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# Assembly California Legislature



**DAVE JONES**  
ASSEMBLYMEMBER, NINTH DISTRICT  
CHAIR, JUDICIARY COMMITTEE

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YOUTH VIOLENCE PREVENTION

May 23, 2008

President Sam Kipp  
Sister Sally Furay, Chair  
EdFund Board of Directors  
P.O. Box 419045  
Rancho Cordova, California 95741

Dear President Kipp & Chair Furay:

I write to urge you and the entire Board of Directors of the EdFund ("the Board") to reject the proposed Executive Change-in-Control Severance Agreement because it would reportedly pay seven executives approximately \$4 million in public funds during one of the most severe budget crises in our state's history. I believe there may be serious procedural deficiencies in the manner this issue has already been considered by the Board and I further believe that regardless of the procedural issues, the proposed size of this compensation package is unreasonable on its face and therefore contrary to law.

It is my understanding that the Board has already inappropriately discussed the severance proposal in two closed session meetings on April 23, 2008 and May 14, 2008. According not only to attorneys at the Student Aid Commission, but also to an oral opinion of the Office of Legislative Counsel, such meetings, if they were indeed held in closed session, were in violation of Education Code section 69525(g)(1) which provides that the EdFund's "board of directors...shall conduct its business in public meetings in accordance with the Bagley-Keene Open Meeting Act [Bagley-Keene]..." In addition, I am informed that both the Office of Legislative Counsel and the Office of the Attorney General concur that such closed meetings would be clearly impermissible under Bagley-Keene. Indeed, the Office of Legislative Counsel specifically cites the 1983 case by the court of appeal in *San Diego Union v. City Council* (146 Cal. App. 3d 947) for direct precedent for the need for these types of compensation decisions to be made in public and never behind closed doors.

In addition to the apparent procedural deficiencies noted above, I also have serious substantive concerns about the Board's apparent decision to continue negotiating a severance proposal. First, in addition to the Bagley-Keene Act concern, I believe the reported severance package would be inappropriate under both state and federal law. Government Code section 12586 provides that the board of directors of a non-profit public benefit corporation must review and approve the compensation of the president, chief executive officer, treasurer and chief financial officer to assure that it is reasonable. Critically in this regard, according to the Office of the Attorney General, any form of severance pay or bonus would ipso facto be deemed unreasonable.

In addition, I recommend the Board turn its attention to federal law, which regarding non-profits limits compensation to that which is not an "excessive benefit" (26 USCS §§ 4941, 4958.).

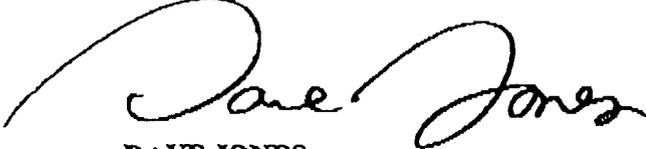
Importantly, IRS Instruction Form 1023 (Application for Recognition of Exemption Under 501(c)(3)) defines reasonable compensation as the amount that would ordinarily be paid for like services by like organizations under like circumstances. It further states that excessive benefits in the form of compensation may even result in the imposition of excise taxes and jeopardize the organization's tax-exempt status.

Finally, the Board's apparent decision to continue holding impermissible closed session meetings under Bagley-Keene, withhold information from the public, and negotiate a questionable severance proposal, raises a number of other troubling questions. Why is the Board reportedly choosing to ignore legal advice from state authorities? Why is the Board reportedly considering a proposal that would use public money to award over \$4 million in severance pay to seven executives at a time when the Student Aid Commission and other public agencies are being forced to layoff employees and cut spending by ten percent? And why is the Board reportedly using public money to seek outside legal counsel, when they have already been advised by attorneys at CSAC, and when the law is clear on this point as noted both by the Office of the Attorney General and the Office of Legislative Counsel, to not discuss the severance proposal in closed session?

It is my understanding that the Student Aid Commission has the authority to remove any member of the EdFund Board at any time. I believe that at its next meeting, the Student Aid Commission should consider the question of whether the Board's recent reported actions in this regard are serving the students of California, and whether or not members should be removed from the Board for actions inconsistent with the mission of the Board and potential violation of the law.

I hope the Board will realize that a proposal to pay out millions of dollars to executives as bonuses or severance pay during a budget crisis is not only an unsupportable idea, but may well violate state law both in the manner in which it has been considered and in the amount of improper compensation being contemplated. If you have any questions about my position on this important public policy issue, or wish to correct any misunderstandings you believe I may have about this issue, please do not hesitate to contact me at (916) 319-2009.

Sincerely,



**DAVE JONES**  
Chair, Assembly Judiciary Committee

DJ: ab  
E2i

CC: Members of the EdFund Board of Directors  
Members of the California Student Aid Commission