

Action/Information Item

California Student Aid Commission Workshop

Discussion on the Composition of the EDFUND Board

To assist Commissioners with their discussion on the composition of the EDFUND Board, CSAC staff has enclosed the following references:

- A. A list of the current EDFUND Directors and vacancies.
- B. The current EDFUND Bylaws, amended by the Commission on February 20, 2004; Article IV of the Bylaws covers the Board of Directors. (pg. 1)
- C. The list of Desired Qualifications for Directors.
- D. The Commission's Appointment Policy for Advisory Bodies and the EDFUND Board of Directors.
- E. EDFUND Director Responsibilities.
- F. Policies and Procedures for Appointment of Commissioners to the EDFUND Board.
- G. Excerpts from the recent BSA Audit Report regarding the composition of the EDFUND Board.
- H. Brief history on the composition of the EDFUND Board.

At the May 10, 2006, meeting of the Personnel, Evaluation and Nominations (PEN) Committee, CSAC staff was asked to survey past Commission Chairs as well as others with historical knowledge of the Board to seek their input on the composition of the Board. These responses will be forwarded to Commissioners under separate cover when they are received.

EDFUND BOARD of DIRECTORS MEMBERS

Term Ending	Appointment Date(s)	Board Member & Office Held	Seat
08/09/07	06/08/01	Sally Furay, Secretary Attorney of Law and Consultant for Higher Education San Diego, CA	CSAC Commissioner Director
09/08/07	06/20/03	Ryan Alcantara CSU Fullerton	Student Director*
11/18/08	11/18/05	Wayne Sparks Director of Financial & Scholarship Services Washington State University	Director
11/18/08	11/18/05	Frederick Weis Executive Practitioner In Residence Claremont McKenna College	Director
02/23/06	02/23/09	Patricia Hurley Associate Dean & Financial Aid Director Glendale Community College	Director
09/12/06	09/12/03	Jennie Woo EDFUND Senior Economist	Employee Director*
N/A Director		Diana Fuentes-Michel	CSAC Executive Director
N/A		Sam Kipp	EDFUND President Ex-Officio Director
		Vacant	Director
		Vacant	Director
		Vacant	Director
		Vacant	Director

* Required by statute

BYLAWS

of

EDFUND

**Amended and Restated
as of February 20, 2004**

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BYLAWS
of
EDFUND

ARTICLE I
PRINCIPAL OFFICE

The principal office of this corporation shall be located in the County of Sacramento, California.

ARTICLE II
MEMBERSHIP

This corporation shall have no voting members.

ARTICLE III
DESIGNATOR

Section 1. Naming of Designator. The Designator referred to in these Bylaws shall be the California Student Aid Commission, a governmental unit of the State of California existing pursuant to Sections 69510 *et seq.* of the California Education Code (the "Commission").

Section 2. Actions of Designator. All actions of the Designator shall be evidenced by a writing, signed on behalf of the Designator by the Designator's Executive Director, Chair or any other officer authorized by the Designator, delivered to an officer of this corporation, and filed by the Secretary with the proceedings of the Board of Directors of this corporation.

ARTICLE IV
BOARD OF DIRECTORS

Section 1. Powers. This corporation shall have powers to the full extent allowed by law. All powers and activities of this corporation shall be exercised and managed by the Board of Directors of this corporation directly or, if delegated, under the ultimate direction of the Board.

Section 2. Number and Qualification of Directors. The number of directors shall be thirteen. At all times, at least one director shall be the Executive Director of the Commission, at least one director shall be an employee of this corporation (the "Employee Director"), at least one director shall be a student enrolled in a California public or private postsecondary educational

institution (the "Student Director"), and at least four directors shall be Commissioners of the Commission. The President of this corporation shall be a nonvoting ex-officio representative to the Board; the President shall not be deemed to be a director of this corporation for purposes of insurance coverage, the application of the California Corporations Code to directors and their fiduciary duties, or any other purpose.

Section 3. Limitations on Interested Persons. At all times, not more than 49% of the directors of this corporation may be interested persons. An interested person means either:

- (a) any person currently being compensated by this corporation for services rendered to it within the previous twelve months, whether as a full-time or part-time employee, independent contractor, or otherwise; or
- (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Section 4. Designation and Term of Office of Directors. The directors of this corporation, including the Executive Director of the Commission Director, the Employee Director and the Student Director, shall be designated by the Designator from time to time. The effective date of any such designation shall be as provided therein. Directors may be designated for any term prescribed in the written designation; if no such term is prescribed, the term for the Student Director shall be two years, and the terms for all other directors shall be three years. The term for the Executive Director of the Commission Director shall be during his or her tenure as Executive Director and shall end upon his or her retirement, resignation or removal from office. Notwithstanding the above, the term of any director who is a Commissioner of the Commission shall be the shorter of the term provided in this Section 4 and his or her term as a Commissioner. Directors may be designated to serve any number of consecutive terms. Each director, except the Executive Director of the Commission Director, shall hold office until a successor has been designated.

Section 5. Vacancies. A vacancy shall be deemed to exist on the Board in the event that the actual number of directors is less than the authorized number for any reason. Vacancies may be filled by the Designator, and only by the Designator, for the unexpired portion of the term.

Section 6. Resignation and Removal. Resignations shall be effective upon receipt in writing by the Chair, the Vice Chair, or the Secretary of this corporation, unless a later effective date is specified in the resignation. The Board of Directors or the Designator may remove any director at any time, with or

without cause, provided that any removal by the Board shall require the consent of the Designator.

Section 7. Frequency and Calling of Meetings. Meetings of the Board of Directors shall be held at least quarterly. The quarterly meetings and any additional meetings shall be called by the Chair, the Vice Chair, or any two directors and noticed in accordance with Section 8.

Section 8. Notice. Notice of the quarterly meetings and any additional meetings of the Board of Directors shall be given at least ten days before any such meeting to each director by written notice delivered personally, or sent by mail or facsimile, and shall state the date, place, and time of the meeting. If mailed, such notice shall be deemed to be delivered the next day during which regular mail deliveries are made after the day such notice is deposited with the United States Postal Service. If notice is given by facsimile, such notice shall be deemed delivered when the facsimile is transmitted. In addition, the public notice requirements of Section 11125 of the California Government Code must be met. Special meetings may only be held pursuant to California Government Code Section 11125.4. Emergency meetings may only be held pursuant to California Government Code Section 11125.5. Closed sessions may only be held pursuant to Government Code Section 11126.

Section 9. Waiver of Notice. Notice of a meeting shall be deemed given to any director who attends the meeting without protesting the lack of adequate notice before the meeting or at its commencement.

Section 10. Open Meetings. The Board of Directors shall conduct its business in public meetings in accordance with the Bagley-Keene Open Meeting Act under Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of the Government Code.

Section 11. Quorum. A majority of the total number of directors then in office shall constitute a quorum, provided that in no event shall the required quorum be less than one-fifth of the authorized number of directors or two directors, whichever is larger. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as otherwise provided in Article V, Section 1 (appointment of Board Committees); Article VII, Section 3 (transactions with interested directors); Article VIII, Section 2 (approval of indemnification); and Article IX, Section 4 (bylaw amendments), of these Bylaws or in the California Nonprofit Public Benefit Corporation Law. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 12. Standard of Care.

A. General. A director shall perform the duties of a director, including duties as a member of any Board Committee on which the director may serve, in good faith, in a manner such director believes to be in the best interest of this corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (i) one or more officers or employees of the corporation whom the director believes to be reliable and competent as to the matters presented;
- (ii) counsel, independent accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (iii) a Board Committee upon which the director does not serve, as to matters within its designated authority, provided that the director believes such Committee merits confidence;

so long as in any such case, the director acts in good faith after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except as provided in Article VII below, a person who performs the duties of a director in accordance with this Section shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

B. Investments. Except with respect to assets held for use or used directly in carrying out this corporation's charitable activities, in investing, reinvesting, purchasing or acquiring, exchanging, selling, and managing this corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income as well as the probable safety of this corporation's capital. No investment violates this section where it conforms to provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to this corporation.

Section 13. Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation.

Section 14. Compensation. The directors of this corporation, except for any ex officio directors and the Executive Director of the Commission Director, shall receive a stipend of one hundred dollars (\$100) for each day in which he or she attends any meeting of the Board or any meeting of any Committee or Subcommittee of the Board, of which Committee or Subcommittee he or she is a member, and which Committee or Subcommittee meeting is conducted for the purpose of carrying out the powers and duties of the Board. The Employee Director shall not receive a stipend pursuant to this section unless the meeting is on a day other than a regularly scheduled workday for which the Employee Director is normally compensated. Any director may, in lieu of receiving a stipend, decline such payment or direct in advance that the stipend be donated to a charitable organization. In addition, the Board of Directors may authorize the advance or reimbursement to a director of actual and reasonable expenses incurred by the director while acting as a director, such as expenses incurred in attending a meeting of the Board. No person attending a meeting and receiving a stipend or expenses pursuant to this section shall be entitled to receive a stipend or expenses pursuant to Education Code section 69511(f) for the same meeting.

ARTICLE V COMMITTEES

Section 1. Board Committees. The Board of Directors may, by resolution adopted by a majority of the directors then in office, create any number of Board Committees, each consisting of two or more directors, and only of directors, to serve at the pleasure of the Board. Appointments to any Board Committee shall be made by the Chair, subject to ratification by majority vote of the directors then in office at a subsequent meeting. Board Committees may be given all the authority of the Board, except for the powers to:

- (a) set the number of directors within a range specified in these Bylaws;
- (b) fill vacancies on any Board Committee;
- (c) remove any director without cause;
- (d) fix compensation of directors for serving on the Board or any Board Committee;
- (e) amend or repeal these Bylaws or adopt new Bylaws;

- (f) adopt amendments to the Articles of Incorporation of this corporation;
- (g) amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (h) create any other Board Committees or appoint the members of any Board Committees; or
- (i) approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of this corporation.

Section 2. Advisory Committees. The Board of Directors may establish one or more Advisory Committees to the Board. The members of any Advisory Committee may consist of directors or non-directors and may be appointed as the Board determines. Advisory Committees may not exercise the authority of the Board to make decisions on behalf of this corporation, but shall be restricted to making recommendations to the Board or Board Committees, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee.

Section 3. Meetings.

A. Of Board Committees. Meetings and actions of Board Committees shall be governed by and held and taken in accordance with the provisions of Article IV of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

B. Of Advisory Committees. Advisory Committees shall determine their own meeting rules and whether minutes shall be kept; provided that meetings of Advisory Committees with three or more members shall be held and recorded in accordance with the provisions of the Bagley-Keene Open Meeting Act applicable to Advisory Committee meetings.

The Board of Directors may adopt rules for the governance of any Board or Advisory Committee not inconsistent with the provisions of these Bylaws.

ARTICLE VI
OFFICERS

Section 1. Officers. The officers of this corporation shall be a Chair, a Vice Chair, a Secretary, and a Treasurer. This corporation may also have, at the discretion of the directors, such other officers as may be appointed by the Board of Directors. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the Chair or Vice Chair of the Board. The Chair and the Vice Chair shall be elected from among the directors of this corporation.

Section 2. Election. The officers of this corporation shall be elected annually by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Removal. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors or by an officer on whom such power of removal may be conferred by the Board of Directors.

Section 4. Resignation. Any officer may resign at any time by giving written notice to this corporation. Any resignation shall take effect on receipt of that notice by the Secretary or at any later time specified by that notice and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. Vacancies. A vacancy in any office for any reason shall be filled in the same manner as these Bylaws provide for election to that office.

Section 6. Chair. The Chair shall preside at all meetings of the Board of Directors, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 7. Vice Chair. The Vice Chair shall, in the absence of the Chair, carry out the duties of the Chair and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 8. Secretary. The Secretary shall supervise the keeping of a full and complete record of the proceedings of the directors, shall supervise the giving of such notices as may be proper or necessary, shall supervise the keeping of the minute books of this corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 9. Treasurer. The Treasurer shall supervise the charge and custody of all funds of this corporation, the deposit of such funds in the manner prescribed by the Board of Directors, and the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, shall render reports and accountings as required, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE VII PROHIBITED TRANSACTIONS

Section 1. Loans. Except as permitted by Section 5236 of the California Nonprofit Public Benefit Corporation Law, this corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer; provided, however, that this corporation may advance money to a director or officer of this corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such officer or director so long as such individual would be entitled to be reimbursed for such expenses absent that advance. As long as this corporation is an auxiliary of the Commission, it shall be subject to the additional restrictions on transactions between directors and the corporation set forth in California Education Code Section 69525(c)-(e).

Section 2. Outright Prohibited Transactions. As long as this corporation is an auxiliary of the Commission, pursuant to Section 69525(e) of the California Education Code this corporation shall not enter into a contract or other transaction if any of the following circumstances exist:

A. The contract or transaction is between this corporation and a director, provided that the corporation may compensate the Employee Director for his or services as an employee;

B. The contract or transaction is between this corporation and a partnership or unincorporated association of which a director is a partner or in which a director is the owner, directly or indirectly, of a proprietary interest;

C. The contract or transaction is between this corporation and a corporation in which any director is the owner or holder, directly or indirectly, of five percent or more of the outstanding common stock; or

D. A director is financially interested in a contract or transaction and, without first disclosing that interest to the Board of Directors at a public

meeting of the Board, influences or attempts to influence another director or other directors to cause this corporation to enter into the contract or transaction.

Section 3. Transactions Requiring Approval. The Board of Directors shall not approve or permit this corporation to enter into any contract or engage in any other transaction in which a director is financially interested, unless the contract or transaction is (i) not described in Section 2 of this Article; and (ii) all of the following circumstances exist:

A. The material facts concerning the transaction and the director's financial interest are disclosed or known to the Board of Directors and noted in the minutes;

B. After reasonable investigation, the Board of Directors determines in good faith that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances;

C. The Board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by the vote of the majority of directors then in office without counting the vote or votes of the financially interested director or directors; and

D. The contract or transaction is, in fact, just and reasonable as to this corporation at the time it is authorized or approved.

ARTICLE VIII INDEMNIFICATION AND INSURANCE

Section 1. Right of Indemnity. To the fullest extent allowed by Section 5238 of the California Nonprofit Public Benefit Corporation Law, this corporation may indemnify and advance expenses to its agents, in connection with any proceeding, and in accordance with Section 5238. For purposes of this Article, "agent" shall have the same meaning as in Section 5238(a), including directors, officers, employees, other agents, and persons formerly occupying such positions; "proceeding" shall have the same meaning as in Section 5238(a), including any threatened action or investigation under Section 5233 or brought by the Attorney General; and "expenses" shall have the same meaning as in Section 5238(a), including reasonable attorneys' fees.

Section 2. Approval of Indemnity. On written request to the Board of Directors in each specific case by any agent seeking indemnification, to the extent that the agent has been successful on the merits, the Board shall promptly authorize indemnification in accordance with Section 5238(d). Otherwise, the Board shall promptly determine, by a majority vote of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the

agent has met the applicable standard of conduct stated in Section 5238(b) or Section 5238(c), and, if so, may authorize indemnification to the extent permitted thereby.

Section 3. Advancing Expenses. The Board of Directors may authorize the advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition, if the Board finds that:

- (a) the requested advances are reasonable in amount under the circumstances; and
- (b) before any advance is made, the agent will submit a written undertaking satisfactory to the Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this Article.

The Board shall determine whether the undertaking must be secured, and whether interest shall accrue on the obligation created thereby.

Section 4. Insurance. The Board of Directors may adopt a resolution authorizing the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond this corporation's power to indemnify the agent under law.

ARTICLE IX MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of this corporation shall end each year on the last day of September.

Section 2. Contracts, Notes, and Checks. All contracts entered into on behalf of this corporation must be authorized by the Board of Directors or by individuals authorized and empowered to do so generally or specifically by the Board. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of this corporation shall be signed by individuals authorized to do so generally or specifically by the Board.

Section 3. Annual Reports to Directors. Within 120 days after the end of this corporation's fiscal year, the Chair shall furnish a written report to all directors of this corporation containing the following information:

- (a) the assets and liabilities, including the trust funds of this corporation, as of the end of the fiscal year;

- (b) the principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) the revenue or receipts of this corporation, both unrestricted and restricted for particular purposes, for the fiscal year;
- (d) the expenses or disbursements of this corporation, for both general and restricted purposes, for the fiscal year;
- (e) any transaction during the previous fiscal year involving Fifty Thousand Dollars (\$50,000.00) or more between this corporation and any of its directors or officers, and the amount and circumstances of any indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000.00) paid during the fiscal year to any director or officer of this corporation. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to this corporation, the nature of such person's interest in the transaction and, where practicable, the value of such interest.

The foregoing report shall be accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of this corporation that such statements were prepared without an audit from the books and records of this corporation. Nothing in this section shall be deemed to permit this corporation to enter into a transaction with a director otherwise prohibited pursuant to any provision of the California Education or Corporations Codes.

Section 4. Amendments. A majority vote of the directors then in office shall be required to adopt a bylaw amendment. No amendment to these Bylaws shall be valid or become effective without the consent of the Designator, which consent may be given either prior to or subsequent to the adoption by the directors, provided that such consent must be given within sixty (60) days of the date of the adoption by the directors.

Section 5. Governing Law. In all matters not specified in these Bylaws, or in the event these Bylaws shall not comply with applicable law, the California Nonprofit Public Benefit Corporation Law as then in effect shall apply, except that if there is a conflict between the California Nonprofit Public Benefit Corporation Law and Article 2.5, Chapter 2, commencing with Section 69522, of Part 42, of the California Education Code, Article 2.5 shall prevail.

CERTIFICATE OF SECRETARY

I, Sally Furay, certify that I am presently the duly elected and acting Secretary of EDFUND, a California nonprofit public benefit corporation, and the above Bylaws, consisting of eleven (11) pages, are the amended and restated Bylaws of this corporation as adopted by the Board of Directors on February 20, 2004.

Dated: 2/20/04

Sally M. Furay
Sally Furay

CALIFORNIA STUDENT AID COMMISSION
EDFUND Board of Directors
Desired Qualifications for Directors
 Revised September 8, 2005

The California Student Aid Commission has an expectation that the members of the Board of Directors of EDFUND will, collectively, possess skills and qualifications in the following areas:

Policy and Government:

- An understanding of relations with federal and state governments and financial aid policy;
- Ability to carry out the policies of the Commission with respect to the administration of Federal Family Education Loans (FFEL) and other EDFUND programs;
- A clear understanding of California's system of postsecondary education or a comparable system of education in another state;
- Familiarity or experience with services provided by EDFUND, including its non-California activities;
- Knowledge of student loan programs and related operations.

Finance and Management:

- Experience with non-profit and tax exempt organizations;
- Knowledge of corporate planning, strategy and business development;
- Experience in developing public-private partnerships;
- Experience with accounting and auditing standards and with financial management for large and complex organizations;
- Understanding of insurance underwriting and financial risk management;

Communication, Marketing, and Technology:

- Ability to focus on the customer and the market-driven nature of student loan activity;
- Ability to communicate well and work effectively with other members of the board in governing the affairs of the corporation;
- Knowledge of technology strategy and the application of technology in public and private sector organizations;
- Sales, marketing and customer relations skills.

Additional Qualifications:

- Student Director - Must presently have a student loan, or had a student loan in the past.
- ***Out-of-State Director – Given the high level of EDFUND business outside the State of California, there is a strong presumption that the EDFUND Board should include the participation of an out-of-state director.***

CALIFORNIA STUDENT AID COMMISSION

APPOINTMENT POLICY

ADVISORY BODIES AND THE EDFUND BOARD OF DIRECTORS

June 20, 2003

The California Student Aid Commission is charged with providing equal opportunity and access to postsecondary education, for California and for Commission clients in other states, to persons of both sexes and all races, ancestries, incomes, ages and geographies. It is also charged with reducing barriers to a college education for students from schools that have low eligibility and college participation rates. The Commission will seek to appoint to its advisory committees and to the EdFund Board, persons who have knowledge and/or experience which would be useful in achieving these goals. Such persons can best advise the Commission on whether its programs are adequately serving relevant groups, and whether its outreach efforts are as effective as possible in contacting underserved populations as mandated by law.

EDFUND DIRECTOR RESPONSIBILITIES

EDFUND is a creature of statute (Education Code sections 69522 et seq.). The Student Aid Commission was authorized to establish an “auxiliary organization” pursuant to the Nonprofit Public Benefit Corporation Law. While the statute authorizing the creation of EDFUND by the Commission provides that EDFUND shall be governed by a board of directors nominated and appointed by the Commission, most director responsibilities are contained in the Corporations Code.

The Commission has determined that the EDFUND Board of Directors shall be comprised of thirteen members. Four of these positions are to be held by individuals simultaneously serving as members of the Commission. EDFUND Directors are elected by the Commission to terms of three years. The term of a Director who is also serving as a Commissioner expires automatically upon expiration of his or her term as a Commissioner.

A Director of EDFUND, whether or not acting simultaneously as a Commissioner, assumes specific statutory liabilities. Among these are the following:

1. The Director may not participate in a transaction in which he or she has a personal interest, either directly or indirectly through an entity.
2. No financial benefit may inure to the Director as a result of the activities of EDFUND.
3. The Director must carry out his or her duties as Director in a reasonably prudent manner, devoting such time and attention as may be necessary to become and remain fully informed regarding the financial condition and activities of EDFUND.

Although liability insurance may protect individual EDFUND Directors against claims based on mere negligence in fulfilling his or her obligations as a Director, as a matter of public policy, liability insurance cannot protect against the following:

1. Acts or omissions outside the scope of the Director’s duties.
2. Acts or omissions performed in bad faith; and
3. Acts or omissions which are reckless, wanton, intentional, or grossly negligent.

A Commissioner serving as an EDFUND Director must be prepared to devote substantial time and attention to the business and activities of EDFUND. The Education Code provides that the EDFUND Board must meet at least once each quarter. However, the scale and scope of EDFUND’S business normally require additional meetings of the Board and its various committees. While the Commission is charged by law with setting EDFUND’S Policy and direction, the responsibility of carrying out the Commission’s mandate ultimately is borne by the Board of Directors of EDFUND.

POLICIES AND PROCEDURES FOR APPOINTMENT OF COMMISSIONERS TO THE EDFUND BOARD

General Statement

Commissioners who serve on the EDFUND Board should be able to recognize the “big picture” and the auxiliary relationship of EDFUND to CSAC. The Commissioner must be able to represent the Commission’s interests on the EDFUND Board, understand the responsibilities of the position, and the extent of the time commitment needed to fulfill the duties for both EDFUND and CSAC boards.

The list of Desired Qualifications for Directors (attached) will be used to fill Commissioner vacancies. However, when a Commissioner vacancy occurs, there may be more emphasis on some qualifications on the list over others, depending on what the specific needs are on the EDFUND Board. The Personnel, Evaluation and Nominations (PEN) Committee may weigh specific qualifications differently when filling vacancies, depending on the needs at the time.

Procedures

- The PEN Committee will determine from the list of Desired Qualifications for Directors, what qualities and characteristics are most important for that particular vacancy.
- A letter will be sent to all Commissioners informing them of the vacancy, stating who had previously served in the seat, listing the particular qualifications and characteristics needed, outlining the responsibilities of the position and the time commitment required and providing a due date for the nomination.
- Each interested Commissioner will provide a statement of interest and commitment by the due date.
- The PEN Committee will meet to review the candidates. Any PEN members who are candidates will recuse themselves from the discussion and meeting.
- The PEN Committee will develop its recommendation and submit it to the full Commission for approval.

California State Auditor

BUREAU OF STATE AUDITS

California Student Aid Commission:

Changes in the Federal Family Education Loan Program, Questionable Decisions, and Inadequate Oversight Raise Doubts About the Financial Stability of the Student Loan Program



April 2006
2005-120

assistant general counsel manage the relationship with the temporary external general counsel. Authorizing, executing, or consummating transactions, such as approving invoices, hinders the chief internal auditor's ability to objectively and independently evaluate the internal controls related to those transactions. As such, simultaneous occupation of both positions is potentially an organizational and personal impairment of independence. After we brought this issue to EDFUND's attention, it assigned the legal duties to staff other than the chief internal auditor.

The Composition of the EDFUND Board Could Impair Student Aid's Decision Making

State law requires Student Aid to oversee the development and operations of EDFUND and to nominate and appoint EDFUND's board. Further, state law requires Student Aid to maintain its responsibility for financial aid program administration and policy leadership program evaluation. Therefore, whether in fact or in appearance, a commissioner may have a perceived conflict with overseeing the operations of an organization for which he or she is also a board member. Additionally, the Student Aid executive director, as a voting member, may have a similar perceived conflict.

State law also requires one member of the board to be an employee of EDFUND and one member to be a student enrolled in a California public or private postsecondary educational institution. Student Aid determines the remaining composition of the board. Since the creation of EDFUND, Student Aid commissioners have been serving as EDFUND board members. In its May 23, 2005 meeting, Student Aid removed six EDFUND board members due to concerns about the governance of the FFEL Program. According to the chair of Student Aid, the decision allowed the commissioners to make a more responsible decision regarding the program's future governance.

Among other things, EDFUND board members must approve all of EDFUND's expenses and fund authorizations. The operating agreement between Student Aid and EDFUND requires Student Aid to review and approve EDFUND's business plan and annual operating budget. Moreover, any material expenditure or material change in operations or corporate policies outside of the plan and budget must have Student Aid's prior approval. Thus, we question whether a commissioner who is also an EDFUND board member can objectively perform his or her duty

of reviewing EDFUND's business plan and operating budget when he or she has played a role in authorizing and approving the expenses.

Allowing commissioners to serve as board members also can create a barrier to Student Aid's oversight responsibilities. For instance, in November 2004, a commissioner who was also the vice chair of the EDFUND board sent an e-mail to Student Aid's executive director and another commissioner complaining about the scope of a performance review of EDFUND that Student Aid had hired consultants to perform. The vice chair questioned why an "annual" performance review included a scope that was going back five years. As a commissioner appointed by the governor to act in the best interests of Student Aid, the commissioner should embrace the intentions of Student Aid staff to conduct a comprehensive review of EDFUND operations. Moreover, state law does not limit reviews conducted by Student Aid to a one-year period. Rather, it requires Student Aid to conduct regular performance evaluations of EDFUND's operations in furtherance of its fiscal and fiduciary responsibilities for approved programs. Additionally, the vice chair stated that she, along with other board members, were well aware that the executive director and Student Aid oversight personnel do not trust the EDFUND board or its staff. The commissioner's perspectives illustrate the problems with appointing commissioners to serve as board members and ultimately could hamper Student Aid's ability to oversee the operations of EDFUND effectively.

Similarly, allowing the executive director to be a voting board member can create a barrier to Student Aid's oversight responsibility. According to the operating agreement between Student Aid and EDFUND, Student Aid's executive director is responsible for reviewing EDFUND's business plan and annual operating budget and approving EDFUND employee bonus plans and travel policy. Thus, we also question whether the executive director, in her role as a voting board member, can perform her duties objectively. The chair of Student Aid agrees that it would be best if commissioners do not serve as board members and that the executive director serve only as a nonvoting board member.

RECOMMENDATIONS

- Ensure that it complies with IIA and government auditing standards that require an external assessment of its internal audits unit.
- Consider removing Student Aid commissioners from the EDFUND board.
- Consider changing the Student Aid executive director's role on the EDFUND board from a voting member to a nonvoting member.
- Ensure that EDFUND complies with the Bagley-Keene Act record-keeping requirements by maintaining a confidential minutes book of the business discussed during its closed sessions. In addition, Student Aid and EDFUND should establish policies and procedures to help ensure that closed sessions are conducted within the board's authority as required by state law. These policies and procedures should provide the board and staff with clear guidelines in defining trade secrets and business proprietary information that can be discussed during closed sessions so that no further violations of state law occur.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: April 20, 2006

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EDFUND BOARD HISTORY

October 25-26, 1996 Special Commission meeting held to discuss planning and governance structure for the new auxiliary, including the composition of the Board and the terms of EDFUND Board Members.

The EDFUND Board will consist of nine members:

- Three directors shall be selected from the members of the Commission. One of the three shall be a student representative of the Commission who shall serve as the student member of the board.
- One director shall be the executive director of the Commission (voting member).
- One director shall be a full-time employee of the auxiliary organization.
- Four directors shall not be members of the Commission, or employees of the Commission or auxiliary. (These are the external/public members.)

November 1996 Commission meeting held to approve the Operating Agreement, Bylaws, governance structure, organizational structure, and those Commissioners who will serve as initial members of the Board. Commission Chair Maridel Moulton wrote a letter stating that she will step down as Chair of the Commission mid-year so that she can be considered one of the original appointments to the Board.

January 1, 1997 **First EDFUND Board meeting is held.** Initial Board members are three Commissioners and the Executive Director of the Commission. Maridel Moulton is elected Chair of the Board; Leslie Fleischman is elected Vice Chair, Jon Shaver (Executive Director of CSAC) is elected Secretary/Treasurer; Darren Guerra (student Commissioner) is the Student director on the Board.

March 13-14, 1997 Commission meeting - approved the appointment of three external/public members to the Board (Cannon, Ryan, Van Dine).

May 8-9, 1997 Commission meeting – approved the appointment of the fourth external member of the Board, Jorge Castro (who was later elected Chair of the EDFUND Board in 1998 following Maridel Moulton).

Nov 13-14, 1997 Commission meeting – approved the appointment of the first employee member of the Board, Leslie Naake. All nine of the Board positions are now filled.

January 22-23, 1998 Commission meeting - Commissioner Moulton resigns from the Commission to accept a position on the Board of Trustees for

CSU. Commissioner Gary Thomson is appointed to fill her vacancy on the EDFUND Board.

March 12-13, 1998 **The Commission approves an amendment to the EDFUND Bylaws. The student director on the EDFUND Board no longer is required to be a student representative on the Commission.**

The positions of Executive Director of CSAC and President of EDFUND are separated due to a BSA investigative audit report. Jon Shaver resigns as Executive Director of CSAC and retains title and position of President/CEO of EDFUND.

July 23-24, 1998 Commission meeting - Student Commissioner Guerra's term as a Commissioner ends. He is approved for appointment to the EDFUND Board under the new bylaw change as a student, but is no longer a Commissioner. Only one Commissioner, Gary Thomson, remains on the Board. Commissioner Leslie Fleishman resigned earlier from the Commission and the Board. Commissioners do not replace her. Commissioners discuss that because of the BSA investigative audit, Commissioners should not serve on the Board to avoid dual responsibilities and appearance of conflict with their oversight responsibilities.

August 24, 1998 Wally Boeck is hired as the new Executive Director of CSAC.

March 1, 1999 Commission Meeting – An Ad Hoc Committee on EDFUND reports out. The Ad Hoc Committee issues a report dated February 4, 1999, and recommends:

- Closer CSAC-EDFUND integration. To ensure integration of CSAC policy perspectives in the EDFUND Board and administrative operations, it is recommended that the EDFUND Board be reconstituted to return, with slight modifications, to the composition that was originally envisioned by the Commission and under which the EDFUND Board operated from January 1997 through mid 1998.
- Three directors shall be selected from the members of the Commission, and shall be authorized to continue serving as Directors during their terms of appointment with the Commission. These Directors shall serve three-year terms.
- One Director shall be a student representative selected from California's postsecondary education community at large, who shall serve a two-year term.
- The Executive Director of the Commission and the President of EDFUND shall serve as ex-officio non-voting

members of the EDFUND Board and fully able to participate in all board deliberations. (The Executive Director shall remain a full-time employee of the Commission and the State and shall not receive any compensation from the auxiliary, eliminating the issues of dual employment or compensation.)

- One Director shall be a full-time employee of the auxiliary organization, who shall serve a three-year term.
- Four Directors shall not be members of the Commission, or employees of the Commission or the auxiliary organization and shall be chosen in recognition of the expertise they can provide to the auxiliary's operations. These directors shall serve three-year terms.

(The Board size remained at nine voting members.)

March 14, 1999	<p>Commission meeting - Commission takes action to reconstitute the Board of Directors using the Ad Hoc Committee's recommendations. This is followed by the resignation of Jon Shaver as President of EDFUND, and the resignation of all other members of the Board except for the employee member.</p> <p>Three Commissioners are appointed to the Board effective March 26, 1999 to obtain control and take charge of EDFUND.</p> <p>Becky Stilling was later appointed the interim President of EDFUND. Both the Executive Director and President will serve ex-officio on the Board, but as non-voting members. The Executive Director of the Commission is officially designated as CEO of the guaranty agency, and the President no longer carries the CEO title.</p>
September 3, 1999	Jonathan Brown, President of AICCU, and Fred Prager of Prager, Sealy & Co, are appointed to the Board.
January 20, 2000	John Anderson, a financial aid professional from Cal Poly SLO, and Thayne McCulloh, Dean of Student Financial Services at Gonzaga, are appointed to fill the remaining seats on the Board. McCulloh becomes the first out-of-state member of the Board.
November 17, 2000	Christine Svendsen is appointed as the Student Director on the Board.
November 22, 2002	Commission meeting – The Commission discusses a recommendation from the EDFUND Board to expand its number of members from nine to eleven in order to more effectively accomplish its work. The Board asks that these two additional seats be added as open seats. There is discussion on the need to have diverse representation on the Board. Legal counsels are

asked to draft proposed bylaw language for the Commission to consider.

April 4, 2003

Commission meeting – **The Commission adopts language to amend the EDFUND Bylaws for the purpose of increasing the number of directors on the EDFUND Board from nine to eleven members.** These will be “open” seats that can be filled by the Commission with additional Commissioners or with external members as they choose. There is further discussion on the need for diversity. To address the issue of diverse representation, the PEN Committee reports that it will develop an appointment policy for EDFUND and for the Advisory Bodies.

May 2003

Diana Fuentes-Michel is hired as Executive Director of the Commission to replace Wally Boeck.

Nov 20-21, 2003

Commission meeting – **Commissioners approve additional changes to the Bylaws of EDFUND and increase the number of directors from eleven to thirteen.** The following changes were made to the composition of the Board:

- The Executive Director is made a voting member of the Board;
- The minimum number of Commissioners on the Board increased from three to four, with a policy of considering the Chair of the Commission’s Fiscal Committee for appointment as one of the directorships;
- One (1) Student Director;
- One (1) Employee Director;
- Six (6) Undesignated Directors (Can be additional Commissioners or public members)

The Commission also took action adopting the following policy:

“The ultimate authority for the operations of EDFUND rests with California Student Aid Commission through its Executive Director, and all actions of EDFUND shall be carried out with this line of authority in mind.”

April 14-15, 2005

Commission Meeting – Action is taken to remove non-Commissioners from the Board. Actual motion language was as follows:

“Reconstitute the EDFUND Board and re-contextualize the role and responsibilities guiding the work of the EDFUND Board by removing the non-Commissioners effective May 31st, except for the Student member, Employee member and Executive Director member. The Commission Chair will establish a workgroup to develop the oversight, fiduciary, and all other roles and responsibilities guiding the work of the Commission and EDFUND Board. The work

group will recommend to the Commission which EDFUND Board members will be reappointed and which new members will be approved. The work group will also review the EDFUND Bylaws and make recommendations for change.”

November 18, 2005 Commission meeting - Commissioners take action to re-appoint both Wayne Sparks (the out-of-state director) and Frederick Weis to the Board of Directors of EDFUND.