

Action/Information Item***California Student Aid Commission*****Update on Lender of Last Resort Program**

Federal law guarantees the availability of a Federal Family Education Loan to eligible students through a lender-of-last-resort (LLR) program. A student, who is otherwise eligible for a Stafford Loan and, after receiving two rejections, has been unable to find a FFEL lender willing to make such a loan is eligible for the LLR program.

The guaranty agency must ensure that it, or an eligible lender act as an LLR in the state in which the guaranty agency is the designated guaranty agency. Eligible LLR providers include state guaranty agencies; a lender that is an agency of the state, or a nonprofit agency designated by the state; or any eligible FFEL Program lender that works with guaranty agencies or state lending agencies. As California's designated guaranty agency, the California Student Aid Commission must designate an eligible lender to serve as a LLR or must itself serve in that capacity.

During times where broad-scale loan-access problems prohibit the implementation of LLR programs, the Secretary of Education has the authority to advance federal funds to guaranty agencies to make LLR loans. If access to FFEL loans becomes a problem, the goal is to have guarantors provide lender of last resort services under their existing LLR programs using non-federal funding sources. The first choice for an LLR process is to secure lenders who are willing to serve as lenders of last resort. Because guarantors have very limited capacity to use their own funds in making LLR loans, they will need to rely on federal advance funds if lenders are unwilling to participate as lenders of last resort. If a guarantor advises the Secretary that it has been unable to find a lender or lenders to act in the lender of last resort capacity, the Secretary will make federal advances available to the guarantor consistent with its authority under Sec. 428(j)(3) of the Higher Education Act, in order to make such loans. Before federal advances are made, the guaranty agency would need to provide a detailed description of the guaranty agency's administrative capability and a detailed rationale of why the guaranty agency does not have sufficient funds to issue LLR loans itself.

Currently, State legislation contains language that would potentially prohibit CSAC/EdFund from participating in the federal advance program. However, the Governor's May Revision contains proposed trailer bill legislation to remove the potential statutory conflict that may impact the Commission's ability to act as a LLR should it be necessary for the Secretary of Education to advance federal funds to guaranty agencies to make LLR loans.

As instructed by US Department of Education (USDE), in May 2008, the Commission submitted two letters to USDE for their review. The first letter contained the Commission's updated LLR rules and operating procedures. The second letter contained the Commission/EDFUND's commitment to the maximum number of loans that it would be

willing to originate under the terms of the federal Advance funds. USDE intends to closely monitor guaranty agency implementation of the LLR policies and procedures.

At the June 2008 Commission meeting, President Kipp indicated that he believes EdFund had one and probably as many as three LLR lenders in place. He further stated that the agreements will be in place before the budget is signed, therefore, legislation would not need to be changed before there is an LLR program in place.

On July 23, 2008, EdFund notified CSAC staff that EdFund was unable to obtain LLR lenders and would be utilizing the federal advance program. Additionally, EdFund staff indicated that they had a fully executed a contract with National Education Servicing (NES) for LLR loan origination and servicing.

Upon further research by CSAC staff it was discovered that without notification to the EdFund Board, Commission or CSAC staff, EdFund staff sent a Request for Proposal to two vendors on May 29, 2008. Subsequently, President Kipp signed a contract not to exceed \$5 million on July 1, 2008 without consultation or notification to the EdFund Board, Commission or CSAC staff.

Currently Sallie Mae and Nelnet organizations have announced that they will provide loans to all students; therefore, in theory there would not be a need to utilize the LLR program. Currently CSAC and EdFund staffs are working with USDE to clarify questions regarding the LLR rules and operating packets submitted to USDE.

Responsible Persons:

Ed Emerson, Chief
Federal Policy & Programs

Janet McDuffie, Chief
Administration and External Affairs