFEL Program policies adopted by the Commission, provided that they are not inconsistent with this Agreement.

ARTICLE IV EDFUND's Agreements

- 4.1 Status as Auxiliary. EDFUND agrees to be the auxiliary organization of CSAC and operate as a nonprofit public benefit corporation in good standing under California law. EDFUND further agrees to maintain its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
- 4.2 Scope of Services. EDFUND agrees to provide services to CSAC as stated in this Agreement, Exhibits and SLAs. EDFUND further agrees not to engage in any activities, services, or corporate actions outside the scope of services agreed to herein without approval of the Commission.
- A. FFEL Program Services. EDFUND agrees to perform such operational and support services as agreed to by the Commission and the EDFUND Board for the benefit of CSAC in its role as guarantor under the FFEL Program. Services are to be provided pursuant to this Agreement, Exhibits and SLAs.
- B. Other Services. EDFUND agrees to perform such other operational and support services pursuant to an SLA and as permitted by law. [Such services shall be provided at cost to the Commission, invoices to be submitted monthly, and upon such other terms as mutually agreed upon.]–

Note: Staffs continue to collaborate on bracketed language.

- 4.3 Processing System. EDFUND agrees to maintain a financial aid processing system that is auditable for all identified program transactions.
- 4.4 Performance [Goals/Standards]. EDFUND agrees to perform services pursuant to Section 4.2 of this Agreement in accordance with generally established procedures and industry standards and practices, and further agrees to the specific and measurable performance [goals/standards] set forth in an SLA.

Note: The terms goals or standards will be revisited at the time of the SLA development.

- 4.5 Compliance. EDFUND agrees to perform all services as agreed to by the Commission and the EDFUND Board in full compliance with the Higher Education Act of 1965, as amended, and the regulations from time to time promulgated thereunder. EDFUND

further agrees to perform all services as agreed to by the Commission and the EDFUND Board pursuant to Commission policies and pertaining to the FFEL Program, this Agreement, Exhibits and SLAs.

- 4.6 EDFUND Policies. EDFUND agrees to develop, implement, and maintain written policies and procedures as are necessary for EDFUND to fully comply with this Agreement. Proposed policies having a potential material effect on the Operating Fund (see Article VI, Section 6.1) shall be submitted to the Commission and the EDFUND Board for review and comments. The Commission recognizes the EDFUND Board of Directors' responsibilities to make business decisions pursuant to the California Corporations Code; however, EDFUND policies and procedures shall be available for review by the Commission. EDFUND agrees to submit any new or revised policy to a designated individual on the CSAC staff and/or such other individual(s) identified by the Commission within ten (10) days of such policy's adoption.

- 4.7 Annual Loan Program Business Plan and Budget. **SEE ISSUE #1**

EDFUND shall develop an annual Loan Program Business Plan and Budget for the administration of the FFEL Program that ensures the fiscal viability and continued success of such program. EDFUND agrees to provide a high level conceptual presentation for CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan and Budget no later than the fifteenth day of May of each year and prior to any significant document development. EDFUND agrees to consult with CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan and Budget no later than the fifteenth day of July of each year and provide any requested information associated therewith. The EDFUND Board shall approve the annual Loan Program Business Plan and Budget no later than the thirty-first day of August of each year and submit such documents to the Commission by the first day of September of each year for review and approval. Such dates may be altered by mutual agreement between the Commission and the EDFUND Board. Any significant change in strategy by EDFUND following any of the above referenced meetings shall be communicated to CSAC staff and/or such other individual(s) identified by the Commission.

The business plan shall include a description of business objectives EDFUND plans to pursue, its information technology strategies, descriptions of proposed new products or services, descriptions of proposed material changes in EDFUND's operations and the anticipated results of the plan. If the approved business plan changes the services to be provided by EDFUND, the SLA shall be amended to reflect the change in EDFUND services.

The budget shall include all projected revenues and expenses expected to be incurred in operations connected with the business plan. The budget shall also include a five-year projection of revenues and expenditures. Any material expenditure of funds or material change in operations or corporate policies outside of the Loan Program Business Plan and Budget shall be submitted to the Commission and EDFUND Board for review and approval.

- 4.8 Assets. EDFUND agrees and acknowledges that all its assets, whether owned by EDFUND or in its control, are held for the benefit of CSAC to the extent provided in the EDFUND Articles of Incorporation. EDFUND agrees to manage such assets with the same duty of care as if the assets were owned by EDFUND, and to use and administer such assets only for purposes allowed herein and in conformance with State law. The Commission agrees to adopt a policy to provide an efficient, reasonable, and cost-effective procedure for the disposal of EDFUND physical property with a de minimis value or located out-of-state, provided that such policy does not violate State law.
- 4.9 Civil Service Employees. EDFUND agrees to continue to take the assignment of existing civil service employees of CSAC assigned to EDFUND as of October 1, 1999, as permitted by law, for the purpose of performing services under this Agreement. EDFUND agrees that it shall treat the identified civil service employees as its own employees, except as required due to their civil service status, including terms and conditions of any applicable memoranda of understanding covering represented employees. EDFUND further agrees that for the assigned civil servants who wish to retain their civil service status, it will use its best efforts to make promotional opportunities available to civil service employees on the same basis as at-will employees. EDFUND and CSAC understand that such promotional opportunities are subject to the applicable personnel rules of the State of California.

EDFUND agrees to work with CSAC to provide one day of annual supervisory training to any EDFUND employee who supervises a civil service employee. Such training shall include, but is not limited to, areas of progressive discipline, documentation, attendance, work performance, and any other areas deemed necessary. CSAC civil service employees will be held accountable for their performance and attendance through their managers.

- 4.10 Insurance. EDFUND agrees to maintain in force during the terms of this Agreement insurance as follows:

- A. GENERAL LIABILITY INSURANCE, including fidelity coverage, with limits of liability for each occurrence of not less than:
\$5,000,000 for bodily injury and property liability combined.
- B. WORKERS COMPENSATION INSURANCE with limits as required by law.
- C. DIRECTORS AND OFFICERS INSURANCE with coverage of not less than:
\$5,000,000 per claim with a \$5,000,000 annual aggregate limit.
- D. AUTOMOBILE LIABILITY for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of EDFUND, with limits of \$1,000,000 per accident for bodily and property damage.

The above insurance limits are the minimum amounts for the described policies and shall be adjusted as necessary to assure sufficient coverage. All such policy(ies) of insurance shall contain a special endorsement naming as a covered entity: The State of California, Student Aid Commission.

ARTICLE V

Commission/CSAC Agreements

- 5.1 Status as Guarantor. CSAC will remain a guaranty agency for purposes of the Higher Education Act of 1965, as amended, and shall comply with all applicable laws and regulations thereunder, unless the guaranty designation is transferred by the U.S. Secretary of Education or terminated by the State or federal government. The Commission further agrees to maintain EDFUND as its auxiliary organization.
- 5.2 Compliance with FFEL Program Requirements. The Commission agrees to perform all guaranty services not otherwise delegated to EDFUND in full compliance with the Higher Education Act of 1965, as amended, and the regulations from time to time promulgated thereunder.

SEE ISSUE #1

- 5.4 Annual Loan Program Business Plan and Budget Approval. The Commission agrees to review EDFUND's Loan Program Business Plan and Budget. To the extent that changes are required in EDFUND's plan or budget due to Commission requirements, changes in federal law, or other circumstances beyond EDFUND's control, the Commission agrees to renegotiate in good faith the annual Loan Program Business Plan and/or Budget to reflect such changes.

Note: Staffs continue to collaborate on language.

- 5.5 Scope of Services. The Commission agrees to provide EDFUND with data and services pursuant to an SLA.
- 5.6 Review and Approvals. The Commission agrees to review any other requests and items within the scope of this Agreement and provide approvals in a timely manner.

ARTICLE VI

FFEL Program Funds, Payments to EDFUND and/or CSAC

- 6.1 FFEL Program Funds. CSAC shall maintain the Student Loan Operating Fund (hereinafter known as the Operating Fund) and the Federal Student Loan Reserve Fund (hereinafter known as the Federal Fund) as required by the FFEL Program. As permitted by law, the Operating Fund may be used for other purposes determined by the Commission and/or the State. CSAC will use the Operating Fund to reimburse EDFUND for its expenses. Revenues received by EDFUND on behalf of CSAC shall be remitted as per agreed upon written procedures. The Operating Fund and the Federal Fund shall be in the sole control of CSAC. EDFUND acknowledges it has no ownership rights of the Operating Fund and/or Federal Fund.
- 6.2 Reimbursement of EDFUND Expenses. CSAC agrees to pay to EDFUND reimbursement for all monies expended for the provision of services, both guaranty and other, in accordance with EDFUND's approved budget, approved SLAs, applicable laws and

regulations and other policies established and approved mutually by EDFUND and the Commission. EDFUND shall invoice CSAC for the services provided in a form pursuant to an SLA. [EDFUND agrees to provide supporting documentation to identify the services rendered.] ***Staffs continue to collaborate on bracketed language.*** CSAC shall be responsible for reviewing the invoices and approving payments. Payment of invoiced expenses shall be made within 30 days of receipt of all necessary documentation pursuant to an SLA. Payment for any disputed expense may be withheld by CSAC and shall be identified in writing to EDFUND within 30 days, including the reason for withholding payment. EDFUND shall have the right to appeal any disputed expenditures by written appeal to an individual designated by the Commission. If EDFUND disputes the decision made by such designee, EDFUND may appeal further in writing to the Chair of the Commission. This appeal shall be considered by the Commission. In no event shall the amount reimbursed to EDFUND for guaranty services during the term of this Agreement exceed the total amount budgeted for such services in the operating budget approved pursuant to Section 4.7, unless prior approval for such expenditures was granted by the Commission.

Note: Staffs continue to collaborate on additional language.

6.3 EDFUND Incentive Compensation Plans.

Note: Staffs are currently collaborating on proposed language..

- A. Variable Pay Plans. EDFUND agrees to administer its Variable Pay Plans pursuant to the current Commission policy which will be titled "EDFUND Incentive Compensation Plans."
 - B. Executive Performance Payment at the Discretion of the Board. The EDFUND Board or a committee of the Board which the Board may name, is authorized to pay a year-end performance based payment to EDFUND's executive team (President and Vice Presidents). EDFUND agrees to administer its Executive Performance Payment pursuant to the current Commission policy which will be titled "EDFUND Incentive Compensation Plans."
- 6.4 Investment of EDFUND Cash. EDFUND cash, including cash resulting from any advance from the Operating Fund, shall be invested according to policy approved by the Commission and the EDFUND Board.
- 6.5 Travel Expenses. All travel expenses incurred by EDFUND shall be reimbursed pursuant to the EDFUND Travel Policy approved by the Commission and the EDFUND Board.
- 6.6 Reimbursements to the Commission. EDFUND agrees to pay CSAC for services rendered pursuant to this Agreement, Exhibits and SLAs.

ARTICLE VII

Effective Date, Assignment and Termination

7.1 Effective Date. This Agreement shall be in full force and effect as of the date first above written and shall continue in full force and effect until [June 30, 2012] unless sooner terminated as herein provided. The parties may amend this Agreement for subsequent terms, as allowed by law, by written agreement of both parties prior to the expiration of this Agreement.

Note: Date will be determined later – this section should correspond with any changes made to Article 1.1.

7.2 Assignment. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

7.3 Termination without Cause. The Commission may terminate this Agreement at any time without cause upon 60 days' written notice.

7.4 Termination for Cause. Either party may terminate this Agreement for cause upon 30 days' written notice to the other party specifying the cause and the proposed termination date. For purposes of this Agreement "cause" shall mean:

- A. material breach of this Agreement
- B. the inability by a party to perform in whole or material part any of its obligations hereunder for a period of more than 30 consecutive days, or
- C. with respect to termination by the Commission, the filing of a petition in bankruptcy by EDFUND or against EDFUND by someone other than a party to this Agreement.

However, should the party receiving notice of termination for cause cure, in the noticing party's sole judgment, the condition giving rise to such notice before the date specified for termination, then this Agreement shall continue in full force and effect.

In lieu of termination under this Section 7.4, the parties may initiate the dispute resolution process in Section 9.14.

7.5 Termination by the Secretary. This Agreement is terminable by the U.S. Secretary of Education upon 30 days' written notice to the parties if the Secretary determines that the Agreement includes an impermissible transfer of federal funds or assets or is otherwise inconsistent with the terms and purposes of Section 422 of the Higher Education Act.

7.6 Transfer of Assets. Upon termination of this Agreement and in the absence of a subsequent Operating Agreement between the parties, all of EDFUND's assets, tangible and intangible, shall immediately and without further action by either party become the property of the Commission. EDFUND agrees to take promptly all steps reasonably requested by the Commission to effectuate such transfer.

ARTICLE VIII
Oversight**SEE ISSUE #2****ARTICLE IX**
General Provisions

- 9.1 Corporate Obligation. This Agreement is a corporate obligation of EDFUND and an obligation of a public agency with respect to the Commission. Any liability arising hereunder shall be a corporate liability or, with respect to the Commission, governed by the California Education Code Section 69510 *et seq.* No commissioner, director, officer or employee of either party shall be subject to any liability to any other party for any action taken, or for refraining from taking action in good faith or for errors in judgment.
- 9.2 Waiver. No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- 9.3 Amendments. Any amendment, modification or waiver of any provision of this Agreement shall be in writing and signed by the party to be bound and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- 9.4 Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California.
- 9.5 Continuing Covenants. All covenants, agreements, representations and warranties contained herein shall extend to, inure to the benefit of and bind all assignees and successors of the respective parties hereto, and the representations, warranties, covenants and indemnities herein contained shall survive the termination of this Agreement, but shall not be deemed to have been made with respect to any period of time subsequent to the termination of this Agreement.
- 9.6 Notice. No written notice required to be given hereunder shall be effective until received by the party, with proof of delivery, to whom addressed, or until five (5) calendar days after mailing to the addressee, whichever is earlier.
- 9.7 Force Majeure. If either party is rendered unable, wholly or in part, by a force outside the control of the parties (including, but not limited to, acts of God or the public enemy, acts of government in either its sovereign or contractual capacity, strikes, lockouts, riots, acts of war, epidemics, fire, communication line or power failure, changes in applicable law, embargoes, weather, quarantine, earthquakes, or other disasters) to carry out its obligations under this Agreement, that party shall give to the other party prompt written

notice to that effect; thereupon, the affected obligations of the party giving the notice, shall be suspended so long as such party is unable to so perform and such party shall have no liability to the other for the failure to perform any suspended obligation during the period of suspension; however, this provision is not intended to modify or abrogate in any way the right of a party to terminate this Agreement if a condition for termination specified elsewhere herein exists.

9.8 Cooperation between Parties. The Commission and EDFUND agree that they will cooperate promptly and fully with one another in order to carry out the terms and provisions of this Agreement. The Commission and EDFUND also agree to mutually promote and support each other in the market place. Guarantee services conducted outside of California may be marketed under the EDFUND name.

9.9 Duly Authorized. Each party with respect to itself represents and warrants that the making and performance of this Agreement and the activities contemplated hereby (i) have been duly authorized by all necessary corporate, statutory, regulatory or Commission action, and (ii) do not and will not violate any provision of law, or any regulation, order, decree, writ or injunction, or any provision of its governing statute or instrument.

This Agreement is the legal, valid and binding obligation of such party, enforceable in accordance with the terms hereof subject to the exercise of judicial discretion in accordance with general principles of equity, to the valid exercise of the police powers of the several states of the United States of America, and of the constitutional powers of the United States of America and to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

9.10 Safeguards and Information Security.

Note: Staffs are currently collaborating on proposed language.

9.11 Custodian of Records, Examination. EDFUND shall serve as custodian of all CSAC records and systems pertaining to the FFEL Program under EDFUND's possession and control. The Commission shall be granted complete right and access to such records and systems upon request.

9.12 Confidentiality. Subject to the requirement of applicable law, including the Bagley-Keene Open Meeting Act, California Government Code Section 11120 *et seq.*, the Public Records Act, California Government Code Section 6250 *et seq.*, and California Education Code Section 69525(g), both parties agree to maintain the confidentiality of documents and other information provided under this Agreement to the fullest extent possible, including all those marked "Proprietary and Confidential."

9.13 Contract Manager. The Commission and EDFUND shall each designate in writing a Contract Manager within ten (10) days of signing this Agreement.

All notices to be provided under this Agreement shall be directed to the Contract Manager. In addition, each party agrees to communicate any material issues or disputes arising out of this Agreement to the other Party's Contract Manager. Both Contract

Managers are to use their best efforts to resolve any such issues or disputes in an informal manner. Either party may change the designation of its Contract Manager at any time upon written notice to the other party. In addition to the Contract Managers designated, copies of all notices and communications as described in this paragraph shall be provided to the legal counsel for both parties.

9.14 Dispute Resolution.

SEE ISSUE #3

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

California Student Aid Commission

EDFUND

SIGNATURE PAGE

PLEASE NOTE

The final Operating Agreement will contain attached Exhibits or Service Level Agreements (SLAs) which have not been developed by CSAC and EDFUND staff at the time of this printing and consequently will not be included with this draft Operating Agreement.

OPERATING AGREEMENT

This Agreement is made and entered into this first day of July 2007, ~~October 2002~~, between the California Student Aid Commission (CSAC), a ~~n~~ public agency of the State of California (~~the Commission~~) and EDFUND, a nonprofit public benefit corporation organized under the laws of the State of California (~~EDFUND~~).

RECITALS

WHEREAS:

- ~~A. The Commission is the designated guaranty agency for the State of California for purposes of the Higher Education Act of 1965, as amended.~~
- ~~B. In order to best serve the interests of students, schools, and lenders on behalf of the State of California, the Commission has established the following objectives for its administration of the Federal Family Education Loan Program (FFEL Program): access to loans for students, low cost and affordable financing, high quality of services, innovation, and decreasing default rates.~~
- ~~C. The Commission formed EDFUND as an auxiliary organization pursuant to California Education Code Sections 69522 et seq. to perform operational and support services essential to the administration of the FFEL Program.~~
- ~~D. The Commission desires to enter into this Agreement with EDFUND for the purpose of enhancing its administration and delivery of Commission programs and services in furtherance of the Commission's objectives and as required under Section 69522(d) of the California Education Code.~~

AGREEMENTS

ARTICLE I

Term

- 1.1 Term. The term of the Agreement shall be for ~~one (1)~~ ____ year period from the effective date ~~above~~, unless sooner terminated under Article VII.

ARTICLE II (New Article)

DEFINITIONS

Note: Formatting will be finalized later.

- 2.1 Definitions. In this Agreement, the following words and terms shall have the following meanings:

- A. California Student Aid Commission or CSAC is the primary State agency responsible for the administration of state-aid programs, key among them the Cal Grant Program.

CSAC is also the designated State guaranty agency responsible for the Federal Family Education Loan (FFEL) Program.

- B. Commission is the governing body of the California Student Aid Commission.
- C. EDFUND is the auxiliary corporation of the California Student Aid Commission, founded on January 1, 1997, as a nonprofit 501(c)(3) public benefit corporation.
- D. EDFUND Board of Directors (the Board) is the governing body of EDFUND.
- E. "FFEL Program" is the Federal Family Education Loan Program
- F. SLA(s) are service level agreements that define the parameters pertaining to services agreed to between the Commission and the Board.

ARTICLE III *(New Article)* FFEL Program Administrative Policies

Note: Formatting will be finalized later.

The Commission is responsible for developing and approving policies for the administration of the FFEL Program. Nothing in this Agreement, Exhibits, SLAs or any policy shall be construed as delegating to EDFUND the Commission's fiduciary responsibilities as required under California statute. However, EDFUND shall provide research and policy analysis and make policy recommendations to the Commission, as appropriate or as requested by the Commission. CSAC and EDFUND staff and the Board shall adhere to all FFEL Program policies adopted by the Commission, provided that they are not inconsistent with this Agreement.

ARTICLE ~~III~~ IV EDFUND's Agreements

~~2.4~~

- 4.1. Status as Auxiliary. ~~EDFUND agrees to maintain its status as an auxiliary organization~~ EDFUND agrees to be the auxiliary organization of CSAC and operate ~~of the Commission~~ and as a nonprofit public benefit corporation in good standing under California law. ~~and to conduct its operations in accordance with such status.~~ EDFUND further agrees to maintain its tax-exempt status under Section 501 (c)(3) of the Internal Revenue Code. ~~and its status as a supporting organization to the Commission.~~

~~2.2~~

- 4.2. Scope of Services. EDFUND agrees to provide services to CSAC ~~the Commission~~ as stated in this Agreement, Exhibits and SLAs. ~~Section.~~ EDFUND further agrees not to engage in any activities, services, or corporate actions outside the scope of services agreed to herein without ~~prior~~ approval of the Commission.

- A. Guaranty FFEL Program Services. EDFUND agrees to perform such operational and support services as agreed to ~~delegated to it~~ by the Commission and the

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Yellow=For Commission Resolution
Blue=New Language
Red=Old Language Deleted

Tab 2.f

Redlined Version 04/10/07

EDFUND Board for the benefit of CSAC ~~the Commission~~ in its role as guarantor under the FFEL Program. Services are to be provided pursuant to this Agreement, Exhibits and SLAs. ~~are listed on Exhibit A, attached hereto.~~

- B. Other Services. EDFUND agrees to perform such other operational and support services pursuant to an SLA and ~~that may be delegated to it by the Commission from time to time,~~ as permitted by law. [Such services shall be provided at cost to the Commission, invoices to be submitted monthly, and upon such other terms as mutually agreed upon.] ~~EDFUND agrees to provide those services listed on Exhibit B, as amended from time to time. Functions not listed in Exhibits A and B and not included in the approved budget will be separately invoiced to the Commission.~~
Note: Staffs continue to collaborate on bracketed language.

~~2.3~~

- 4.3 Processing System. EDFUND agrees to ~~establish and~~ maintain a financial aid processing system that is auditable for all identified program transactions.

~~2.4~~

- 4.4 Performance [Goals/Standards]. EDFUND agrees to perform ~~the guaranty~~ services pursuant to Section 4.2 of ~~delegated to it in~~ this Agreement in accordance with generally established procedures and industry standards and practices, and further agrees to the specific and measurable performance [goals/standards] set forth in an SLA. ~~Exhibit C, attached hereto. Services provided pursuant to Section 2.2.B will be performed in accordance with the performance expectations set forth in Exhibit D.~~

Note: The terms goals or standards will be revisited at the time of the SLA development.

~~2.5.~~

- 4.5 Compliance with FFEL Program Requirements. EDFUND agrees to perform all guaranty services as agreed to ~~delegated to it~~ by the Commission and the EDFUND Board in full compliance with the Higher Education Act of 1965, as amended, and the regulations from time to time promulgated thereunder. EDFUND further agrees to perform all services as agreed to by the Commission and the EDFUND Board pursuant to Commission policies and pertaining to the FFEL Program, this Agreement, Exhibits and SLAs.

~~2.6. Compliance with Commission Policies. EDFUND agrees to perform all guaranty services and other services in conformance with Commission regulations, policies, and procedures pertaining to the FFEL Program.~~

~~2.7.~~

- 4.6 EDFUND Policies.
~~A. Corporate Governance Policy.~~ EDFUND agrees to develop, implement, and maintain written policies and procedures as are necessary for EDFUND to fully comply with this Agreement. Proposed policies having a potential material effect on the Operating Fund (see Section 6.1 Article VI 4.1, ~~Article IV~~) shall be submitted to the ~~CSAC/EDFUND Financial and Policy Review Team~~ Commission and the EDFUND Board for review and comments. The Commission recognizes the EDFUND Board of Directors' responsibilities

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to make business decisions pursuant to the California Corporations Code; however, EDFUND policies and procedures shall be available for review by the Commission. EDFUND agrees to submit any new or revised policy to a designated individual on the CSAC staff and/or such other individual(s) identified by the Commission within ten days of such policy's adoption.

~~B. Financial Aid and Information Development Policy. Nothing in this Agreement shall be construed as delegating to EDFUND the Commission's responsibilities for policy development and administration with respect to financial aid administration, including policy relating to the administration of the FFEL Program and information development. EDFUND agrees however, to provide research and policy analysis to the Commission and make policy recommendations with respect to financial aid and information development as appropriate and as requested by the Commission.~~

2.8

4.7 Annual Loan Program Business Plan and ~~Operating~~ Budget.

SEE ISSUE #1

EDFUND shall develop an annual Loan Program Business Plan and Budget for the administration of the FFEL Program that ensures the fiscal viability and continued success of such program. EDFUND agrees to provide a high level conceptual presentation for CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan and Budget no later than the fifteenth day of May of each year and prior to any significant document development. EDFUND agrees to consult with CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan and Budget no later than the fifteenth day of July of each year and provide any requested information associated therewith. The EDFUND Board shall approve the annual Loan Program Business Plan and Budget no later than the thirty-first day of August of each year and submit such documents to the Commission by the first day of September of each year for review and approval. Such dates maybe altered by mutual agreement between the Commission and the EDFUND Board. Any significant change in strategy by EDFUND following any of the above referenced meetings shall be communicated to CSAC staff and/or such other individual(s) identified by the Commission.

~~EDFUND agrees to submit a summary business plan and annual operating budget, as approved by its Board, to the Commission for review and approval.~~

The business plan shall include a description of business objectives EDFUND plans to pursue, its information technology strategies, descriptions of proposed new products or services, ~~and~~ descriptions of proposed material changes in EDFUND's operations and the anticipated results of the plan. If the approved business plan changes the services to be provided by EDFUND, the SLA shall be amended to reflect the change in EDFUND services.

The budget shall include all projected revenues and expenses expected to be incurred in operations connected with the business plan. The budget shall also include a five-year projection of revenues and expenditures. ~~EDFUND further agrees to conduct its business operations only in conformance with the plan and budget approved by the Commission.~~

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Tab 2.f

Redlined Version 04/10/07

Any material expenditure of funds or material change in operations or corporate policies outside of the Loan Program Business Plan and Budget shall be submitted to the Commission and EDFUND Board for review and approval. ~~business plan and budget shall have prior approval by the Commission.~~

~~In order to facilitate the review and negotiation process, EDFUND agrees to submit a draft annual Loan Program business plan and proposed operating Budget to the Commission's Executive Director and Contract Manager pursuant to a mutually agreed upon schedule for submission to and review by the Commission.~~

~~2.9.~~

4.8 Assets. EDFUND agrees and acknowledges that all its assets, whether owned by EDFUND or in its control, are held for the benefit of CSAC ~~the Commission~~ to the extent provided in the EDFUND Articles of Incorporation. EDFUND agrees to manage such assets with the same duty of care as if the assets were owned by EDFUND and to use and administer such assets only for purposes allowed herein and in conformance with State law. The Commission agrees to adopt a policy ~~to provide an efficient, reasonable, and cost-effective procedure for the disposal of EDFUND physical property with a de minimis value or located out-of-state, provided that such policy does not violate State law.~~

~~2.10~~

4.9 Civil Service Employees. EDFUND agrees to continue to take the assignment of existing civil service employees of CSAC ~~the Commission~~ assigned to EDFUND as of October 1, 1999, as permitted by law, for the purpose of performing services under this Agreement. EDFUND agrees that it shall treat the identified civil service employees as its own employees, except as required due to their civil service status, including terms and conditions of any applicable memoranda of understanding covering represented employees. EDFUND further agrees that for the assigned civil servants who wish to retain their civil service status, it will use its best efforts to make promotional opportunities available to civil service employees on the same basis as at-will employees. EDFUND and CSAC ~~the Commission~~ understand that such promotional opportunities are subject to the applicable personnel rules of the State of California.

EDFUND agrees to work with CSAC to provide one day of annual supervisory training to any EDFUND employee who supervises a civil service employee. Such training shall include, but is not limited to, areas of progressive discipline, documentation, attendance, work performance, and any other areas deemed necessary. CSAC civil service employees will be held accountable for their performance and attendance through their managers.

~~2.14~~

4.10 Insurance. EDFUND agrees to maintain in force during the terms of this Agreement insurance as follows:

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- A. GENERAL LIABILITY INSURANCE, including fidelity coverage, with limits of liability for each occurrence of not less than:
\$5,000,000 for bodily injury and property liability combined.
- B. WORKERS COMPENSATION INSURANCE with limits as required by law.
- C. DIRECTORS AND OFFICERS INSURANCE with coverage of not less than:
\$5,000,000 per claim with a \$5,000,000 annual aggregate limit.
- D. AUTOMOBILE LIABILITY for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of EDFUND, with limits of \$1,000,000 per accident for bodily and property damage.

The above insurance limits are the minimum amounts for the described policies and shall be adjusted as necessary to assure sufficient coverage. All such policy(ies) of insurance shall contain a special endorsement naming as a covered entity: The State of California, Student Aid Commission.

ARTICLE III-V

California Student Aid Commission's Commission/CSAC Agreements

3.4

5.1 Status as Guarantor. ~~The Commission agrees to~~ CSAC will remain a guaranty agency for purposes of the Higher Education Act of 1965, as amended, and shall comply with all applicable laws and regulations thereunder, unless the guaranty designation is transferred by the U.S. Secretary of Education or terminated by the State or federal government. The Commission further agrees to maintain EDFUND as its auxiliary organization.

3.2

5.2 Compliance with FFEL Program Requirements. The Commission agrees to perform all guaranty services not otherwise delegated to EDFUND in full compliance with the Higher Education Act of 1965, as amended, and the regulations from time to time promulgated thereunder.

5.3 Commission Annual Loan Program Goals.

SEE ISSUE #1

3.3

5.4 Annual Summary Loan Program Business Plan and Operating Budget Approval. The Commission agrees to review EDFUND's summary Loan Program Business Plan and operating Budget, as well as any other requests for approval submitted by EDFUND pursuant to Section 2.7, in a timely manner. The Commission further agrees that EDFUND proposals that require expedited consideration or are of a confidential nature as designated by EDFUND, such that disclosure in a public meeting would be detrimental to EDFUND's business interests, shall be reviewed by the Chair of the Commission, the Chair of the Federal Loan and EDFUND Oversight Committee, and the Executive Director

~~of the Commission.~~ To the extent that changes are required in EDFUND's plan or budget due to Commission requirements, changes in federal law, or other circumstances beyond EDFUND's control, the Commission agrees to renegotiate in good faith the annual Loan Program Business Plan and/or bBudget to reflect such changes.

Note: Staffs continue to collaborate on language.

~~3.4~~

~~5.5~~ Scope of Services. The Commission agrees to provide EDFUND with ~~the data and~~ services pursuant to an SLA. ~~as outlined in Exhibit E.~~

~~3.5~~

~~5.5~~ Review and Approvals. The Commission agrees to review any other requests and items within the scope of this ~~a~~Agreement and provide approvals in a timely manner.

~~3.6~~ ~~Review and Assessment of Required Reports. The Commission agrees that it will review and assess the need for the reports listed in Exhibit F and eliminate any that are no longer necessary.~~

ARTICLE IV VI

FFEL Program Funds, Payments to EDFUND and/or CSAC Commission

~~4.1~~

~~6.1~~ FFEL Program Funds. ~~The Commission~~ CSAC shall maintain the Student Loan Operating Fund (hereinafter known as the Operating Fund) and the Federal Student Loan Reserve Fund (hereinafter known as the Federal Fund) as required by the FFEL Program. ~~and shall use such funds, a~~As permitted by law, the Operating Fund may be used for other purposes determined by the Commission and/or the State. CSAC will use the Operating Fund to reimburse EDFUND for its expenses. Revenues received by EDFUND on behalf of CSAC ~~the Commission~~ shall be remitted as per agreed upon written procedures. The Operating Fund and the Federal Fund shall be in the sole control of CSAC. ~~the Commission and~~ EDFUND acknowledges it has no ownership rights of the Operating Fund and/or Federal Fund. ~~in such funds whatsoever.~~

~~4.2~~

~~6.2~~ Reimbursement of EDFUND Expenses. ~~The Commission~~ CSAC agrees to pay to EDFUND reimbursement for all monies expended for the provision of services, both guaranty and other, in accordance with EDFUND's approved budget, approved SLAs, applicable laws and regulations and other policies established and approved mutually by EDFUND and the Commission. EDFUND shall invoice CSAC ~~the Commission monthly~~ for the services provided in a form pursuant to an SLA. [EDFUND agrees to provide supporting documentation to identify the services rendered]. **Staffs continue to collaborate on bracketed language** ~~The Commission's~~ CSAC staff shall be responsible for reviewing the invoices and approving payments. Payment of approved invoiced expenses shall be made within 30 days of receipt of all necessary documentation pursuant to an SLA, as defined in Exhibit F. Payment for Aany denied/disputed expenses ~~shall~~ may be withheld by CSAC and shall be identified in writing to EDFUND within 30 days, including the reason for withholding payment ~~denial.~~

EDFUND shall have the right to appeal any ~~denied~~disputed expenditures by written appeal to ~~the Executive Director of an individual designated by~~ the Commission. If EDFUND disputes the decision made by such ~~designee Executive Director~~, EDFUND may appeal further in writing to the Chair of the Commission. This appeal shall be considered by ~~either the full Commission. or a committee thereof, at the Chair's discretion.~~—In no event shall the amount reimbursed to EDFUND for guaranty services during the term of this Agreement exceed the total amount budgeted for such services in the operating budget approved pursuant to Section 4.7 ~~2-7~~, unless prior approval for such expenditures was granted by the Commission.

Note: Staffs continue to collaborate on additional language.

4.3

6.3 EDFUND Incentive Compensation Plans.

Note: Staffs are currently collaborating on proposed language.

- A. Variable Pay Plans. EDFUND agrees to administer its Variable Pay Plans pursuant to the ~~current~~ Commission's policy ~~which will be titled "EDFUND Incentive Compensation Plans." dated August 12, 2002, which is incorporated herein by this reference as if set forth in full.~~
- B. Executive Performance Payment at the Discretion of the Board. The EDFUND Board ~~of Directors~~, or a committee of the Board which the Board may name, is authorized to pay a year-end performance based payment to EDFUND's executive team (President and Vice Presidents). EDFUND agrees to administer its Executive Performance Payment pursuant to the ~~current~~ Commission policy ~~which will be titled "EDFUND Incentive Compensation Plans." dated August 12, 2002, which is incorporated herein by this reference as if set forth in full.~~

~~4.4. Use of Operating Surplus. The use and application of funds representing a surplus of revenues over expenses in the Operating Fund during the fiscal year, if any, shall be determined by the Commission in consultation with the EDFUND Board of Directors.~~

4.5

6.4 Investment of EDFUND Cash. EDFUND cash, including cash resulting from any advance from the Operating Fund, shall be invested according to policy ~~approved~~ reviewed by the Commission ~~staff~~ and ~~approved by~~ the EDFUND Board.

4.6

6.5 Travel Expenses. All travel expenses incurred by EDFUND shall be reimbursed pursuant to ~~a the~~ EDFUND Travel Policy approved by the ~~Executive Director of the~~ Commission and the EDFUND Board.

~~4.7. Advances. Upon request by EDFUND, the Commission may authorize advance payments to EDFUND if needed for working capital or in connection with significant projects or capital expenditures. Any such advances so authorized by the Commission, whether or not such advance is considered a loan under the Higher Education Act, shall be documented in writing and accounted for separately in the books and records of EDFUND.~~

4.8

6.6 Reimbursements to the Commission. EDFUND agrees to pay CSAC~~the Commission~~ for services rendered pursuant to this Agreement, Exhibits and SLAs. ~~Section 3.4, in a timely manner.~~

ARTICLE ~~V~~VII

Effective Date, ~~Renewal~~, Assignment and Termination

5.1

7.1 Effective Date; ~~Renewal~~. This Agreement shall be in full force and effect as of the date first above written and shall continue in full force and effect until ~~September 30, 2003~~ [June 30, 2012] unless sooner terminated as herein provided. The parties may ~~renew~~ amend this Agreement for subsequent terms, as allowed by law, by written agreement of both parties prior to the expiration of this Agreement. ***Note: date will be determined later, and this section should correspond with any changes made to Article 1.1.***

5.2

7.2 Assignment. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

5.3

7.3 Termination without Cause. The Commission may terminate this Agreement at any time without cause upon 60 days' written notice.

5.4

7.4 Termination for Cause. Either party may terminate this Agreement for cause upon 30 days' written notice to the other party specifying the cause and the proposed termination date. For purposes of this Agreement "cause" shall mean:

- A. material breach of this Agreement
- B. the inability by a party to perform in whole or material part any of its obligations hereunder for a period of more than 30 consecutive days, or
- C. with respect to termination by the Commission, the filing of a petition in bankruptcy by EDFUND or against EDFUND by someone other than a party to this Agreement.

However, should the party receiving notice of termination for cause cure, in the noticing party's sole judgment, the condition giving rise to such notice before the date specified for termination, then this Agreement shall continue in full force and effect.

In lieu of termination under this Section ~~7.45-4~~, the parties may initiate the dispute resolution process in Section 9.14. ~~the Commission shall have the right, in its sole discretion, to impose other remedial action upon EDFUND in the event it determines there is sufficient cause for termination. Notice of the remedial action shall be given in writing.~~

~~Such remedial action may include revoking the delegation to perform certain services for the Commission, requiring the use by EDFUND of outside consultants selected by the Commission, or any other lawful action selected by the Commission provided that any such remedial action taken by the Commission must relate directly to the condition giving rise to the notice.~~

5.5

7.5 Termination by the Secretary. This Agreement is terminable by the U.S. Secretary of Education upon 30 days' written notice to the parties if the Secretary determines that the Agreement includes an impermissible transfer of federal funds or assets or is otherwise inconsistent with the terms and purposes of section 422 of the Higher Education Act.

5.6

7.6 Transfer of Assets. Upon termination of this Agreement and in the absence of a subsequent Operating Agreement between the parties, all of EDFUND's assets, tangible and intangible, shall immediately and without further action by either party become the property of the Commission. EDFUND agrees to take promptly all steps reasonably requested by the Commission to effectuate ~~evidence or effect~~ such transfer. ~~The Commission, in its sole discretion, may require EDFUND to transfer all assets in its possession to a successor nonprofit auxiliary organization or to the Commission itself.~~

~~ARTICLE VI~~ Indemnification

6.1 ~~Indemnification.~~ Each party shall indemnify, defend, and save harmless the other, and their various directors, commissioners, officers, agents, and employees, from any and all claims, damages, liabilities, and/or losses that may be suffered or incurred or which arise out of or are in any way connected with their respective acts, operations, or performance hereunder, to the fullest extent permitted by law, provided that any such loss, damage, or liability does not arise out of the intentional or negligent acts or omissions of the indemnitee or its various directors, commissioners, officers, agents, and employees.

~~In the event any claim, action or proceeding is made or brought against a party hereto with respect to which indemnity is required hereunder, the indemnitee shall promptly notify the indemnitor and the indemnitor shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. Indemnitee shall have the right to employ separate counsel and to participate in the defense of any action or proceeding against indemnitee, but the indemnitor shall not be required to pay the fees or expenses of such separate counsel unless such separate indemnitee prevails separately from the result achieved by the provided defense.~~

ARTICLE VIII Oversight

~~Reports, Audits, Examination of Records and Confidentiality~~

SEE ISSUE#2

- 7.1 Reports. EDFUND agrees to provide such reports to the Commission as are needed for the Commission to fulfill its role as guarantor and to monitor compliance with this Agreement. Exhibit F, attached hereto, is a list of standard reports EDFUND agrees to provide on a regular basis.
- 7.2 Commission Oversight and Audits. The Commission may, in its discretion, perform periodic contract performance reviews and audits of EDFUND's operations in order to evaluate the efficiency and effectiveness of EDFUND's administrative and operational systems, including analyzing EDFUND's compliance with this Agreement, applicable state and federal laws and regulations and with Commission and EDFUND internal policies. EDFUND shall provide access to the Commission or a designee of the Commission to its premises and staff for monitoring, review, and testing of EDFUND's operations. The Commission shall provide reasonable notice to EDFUND prior to any such reviews and audits.
- 7.3 External Audits. EDFUND agrees to provide to the Commission on an annual basis an audit report prepared by an independent certified public accountant in accordance with California Education Code Section 69527 (a).
- 7.4 Third Party Audits. EDFUND agrees to cooperate fully in any audits of the Commission or of the Commission and EDFUND jointly, conducted by duly authorized third parties, including but not limited to the U.S. Education Department, and the State of California.
- 7.5 Audit Issues or Findings. EDFUND agrees to address and resolve audit issues or findings in a timely manner.

~~7.6 Custodian of Records, Examination. EDFUND shall serve as custodian of all Commission records and systems pertaining to the FFEL Program under EDFUND's possession and control. The Commission shall be granted complete right and access to such records and systems upon request. **Note: Section moved to 9.11**~~

~~7.7 Confidentiality. Subject to the requirement of applicable law, including the Bagley-Keene Open Meeting Act, California Government Code Section 11120 *et seq.*, and the Public Records Act, California Government Code Section 6250 *et seq.*, both parties agree to maintain the confidentiality of documents and other information provided under this Agreement to the fullest extent possible, including all those marked "Proprietary and Confidential." **Note: Section moved to 9.12**~~

ARTICLE VIII-IX General Provisions

~~8.4~~

9.1 Corporate Obligation. This Agreement is a corporate obligation of EDFUND and an obligation of a public agency with respect to the Commission. Any liability arising hereunder shall be a corporate liability or, with respect to the Commission, governed by the California Education Code Section 69510 *et seq.* No commissioner, director, officer

or employee of either party shall be subject to any liability to any other party for any action taken, or for refraining from taking action in good faith, or for errors in judgment. ~~except as provided for in Section 6.1.~~

~~8.2~~

9.2 Waiver. No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

~~8.3~~

9.3 Amendments. ~~No Any~~ amendment, modification, ~~termination,~~ or waiver of any provision of this Agreement ~~by either party shall in any event be effective unless the same~~ shall be in writing and signed by the party to be bound and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. ~~No notice to or demand on either party in any case shall entitle the other party to any other or further notice or demand in similar or other circumstances.~~

~~8.4~~

9.4 Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

~~8.5~~

9.5 Continuing Covenants. All covenants, agreements, representations and warranties contained herein shall extend to, inure to the benefit of and bind all assignees and successors of the respective parties hereto, and the representations, warranties, covenants and indemnities herein contained shall survive the termination of this Agreement, but shall not be deemed to have been made with respect to any period of time subsequent to the termination of this Agreement.

~~8.6~~

9.6 Notice. No written notice required to be given hereunder shall be effective until received by the party, with proof of delivery, to whom addressed, or until five (5) calendar days after mailing to the addressee, whichever is earlier.

~~8.7~~

9.7 Force Majeure. If either party is rendered unable, wholly or in part, by a force outside the control of the parties (including, but not limited to, acts of God or the public enemy, acts of government in either its sovereign or contractual capacity, strikes, lockouts, riots, acts of war, epidemics, fire, communication line or power failure, changes in applicable law, embargoes, weather, quarantine, earthquakes, or other disasters) to carry out its obligations under this Agreement, that party shall give to the other party prompt written notice to that effect; thereupon, the affected obligations of the party giving the notice, shall be suspended so long as such party is unable to so perform and such party shall have no liability to the other for the failure to perform any suspended obligation during the period of suspension; however, this provision is not intended to modify or abrogate in any way the right of a party to terminate this Agreement if a condition for termination specified elsewhere herein exists.

~~8.8~~

9.8 Cooperation between Parties. The Commission and EDFUND agree that they will cooperate promptly and fully with one another in order to carry out the terms and provisions of this Agreement. The Commission and EDFUND also agree to mutually promote and support each other in the market place. Guarantee services conducted outside of California may be marketed under the EDFUND name.

~~8.9~~

9.9 Duly Authorized. Each party with respect to itself represents and warrants that the making and performance of this Agreement and the activities contemplated hereby (i) have been duly authorized by all necessary corporate, statutory, regulatory or Commission action, and (ii) do not and will not ~~violate any provision of law, or any regulation, order, decree, writ or injunction, or any provision of its governing statute or instrument.~~

~~A. violate any provision of law, or any regulation, order, decree, writ or injunction, or any provision of its governing statute or instrument, or;~~

~~B. violate or result in the breach of, or constitute a default or require any consent under, any agreement or instrument by which it or any of its property may be bound or affected;~~

~~and that~~ This Agreement is the legal, valid and binding obligation of such party, enforceable in accordance with the terms hereof subject to the exercise of judicial discretion in accordance with general principles of equity, to the valid exercise of the police powers of the several states of the United States of America, and of the constitutional powers of the United States of America and to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

9.10 Safeguards and Information Security.

Note: Staffs are currently collaborating on proposed language.

9.11 Custodian of Records, Examination. EDFUND shall serve as custodian of all ~~Commission~~ CSAC records and systems pertaining to the FFEL Program under EDFUND's possession and control. The Commission shall be granted complete right and access to such records and systems upon request.

9.12 Confidentiality. Subject to the requirement of applicable law, including the Bagley-Keene Open Meeting Act, California Government Code Section 11120 *et seq.*, ~~and~~ the Public Records Act, California Government Code Section 6250 *et seq.*, and California Education Code Section 69525 (g), both parties agree to maintain the confidentiality of documents and other information provided under this Agreement to the fullest extent possible, including all those marked "Proprietary and Confidential."

~~8.10~~

9.13 Contract Manager. ~~The Contract Manager for the Commission shall be:~~ The Commission and EDFUND shall each designate in writing a Contract Manager within ten (10) days of signing this Agreement.

Green=Mutually Agreed Upon
Yellow=For Commission Resolution
Blue=New Language
Red=Old Language Deleted

Tab 2.f

Redlined Version 04/10/07

~~Rosemary Phillips, Chief
Loan Program Oversight Division
California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670~~

~~The Contract Manager for EDFUND shall be:~~

~~Michael Rothman, Vice President
Finance and Administration Division
EDFUND
3300 Zinfandel Drive
Rancho Cordova, CA 95670~~

All notices to be provided under this Agreement shall be directed to the Contract Manager. In addition, each party agrees to communicate any material issues or disputes arising out of this Agreement to the other Party's Contract Manager. Both Contract Managers are to use their best efforts to resolve any such issues or disputes in an informal manner. Either party may change the designation of its Contract Manager at any time upon written notice to the other party. **In addition to the Contract Managers designated, copies of all notices and communications as described in this paragraph shall be provided to the legal counsel for both parties.**

~~8.14~~

9.14 **Dispute Resolution** ~~Binding Arbitration.~~

SEE ISSUE #3

The parties will attempt in good faith to resolve through informal negotiation any dispute, claim or controversy arising out of or relating to this agreement. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that cannot be so resolved, shall be settled by arbitration administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules including Optional Procedures for Large, Complex Commercial Disputes, Supplementary Procedures for Large, Complex Disputes and Optional Rules for Emergency Measures of Protection, unless otherwise specified in this Agreement, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in Sacramento County, California, unless otherwise agreed to in writing by both parties.

In compliance with AAA Commercial Arbitration Rules (numbers 13, 14 and 15), if the parties fail to agree upon a single arbitrator, each party shall appoint an arbitrator within fifteen (15) days of the transmittal of the list of persons from the AAA panel. Said party-appointed arbitrators are required and authorized to appoint a neutral arbitrator pursuant to AAA Commercial Arbitration Rule 15.

The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration

Green=Mutually Agreed Upon
Yellow=For Commission Resolution
Blue=New Language
Red=Old Language Deleted

Tab 2.f

Redlined Version 04/10/07

award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. Reimbursement of EDFUND's costs of court actions will, in the absence of court order, be determined by agreement of the parties or arbitration. Both parties agree that the venue for any such action shall be Sacramento County, California.

No more than 30 days before the arbitration, a party may serve a document request calling for any document that would be discoverable in civil litigation. The party served with this request shall deliver the requested documents and any objections within five (5) business days of said notice or no later than five (5) days prior to the arbitration hearing. The arbitrator may resolve any dispute over the exchange of documents. Thereafter, each party may take no more than three (3) depositions, each of which shall last no more than four hours each. The arbitrator may resolve any dispute over the depositions, as they would be resolved in civil litigation.

The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators necessary to determine the controversy, including a finding of whether or not EDFUND acted in bad faith in the subject action. EDFUND costs of arbitration shall be reimbursed except in the event of a finding of bad faith on the part of EDFUND in the subject action.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

California Student Aid Commission

EDFUND

SIGNATURE PAGE

Green=Mutually Agreed Upon
Yellow=For Commission Resolution
Blue=New Language
Red=Old Language Deleted

Tab 2.f

Redlined Version 04/10/07

PLEASE NOTE

The final Operating Agreement will contain attached Exhibits or Service Level Agreements (SLAs) which have not been developed by CSAC and EDFUND staff at the time of this printing and consequently will not be included with this draft Operating Agreement.

COPY

AMENDMENT/EXTENSION

This extension dated January 31, 2007, hereby extends the Operating Agreement by and between the California Student Aid Commission and EDFUND entered into on October 1, 2002, as amended on October 1, 2003, October 1, 2004, October 1, 2005 and October 1, 2006, as follows:

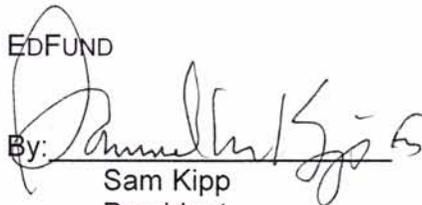
The term of the Agreement shall be extended for **five months** until **June 30, 2007**, unless sooner terminated under Article V.

All other terms and conditions of the Agreement shall remain unchanged.

California Student Aid Commission

By: 
Diana Fuentes-Michel
Executive Director

EDFUND

By: 
Sam Kipp
President

AMENDMENT/EXTENSION

The California Student Aid Commission and EDFUND intend to execute a new Operating Agreement by no later than January 31, 2007, which will include such terms as are necessary to implement or respond to recommendations made by the Bureau of State Audits in its Report on the Commission's Administration of the Federal Family Education Loan Program (Audit 2005-120), issued on April 20, 2006. In the interim, to allow sufficient time for development of the new Operating Agreement, the parties have agreed to enter into an extension of the current Operating Agreement.

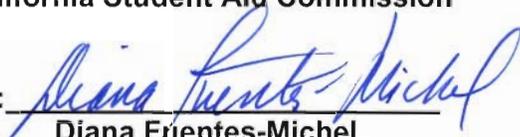
Therefore, this Amendment dated October 1, 2006 hereby amends the Operating Agreement by and between the California Student Aid Commission and EDFUND, entered into on October 1, 2002, as amended on October 1, 2003, October 1, 2004 and on October 1, 2005, as follows:

1. The term of the Agreement shall be extended for four (4) months, until **January 31, 2007**, unless sooner terminated under Article V.
2. The "California Student Aid Commission's specific and measurable Performance Goals for EDFUND" as referenced in Article 2.4 and Exhibit C of the Agreement, shall include the "High-level Organizational Metrics" contained in the 2006-07 Loan Program Business Plan. The Commission will evaluate EDFUND's accomplishments of these goals in the context of the actual competitive student loan industry environment and national economy during the year.

All other terms and conditions of the Agreement shall remain unchanged.

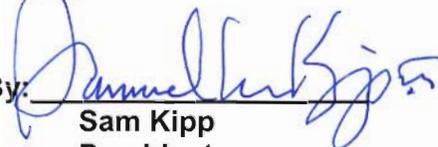
California Student Aid Commission

By:


Diana Fuentes-Michel
Executive Director

EDFUND

By:


Sam Kipp
President

AMENDMENT/EXTENSION

This Amendment dated October 1, 2005, hereby amends the Operating Agreement by and between the California Student Aid Commission and EDFUND entered into on October 1, 2002 and amended on October 1, 2003 and on October 1, 2004, as follows:

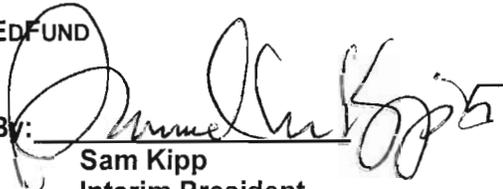
1. The term of the Agreement shall be extended for one (1) year, until September 30, 2006, unless sooner terminated under Article V.
2. The "California Student Aid Commission's Performance Goals for EDFUND" as contained in the Business Plan pursuant to Exhibit C of the Agreement shall mean the "High-level Organizational Metrics" contained in the 2005-06 Loan Program Business Plan. The Commission will evaluate EDFUND's accomplishments of these goals in the context of the actual competitive student loan industry environment and national economy during the year.

All other terms and conditions of the Agreement shall remain unchanged.

California Student Aid Commission

By: 
Diana Fuentes-Michel
Executive Director

EDFUND

By: 
Sam Kipp
Interim President

AMENDMENT/EXTENSION

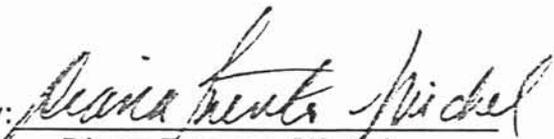
This Amendment, dated October 1, 2004, hereby amends the Operating Agreement by and between the California Student Aid Commission and EDFUND entered into on October 1, 2002, and amended on October 1, 2003, as follows:

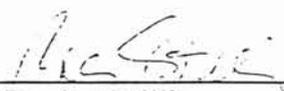
1. The term of the Agreement shall be extended for one (1) year, until September 30, 2005, unless sooner terminated under Article V.
2. The "California Student Aid Commission's Performance Goals for EDFUND" as contained in the Business Plan pursuant to Exhibit C of the Agreement shall mean the "High-Level Organizational Metrics" contained in the 2004-05 EDFUND Business Plan. The Commission will evaluate EDFUND's accomplishments of these goals in the context of the actual competitive student loan industry environment and national economy during the year.

All other terms and conditions of the Agreement shall remain unchanged.

California Student Aid Commission

EDFUND

By: 
Diana Fuentes-Michel
Executive Director

By: 
Becky Stilling
President

AMENDMENT/EXTENSION

This Amendment, dated October 1, 2003, hereby amends the Operating Agreement by and between the California Student Aid Commission and EDFUND entered into on October 1, 2002, as follows:

1. The term of the Agreement shall be extended for one (1) year, until September 30, 2004, unless sooner terminated under Article V.

2. The "California Student Aid Commission's Performance Goals for EDFUND" as contained in the Business Plan pursuant to Exhibit C of the Agreement shall mean the "High-Level Organizational Metrics" contained in the 2003-04 EDFUND Business Plan. The Commission will evaluate EDFUND's accomplishments of these goals in the context of the actual competitive student loan industry environment and national economy during the year.

3. Article II, Section 2.11 shall be amended to delete the last sentence and substitute the following sentence:

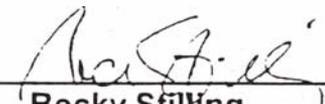
All such policies of insurance, as well as any additional policies covering EDFUND, shall contain a special endorsement naming as a covered entity: The State of California, Student Aid Commission.

All other terms and conditions of the Agreement shall remain unchanged.

California Student Aid Commission

By: 
Diana Fuentes-Michel
Executive Director

EDFUND

By: 
Becky Stilling
President

By: 
Michael Rothman
Vice President, Finance &
Administration and CFO

OPERATING AGREEMENT

This Agreement is made and entered into this first day of October 2002, between the California Student Aid Commission, an agency of the State of California (the Commission) and EDFUND, a nonprofit public benefit corporation organized under the laws of the State of California (EDFUND).

RECITALS

WHEREAS:

- A. The Commission is the designated guaranty agency for the State of California for purposes of the Higher Education Act of 1965, as amended.
- B. In order to best serve the interests of students, schools, and lenders on behalf of the State of California, the Commission has established the following objectives for its administration of the Federal Family Education Loan Program (FFEL Program): access to loans for students, low cost and affordable financing, high quality of services, innovation, and decreasing default rates.
- C. The Commission formed EDFUND as an auxiliary organization pursuant to California Education Code Sections 69522 *et seq.* to perform operational and support services essential to the administration of the FFEL Program.
- D. The Commission desires to enter into this Agreement with EDFUND for the purpose of enhancing its administration and delivery of Commission programs and services in furtherance of the Commission's objectives and as required under Section 69522(d) of the California Education Code.

AGREEMENTS

ARTICLE I

Term

- 1.1 Term. The term of the Agreement shall be for one (1) year from the effective date above, unless sooner terminated under Article V.

ARTICLE II

EDFUND's Agreements

- 2.1 Status as Auxiliary. EDFUND agrees to maintain its status as an auxiliary organization of the Commission and as a nonprofit public benefit corporation in good standing under California law and to conduct its operations in accordance with such status. EDFUND further agrees to maintain its tax-exempt status under Section 501 (c)(3) of the Internal Revenue Code and its status as a supporting organization to the Commission.

- 2.2 Scope of Services. EDFUND agrees to provide services to the Commission as stated in this Section. EDFUND further agrees not to engage in any activities, services, or corporate actions outside the scope of services agreed to herein without prior approval of the Commission.
- A. Guaranty Services. EDFUND agrees to perform such operational and support services as delegated to it by the Commission for the benefit of the Commission in its role as guarantor under the FFEL Program. Services to be provided are listed on Exhibit A, attached hereto.
 - B. Other Services. EDFUND agrees to perform such other operational and support services that may be delegated to it by the Commission from time to time, as permitted by law. Such services shall be provided at cost to the Commission, invoices to be submitted monthly, and upon such other terms as mutually agreed upon. EDFUND agrees to provide those services listed on Exhibit B, as amended from time to time. Functions not listed in Exhibits A and B and not included in the approved budget will be separately invoiced to the Commission.
- 2.3 Processing System. EDFUND agrees to establish and maintain a financial aid processing system that is auditable for all identified program transactions.
- 2.4 Performance Goals. EDFUND agrees to perform the guaranty services delegated to it in this Agreement in accordance with generally established procedures and industry standards and practices, and further agrees to the specific and measurable performance goals set forth in Exhibit C, attached hereto. Services provided pursuant to Section 2.2.B will be performed in accordance with the performance expectations set forth in Exhibit D.
- 2.5. Compliance with FFEL Program Requirements. EDFUND agrees to perform all guaranty services delegated to it by the Commission in full compliance with the Higher Education Act of 1965, as amended, and the regulations from time to time promulgated thereunder.
- 2.6. Compliance with Commission Policies. EDFUND agrees to perform all guaranty services and other services in conformance with Commission regulations, policies, and procedures pertaining to the FFEL Program.
- 2.7. EDFUND Policies.
- A. Corporate Governance Policy. EDFUND agrees to develop, implement, and maintain written policies and procedures as are necessary for EDFUND to fully comply with this Agreement. Proposed policies having a potential material effect on the Operating Fund (see Section 4.1, Article IV) shall be submitted to the CSAC/EDFUND Financial and Policy Review Team for comments. The Commission recognizes the EDFUND Board of Directors' responsibilities to make business decisions pursuant to the California Corporations Code; however, EDFUND policies and procedures shall be available for review by the Commission.

- B. Financial Aid and Information Development Policy. Nothing in this Agreement shall be construed as delegating to EDFUND the Commission's responsibilities for policy development and administration with respect to financial aid administration, including policy relating to the administration of the FFEL Program and information development. EDFUND agrees however, to provide research and policy analysis to the Commission and make policy recommendations with respect to financial aid and information development as appropriate and as requested by the Commission.
- 2.8. Annual Business Plan and Operating Budget. EDFUND agrees to submit a summary business plan and annual operating budget, as approved by its Board, to the Commission for review and approval. The business plan shall include a description of business objectives EDFUND plans to pursue, its information technology strategies, descriptions of proposed new products or services, and descriptions of proposed material changes in EDFUND's operations. The budget shall include all projected revenues and expenses expected to be incurred in operations connected with the business plan. The budget shall also include a five-year projection of revenues and expenditures. EDFUND further agrees to conduct its business operations only in conformance with the plan and budget approved by the Commission. Any material expenditure of funds or material change in operations or corporate policies outside of the plan and budget shall have prior approval by the Commission.
- In order to facilitate the review and negotiation process, EDFUND agrees to submit a draft annual business plan and proposed operating budget to the Commission's Executive Director and Contract Manager pursuant to a mutually agreed upon schedule for submission to and review by the Commission.
- 2.9. Assets. EDFUND agrees and acknowledges that all its assets, whether owned by EDFUND or in its control, are held for the benefit of the Commission to the extent provided in the EDFUND Articles of Incorporation. EDFUND agrees to manage such assets with the same duty of care as if the assets were owned by EDFUND and to use and administer such assets only for purposes allowed herein and in conformance with Commission policy.
- 2.10. Civil Service Employees. EDFUND agrees to continue to take the assignment of existing civil service employees of the Commission assigned to EDFUND as of October 1, 1999, as permitted by law, for the purpose of performing services under this Agreement. EDFUND agrees that it shall treat the identified civil service employees as its own employees, except as required due to their civil service status, including terms and conditions of any applicable memoranda of understanding covering represented employees. EDFUND further agrees that for the assigned civil servants who wish to retain their civil service status, it will use its best efforts to make promotional opportunities available to civil service employees on the same basis as at-will employees. EDFUND and the Commission understand that such promotional opportunities are subject to the applicable personnel rules of the State of California.
- 2.11. Insurance. EDFUND agrees to maintain in force during the terms of this Agreement insurance as follows:

- A. GENERAL LIABILITY INSURANCE, including fidelity coverage, with limits of liability for each occurrence of not less than:
\$5,000,000 for bodily injury and property liability combined.
- B. WORKERS COMPENSATION INSURANCE with limits as required by law.
- C. DIRECTORS AND OFFICERS INSURANCE with coverage of not less than:
\$5,000,000 per claim with a \$5,000,000 annual aggregate limit.
- D. AUTOMOBILE LIABILITY for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of EDFUND, with limits of \$1,000,000 per accident for bodily and property damage.

All such policy(ies) of insurance shall contain a special endorsement naming as a covered entity: The State of California, Student Aid Commission.

ARTICLE III California Student Aid Commission's Agreements

- 3.1 Status as Guarantor. The Commission agrees to remain a guaranty agency for purposes of the Higher Education Act of 1965, as amended, and shall comply with all applicable laws and regulations thereunder.
- 3.2 Compliance with FFEL Program Requirements. The Commission agrees to perform all guaranty services not otherwise delegated to EDFUND in full compliance with the Higher Education Act of 1965, as amended, and the regulations from time to time promulgated thereunder.
- 3.3 Annual Summary Business Plan and Operating Budget Approval. The Commission agrees to review EDFUND's summary business plan and operating budget, as well as any other requests for approval submitted by EDFUND pursuant to Section 2.7, in a timely manner. The Commission further agrees that EDFUND proposals that require expedited consideration or are of a confidential nature as designated by EDFUND, such that disclosure in a public meeting would be detrimental to EDFUND's business interests, shall be reviewed by the Chair of the Commission, the Chair of the Federal Loan and EDFUND Oversight Committee, and the Executive Director of the Commission. To the extent that changes are required in EDFUND's plan or budget due to Commission requirements, changes in federal law, or other circumstances beyond EDFUND's control, the Commission agrees to renegotiate in good faith the annual budget to reflect such changes.
- 3.4. Scope of Services. The Commission agrees to provide EDFUND with the services as outlined in Exhibit E.
- 3.5. Review and Approvals. The Commission agrees to review items within the scope of this agreement and provide approvals in a timely manner.
- 3.6. Review and Assessment of Required Reports. The Commission agrees that it will review and assess the need for the reports listed in Exhibit F and eliminate any that are no longer necessary.

ARTICLE IV

FFEL Program Funds, Payments to EDFUND and/or Commission

- 4.1 FFEL Program Funds. The Commission shall maintain the Student Loan Operating Fund (hereinafter known as the Operating Fund) and the Federal Student Loan Reserve Fund (hereinafter known as the Federal Fund) as required by the FFEL Program and shall use such funds, as permitted by law to reimburse EDFUND for its expenses. Revenues received by EDFUND on behalf of the Commission shall be remitted as per agreed upon written procedures. The Operating Fund and the Federal Fund shall be in the sole control of the Commission and EDFUND acknowledges it has no ownership rights in such funds whatsoever.
- 4.2 Reimbursement of EDFUND Expenses. The Commission agrees to pay to EDFUND reimbursement for all monies expended for the provision of services, both guaranty and other, in accordance with EDFUND's approved budget, applicable laws and regulations and other policies established and approved mutually by EDFUND and the Commission. EDFUND shall invoice the Commission monthly for the services provided. EDFUND agrees to provide supporting documentation sufficient to identify the services rendered. The Commission's staff shall be responsible for reviewing the invoices and approving payments. Payment of approved expenses shall be made within 30 days of receipt of all necessary documentation as defined in Exhibit F. Any denied expenses shall be identified in writing to EDFUND within 30 days, including the reason for denial. EDFUND shall have the right to appeal any denied expenditures by written appeal to the Executive Director of the Commission. If EDFUND disputes the decision made by the Executive Director, EDFUND may appeal further in writing to the Chair of the Commission. This appeal shall be considered by either the full Commission or a committee thereof, at the Chair's discretion. In no event shall the amount reimbursed to EDFUND for guaranty services during the term of this Agreement exceed the total amount budgeted for such services in the operating budget approved pursuant to Section 2.7, unless prior approval for such expenditures was granted by the Commission.
- 4.3 EDFUND Incentive Compensation Plans.
- A. Variable Pay Plans. EDFUND agrees to administer its Variable Pay Plans pursuant to the Commission policy "EDFUND Incentive Compensation Plans" dated August 12, 2002, which is incorporated herein by this reference as if set forth in full.
- B. Executive Performance Payment at the Discretion of the Board. The EDFUND Board of Directors, or a committee of the Board which the Board may name, is authorized to pay a year end performance based payment to EDFUND's executive team (President and Vice Presidents). EDFUND agrees to administer its Executive Performance Payment pursuant to the Commission policy "EDFUND Incentive Compensation Plans" dated August 12, 2002, which is incorporated herein by this reference as if set forth in full.

- 4.4. Use of Operating Surplus. The use and application of funds representing a surplus of revenues over expenses in the Operating Fund during the fiscal year, if any, shall be determined by the Commission in consultation with the EDFUND Board of Directors.
- 4.5. Investment of EDFUND Cash. EDFUND cash, including cash resulting from any advance from the Operating Fund, shall be invested according to policy reviewed by the Commission staff and approved by the EDFUND Board.
- 4.6. Travel Expenses. All travel expenses incurred by EDFUND shall be reimbursed pursuant to a Travel Policy approved by the Executive Director of the Commission.
- 4.7. Advances. Upon request by EDFUND, the Commission may authorize advance payments to EDFUND if needed for working capital or in connection with significant projects or capital expenditures. Any such advances so authorized by the Commission, whether or not such advance is considered a loan under the Higher Education Act, shall be documented in writing and accounted for separately in the books and records of EDFUND.
- 4.8. Reimbursements to the Commission. EDFUND agrees to pay the Commission for services rendered pursuant to Section 3.4, in a timely manner.

ARTICLE V

Effective Date, Renewal, Assignment and Termination

- 5.1. Effective Date: Renewal. This Agreement shall be in full force and effect as of the date first above written and shall continue in full force and effect until September 30, 2003 unless sooner terminated as herein provided. The parties may renew this Agreement for subsequent terms, as allowed by law, by written agreement of both parties prior to the expiration of this Agreement.
- 5.2. Assignment. This Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.
- 5.3. Termination without Cause. The Commission may terminate this Agreement at any time without cause upon 60 days' written notice.
- 5.4. Termination for Cause. Either party may terminate this Agreement for cause upon 30 days' written notice to the other party specifying the cause and the proposed termination date. For purposes of this Agreement "cause" shall mean:
 - A. material breach of this Agreement
 - B. the inability by a party to perform in whole or material part any of its obligations hereunder for a period of more than 30 consecutive days, or

- C. with respect to termination by the Commission, the filing of a petition in bankruptcy by EDFUND or against EDFUND by someone other than a party to this Agreement.

However, should the party receiving notice of termination for cause cure, in the noticing party's sole judgment, the condition giving rise to such notice before the date specified for termination, then this Agreement shall continue in full force and effect.

In lieu of termination under this Section 5.4, the Commission shall have the right, in its sole discretion, to impose other remedial action upon EDFUND in the event it determines there is sufficient cause for termination. Notice of the remedial action shall be given in writing. Such remedial action may include revoking the delegation to perform certain services for the Commission, requiring the use by EDFUND of outside consultants selected by the Commission, or any other lawful action selected by the Commission provided that any such remedial action taken by the Commission must relate directly to the condition giving rise to the notice.

- 5.5 Termination by the Secretary. This Agreement is terminable by the U.S. Secretary of Education upon 30 days' written notice to the parties if the Secretary determines that the Agreement includes an impermissible transfer of federal funds or assets or is otherwise inconsistent with the terms and purposes of section 422 of the Higher Education Act.
- 5.6 Transfer of Assets. Upon termination of this Agreement and in the absence of a subsequent Operating Agreement between the parties, all of EDFUND's assets, tangible and intangible, shall immediately and without further action by either party become the property of the Commission. EDFUND agrees to take promptly all steps reasonably requested by the Commission to evidence or effect such transfer. The Commission, in its sole discretion, may require EDFUND to transfer all assets in its possession to a successor nonprofit auxiliary organization or to the Commission itself.

ARTICLE VI Indemnification

- 6.1 Indemnification. Each party shall indemnify, defend, and save harmless the other, and their various directors, commissioners, officers, agents, and employees, from any and all claims, damages, liabilities, and/or losses that may be suffered or incurred or which arise out of or are in any way connected with their respective acts, operations, or performance hereunder, to the fullest extent permitted by law, provided that any such loss, damage, or liability does not arise out of the intentional or negligent acts or omissions of the indemnitee or its various directors, commissioners, officers, agents, and employees.

In the event any claim, action or proceeding is made or brought against a party hereto with respect to which indemnity is required hereunder, the indemnitee shall promptly notify the indemnitor and the indemnitor shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. Indemnitee shall have the right to employ separate counsel and to participate in the defense of any action or proceeding against indemnitee, but the indemnitor shall not be required to pay the fees or expenses of such separate counsel unless such separate indemnitee prevails separately from the result achieved by the provided defense.

ARTICLE VII

Reports, Audits, Examination of Records and Confidentiality

- 7.1 Reports. EDFUND agrees to provide such reports to the Commission as are needed for the Commission to fulfill its role as guarantor and to monitor compliance with this Agreement. Exhibit F, attached hereto, is a list of standard reports EDFUND agrees to provide on a regular basis.
- 7.2 Commission Oversight and Audits. The Commission may, in its discretion, perform periodic contract performance reviews and audits of EDFUND's operations in order to evaluate the efficiency and effectiveness of EDFUND's administrative and operational systems, including analyzing EDFUND's compliance with this Agreement, applicable state and federal laws and regulations and with Commission and EDFUND internal policies. EDFUND shall provide access to the Commission or a designee of the Commission to its premises and staff for monitoring, review, and testing of EDFUND's operations. The Commission shall provide reasonable notice to EDFUND prior to any such reviews and audits.
- 7.3 External Audits. EDFUND agrees to provide to the Commission on an annual basis an audit report prepared by an independent certified public accountant in accordance with California Education Code Section 69527 (a).
- 7.4 Third Party Audits. EDFUND agrees to cooperate fully in any audits of the Commission or of the Commission and EDFUND jointly, conducted by duly authorized third parties, including but not limited to the U.S. Department of Education, and the State of California.
- 7.5 Audit Issues or Findings. EDFUND agrees to address and resolve audit issues or findings in a timely manner.
- 7.6 Custodian of Records, Examination. EDFUND shall serve as custodian of all Commission records and systems pertaining to the FFEL Program under EDFUND's possession and control. The Commission shall be granted complete right and access to such records and systems upon request.
- 7.7 Confidentiality. Subject to the requirement of applicable law, including the Bagley-Keene Open Meeting Act, California Government Code Section 11120 *et seq.*, and the Public Records Act, California Government Code Section 6250 *et seq.*, both parties agree to maintain the confidentiality of documents and other information provided under this Agreement to the fullest extent possible, including all those marked "Proprietary and Confidential."

ARTICLE VIII

General Provisions

- 8.1 Corporate Obligation. This Agreement is a corporate obligation of EDFUND and an obligation of a public agency with respect to the Commission. Any liability arising hereunder shall be a corporate liability or, with respect to the Commission, governed by the California Education Code Section 69510 *et seq.* No commissioner, director, officer or employee of either party shall be subject to any liability to any other party for any

action taken, or for refraining from taking action in good faith, or for errors in judgment except as provided for in Section 6.1.

- 8.2 Waiver. No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- 8.3 Amendments. No amendment, modification, termination, or waiver of any provision of this Agreement by either party shall in any event be effective unless the same shall be in writing and signed by the party to be bound and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on either party in any case shall entitle the other party to any other or further notice or demand in similar or other circumstances.
- 8.4 Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California.
- 8.5 Continuing Covenants. All covenants, agreements, representations and warranties contained herein shall extend to, inure to the benefit of and bind all assignees and successors of the respective parties hereto, and the representations, warranties, covenants and indemnities herein contained shall survive the termination of this Agreement, but shall not be deemed to have been made with respect to any period of time subsequent to the termination of this Agreement.
- 8.6 Notice. No written notice required to be given hereunder shall be effective until received by the party, with proof of delivery, to whom addressed, or until five (5) calendar days after mailing to the addressee, whichever is earlier.
- 8.7 Force Majeure. If either party is rendered unable, wholly or in part, by a force outside the control of the parties (including, but not limited to, acts of God or the public enemy, acts of government in either its sovereign or contractual capacity, strikes, lockouts, riots, acts of war, epidemics, fire, communication line or power failure, changes in applicable law, embargoes, weather, quarantine, earthquakes, or other disasters) to carry out its obligations under this Agreement, that party shall give to the other party prompt written notice to that effect; thereupon, the affected obligations of the party giving the notice, shall be suspended so long as such party is unable to so perform and such party shall have no liability to the other for the failure to perform any suspended obligation during the period of suspension; however, this provision is not intended to modify or abrogate in any way the right of a party to terminate this Agreement if a condition for termination specified elsewhere herein exists.
- 8.8 Cooperation between Parties. The Commission and EDFUND agree that they will cooperate promptly and fully with one another in order to carry out the terms and provisions of this Agreement. The Commission and EDFUND also agree to mutually promote and support each other in the market place. Guarantee services conducted outside of California may be marketed under the EDFUND name.
- 8.9 Duly Authorized. Each party with respect to itself represents and warrants that the making and performance of this Agreement and the activities contemplated hereby (i)

have been duly authorized by all necessary corporate or Commission action, and (ii) do not and will not:

- A. violate any provision of law, or any regulation, order, decree, writ or injunction, or any provision of its governing statute or instrument, or;
- B. violate or result in the breach of, or constitute a default or require any consent under, any agreement or instrument by which it or any of its property may be bound or affected;

and that this Agreement is the legal, valid and binding obligation of such party, enforceable in accordance with the terms hereof subject to the exercise of judicial discretion in accordance with general principles of equity, to the valid exercise of the police powers of the several states of the United States of America, and of the constitutional powers of the United States of America and to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

8.10 Contract Manager. The Contract Manager for the Commission shall be:

Rosemary Phillips, Chief
Loan Program Oversight Division
California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670

The Contract Manager for EDFUND shall be:

Michael Rothman, Vice President
Finance and Administration Division
EDFUND
3300 Zinfandel Drive
Rancho Cordova, CA 95670

All notices to be provided under this Agreement shall be directed to the Contract Manager. In addition, each party agrees to communicate any material issues or disputes arising out of this Agreement to the other Party's Contract Manager. Both Contract Managers are to use their best efforts to resolve any such issues or disputes in an informal manner. Either party may change the designation of its Contract Manager at any time upon written notice to the other party.

8.11 Binding Arbitration. The parties will attempt in good faith to resolve through informal negotiation any dispute, claim or controversy arising out of or relating to this agreement. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that cannot be so resolved, shall be settled by arbitration administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules including Optional Procedures for Large, Complex Commercial Disputes, Supplementary Procedures for Large, Complex Disputes and Optional Rules for Emergency Measures of Protection, unless otherwise specified in this Agreement, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in Sacramento County, California, unless otherwise agreed to in writing by both parties.

In compliance with AAA Commercial Arbitration Rules (numbers 13, 14 and 15), if the parties fail to agree upon a single arbitrator, each party shall appoint an arbitrator within fifteen (15) days of the transmittal of the list of persons from the AAA panel. Said party-appointed arbitrators are required and authorized to appoint a neutral arbitrator pursuant to AAA Commercial Arbitration Rule 15.

The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. Reimbursement of EDFUND's costs of court actions will, in the absence of court order, be determined by agreement of the parties or arbitration. Both parties agree that the venue for any such action shall be Sacramento County, California.

No more than 30 days before the arbitration, a party may serve a document request calling for any document that would be discoverable in civil litigation. The party served with this request shall deliver the requested documents and any objections within five (5) business days of said notice or no later than five (5) days prior to the arbitration hearing. The arbitrator may resolve any dispute over the exchange of documents. Thereafter, each party may take no more than three (3) depositions, each of which shall last no more than four hours each. The arbitrator may resolve any dispute over the depositions, as they would be resolved in civil litigation.

The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators necessary to determine the controversy, including a finding of whether or not EDFUND acted in bad faith in the subject action. EDFUND costs of arbitration shall be reimbursed except in the event of a finding of bad faith on the part of EDFUND in the subject action.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

California Student Aid Commission EDFUND

By: W. Boeck
Print Name: Wally Boeck
Title: Executive Director

Signature Date: 9/20/02

By: Becky Stilling
Print Name: Becky Stilling
Title: President

Signature Date: 9/09/02

By: Michael Rothman
Print Name: Michael Rothman
Title: Vice President, Finance and Administration

Signature Date: 9/16/02

CSAC		CONTROL NUMBER
POLICY STATEMENT AND GUIDELINES MEMO		
SUBJECT: EDFUND Incentive Compensation Plans		EFFECTIVE DATE August 12, 2002
APPROVED BY:	APPROVED BY:	EXPIRES:

Introduction

Pursuant to California Education Code Sections 69522 et seq., the Commission formed EDFUND as an auxiliary organization to perform operational and support services essential to the administration of the FFEL Program. It is the Commission's intention that EDFUND function as a performance based organization. EDFUND offers its employees incentive compensation plans in furtherance of this intent. This memo provides the Commission's guidelines for EDFUND'S Incentive Compensation Plans.

The Commission's incentive compensation philosophy is based on the following principles:

- The combination of EDFUND's basic and incentive compensation should take into consideration the practices of similar organizations and reflect the actual worth of work done by employees of the organization.
- The provision of incentive compensation must reflect the prudent use of funds provided to EDFUND for its administration and operation of the Federal Family Education Loan Program.
- Incentive compensation should promote organizational and individual performance and accountability by setting challenging, yet achievable, goals.
- Incentive compensation should help to attract, retain and motivate employees.

The EDFUND Board of Directors has been designated as responsible to the Student Aid Commission for the establishment of EDFUND'S incentive compensation plans.

Variable Pay Plans

The following variable pay plans have been agreed to by EDFUND and the Commission. These plans allow EDFUND to offer incentive compensation to designated employees:

- EDSHARE Incentive Pay Plan for Client Relations Managers.
- EDSHARECOLLECT Variable Pay Plan for Internal Collectors and Internal Collection Supervisors.
- EDSHARE Variable Pay Plan for all other employees other than EDFUND's Executive Management.

For each of these agreed upon variable pay plans, EDFUND is responsible for developing corporate policies and procedures that address plan eligibility, plan design, organizational, departmental and individual performance goals and objectives, goals measurement, review and evaluation, approval processes, and the funding and distribution mechanism. The goals, at a minimum, should be specific, measurable, achievable, relevant, and timely. Departmental and individual goals should be aligned with the goals of the organization.

The EDFUND Board of Directors and the Commission's Executive Director are responsible for approving these initial plans and any subsequent changes to the variable pay plans. Variable pay plans that are specified in the operating agreement will be reflected in the EDFUND budget as a part of total wages and salaries.

The variable pay plan structure provides EDFUND participants the opportunity to receive incentive pay based upon the achievement of individual and/or corporate objectives. With respect to the attainment of corporate goals and objectives, at fiscal year end, the Commission's Executive Director will assess the percentage of accomplishment EDFUND has achieved toward the "California Student Aid Commission's Performance Goals for EDFUND" as contained in the Business Plan pursuant to Exhibit C of the Operating Agreement. The Executive Director will report his/her findings to the Commission Chair who will either concur or modify that recommendation on behalf of the Commission. If either the Executive Director or the President of EDFUND disagree with the decision rendered by the Commission Chair, one or both may request a review by the Commission. This review would be performed at the next scheduled meeting of the Commission. A vote of the majority of the Commission will be the final decision on this matter. Once the decision on Company performance is made, the Executive Director will communicate this percentage of performance to EDFUND and EDFUND will, given that percentage, prepare a summary of the total payment to be made under the variable pay plans for the Executive Director's review. The Commission's Executive Director will approve in writing the payments for reimbursement from the Operating Fund.

Discretionary Executive Incentive Compensation

EDFUND's executive management team, consisting of its President and Vice Presidents, may receive incentive compensation under the terms of this policy. A precondition for this compensation is that the loan program has been managed to a year end operating surplus or deficit at least as positive as the budget (as revised) for the year, excluding the revenue and expenditures related to the Voluntary Flexible Agreement and any non-loan program expenditures directed by the Commission.

The Commission places responsibility to propose the amounts of Executive Incentive Compensation payment with the EDFUND Board or its designated committee.

At the fiscal year end, the EDFUND Board will provide the Commission's Executive Director with documentation that details the overall performance of EDFUND and an assessment of the individual performance of the corporation's President. This documentation should include the Board's assessment of the percentage of accomplishment EDFUND has achieved toward the "California Student Aid Commission's Performance Goals for EDFUND" as contained in the Business Plan pursuant to Exhibit C of the Operating Agreement if the Board's performance assessment is different from the Executive Director's assessment prepared for the Variable Pay Plans. The Board shall also recommend the proposed incentive compensation amount, if any, for the President and the total incentive compensation amount for the Executive Management Team. The Executive Director shall review and make his/her recommendation on the

performance assessment and the proposed incentive compensation amounts for the President and the Executive Management Team and forward the entire matter to the Chair of the Commission.

The Chair of the Commission will evaluate the Board's and the Executive Director's reports and will determine whether or not the Incentive Compensation amounts which are proposed by the EDFUND Board are appropriate. The Chair of the Commission will then determine what, if any, the incentive compensation amounts for the President and the Executive Management Team will be. If either the Board or the Executive Director does not agree with the decision of the Chair of the Commission, they may request a closed session review by the full Commission which will be held at the next scheduled meeting of the Commission. The decision of the Commission will be final. While the Executive Director and the Commission Chair shall each have five (5) working days for their respective actions, all activities associated with this process should be completed so as to ensure payment within seventy-five (75) days of the end of EDFUND'S fiscal year.

High Level Executive Incentive Compensation Process Flow and Tasks

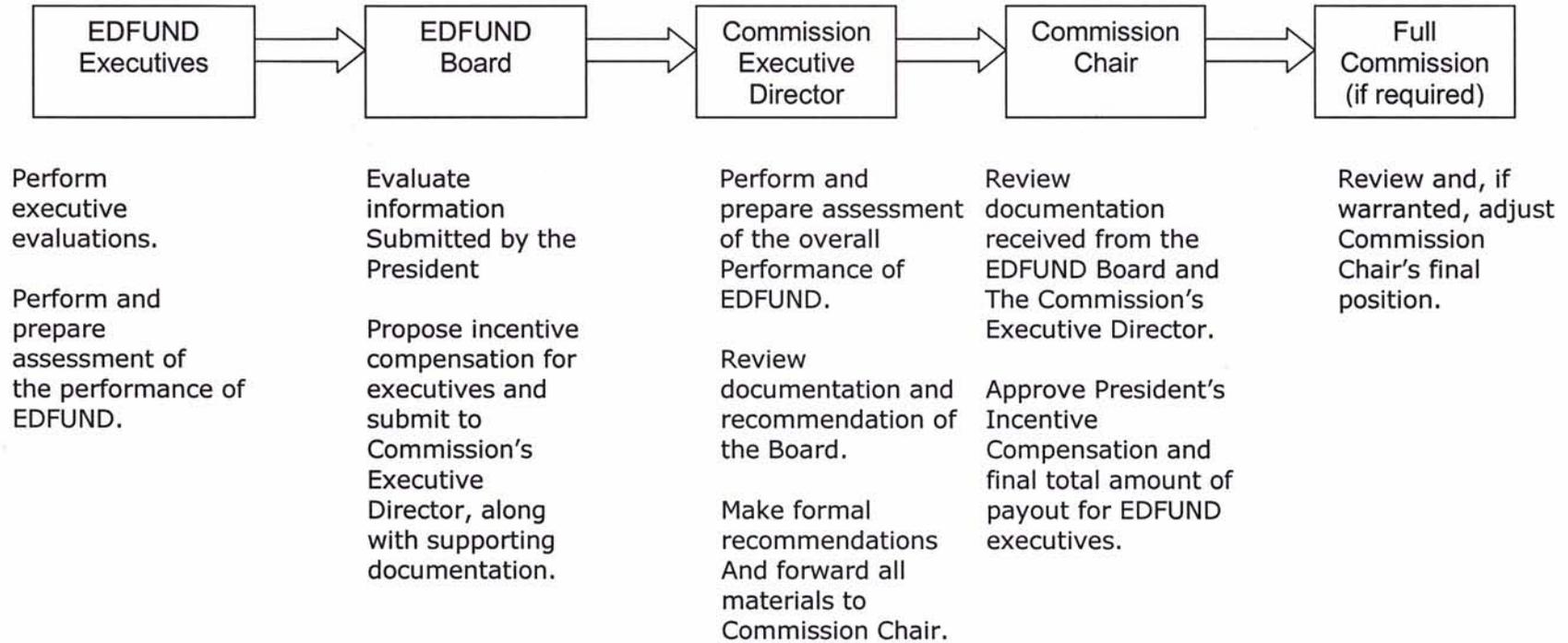


EXHIBIT A

GUARANTY SERVICES

OPERATING AGREEMENT 2002-2003

Unless otherwise specified, EDFUND agrees that it will provide operational support and/or administrative services that are necessary to meet the requirements of the guaranty agency for the Federal Family Education Loan Programs (FFEL Programs). These services involve the basic functions of the lifecycle of the loan and shall include the following:

- 1) **GUARANTY/ORIGINATION** - includes approving the loan and providing the lender with insurance against default; customer inquiry services, application processing and printing, processing promissory notes for schools, processing disbursements and loan status tracking; insurance, fee collection and remittance related to eligibility and participation in the FFEL Program; administration of the lender of last resort program.
- 2) **DEFAULT AVERSION AND PREVENTION** - includes offering loan management services designed to keep students in repayment or return them to good standing on their loans; delinquency tracking, processing pre-claims assistance, borrower counseling including problem resolution; skip tracing; school-based default aversion services; providing information about loan consolidation to pre-default borrowers; handling pre-default loan disputes and any other related services prescribed by regulation.
- 3) **LENDER CLAIM ADJUDICATION AND PAYMENT SERVICES** - includes claim review, processing, certification, reject control and claim payment disbursement; claim repurchases and adjustments; processing bankruptcy documents and transfers to ECMC.
- 4) **POST DEFAULT SERVICES** - includes borrower disputes and appeals prior to the Ombudsman level; administrative review; processing treasury and state offsets; review of loan discharges for reason of false certification, closed school, permanent and total disability and death; research and referral of suspected fraud to OIG-USED and other law enforcement agencies as appropriate.
- 5) **DEFAULTED LOAN COLLECTION SERVICES** - includes internal and external collections; administrative wage garnishment.
- 6) **PROGRAM OVERSIGHT AND COMPLIANCE SERVICES** - includes school and lender reviews and related activities.
- 7) **FINANCIAL AND PROGRAM REPORTING** - includes borrower, school or lender payment processing, disbursing and reporting; subrogation; loan consolidation processing.
 - a) **Federal reporting** - preparation and completion of required FFEL Program financial and accounting reports that includes the Form 2000.
 - b) **CSAC reporting** - preparation and submission of financial forecasts and analysis on the Federal and Operating Funds.

- c) **Invoice reimbursements** - preparation and submission of the following invoices:
 - EDFUND operating expenses
 - fixed assets
 - Commission support activities expenses
 - default prevention activity
 - insurance premium fee refunds
 - claim payments and adjustments

- 8) **COMMUNICATIONS, TRAINING AND SUPPORT** - will be coordinated with the appropriate Commission staff.
 - a) produces and maintains financial aid brochures, booklets, and other public information;
 - b) conducts loan-related training for postsecondary schools and lenders; participates and represents the Commission as delegated at any loan-related meetings, conferences and committees, and conducts any loan-related activities that support those functions;
 - c) establishes and maintains liaison activities with the financial aid community.
 - d) shared partnership projects will recognize and list all parties.

- 9) **BUSINESS DEVELOPMENT AND MARKETING** - includes development and enhancement of loan-related products and services through collaboration with all customers; marketing of services and products; establishing and maintaining relationships with schools and lenders, and any activities that support these functions. New products and services that are beyond the scope of guaranty services are to be submitted on a timely basis to the Commission for approval before implementation.

- 10) **POLICY, RESEARCH AND LEGISLATIVE ASSISTANCE** - includes collection of guarantor policy and management data; providing regulatory guidance, analysis and interpretation to ensure compliance with FFEL Program requirements; identifying and proposing policy for the Commission's consideration and approval; conducting and producing loan research and reports; performing data modeling, analyzing and tracking legislation as it relates to the loan programs, and advocating legislative and regulatory positions as directed by the Commission.

- 11) **TECHNOLOGY SERVICES** - includes ensuring quality, delivery, maintenance and support of hardware and software systems used to provide loan services to customers including managing and providing oversight for the systems and processes that are outsourced; providing technical support to customers; design, develop and implement new technology to support FFEL Program regulatory requirements or enhance current services; providing technology infrastructure support to building and businesses.

- 12) **LEGAL SERVICES** - includes, but is not limited to, representation of or management of representation for EDFUND or the Commission in matters relating to any federal, state, or local law or regulation in any business, government, or dispute resolution forum related to the implementation and/or provision of any operational exhibits, thereto or any

Commission responsibility under the FFEL Program or other services delegated to EDFUND by the Commission and agreed upon by the parties.

- 13) **OMBUDSMAN SERVICES** – provide an Ombudsman Office to handle and resolve borrower complaints within EDFUND and complaints referred by the Commission, including referrals from other governmental offices; administer the compromise, settlement or write-off of loans based on Commission approved policies; provide reports related to Ombudsman activities; maintain complaint tracking system that is accessible to identified Commission staff.
- 14) **STRATEGIC PLAN OBJECTIVES** – develop and implement action plans to meet the Commission’s Strategic Plan objectives related to the FFEL Program and EDFUND’s administration of the program.
- 15) **BORROWER COMPLAINT TRACKING** – establish and maintain an integrated borrower complaint tracking system that is jointly defined and agreed to by EDFUND and the Commission, implemented pursuant to an agreed schedule, and budgeted for as an addition to the approved annual budget.
- 16) **OTHER LOAN SERVICES** - submit and maintain loan data on the NSLDS; complete cohort default appeals which includes production of any necessary reports; process school and lender requests for participation in the Commission’s FFEL Programs; provide support to the Commission’s Loan Advisory Council which includes making presentations and on occasion providing other services as needed or requested, any other loan services that may on occasion, be delegated by the Commission and agreed upon in writing by both parties.

EXHIBIT B
OTHER SUPPORT SERVICES
OPERATING AGREEMENT 2002-2003

EDFUND agrees to provide additional support services as specified in the Charge Back Agreement and bill the Commission for the charges within five (5) workdays of EDFUND's monthly close. Estimated costs for services will be established prior to October 1 by the Commission's Management Services Division and EDFUND's Finance and Administration Division and will be documented in the Charge Back Agreement. Backup documentation for costs will be provided including a schedule of rates. Performance expectations for these services are outlined in Exhibit D. Other services not listed below will be agreed to in writing and will become part of the operating agreement as an amendment. The written agreement will outline the services to be provided with estimated costs and performance expectations. The additional support services to be provided are:

- 1) **SUPPLY SERVICES** - office supply orders
- 2) **REPORT DISTRIBUTION** - system generated internal and external reports
- 3) **MAIL PROCESSING SERVICES** - process incoming and outgoing mail and delivery, messenger and express mail services
- 4) **PRINTING SERVICES** - printing, copying, assembling and distribution
- 5) **SECURITY SERVICES** - security guard services, coordinate physical security of facilities and staff, facility access
- 6) **WAREHOUSE SERVICES** - storage of Commission materials, assembling and shipping, processing publication orders
- 7) **TRANSPORTATION SERVICES** - vehicle maintenance and tracking
- 8) **RECORDS MANAGEMENT** - establish and maintain records retention schedules including retrieval of records
- 9) **COMMON AREA USAGE** - use of Board Room, conference rooms, cafeteria and storage rooms
- 10) **TELECOMMUNICATIONS SERVICES** - voice, video and data support
- 11) **REGIONAL OFFICE SERVICES** - grant training, and information dissemination and customer service support
- 12) **STAFF TRAINING AND DEVELOPMENT SERVICES** - access to EDFUND's training and development classes/sessions

13) **OTHER SERVICES** - as requested by the Commission, provide other services including, but not limited to, publication and video production; CD-ROM software product development or other technology consulting services or research.

14) **SUBLEASE FOR SPACE –**

1. CSAC agrees to occupy the space subject to the sublease at 10811 International Drive. CSAC agrees to hold EDFUND harmless due to CSAC's occupancy of 10811 International Drive and to reimburse EDFUND for:

a. all actual direct costs incurred by EDFUND in connection with the sublease sections;

- 4. RENT – excluding 4.3 when such non-payment is due to the failure of EDFUND to pay the rent in a timely fashion
- 13. OPERATING EXPENSES/TAXES
- 14. ELECTRIC CHARGE

Such reimbursement shall be made on a monthly basis per EDFUND's invoice to CSAC.

b. actual costs, other than costs of insurance, incurred by EDFUND and caused by CSAC's occupancy of 10811 International Drive not included in a. or b. above. Such reimbursement will be made upon receipt of invoice from EDFUND to CSAC.

2. CSAC agrees to be bound by and comply with the terms and conditions for occupancy contained in the following sections of the sublease between EDFUND and Computer Associates:

- 8. USE OF PREMISES
- 15. ALTERATIONS
- 17. QUIET ENJOYMENT
- 22. NON-SOLICITATION OF SUBLANDLORD'S AND SUBTENANT'S EMPLOYEES
- 23. NO SMOKING
- 25. MISCELLANEOUS

3. CSAC will be the sole occupant of the leased space at 10811 International Drive. Any revision in the use of the space, and attendant reallocation of costs, is subject to the mutual agreement of both CSAC and EDFUND.

4. EDFUND agrees to assume occupancy of approximately 8,000 square feet of rentable space currently occupied by CSAC at 10834 International Drive. EDFUND will hold CSAC harmless due to its occupancy of the space at 10834 International Drive and will reimburse CSAC for actual costs attributable to the following sections of the lease between CSAC and Evergreen Zinfandel 76:

- 4. RENT
- 13. SERVICES, UTILITIES AND SUPPLIES
- 31. CPI ESCALATOR OPERATION EXPENSE

Such reimbursement shall be made on a monthly basis per CSAC's invoice to EDFUND. Any revision in the use of the space, and attendant reallocation of costs, is subject to the mutual agreement of both CSAC and EDFUND. CSAC and EDFUND agree to use best efforts to reach mutual agreement on any proposed revisions.

5. EDFUND agrees to comply with the terms and conditions for occupancy contained in the following sections of the lease between CSAC and Evergreen Zinfandel 76:
 - 16. CHANGE ORDERS AND ALTERATIONS
 - 18. QUIET POSSESSION
 - 19. INSPECTION

EXHIBIT C**GUIDING PRINCIPLES, GOVERNANCE POLICIES AND GOALS FOR EDFUND
OPERATING AGREEMENT 2002-2003**

The California Student Aid Commission (Commission) and EDFUND shall conduct their operations and performance pursuant to this operating agreement and the Federal Family Education Loan (FFEL) Program activities in conformance with the following principles, policies, and goals.

Guiding Principles:

- Education is crucial to the success and quality of life to all Americans.
- Education is a community responsibility, as well as a family and student responsibility, and investing in students is imperative.
- Education is a key element in the social compact among America's diverse populations and provides access to genuine economic and social opportunities.
- Education is integral to an active, competent, and involved citizenry.
- Educational choice beyond high school should be made available to all individuals so that they have the opportunity to attend the postsecondary institution that best meets their interests and abilities.
- Access to financial aid should be available to all needy students, and should be provided through a seamless, effective, user-friendly system of delivery.
- Integrity and sound stewardship should be paramount in the administration of all EDFUND programs.

Governance Policies:

- Protect EDFUND, the Commission and the State of California by maintaining the highest ethical, legal and accounting standards.
- Ensure that any operational activity or program initiative undertaken by EDFUND does not put the long-term viability of the organization or the Commission's participation in the FFEL Program at undue risk.
- Activities of the corporation should ultimately support students in achieving their educational goals.
- Student loan guarantees shall be provided at the lowest possible cost to students and their families.
- Operational costs shall be managed such that the highest quality services and products are provided to EDFUND's customers consistent with the need to maximize revenues that would support the policies and programs of the Commission.

Commission's Goals for EDFUND:

- Provide premier customer service to schools, lenders and borrowers that meets or exceeds that of EDFUND's competitors.
- Provide a reliable, sustainable and increasing revenue stream to ensure the continuation of a strong competitive loan program and to provide resources for the other priorities established by the Commission.
- Provide the most efficient and effective service while controlling company costs.

- Increase market share within California, within the home market and nationally.
- Provide a range of products that meet the needs of schools, lenders and borrowers
- Continuously invest in the development of technology solutions that enhance the effectiveness and efficiency of both customers and the company.
- Be a source of public outreach and information to allow students to achieve their educational goals.
- Provide effective and responsive default aversion programs.
- Provide administrative, technical and programmatic support to the Commission in accordance with detailed support plans mutually developed and agreed to by both organizations.

EDFUND's Strategies:

EDFUND's annual business plan shall be approved by the Commission and shall include specific, measurable goals, and implementation strategies for achieving the overall goals set by the Commission for EDFUND as stated above. The plan should outline what the company plans to accomplish during the year.

EXHIBIT D

PERFORMANCE EXPECTATIONS FOR OTHER SUPPORT SERVICES

OPERATING AGREEMENT 2002-2003

1) SUPPLY SERVICES

For in-stock items, orders properly placed each business day will be delivered by end of the next business day.

- All other orders shall be processed in a timely basis.

2) REPORT DISTRIBUTION

- Daily reports received are sorted and delivered daily to users, or mailed pursuant to user's instructions to external customers.
- Weekly reports received are sorted and delivered within one to three (1-3) workdays of receipt, or mailed pursuant to user's instructions to external customers.
- Month end reports are sorted and processed by the third workday of the following month after receiving all completed material.
- Quarterly and Year End reports are sorted, delivered and mailed within three (3) workdays of receipt to internal and external customers.

3) MAIL PROCESSING SERVICES

a) Outgoing mail

- Normal mail is processed within one (1) day of receipt.
- Special mail (i.e. mass mailings) is processed with reasonable notice.
- Express mail is processed the same day if delivered to the mailroom by 3 p.m.
- Mail is processed accurately.

b) Incoming mail

- Normal mail is delivered to the Commission's delivery sites as follows:
 - (1) Morning mail is delivered no later than the afternoon of the same day.
 - (2) Afternoon mail is delivered no later than the morning of the following day.
 - (3) Mail is handled and delivered accurately.

c) Express mail is processed within established deadlines

d) Messenger services

- Internal runs are provided four (4) times daily.
- Runs to the State Controller's Office or other destinations as requested are provided twice a day.

- Special non-scheduled runs are provided upon request if staffing and vehicles are available.

4) PRINTING SERVICES

- Printing is done daily pursuant to customer's needs and deadline requirements either in house or by subcontractor vendor.
- Standard print jobs of 5,000 impressions and those requiring special features will be processed within customer's reasonable timeframes internally or by using subcontractors.
- Overtime hours chargeable to the requesting program customer may be used at the customer's request.
- Grant Program printing requests will be produced back to back, stapled and folded as requested by the customer on a routine basis, or as otherwise noted on the service order form. Appropriate size envelopes will be used.

5) SECURITY SERVICES

- Provides 24/7 video security monitoring and normal business hour security guard service and oversight.
- Special or overtime security support is provided upon request.
- Processes badge access within 24 hours of appropriately submitted request.
- Provides the services of two security guards at all times (duties to be determined by the Commission).
- Provides after hours guard patrol of EDFUND HQ and CSAC South premises as established by the Commission.

6) WAREHOUSE SERVICES

- Routine publication requests or orders are pulled, packaged and shipped within three (3) workdays from receipt of request.
- Non-typical major shipments are processed as quickly as possible using available staff and/or overtime to ensure shipping within three (3) workdays from receipt of request.
- Bulk storage (equipment, furniture or bulk supply items) is delivered within 48 hours from receipt of request.
- Non-typical requests during peak periods may require longer or overtime to the requesting customer upon approval.
- Between October and March provide weekly updates via e-mail of publication orders which have not been filled with an explanation of how and when the backlog will be resolved.
- Institutional requests for publications or forms should be cross-checked against bulk mailings to avoid duplications.

7) TRANSPORTATION SERVICES

- Vehicles are maintained in proper and safe working condition.
- Passenger cars, passenger vans, cargo van and pickup trucks are available for rental on a first come first serve basis.
- Provides van service to and from airport to Commissioners if requested.

8) RECORDS MANAGEMENT

- Retrieves records from State or private storage centers within five (5) workdays, or within one (1) workday on an emergency basis.
- Coordinates and transfers records to private or State off site storage facilities upon receiving approval to transfer from the proper authorities.
- Media copies of computer output system reports are checked, sorted, and distributed within 24 hours from receipt of request.
- Copies of reports stored on media are provided within 24 hours of request.

9) COMMON AREA USAGE

- Changes in access or availability are coordinated with the Commission, before the change occurs.
- Commission, Board and major Advisory Committee meetings are given priority over other uses of the Board Room.
- Board Room is maintained in an orderly and clean manner.
- Media equipment will be maintained in good working order.

10) TELECOMMUNICATIONS SERVICES

- a) Phone service is available 99% or better on

State workdays	06:00-20:00
Saturdays	06:00-18:00

Although service will be available during off-hours, EDFUND will use off-hours to perform maintenance and upgrades. A minimum of three (3) workdays advanced notification of maintenance will be provided except in the event of an emergency.

- b) The EDFUND telecommunications link to EDS will be provided with a minimum of 99% availability during the following times

State workdays	06:00-20:00
Saturdays	06:00-18:00

Although service will be available during off-hours, EDFUND will use off-hours to perform maintenance and upgrades. A minimum of three (3) workdays advanced notification of maintenance will be provided except in the event of an emergency.

- c) Problem resolution services are provided during normal Technology Help Desk hours

EDFUND workdays	05:00-21:00
Saturdays	06:00-18:00

Problem resolution services consists of application of remote diagnostics within two (2) hours and onsite service within four (4) hours of notification of problem.

After hours, service will be dispatched the following EDFUND workday. After hours are defined as 17:00 to 21:00 workdays and Saturdays.

- d) Moves, Equipment Changes, System Modifications.
- Moves are accommodated within two (2) workdays of receiving a written request.
 - Equipment changes are accommodated within five (5) workdays of receiving a written request.
 - System modifications are accommodated within 30 workdays of receiving a written request.

- e) Business Continuity Plan

EDFUND will ensure that its business continuity plan includes provisions for recovery of telecommunications services to the Commission in the event of a disaster.

11) REGIONAL OFFICE SERVICES

- Meet on a quarterly basis with Commission staff to discuss and agree upon grant activities to be provided by EDFUND's regional office staff.
- Provide customer contact summary on a monthly basis.
- Provide the Commission with information from the customer database as requested.

12) STAFF TRAINING AND DEVELOPMENT SERVICES

- Notifies all Commission staff of available training classes/sessions in tandem with the notification of EDFUND staff (i.e. via email).
- Provides other training by request.

13) OTHER SERVICES (including joint endeavors)

- a) Publication services

- Work is completed within mutually agreed deadlines.
- Publications are accurate and backup details are available upon request.
- Mutual publications content, graphics and costs are reviewed and agreed to by the Commission before publication or distribution.

- b) Research services

- Work is completed within mutually agreed deadlines.
- Work is accurate and backup details are available upon request.
- Mutual research reports content and costs are reviewed and agreed to by the Commission before publication or distribution.

- c) Customer survey services

- Contracted customer survey services and design of surveys are reviewed and agreed to by the Commission prior to the commencement of work.
 - Customer survey materials are reviewed and edited by the Commission before publication and distribution.
- d) Additional outreach and training activities
- Commission reviews and agrees to the activities to be provided.
 - Summary reports at the conclusion of each activity are provided to the Commission.
- e) Video Production services which include working with external contractors for scripts and production of financial aid videos for mass distribution
- Work is completed within mutually agreed deadlines.
 - Product is of a highly professional quality.
 - Product is reviewed for accuracy and quality by the Commission before publication or distribution.
- f) Development of CD-ROM software products used for training and which will include working with external contractors
- Product is reviewed for accuracy and quality by the Commission before publication and distribution.
 - Work is completed within mutually agreed deadlines.

EXHIBIT E

COMMISSION SERVICES TO EdFUND

OPERATING AGREEMENT 2002-2003

The Commission agrees that it will provide the following services to EdFUND as specified below:

- 1) FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA) DATA - EdFUND will be provided with copies of all the Institutional Student Information Reports (ISIRS) received by the Commission each year via an IBM cartridge tape to be readable by EdFUND's mainframe. In addition, the Commission will provide EdFUND with the associated documentation, i.e. the record position of each data element, by the number of the element, and a copy of the FAFSA with the data element numbers on it. Data will be delivered in the format that the Commission receives from the U.S. Department of Education's Central Processing System (CPS). EdFUND will be charged on an annual basis and agrees to pay one half the total cost incurred by the Commission.

EXHIBIT F

REPORTS / INVOICES/ PUBLICATIONS

OPERATING AGREEMENT 2002-2003

Reports are to be provided to the Commission in a timely manner and in the following frequency indicated with format and media requested or agreed upon by both parties. Where possible, reports will be delivered electronically via email. The Loan Program Oversight Division will be the central depository for all reports listed. Recipients of any of the listed reports will maintain the confidentiality of such reports pursuant to section 7.2.

Note: All accounting, budget, and personnel staffing reports will be considered confidential and proprietary.

Annual Reports

- 1) Annual Report to the Legislature by January 1 of each year. This report will be submitted to the Commission in time to review and approve before distribution. A draft copy will be available to present to the Commission for approval at its last scheduled meeting of the prior year.
- 2) One major research report on a topic agreed upon by both parties to be distributed to constituents and others by the Commission.
- 3) End of Federal Fiscal Year Audited Balance Sheet, Income Statement of Revenues, Expenditures and Changes in Fund Balance, and Cash Flow Statements, for the Federal, and Operating Funds.
Due five (5) workdays after completion of general audit (generally in December).
- 4) End of Federal fiscal year loan program statistics to include, but not limited to:
 - guarantees
 - defaults
 - collections
 - preclaims
 - claims
 - outstanding loans
 Due the 1st week of December.
- 5) Listing of all participating schools and lenders that includes names, codes, location, number and dollar volume of loans by program and sorted by name (confidential and proprietary).
Due the 1st week of November.
- 6) Management Organizational Chart (manager and above). That includes names, titles and employee number.
Due October 1.
- 7) Major and Minor Property Inventory Report as of June 30 for property purchased with

the General and FFEL program funds. The report will include the following reporting categories:

- property item
- description
- cost
- purchase date
- cost center

Due July 31.

- 8) Annual internal audit schedule (proprietary and confidential).
Due the 1st week of October.
- 9) Preparation of an activity based cost analysis of staffing to be provided with preliminary annual budget proposal (confidential and proprietary).
Due 30 days prior to EDFUND Board approval.
- 10) Report that includes information on EDFUND's market share for California, Western Region and Nationwide. Report to include information based on a federal fiscal year (confidential and proprietary).
Due date June 1st.

Quarterly Reports

- 1) Loan program statistics that includes the same information as noted for #4 under annual reports above.
Due three (3) weeks after the end of the quarter.
- 2) Loan Program Flat File (confidential and proprietary).
Due date as mutually agreed upon.
- 3) New Technology Initiatives report (confidential and proprietary). New technology initiatives will include those IT projects approved in the reporting quarter that meet the following criteria:
 - total estimated project costs exceed \$500,000 or
 - project has been identified as mission critical by EDFUND

Reportable information should include at a minimum the following:

- project name and description
- project approval date
- estimated project costs and schedule

Due the 1st week of the following quarter.

EDFUND will provide demonstrations of new technology initiatives to the Commission's Executive Director, Chief Information Officer and Chief of the Loan Program Oversight Division or their designee.

- 4) Status Report of mission critical information technological (IT) projects (confidential and proprietary). Mission critical projects generally will be identified in the annual TSS Strategic Report. The status report, at a minimum should include the following reporting categories:

- project name and description
 - project start date
 - estimated completion date
 - percentage completed (budgeted costs & schedule)
 - issues/concerns
- Due the 1st of the month following quarter.
- 5) Summary Reports of Borrower Complaints, Disputes and Resolution Reports from the Ombudsman Office. These reports include the following reporting categories, but not limited to:
- type of complaint
 - type of resolution
 - resolution time frame
- Due the 15th of the month following the end of the quarter.
- 6) Updates to the listing of participating schools and lenders sorted by name (confidential and proprietary). The listing will include the following:
- name of institution
 - school/lender codes
 - location
 - number and dollar volume of loans sorted by loan program type (i.e. Stafford)
- Due the 1st week of the following quarter.
- 7) Personnel staffing report, which includes staffing number, in the following categories (confidential and proprietary).
- filled positions
 - vacancies
 - terminations
 - resignations
 - new hires
 - promotions
- Due the 2nd week of the following quarter.
- 8) Telecommunication usage summary report for Commission staff that includes detailed phone usage for only the last month of each quarter. The report shall be sorted by unit, name and phone number.
- Due within ten (10) workdays from the end of the quarter.
- 9) Cash Flow Statements for the Federal and Operating Funds.
- Due the 10th of the second month after the end of the quarter.
- 10) Management Organizational Chart (manager and above). To include names, titles and department.
- Due the first day of each quarter in the fiscal year.
- 11) Quarterly internal audit schedule (proprietary and confidential).
- Due the first day of each quarter in the fiscal year.

Monthly Reports and Invoices

- 1) Balance Sheet, Statement of Revenues, Expenditures and Changes in Fund Balance for the Federal and Operating Funds.
Due 10th of the 2nd subsequent month following the EDFUND month-end close.

- 2) Accruals for the Federal and Operating Funds including, but not limited to:
 - fund type
 - general ledger #
 - description
 - source
 - amount
 Due the 13th of the month following the reporting period, except for June accruals which will be due July 12th.

- 3)
 - A. Reconciled Property/Fixed Assets Report (for assets purchased prior to 02-01-01)
 - Identify and correctly record capitalized assets according to the guidelines set out in the State Administrative Manual (SAM).
 - Provide the reconciled schedule to the Commission within five (5) workdays of EDFUND's month-end-close with supporting documentation including invoices, purchase orders and journal entries.
 - Fixed assets reimbursement invoices are reconciled between Business Operations property management records and financial operations accounting records before submission of invoices to the Commission.
 - B. Invoice for Loan Program Assets Purchased on or after 2-1-01.
The EDFUND Equity Fund will purchase new fixed assets used by the Loan Program and invoice CSAC for an amount representing the portion of the assets used for Loan or Grant Program activity.

- 4) Reconciled Unclear Collections and Escrow Account Reports
 - Reconcile the Financial Aid Processing System (FAPS) monthly reports to the 2007 uncleared collections account.
 - Reconcile the general ledger bank account with the refund account
 - Reconcile the collection escrow account to the uncleared collection activity
 - Provide the Commission with the reconciled uncleared collections summary and reconciled collection escrow account reports within 15 workdays after the close of the month.

- 5) Invoices the Commission for administration of the loan program
 - Invoices for EDFUND operating expenses, default prevention expense and insurance premium fee refunds will be prepared within five (5) workdays after EDFUND's month-end close. Submits a trial balance report for each invoice, sorted by account code, then reference, subtotaled within each change of reference and code.
 - Invoices for claim payments will be prepared and invoiced within 24 hours after the receipt in Financial Accounting of the CPA report from EDFUND's Claims Unit.
 - Invoices for default prevention initiatives will be prepared and forwarded with complete supporting documentation including invoices, purchase orders, journal entries within five (5) workdays after EDFUND's month end close.
 - Gathers supporting documentation for invoices as requested by the Commission generally within five (5) workdays of request.

- 6) Invoices for services rendered to the Commission
 - Invoices for the support of Commission activities will be prepared and forwarded with complete supporting documentation including invoices, purchase orders, journal entries within five (5) workdays after EDFUND's month-end close.
 - Supporting documentation for telecommunication invoices will include: 1) vendor billings with the Commission unit to be charged, 2) a usage report summarized by unit and sorted by phone and name.
 - Gathers supporting documentation for invoices as requested by the Commission generally within five (5) workdays of request.

- 7) Provides monthly inventory reports of all publications and forms that are 1) in stock, 2) that institutions have ordered and have been mailed and 3) that institutions have ordered but have not been mailed (back orders).

- 8) Monthly Budget Variance and Projection Report. Reports for each division and one cumulative (rolled up) for all operations. The report includes the following categories:
 - approved annual budget
 - annual reprojection
 - year-to-date budget
 - year-to-date actuals
 - monthly projections
 - monthly actuals
 Due within five (5) workdays after the EDFUND month-end close.

- 9) Personnel staffing report (two-page FLASH report). The reporting categories as follows:
 - staffing
 - vacancies/EEO recruitment
 - training
 - labor relations
 - leaves of absences
 - separations
 - performance reviews
 Due 10th of each month.

Special Reports

- 1) Reports for Commission and Loan Advisory Council Meetings - oral and written reports on requested topics are submitted to the Committee staff liaison for review three (3) workdays prior to the deadline date established for submitting the information for agenda printing. The agenda items are to include completed agenda tabs and supporting documentation.

- 2) Within ten (10) workdays of request, provide a detailed summary of phone usage for a specific timeframe upon request by the Management Services Division of the Commission.

- 3) Other special reports as may be requested and agreed upon by both parties.

On An Ongoing Basis and As Approved or Issued

- 1) Copy of the contract log will be provided and contain the following information: contract number, contract manager name, contract department, start and end dates of contract, contractor name, description of the scope of work, dollar amount, cumulative amendment information (time and money) and Board of Director's approval date, as appropriate.
- 2) List and copies of approved operational policies as they are distributed. This includes technology policies.
- 3) Up to date phone list.
- 4) Updates to the EDFUNDAMENTALS manual.
- 5) Copies of final internal audit reports.
- 6) Updates to the internal audit schedule.
- 7) Updates to the Management Organizational Chart.

Other Reports

- 1) Action plans for any applicable goals and objectives for the Commission' strategic plan. Due date to be mutually agreed upon.