

**Information/Action Item**

***California Student Aid Commission***

Consideration of the amendment/extension of the Operating Agreement  
between the Commission and its auxiliary organization, EdFund

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California Education Code section 69522(d) requires the operations of EDFUND be conducted in conformity with an Operating Agreement approved annually by the Commission. The current Operating Agreement between the Commission and EDFUND is set to expire on June 30, 2010.

As part of the extension of the Operating Agreement, staff is recommending that certain provisions of the Operating Agreement be amended to address the Bureau of State Audits (BSA) findings reported in "Internal Control and State and Federal Compliance Audit Report for the Fiscal Year Ended June 30, 2009" issued in March 2010. Specifically, BSA recommended that the Commission "enforce the provision of the operating agreement requiring EDFUND to provide it with the appropriate supporting documentation" including seeking clarifying legislation if the Commission "believes it needs additional authority to compel EDFUND to allow it to review proprietary and confidential information related to EDFUND'S expenditures ..."

Commission staff is recommending that provision 9.13 of the Operating Agreement ("Confidentiality") be amended to include language that explicitly provides that EDFUND shall not deem any information as confidential and subject to withholding from the Commission, and includes a five (5) business day time frame for EDFUND to produce the requested documents unless both parties agree to an extension of the deadline. Staff does not believe that the Commission needs additional statutory authority to compel production of EDFUND business records to enable the Commission to comply with its statutory oversight responsibilities.

BSA further recommended that the Commission ensure that certain EdFUND policies be modified to strengthen the reimbursement process and ensure the future Student Loan Operating Fund expenditures are for only allowable activities and costs. Staff is proposing that provision 4.5 "EdFUND Policies" be amended to indicate that all proposed EdFUND policies relating to those areas where BSA identified issues, such as travel, training, business expense reimbursement, etc., be submitted to the Commission for review and approval prior to implementation.

Although BSA did not specifically include a recommendation related to provision 9.15, the "Dispute Resolution" clause, staff is recommending changes to that provision as a result of the comments made by BSA regarding the dispute resolution process and the impact the enactment of

Chapter 182, Statutes of 2007, (Senate Bill 89) has on the process as set forth in the Operating Agreement. As it currently reads, the dispute resolution process contemplates that after the Commission has made a final decision on an issue, EDFUND may seek mediation and pursue other legal remedies against the Commission. However, with the final authority having been removed from the Commission and given to the Director of Finance by Senate Bill 89, any dispute resolution process which does not include the Director of Finance makes little sense.

In addition, when evaluating how the Dispute Resolution provision should be changed to address the fact that the Director of Finance has assumed final authority for the state's student loan guarantee program, staff considered that EDFUND is an entity wholly owned by the State of California and utilizing state monies for all of its expenditures. Staff considered it appropriate to ensure that state funds are not used to pursue legal claims against the State of California, the Director of Finance, the Commission, and officers or employees of the State when EDFUND disagrees with decisions rendered by state officials with respect to an auxiliary organization formed and funded by the State.

In light of the foregoing considerations and in furtherance of the goal of preserving state student loan guarantee assets, staff has recommended changes to the "Dispute Resolution" provision and the addition of a "Legal Recourse" provision to the operating agreement which would bar EDFUND from suing the state on issues relating to, or arising out of, the Operating Agreement.

Lastly, the U.S. Department of Education has added an additional monthly report for all guaranty agencies. Page 23, Section III, "EDFUND REPORTS / INVOICES / PUBLICATIONS" has been amended to include language related to this new report.

Attached to this Item is Tab 3.a, a redline/strikeout version of the current Operating Agreement with the amendments being recommended by staff.

**Responsible Person(s):** Keri Faseler Tippins  
General Counsel

## OPERATING AGREEMENT

This Agreement is effective the first day of July ~~2007~~ 2010 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.

### ARTICLE I

#### Term

- 1.1 Term. The term of this Agreement shall be for a ~~1-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. "Agreement" is the Operating Agreement between the California Student Aid Commission and EDFUND.
  - B. "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. For purposes of this definition CSAC does not include EDFUND.
  - C. "Commission" is the governing body of the California Student Aid Commission.
  - D. "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.
  - E. "EDFUND Board of Directors" or the "EDFUND Board" is the governing body of EDFUND.
  - F. "FFEL Program" is the Federal Family Education Loan Program.
  - G. "SLA" is a service level agreement(s) that defines the parameters of the services between CSAC and EDFUND.

### ARTICLE III FFEL Program and Governance Policies

The Commission is responsible for developing and approving policies for the governance of the FFEL Program. Nothing in this Agreement, SLA or any policy shall be construed as delegating to EDFUND the Commission's fiduciary responsibilities as required under California statute. EDFUND shall provide research and policy analysis and make policy recommendations to the Commission, as appropriate or as requested by the Commission. CSAC staff, EDFUND staff and the EDFUND Board shall adhere to all FFEL Program policies adopted by the Commission, provided that the policies are consistent 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 CSAC with data and services pursuant to this Agreement and SLA. 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, support and administrative 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 and SLA.
- B. Other Services. EDFUND agrees to perform such other operational and support services pursuant to an SLA and as permitted by law.
- 4.3 Processing System. EDFUND agrees to maintain a financial aid processing system that is auditable for all identified program transactions.
- 4.4 Compliance. EDFUND agrees to perform all services as agreed to by the Commission and the EDFUND Board in full compliance with applicable State law and 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 and SLA.
- 4.5 EDFUND Policies. EDFUND agrees to develop, implement and maintain written policies and procedures as are necessary for EDFUND to fully comply with this Agreement and SLA. Proposed policies relating directly or indirectly to, conflict of interest, procurements, contracts, travel, training, business expense reimbursement, corporate travel and purchasing cards, employee-wide events spending, severance and any other policy having a potential material effect on the Student Loan Operating Fund (hereinafter known as the Operating Fund) (see Section 6.1) shall be submitted to the Commission and the EDFUND Board for review and approval prior to implementation. The

Commission recognizes the EDFUND Board of Directors' responsibilities to make business decisions pursuant to the California Corporations Code; however, all 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.

- 4.6 Annual Loan Program Business Plan, Budget and Goals. EDFUND shall develop an annual Loan Program Business Plan, 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, Budget and Goals no later than the fifteenth day of May of each year and prior to any significant document development. EDFUND will provide to CSAC staff the first draft annual Loan Program Business Plan, Budget and Goals by the first business day of June of each year. EDFUND agrees to make a presentation to the Commission at its June Commission meeting of each year on the current draft of the annual Loan Program Business Plan, Budget and Goals for the following federal fiscal year. EDFUND agrees to consult with CSAC staff and/or such other individual(s) identified by the Commission on the annual Loan Program Business Plan, Budget and Goals no later than the fifteenth day of July of each year and provide any requested information associated therewith. The Commission and the EDFUND Board will review the annual Loan Program Business Plan, Budget and Goals at the Joint Commission and EDFUND Board Workshop held each July. The EDFUND Board shall approve the annual Loan Program Business Plan, 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.

The annual 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 annual 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 annual Loan Program Business Plan, Budget and Goals shall be submitted to the Commission and EDFUND Board for review and approval.

The annual goals shall include specific, measurable goals and implementation strategies for activities within the FFEL Program for which EDFUND has a reasonable but not an 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 and to provide resources, where feasible, for the other priorities established by the Commission.
  - 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 CSAC in accordance with detailed support plans mutually developed and agreed to by both organizations.
- 4.7 Service Level Agreement. As part of the annual budget process, CSAC and EDFUND shall review the SLA and determine if amendments are necessary. The SLA is incorporated herein by this reference as if set forth in full.
- 4.8 Assets. EDFUND agrees and acknowledges that all of its assets, whether owned by EDFUND or in its control, are held for the benefit of CSAC. 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 (1) 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 term 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 applicable 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 guarantee services not otherwise assigned 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 Annual Loan Program Business Plan, Budget and Goals Approval. CSAC staff will review the proposed annual Loan Program Business Plan, Budget and Goals and provide perspective to the Commission at its June, July and September meetings of each year. The Commission agrees to review and approve EDFUND's annual Loan Program Business Plan, Budget and Goals no later than the thirtieth day of September of each year. To the extent that changes are required in the approved annual Loan Program Business Plan, Budget and Goals due to Commission requirements, changes in state or federal law, or other circumstances beyond EDFUND's control, the

Commission agrees to negotiate in good faith the annual Loan Program Business Plan, Budget and Goals to reflect such changes.

- 5.4 Scope of Services. The Commission agrees to provide EDFUND with data and services pursuant to this Agreement and SLA.
- 5.5 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, as guarantor, shall maintain 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 State and federal 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 pursuant to 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 to the Operating Fund and/or Federal Fund.

A guaranty agency may use the Operating Fund for (1) Guaranty agency-related activities, including application processing; loan disbursement; enrollment and repayment status management; default aversion activities; default collection activities; school and lender training; financial aid awareness and related outreach activities; and compliance monitoring; and (2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency. Other student financial aid-related activities that are major investments in local assistance, State assets, or outreach and awareness programs that are not directly related to FFEL program guaranty business operations shall be subject to annual review through the normal State budget process or legislation.

- 6.2 Reimbursement of EDFUND Expenses. CSAC agrees to pay to EDFUND reimbursement for all monies expended for the provision of services, both guarantee and other, in accordance with EDFUND's approved budget, approved SLA, applicable laws and regulations and other policies established and approved ~~mutually~~ by the EDFUND Board and the Commission. EDFUND shall invoice CSAC for the services provided pursuant to this Agreement and SLA. EDFUND agrees to provide appropriate supporting documentation and, if system security permits, read-only access to the EDFUND accounting system in order for CSAC staff to identify the services rendered. CSAC shall be responsible for reviewing the invoices and approving payments. Payment of invoiced expenses shall be made within thirty (30) days of receipt of all necessary documentation pursuant to this Agreement and SLA. Payment for any disputed expense may be withheld by CSAC and shall be identified in writing to EDFUND within thirty (30) days, including the reason for withholding payment. EDFUND shall have the right to appeal pursuant to Section 9.15. In no event shall the amount reimbursed to EDFUND for guarantee services during the term of this Agreement exceed the total amount budgeted for such services in the operating budget approved pursuant to Section 4.6, unless prior approval for such expenditures was granted by the Commission.

CSAC and EDFUND staffs will work together on Operating Fund and Federal Fund cash flow projections. In the event of a projected cash shortfall in the Operating Fund held by the State Treasury, the reimbursement of the EDFUND invoices pursuant to this Agreement may be delayed. Invoice reimbursement may only be delayed so long as EDFUND cash balances are greater than, or equal to, two months of total loan and non-loan operating expenses as presented in the annual Loan Program Business Plan, Budget and Goals as approved by the Commission. EDFUND agrees to utilize available cash in all accounts, as needed, during this cash shortfall period. This delay will in no way compromise the financial viability of EDFUND, pursuant to Section 69526(b)(2) of the California Education Code. If a shortfall exists in both the Operating Fund held by the State Treasury and in the EDFUND accounts, the CSAC Executive Director and EDFUND President will collaborate on a prudent course of action. Once sufficient funds are available in the Operating Fund held by the State Treasury, delayed reimbursements will be processed as quickly as possible in order to return to the prescribed timeframe detailed above.

- 6.3 EDFUND Incentive Compensation Plans. Variable Pay Plans and Incentive Compensation Plans are hereby authorized and shall be administered pursuant to policies adopted by the Commission and the EDFUND Board. The policies are incorporated herein by this reference as if set forth in full.
- 6.4 Investment of EDFUND Cash. EDFUND cash, including cash resulting from any advance from the Operating Fund, shall be invested according to a policy approved by the Commission and the EDFUND Board. In the absence of an approved policy and unless otherwise required by law, cash and cash equivalents managed by EDFUND, which include cash held in the Operating Fund and Equity Accounts, when used for cash investment purposes, shall be held in a money market account. This investment cash requirement does not include cash held on behalf of the federal government or in sweep investment accounts.
- Cash held in EDFUND's Equity Account shall only be used for such purposes approved by the Commission and EDFUND Board, in consultation with and approved by the California Department of Finance.
- 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. The policy is incorporated herein by this reference as if set forth in full.
- 6.6 Reimbursements to CSAC. EDFUND agrees to pay CSAC for services rendered pursuant to this Agreement and SLA.

## 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, 2008~~ 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.
- 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 sixty (60) days' written notice.
- 7.4 Termination for Cause. Either party may terminate this Agreement for cause upon thirty (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 thirty (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, the parties may initiate the dispute resolution process in Section 9.15.

- 7.5 Termination by the Secretary. This Agreement is terminable by the U.S. Secretary of Education upon thirty (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 of 1965, as amended.
- 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 CSAC. EDFUND agrees to take promptly, all steps reasonably requested by the Commission to effectuate such transfer.

## ARTICLE VIII Oversight

- 8.1 Commission Oversight. As a designated guarantor, the Commission has statutory and fiduciary responsibilities for oversight of CSAC staff, EDFUND and the FFEL Program, as administered by EDFUND, 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 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 Section 8.6 of this Agreement and 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, as amended; 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. The selection of the certified public accountant shall be mutually agreed upon by the Commission and EDFUND Board upon recommendations by the audit committees.
  - B. Annual Audit of Internal Controls – An independent certified public accountant shall provide to the Commission and the EDFUND Board an annual 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. The selection of the certified public accountant shall be mutually agreed upon by the Commission and EDFUND Board upon recommendations by the audit committees. The Annual Audit of Internal Controls shall be performed only if the expenses associated therewith are approved by the California Department of Finance.
  - 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 the 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 and Evaluations – This shall include any other review, audit or evaluation approved by the Commission’s Audit Committee in consultation with the EDFUND Audit Committee and approved by the Commission in consultation with the EDFUND Board. This shall include conducting regular performance evaluations of the operations of EDFUND in furtherance of the Commission’s fiscal and fiduciary responsibility for approved programs as required in California Education Code Section 69522 (c)(2). This shall also include any other audits required by State or federal law, including the State auditor. Such reviews, audits or evaluations shall be conducted by an independent certified public accountant, independent consultant or such other independent 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 Supporting the Commission’s Oversight Responsibility. 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 no later than 75 days after federal fiscal year-end.

- (2) Listing of all 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

Due no later than 45 days after federal fiscal year-end.

- (3) Annual Internal Audit Plan

Due after the Commission and EDFUND Audit Committees review and approve the Plan after their first meeting of the new federal fiscal year.

- (4) Staffing analysis, as part of the budget process, to be provided with the preliminary annual budget proposal.

Due no later than July 15 of each year as part of the EDFUND annual budget process.

**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

Due no later than 30 days after quarter-end.

- (2) Unaudited Financial Statements and Analysis. These include the following documents for the Operating Fund/EDFUND and Federal Fund:

- (a) Variance Report
- (b) Combined Statement of Assets
- (c) Statement of Activities
- (d) Statement of Cash Flows
- (e) Revenues and Expenses Variance Report
- (f) Notes to Financial Statements

Due no later than 45 days after quarter-end.

**C. Monthly Reports**

- (1) Loan Program Statistics to include, but not limited to:

- (a) Guarantees
- (b) Defaults
- (c) Collections
- (d) Claims
- (e) Outstanding loans

Due no later than 30 days after month-end.

(2) Updates to the Top 200 Schools and School Groups to include, but not limited to:

- (a) Name of institution
- (b) School/lender codes
- (c) Location
- (d) Number and dollar volume of loans sorted by loan program type

Due no later than 30 days after month-end.

(3) Unaudited Financial Statements. These include the following documents for the Operating Fund/EDFUND and Federal Fund:

- (a) Variance Report
- (b) Combined Statement of Assets
- (c) Statement of Activities
- (d) Revenues and Expense Variance Report
- (e) Notes to Financial Statements

Due no later than 45 days after month-end.

(4) Detailed Cash Flow Forecast for the Federal and Operating Funds.

Due no later than 30 days after month-end.

8.6 Annual Oversight Plan. The CSAC division/unit designated by the Commission and/or other entity designated by the Commission shall develop an Annual Oversight Plan. The Annual Oversight Plan shall describe the oversight and any limitations associated therewith; including, but not limited to identification of EDFUND staff, systems and specific dates for such reviews that are needed to execute the Plan. The Annual Oversight Plan shall be designed to have the least intrusive impact on EDFUND operations and shall not be considered an audit. The Annual Oversight Plan shall be prepared no later than the fifteenth day of May of each year; and adopted by the Commission no later than the thirtieth day of September of each year. The EDFUND staff and Board shall have an opportunity to provide input on the Annual Oversight Plan prior to Commission approval.

The Annual Oversight Plan may include, but is not limited to the following components:

- A. Monitoring compliance with Commission and EDFUND Policies.
- B. Monitoring the compliance with the approved Loan Program Business Plan, Budget and Goals.
- C. Evaluating the year-end achievements of the approved High Level Organizational Metrics.
- D. Monitoring and evaluating loan program forecasts and expenditures.
- E. Monitoring compliance with the Operating Agreement and Service Level Agreement.
- F. Reviewing and monitoring EDFUND internal audit reports once issued.
- G. Monitoring loan program and synergy activities through quarterly Operating Agreement meetings with appropriate CSAC and EDFUND staffs.

## 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. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.

CSAC and EDFUND agree to mutually work together to address any further concerns that may exist with regard to this Agreement or SLA that are expressed by the California Department of Finance and the Joint Legislative Budget Committee and to submit amendments relating thereto to the Commission and the EDFUND Board for their approval pursuant to the provisions of Section 69522 (d)(2) of the California Education Code.

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 and covenants 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, terrorism, 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 and SLA. The Commission and EDFUND also agree to mutually promote and support each other in the market place.
- 9.9 Guarantee Services Outside of California. Guarantee services conducted outside of California may be marketed under the EDFUND name.
- 9.10 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 sovereign 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.

- 9.11 Safeguards and Information Security. Throughout this Agreement, CSAC and EDFUND shall implement and maintain appropriate safeguards, as that term is used in the Federal Trade Commission's Safeguards Rule ("Safeguards Rule") at 16 C.F.R. §314 *et. seq.*, for all Customer Information as defined at §314.2 *et. seq.* of the Safeguards Rule, as well as all Confidential Information provided to CSAC and/or EDFUND by any borrower, only as necessary to perform the services as set forth in this Agreement. CSAC and/or EDFUND agrees to not disclose such information provided to them with any third party other than as permitted in this Agreement and SLA, or as permitted by Title IV of the Higher Education Act of 1965, as amended. In addition, the parties agree to comply with any other state and federal laws.
- 9.12 Custodian of Records, Examination. EDFUND shall serve as the custodian of all CSAC records and systems pertaining to the FFEL Program under possession and control as defined by Federal Trade Commission's Safeguards Rule, at 16 C.F.R. §314.1(b). The Commission shall be granted complete right and access to such records and systems upon request.
- 9.13 Confidentiality. Subject to the requirements 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."

EDFUND, as an asset of the State of California and an auxiliary of the Commission may not deem any document, information or record, including employee records, as "confidential" as to the Commission. In order to facilitate the Commission's ability to comply with its statutory responsibilities to provide effective oversight of EDFUND, EDFUND shall produce all documents, information and records requested by the Commission within five (5) business days, unless an extension of time is agreed to between the parties.

- 9.14 Contract Manager. CSAC 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.

- 9.15 Dispute Resolution. The parties will attempt in good faith to resolve through informal negotiation any issue, dispute, claim, controversy and/or breach (hereinafter referred to as breach) arising out of or relating to this Agreement. Any breach that cannot be so resolved shall first be presented to the respective Contract Managers for CSAC 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 or designee of EDFUND. The Executive Director or designee and the President or designee shall make every good faith effort to resolve the issue. In the event the breach cannot be resolved by the Executive Director or designee and the President or designee within five (5) business days of receipt, the Chairs of the Commission and the EDFUND Board shall be notified and a joint meeting of the Commission and the EDFUND Board shall be noticed and shall take place within twenty (20) business days of reporting the issue to the Chairs to attempt to resolve the breach. In the event the breach cannot be resolved by the Commission and EDFUND Board, the Commission's decision shall be final. ~~In the event EDFUND disagrees with the Commission's final decision, EDFUND may move forward with mediation.~~

~~In the event of a breach to this Agreement, nothing herein shall prevent the Commission or the EDFUND Board from pursuing all other legal avenues available to the parties, including but not limited to legal action. However, both parties agree that prior to any legal action they will attempt to resolve their issues in an amicable manner through mediation administered by the American Arbitration Association under its Commercial Mediation Rules. Nothing herein shall prevent the parties from mutually agreeing to settle an issue through arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.~~

~~The parties agree that the venue for any action pursuant to this Section shall be Sacramento County, California. EDFUND's costs for mediation, arbitration or legal action shall be reimbursed by CSAC, except in the event of a finding of bad faith on the part of EDFUND in the subject action.~~

Current law, Chapter 182 Statutes of 2007 (Senate Bill 89) gives the Director of Finance certain authority over actions of the Commission with respect to the state's student loan guarantee program assets, including EDFUND. While Senate Bill 89 remains in effect, the Director of Finance has final authority to review, approve or rescind Commission actions that it deems not to be in the State's best interests.

9.16 Legal Recourse. Because all monies expended by EDFUND are state monies, EDFUND is not authorized to pursue legal action against the State of California, the Commission, the Department of Finance or any other subdivisions of the State, its officials or employees, on any issue, dispute, claim, controversy and/or breach arising out of, or in any manner relating to, this Agreement.

**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: \_\_\_\_\_

**Louise McClain  
Commission Chair  
California Student Aid Commission**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Sally M. Furay  
Board of Directors, Chair  
EDFUND**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Diana Fuentes-Michel  
Executive Director  
California Student Aid Commission**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Samuel M. Kipp, III  
President  
EDFUND**

Date: \_\_\_\_\_

## SERVICE LEVEL AGREEMENT

This Service Level Agreement (SLA) is effective the 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 and shall continue in full force and effect until June 30, 2008 unless sooner terminated or amended. The SLA shall enumerate specific services to be performed by CSAC and/or EDFUND in connection with the Operating Agreement, entered into by the parties effective the first day of July ~~2007~~2010.

### SECTION I FFEL PROGRAM SERVICES

Unless otherwise specified, EDFUND agrees to provide the following FFEL Program operational, support and administrative services:

- 1) **GUARANTY** – includes, but is not limited to: (a) application processing and printing, and approving the loan for guarantee, including Lender of Last Resort; (b) general loan maintenance and reporting; (c) borrower, lender and school inquiry services; (d) fee remittance and collection; and (e) customer-facing product development and administration.
- 2) **DEFAULT AVERSION AND PREVENTION** – includes, but is not limited to: (a) processing of default aversion assistance requests; (b) borrower counseling for a successful repayment experience; (c) skip tracing; and (d) school-based default aversion services.
- 3) **LENDER CLAIM ADJUDICATION AND PAYMENT SERVICES** – includes, but is not limited to: (a) claim review, processing, certification, reject control and claim payment disbursement; (b) claim repurchases and adjustments; and (c) processing bankruptcy documents.
- 4) **POST DEFAULT SERVICES** – includes, but is not limited to: (a) borrower disputes and appeals prior to the Ombudsman level; (b) administrative review; (c) processing Treasury and State offsets; (d) review of loan discharges for reason of false certification, closed school, permanent and total disability and death; and (e) research and referral to the Ombudsman of suspected fraud and for handling with the Office of the Inspector General – U.S. Department of Education (OIG-USED) and other law enforcement agencies as appropriate.
- 5) **DEFAULTED LOAN COLLECTION SERVICES** – includes internal and external collections.
- 6) **PROGRAM OVERSIGHT AND COMPLIANCE SERVICES** – includes school and lender reviews and related activities.
- 7) **FINANCIAL AND PROGRAM REPORTING** – includes, but is not limited to: borrower, school or lender payment processing, disbursing and reporting; subrogation; loan consolidation processing, such as: (a) Federal reporting – preparation and submission of required FFEL Program financial and accounting reports that includes the U.S.

Department of Education Form 2000; (b) CSAC reporting – preparation and submission of financial forecasts and analysis on the Federal and Operating Funds; and (c) Program Invoicing and Disbursements – preparation and submission of EDFUND operating expenses, fixed assets, CSAC support activities expenses, federal default fee disbursements, and claim payment processing.

- 8) **COMMUNICATIONS, TRAINING AND SUPPORT** – includes, but is not limited to: (a) producing, maintaining and distributing financial aid brochures, booklets and other public information; (b) conducting loan-related training for postsecondary schools and lenders; (c) establishing and maintaining liaison activities with the financial aid community; (d) maintaining a list of all FFEL Program memberships and associations; and (e) coordinating as appropriate, with CSAC staff and EDFUND staff, and listing all parties involved in shared partnership projects.
- 9) **BUSINESS DEVELOPMENT AND MARKETING** – includes, but is not limited to: (a) developing and enhancing loan-related products and services; (b) marketing of services and products; (c) establishing and maintaining relationships with schools and lenders; and (d) any activities supporting these functions.
- 10) **POLICY, RESEARCH AND LEGISLATIVE ASSISTANCE** – includes, but is not limited to: (a) collecting guarantor policy and management data; (b) providing regulatory guidance, analysis and interpretation to ensure compliance with FFEL Program requirements; (c) identifying and proposing policy for the Commission’s consideration and approval; (d) conducting and producing loan research and reports; (e) performing data modeling, analyzing and tracking legislation as it relates to the loan program; and (f) advocating legislative and regulatory positions as approved by the Commission.
- 11) **TECHNOLOGY SERVICES** – includes, but is not limited to: (a) 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; (b) providing technical support to customers; (c) designing, developing and implementing new technology to support FFEL Program regulatory requirements or enhance current services; and (d) providing technology infrastructure support.
- 12) **LEGAL SERVICES** – includes, but is not limited to: providing representation and/or management of outside counsel for EDFUND and/or CSAC 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 this Agreement, SLA or any CSAC responsibility under the FFEL Program. EDFUND on behalf of CSAC will provide any other services requested of EDFUND by the Commission and agreed upon by the parties.
- 13) **OMBUDSMAN SERVICES** – includes, but is not limited to: (a) providing an Ombudsman Office to handle and resolve borrower complaints regarding CSAC and/or EDFUND, which are referred internally, by CSAC or by customers and partners, including but not limited to, student loan borrowers, schools, lenders, other governmental and legislative offices (federal and state) and United States Department of Education; (b) administering the compromise, settlement or write-off of loans based on Commission-approved policies; and (c) research of and referral to the Ombudsman of suspected fraud and for handling with OIG-USED and other law enforcement agencies.

- 14) **OTHER LOAN SERVICES** – includes, but is not limited to: (a) submitting and maintaining loan data on the National Student Loan Data Systems (NSLDS); (b) completing cohort default appeals which includes production of any necessary reports; (c) processing school and lender requests for participation in CSAC’s FFEL Program; (d) providing support to CSAC’s Loan Advisory Council which includes making presentations and on occasion providing other services as needed or requested, and (e) any other loan services that may on occasion, be assigned by the Commission and agreed upon in writing by both parties.

## SECTION II OTHER SUPPORT SERVICES

EDFUND agrees to provide additional support services as specified in the Charge Back Agreement between EDFUND and CSAC, and bill CSAC for the charges within five (5) business days of EDFUND’s monthly close. Estimated costs for services will be established and agreed upon, prior to the first day of October of each year by CSAC and EDFUND, and will be documented in the Charge Back Agreement. Supporting documentation for costs will be provided including a schedule of rates. Other services not listed below will be agreed to in writing and will become part of this SLA as an amendment. The written agreement will outline the services to be provided with estimated costs and performance expectations. Any change to the cost-for-services charged back to CSAC in effect on the thirtieth day of June 2007, will be in consultation with and approval by the California Department of Finance. 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 CSAC 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) **TECHNOLOGY SERVICES** – voice, video and data center support
- 11) **CLIENT RELATIONS SERVICES** – Grant training, information dissemination and customer service support

- 12) **STAFF TRAINING AND DEVELOPMENT SERVICES** – access to EDFUND’s training and development classes/sessions
- 13) **INVENTORY SERVICES** – maintain records for the acquisition and disposition of property
- 14) **OTHER SERVICES** – as requested by CSAC, provide other services including, but not limited to, publication and video production; Compact Disk read-only memory (CD-ROM) software product development or other technology consulting services or research.

**SECTION III**  
**EDFUND REPORTS / INVOICES / PUBLICATIONS**

Reports necessary for day-to-day operations are to be provided to CSAC in a timely manner and in the following frequency indicated with format and media requested or agreed upon by both parties.

**Reports / Invoices / Publications – Annual**

**RA-1** EDFUND will assist CSAC staff in the preparation of the first draft of the California Student Aid Commission’s Annual Report to the California State Legislature on EDFUND and agrees to assist CSAC staff in any edits and updates.

**RA-2** One major research project on a topic designated by CSAC, and based upon availability of funding and quality of data.

**RA-3** Major and Minor Property Inventory Reports and Construction in Progress (CIP) Report as of June 30 for property purchased for use in the General Fund and Operating Fund. The reports will include the following reporting categories:

- Property item
- Description
- Cost
- Date of acquisition
- Cost center
- Asset category
- Tag number
- Asset number (Oracle number)
- Net book value (at period end for Major only)
- Year-to-date depreciation (Major only)

Due no later than July 31 each year.

**RA-4** EDFUND shall provide a report of its market share of California, Western Region and Nationwide when the actual Federal Student Loan data is available, typically in March of the following year.

**Reports / Invoices / Publications – Quarterly**

**RQ-1** Technology Major Projects Status Report (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
- Milestone and budget status
- Issues/concerns

Due no later than the 10<sup>th</sup> of the month following quarter-end.

**RQ-2** Telecommunication usage summary report for CSAC 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 no later than ten (10) business days after quarter-end.

**Reports / Invoices / Publications – Monthly**

**RM-1** Accruals for the Federal and Operating Funds including but not limited to:

- Fund type
- GL#
- Description
- Source
- Amount

Due no later than the 13<sup>th</sup> of the month following the reporting period, except for June accruals, which will be due no later than July 12.

In addition, the U.S. Department of Education (USDE) requires monthly monitoring of all FFELP guaranty agencies. Reports are derived from the monthly financials and are due the 10<sup>th</sup> of the month to CSAC for final review. CSAC may require a meeting with EdFund staff prior to the deadline for all guaranty agencies to submit the reports to USDE by the 20<sup>th</sup> of the month. CSAC is also to be copied on reports submitted in Excel via email to [Monthly.report@ed.gov](mailto:Monthly.report@ed.gov).

**RM-2** CSAC Major Equipment Reconciliation – from Oracle (for assets purchased prior to February 1, 2001 – CSAC’s assets)

Due no later than five (5) business days after EDFUND’s month-end close.

**RM-3** Loan Program Assets Purchased on or after February 1, 2001 – Depreciation Schedule.

Due no later than five (5) business days after EDFUND’s month-end close.

**RM-4** Invoices for services to CSAC for support activities will include supporting documentation such as purchase orders and journal entries. Supporting documentation for telecommunication will include vendor billings and divisional charges.

Due no later than five (5) business days after EDFUND's month-end close. Additional supporting documentation for invoices as requested by CSAC staff will be provided no later than seven (7) business days from request.

**RM-5** Supporting documentation for telecommunication invoices will include a usage report summarized by unit and sorted by phone and name.

Due no later than five (5) business days after EDFUND's month-end close.

**RM-6** Monthly inventory reports of all publications and forms that reflect:

- Current stock on hand
- What institutions have ordered and what has been mailed
- What institutions have ordered but have not been mailed (back orders)

Due the 1<sup>st</sup> week of each month.

**RM-7** Personnel Staffing Report (2-Page FLASH Report), excluding personal information, that includes:

- Staffing
- Vacancies/EEO recruitment
- Training
- Labor relations
- Leaves of absence
- Separations
- Performance reviews

Due no later than the 10<sup>th</sup> of each month.

### **Reports / Invoices / Publications – Special**

**RS-1** Reports for Commission and Loan Advisory Council Meetings – oral and written reports on requested topics including completed agenda tabs and supporting documentation.

**RS-2** Within ten (10) business days of request, provide a detailed summary of phone usage for a specific timeframe upon request by the Management Services Division of CSAC.

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

### **Reports / Invoices / Publications – Other Reports**

**RO-1** EDFUND will develop the loan program strategic plan and an annual plan delineating specific action steps to implement the strategic plan. EDFUND will provide quarterly updates on the progress of implementing the strategic plan.

Due date to be mutually agreed upon.

## SECTION IV CSAC REPORTS / INVOICES / PUBLICATIONS

Reports necessary for day-to-day operations are to be provided to EDFUND in a timely manner and in the following frequency indicated with format and media requested or agreed upon by both parties.

### **CSAC Services – Annual**

- CA-1** Detailed information necessary for annual budget development.
- (a) Personnel benefit percentages
  - (b) Prorata
  - (c) Grant Administration Budget
  - (d) Capital Assets included in the Grant Administration Budget (including: description, useful life, estimated purchase date, estimated in service date, and contact person).
- Due each year, ongoing, from February through June.
- CA-2** Information necessary for notes to the financial statements for the annual audits.
- (a) Cash and Cash Equivalents (Surplus Money Investment Fund (SMIF)/Pooled Money Investment Account (PMIA)) as of June 30
  - (b) Pension Benefits as of June 30 and September 30
  - (c) Post-Employment Benefits Other Than Pensions as of June 30 and September 30
  - (d) Commission Minutes for the twelve (12) months under audit as of June 30 and September 30
- Due each year, no later than, seven weeks after State and federal fiscal year-end.

### **CSAC Services – Monthly**

- CM-1** Monthly and Period Fiscal Month-13 California State Accounting and Reporting System (CALSTARS) Accounting Reports (G01, Q12, Q24, D09 and Q16) in both hard and soft/Monarch copy (used to prepare Fund Financial statements)
- Due no later than the 5<sup>th</sup> business day after CSAC receives the Operating and Federal Fund accruals from EDFUND.
- CM-2** CSAC feedback of their specific budgeted line items on update Annual Forecast (i.e. reprojections) column in the monthly financial reports
- Due no later than the 11<sup>th</sup> business day of the following month.
- CM-3** State Controller's Office (SCO) Fund Reconciliation Report and Agency Reconciliation Report used to prepare SMIF interest accruals
- Due no later than the 3<sup>rd</sup> business day of the following month.
- CM-4** Civil Service Payroll and Vacation accrual entries
- Due no later than the 6<sup>th</sup> business day of the following month.

**CM-5** Monthly Accounting Schedules.

- (a) Claim Schedules (Claim Purchased/Adjusted Report (CPA) – Lender Payments) and all other reimbursements for EDFUND activities)
- (b) Invoices paid
- (c) Reimbursement and Minimum Reserve Subsidy
- (d) Revenue-Type Account
- (e) Collection Activity (in/out Due From/To accounts)
- (f) Sweep Interest

Due no later than the 5<sup>th</sup> business day after CSAC receives the Operating and Federal Fund accruals from EDFUND.

**CM-6** Federal Fund Cash Flow Detailed Schedule and Operating Fund Cash Flow Detailed Schedule

Due no later than the 5<sup>th</sup> business day after month-end.

**CSAC Services – On an Ongoing Basis as CSAC Receives**

**CO-1** CSAC staff agrees to provide EDFUND with the Free Application for Federal Student Aid (FAFSA) data with copies of all the Institutional Student Information Reports (ISIR) as received by CSAC. ISIR records will be transmitted electronically on an ongoing basis to EDFUND as they are received by CSAC. In addition, CSAC 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 CSAC receives from the U.S. Department of Education’s Central Processing System (CPS).

If any expenses are incurred, EDFUND agrees to pay for half.

**CO-2** CSAC will acknowledge and recognize EDFUND in all shared partnership projects.

**SECTION V  
PERFORMANCE EXPECTATIONS**

CSAC and EDFUND agree to perform all services required pursuant to this Agreement according to best practices, and according to performance expectations. Such performance expectations include, but may be expanded by mutual agreement of the Commission and EDFUND Board:

**A. Guaranty Services**

1. All guarantee services must satisfy the requirements established by United States Department of Education.
2. Error free paper guarantee requests will be processed to completion within one business day of receipt.
3. Error free electronic guarantee requests received in a batch file will be fully processed within one business day of receipt.

**B. Default Aversion Services**

All default aversion efforts must, at a minimum, comply with the requirements established by United States Department of Education.

C. Claims Services

Claims adjudication must, at a minimum, comply with the requirements established by United States Department of Education.

D. Collection Services

Collections must, at a minimum, comply with the requirements established by United States Department of Education.

E. Program Oversight Services

Program Reviews must, at a minimum, comply with the requirements established by United States Department of Education and State regulations, provided that the term "on a regular basis" as that term is used in California Code of Regulations, Title 5, § 30903 shall not be interpreted to mean annually.

F. Training Services

1. EDFUND will coordinate with CSAC in the development of California High School and Counselor workshops.
2. The EDFUND Workshop Calendar will be posted, as appropriate, on the EDFUND website.

G. Policy, Research and Legislative Assistance Services

1. Any public position or actions taken by EDFUND under the services of the Operating Agreement shall be consistent with and supportive of the Commission and the Commission's position and/or policies.
2. The EDFUND Board and its staff will not take a position or engage in activities on critical public policy matters upon which the Commission has not yet adopted a written policy or position.
3. Item G shall not apply to issues concerning the sale of EDFUND if directed by the Governor's Office, Legislature or Department of Finance; such communications shall be shared with the CSAC Executive Director and/or Commission as appropriate.

H. Technology Services

1. All commercial off-the-shelf software directly affecting the loan guarantee services shall be a fully supported version of the vendor's software. Any exceptions will require the approval of CSAC's Contract Manager.
2. All hardware and commercially available software shall have a maintenance contract with the vendor or fully supported internally by EDFUND.
3. CSAC and EDFUND will ensure that technology services comply with applicable state and federal security and privacy requirements.
4. CSAC and EDFUND will maintain documentation, which fully describes the current system including change history and build procedures.

5. CSAC and EDFUND will maintain a disaster recovery plan. The Plan will be tested annually and the results of the annual test will be documented and provided to the Contract Managers.

I. Legal Services

At least quarterly at an audit committee meeting, CSAC's legal counsel will report on active or anticipated legal actions affecting CSAC and EDFUND's legal counsel will report on active or anticipated legal actions affecting EDFUND and/or CSAC under the FFEL Program.

J. Financial Services

EDFUND will adhere to General Accepted Accounting Principles in daily operations.

K. Information Security Services

1. Confidential CSAC and EDFUND data (includes non public personal information, personally identifiable information and personal financial information), or derivations thereof shall be returned in its entirety or securely disposed of in accordance with the Federal Trade Commission's Disposal Rule ("Disposal Rule") at 16 C.F.R. §682, et seq.
2. Access to confidential CSAC and EDFUND data by third parties to perform the services of this Agreement and SLA shall be made through an encrypted channel with no less than 128 bit encryption, utilizing industry standard encryption algorithms and commercially available or open source software.
3. CSAC shall notify EDFUND's Contract Manager and Chief Security Officer (CSO) and EDFUND shall notify CSAC's Contract Manager and Information Security Officer (ISO) within 24 hours in the event of a data or security breach involving unauthorized access or disclosure of CSAC and/or EDFUND data, followed up with a written report submitted within 8 business days to the appropriate State notification agency to accommodate state reporting requirements. CSAC and EDFUND shall require immediate disclosure by third parties upon discovery of unauthorized access to CSAC and/or EDFUND data. Any breach notification requirements shall adhere to California's Breach Notification Law (Calif. Civil Code 1798 et seq).
4. CSAC and EDFUND shall limit the scope of access to Confidential CSAC and/or EDFUND data by third parties to prevent data mining or other aggregation of data, and shall require no further access, disclosure, transfer or sale of Confidential CSAC and/or EDFUND data by these parties beyond that necessary to perform the services of this Agreement and SLA.
5. CSAC and EDFUND shall immediately revoke all access to CSAC and/or EDFUND data and relevant systems by individuals or third parties that no longer require access to perform the services of this Agreement and SLA.
6. CSAC and EDFUND shall securely store access logs and records of access authorization to confidential CSAC and/or EDFUND data by third parties for 6 months, unless otherwise specified by regulatory requirements.

L. Other Support Services

CSAC and EDFUND agree that EDFUND will perform the following services according to the performance expectations noted below with the understanding that these expectations will be reviewed and amended as necessary.

**1) SUPPLY SERVICES**

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

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

**2) REPORT DISTRIBUTION**

- a) Daily reports received are sorted and delivered daily to users, or mailed pursuant to user's instructions to external customers.
- b) 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.
- c) Month end reports are sorted and processed by the 3rd workday of the following month after receiving all completed material.
- d) 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 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 sub-contractor 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.
- Boardroom 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.

- ~~d)~~ 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 consist 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.

e)-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 E-mail).
- 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.