
5.5

Action/Information Item

California Student Aid Commission

Commission Oversight of EDFUND

The Commission will discuss and may take action to directly exercise its authority and responsibility for oversight of its auxiliary, EDFUND, including possible formation of an oversight Standing Committee, and the duties and responsibilities of the committee.

Enclosed is a Roles and Responsibilities proposal developed and approved by the EDFUND Board of Directors. The EDFUND proposal seeks to clarify the responsibilities of both the Commission and EDFUND and their respective staffs. This document was prepared in response to a request from the Commission. CSAC staff is preparing an analysis of the EDFUND proposal for Commission discussion that will be sent under separate cover.

Responsible Staff: David Roth, Chair
California Student Aid Commission

Sally Furay, Chair
EDFUND Board of Directors

PROPOSED MOTION 1

The California Student Aid Commission is responsible for, and has authority over, the policy leadership, administration, program evaluation, and information development and coordination of the State's participation as the state student loan guaranty agency in the Federal Family Education Loan Program (Loan Program). As authorized by California law, the Commission uses an auxiliary organization, EDFUND, as operational and administrative support for the Loan Program.

To address the significant oversight issues involved in the Loan Program, and to facilitate the Commission's ultimate responsibility for the Loan Program, the Commission will directly exercise its authority and responsibility for oversight of its auxiliary organization, EDFUND, through the following actions.

1. The Commission establishes a three-Commissioner standing committee entitled the Loan Program Oversight Committee.
2. The Chair of the Commission shall appoint the members of the Committee. The members shall be Commissioners who are not directors of EDFUND.
3. The Committee shall be responsible for oversight of the Loan Program.

PROPOSED MOTION 2

The Commission directs the Loan Program Oversight Committee to review the organizational relationship, including operations and governance, between the Commission and EDFUND, and recommend any changes to ensure and improve compliance with the Commission's Loan Program responsibilities under the Education Code.

The Committee shall retain an outside consultant or consultants with experience and expertise in California State government programs and financial matters, and business and financial industry matters, including, if possible, student loan industry and student loan guaranty industry expertise, to assist the Committee.

When requested by the Committee, the Executive Director of the Commission and the EDFUND President shall authorize members of their respective staffs to work directly for the Committee on specific assignments.

Sixth Draft

August 22, 2005

Roles and Responsibilities
EdFund Board of Directors and EdFund Oversight

Introduction

On May 23, 2005, the California Student Aid Commission requested that the EdFund Board of Directors provide recommendations to the Commission on the Roles and Responsibilities of EdFund Board of Directors. Earlier drafts have been discussed in public meetings by Commissioners, the EdFund Board, Commission and EdFund staff, and interested members of the public. The EdFund Board proposes this sixth draft, with two appendices, for action at the Commission's meeting on September 8. Only these two pages, not the appendices, are being proposed for action in response to the Commission's May 23 directive to the EdFund Board.

Roles and Responsibilities of EdFund Board for Operation of EdFund

1. The EdFund Board is the Board of Directors of a California nonprofit corporation which is the auxiliary of a state agency. Therefore, as specified in Education Code Section 69522(b), EdFund has all the powers and duties of a state nonprofit corporation, except that, if the Nonprofit Public Benefit Corporation Law conflicts with the Education Code, the Education Code prevails.
2. The California Student Aid Commission (CSAC) declares that the powers and duties of the EdFund Board include but are not limited to the following operational and support aspects of the role of the EdFund corporation/auxiliary:
 - As the Commission's specified loan entity, and under Commission supervision, EdFund has the primary role in developing all aspects of the Commission's loan programs, for example, default management, loan operations, marketing strategies, client services, loan default programs, human resources for EdFund "at will" employees, EdFund public affairs, and the like.
 - EdFund initiates development of the annual business plan, proposes priorities, identifies clearly the basis for projected annual percentage increases, choices and locations for expansion, portfolio risks, marketing plans, and other high-level issues within the loan program. These planning and budget materials are forwarded for Commission substantive review and approval. Simultaneously, EdFund initiates development of the annual budget which implements the business plan, proposing it for Commission approval, in accord with an annual timing plan approved by the Commission.
 - EdFund initiates policy development for all major aspects of EdFund operations. Major policies and substantive changes to those policies which affect the mission and future of the Commission's loan program require approval by the Commission itself.
 - Technological information development and coordination are handled jointly by those in charge of technology at CSAC and EdFund.
 - Because of its professional expertise and day-to-day operations in these areas, EdFund's role encompasses representing the Commission's loan program with industry and trade associations and similar groups, including communications with the federal Department of Education concerning federal reporting, operational communication, VFA development for the Commission, and program compliance.
 - In order to improve service to students and other clients, EdFund facilitates, through the joint Internal Audit division, internal audits of EdFund management and programs, reporting findings to the Joint Audit Committee of the Commission and EdFund.
 - In legislative situations where the expertise of the President and/or senior management of EdFund could be helpful to the Commission in the legislative arena, the Commission expects these individuals to be called upon in the areas of their expertise.
 - EdFund is accountable to the Commission for all aspects of its operations and support programs, as defined in the Operating Agreement.
 - Other roles and responsibilities as designated by the Commission or by statute.

Major Commission Oversight Roles and Responsibilities

1. The Commission exercises its ultimate responsibility over the loan program by direct annual approval of the business plan, annual budget, and performance goals of EdFund, and by appropriate monitoring and verification of EdFund operations and support services throughout the year, as defined in the Operating Agreement.

2. Commission staff members assist the Commission in its responsibility for financial aid program administration, policy leadership, program development, and information coordination and development. However, Commission staff do not initiate nor participate in operations designated for EdFund, including development of the business plan, the annual budget, the performance goals, and major policies, nor do they involve themselves in the implementation of responsibilities which are part of EdFund's role. In general, the oversight role is to monitor and verify after the fact, as follows:

- Since the Operating Agreement is the document which specifies the broad elements and the details of the relationship between the Commission and its auxiliary, there must be concurrence between CSAC and EdFund management and staffs about what the Operating Agreement says and the roles and responsibilities it defines. To preclude confusion and discord during the year, the Commission itself, directly or through one of its designated committees, will resolve issues of disagreement prior to approval of the final Operating Agreement.
- When the annual business plan, budget, and performance goals have been developed by EdFund staff, Commission oversight staff reviews these documents for conformance with the Operating Agreement, but they do not second-guess professional judgments of EdFund management on these and other operational issues. Any differences of opinion and viewpoint among EdFund and CSAC staffs during this review are identified and are resolved by the appropriate Commission committees or the Commission itself.
- Major policies initiated and developed by EdFund, after approval by the Commission, are monitored by CSAC oversight staff for conformance with approved policy.
- Implementation of fiscal oversight involves statutory requirements which are relatively detailed. The key to successful oversight in financial matters is to develop a system with the least duplication possible, while ensuring that Commission and EdFund staffs implement specific statutory requirements. The Commission itself or a Commission committee will provide for an analysis of the current fiscal oversight system in order to assure that, as far as feasible, duplication is at a minimum while statutory requirements are met. Again, any differences of opinion and viewpoint in this process are resolved by the appropriate Commission committees or the Commission itself.
- The Commission itself has ultimate responsible for the statutorily required "regular performance evaluations" of the operations of EdFund. The objectives, methodology, scope, and timeline of such performance reviews must be specifically approved in advance by the full Commission, and subsequently adhered to as approved. The Commission expects that the general standards and fieldwork standards for performance audits prescribed in the U.S. General Accounting Office's Government Auditing Standards be applied to evaluations of EdFund's operations even though "evaluations" are performed as opposed to "performance audits." The Internal Auditor will provide an assessment of the objectives, methodology, scope and timeline of each evaluation for the Commission to consider during its approval process. The Internal Auditor may be asked by the Commission to monitor the conduct and progress of the evaluations.
- Other aspects of oversight as developed over time by the Commission.

APPENDIX I: RELEVANT STATUTES

Roles and Responsibilities

EDUCATION CODE SECTION 69522

(a) (1) The commission may establish an auxiliary organization for the purpose of providing operational and administrative services for the commission's participation in the Federal Family Education Loan Program, or for other activities approved by the commission and determined by the commission to be all of the following:

- (A) Related to student financial aid.
- (B) Consistent with the general mission of the commission.
- (C) Consistent with the purposes of the federal Higher Education Act of 1965 (Public Law 89-329) and amendments thereto.

(2) The activities approved by the commission under this subdivision shall not include either of the following:

- (A) The issuance of bonds.
- (B) Loan origination or loan capitalization activities. This paragraph shall not preclude the commission or the auxiliary organization from undertaking other permitted activities that are related to student financial aid in partnership with institutions that conduct loan origination or loan capitalization activities.

(b) The auxiliary organization shall be established and maintained as a nonprofit public benefit corporation subject to the Nonprofit Public Benefit Corporation Law in Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, except that, if there is a conflict between this article and the Nonprofit Public Benefit Corporation Law, this article shall prevail.

(c) (1) The commission shall maintain its responsibility for financial aid program administration, policy leadership program evaluation, and information development and coordination. The auxiliary organization shall provide operational and support services essential to the administration of the Federal Family Education Loan Program and other permitted activities that are related to student financial aid, if those services are determined by the commission to be consistent with the overall mission of the commission.

(2) The implementation and effectuation of the auxiliary organization shall be carried out so as to enhance the administration and delivery of commission programs and services. The commission shall conduct regular performance evaluations of the operation of auxiliary organizations in furtherance of its fiscal and fiduciary responsibilities for approved programs.

(d) (1) The operations of the auxiliary organization shall be conducted in conformity with an operating agreement approved annually by the commission. On and after January 1, 2002, the commission may approve an operating agreement for a period not to exceed five years. Prior to approval, the commission shall provide the proposed operating agreement to the Department of Finance for its review and comment. The operations of the auxiliary organization shall be limited to services prescribed in that agreement.

(2) Prior to approval of any amendment to an existing operating agreement or any new operating agreement with an auxiliary organization or subsidiary auxiliary organization for the purpose of delineating new services or activities authorized pursuant to subdivision (a), the commission shall provide the Director of Finance and the Joint Legislative Budget Committee with at least 45 days advance notice in writing that includes a description of the proposed operating agreement. If the Director of Finance or the Joint Legislative Budget Committee notifies the commission regarding issues of concern with the proposed operating agreement, the commission shall convene a meeting of appropriate representatives from the commission, the Department of Finance, and the Legislature to resolve those issues.

(e) The commission shall oversee the development and operations of the auxiliary organization in a manner that ensures broad public input and consultation with representatives of the financial aid community, colleges and universities, and state agencies.

EDUCATION CODE SECTION 69513.1

The commission may delegate to the director any power, duty, purpose, function, or jurisdiction that the commission may lawfully delegate, including the authority to enter into and sign contracts on behalf of the commission. The director may redelegate any of those powers, duties, purposes, functions, or jurisdictions to his or her designee, unless by statute, or rule or regulation, the director is expressly required to act personally.

APPENDIX II Roles and Responsibilities

Background Materials

Because of current law, the roles and responsibilities of the EdFund Board cannot be separated from Commission authority inherent in law. Although the word “oversight” is used only once in the statute, it is adopted in this document as “shorthand” for Commission overall responsibilities with respect to its auxiliary, EdFund.

Existing Situation:

Managerial staffs of the Commission and EdFund currently operate out of divergent views of the roles and responsibilities of the Commission and EdFund, particularly at the staff level. In a recent analysis of the current approaches to roles and responsibilities by Commission and EdFund staffs, the following differences were evident.

Brief summary of managerial staff comments:

CSAC: Commission managerial staff chose a narrow interpretation of the enabling statute, conceptualizing the relationship between the Commission and EdFund Board by offering six broad categories describing the FFEL program. Those six categories focused on direct initiation of major components of EdFund operations by the Commission and CSAC staff, with input and advice solicited from EdFund managerial staff. Issues of CSAC staff initiative included business decisions, policies, marketing, performance standards and measurements, financial management, future projections, loan portfolios, and cost-effectiveness.

EdFund: EdFund managerial staff chose a broader interpretation of the statute, focusing on their perception that EdFund is most beneficial to the Commission when it can achieve high performance goals and provide diversified income through services consistent with the Commission’s mission and approved by the Commission. EdFund envisions the optimum structure for oversight as one wherein the Commission can articulate its expectations for EdFund, then monitor and verify how those expectations are reflected in performance goals and performance outcomes, without the Commission or its staff performing the work themselves.

These summary comments evidence that managerial staffs of the two entities have totally different perspectives on how the Commission should define roles and responsibilities. These divergent interpretations are irreconcilable. The Commission must decide between these perspectives.

Analysis

Education Code 69522 clearly indicates the role of the Commission to “maintain its responsibility for financial aid program administration, policy leadership program evaluation, and information development and coordination.” The statute also clearly indicates the Commission’s responsibility to see that “The implementation and effectuation of the auxiliary organization shall be carried out so as to enhance the administration and delivery of commission programs and services.” Hence, the Commission has two primary obligations with respect to its auxiliary: first, to maintain its responsibility for and oversight of EdFund, and second, to make sure that it creates a system and adopts practices which enable EdFund’s loan services to function with the highest degree of effectiveness for students, for stakeholders, and for the state of California.

In order to meet its statutory obligations, the Commission must decide what responsibilities it wants to reserve to itself, what responsibilities it considers to be part of EdFund’s statutory operating and support role under appropriate Commission oversight, and what it wants to delegate to the Commission’s Executive Director, and through the Executive Director, to CSAC staff. The Commission has full authority to make such decisions.

Underlying Principles

- EdFund is a wholly owned subsidiary of the California Student Aid Commission, which has a statutory obligation of appropriate oversight and direction of EdFund.
- The Commission has a corollary statutory obligation to enhance, through EdFund, the Commission's loan program, in California and nationally, in a highly competitive market.
- The Commission has the right to clarify the relationship between CSAC and EdFund, and to specify the level of responsibility for each entity within that relationship, as long as the Commission maintains its ultimate responsibility.

Conclusions

1. Sustaining EdFund's value as a stable, competitive, customer-driven, performance-based entity which serves students and generates revenue can best be met by clarifying EdFund's authority to operate effectively and competitively, while ensuring the Commission's appropriate oversight and responsibility and EdFund's accountability.

2. The roles and responsibilities of the EdFund Board cannot be separated from the Commission's oversight obligations and the EdFund Board's accountability obligations. This oversight and accountability can be achieved through development by the Commission, as expeditiously as possible, of a comprehensive plan for EdFund oversight which does not rely on potentially changing staff initiatives of either entity. Such an oversight plan establishes guidelines that clarify areas of responsibility of the EdFund Board. It also eliminates ambiguity of responsibilities so that oversight management never slides into operational management.

Comments on the Conclusions

First conclusion:

It is indisputable that EdFund, in the eight years of its existence as the Commission's auxiliary has had enormous success. The recently approved Commission Performance Review of EdFund notes that "EdFund has become one of the nation's leading providers of student loan services under the FFEL program. EdFund currently processes approximately \$7 billion a year in federal student loans and administers an outstanding loan portfolio worth more than \$24 billion." The performance review further cites that, with Commission support, EdFund's growth rate has been over 20%, its loan default rate has been cut in half, loan collection recoveries and annual revenues almost doubled, all done while maintaining a superior audit record with the federal Department of Education. The Commission and the State of California need continuation of EdFund's success. Thus, there is compelling evidence for the first conclusion.

Second conclusion:

It is clear to the drafters of these recommendations that the roles and responsibilities of the EdFund Board and the Commission's critical role in oversight and fiscal and fiduciary responsibility for its auxiliary cannot depend on shifting patterns when there are personnel changes. Such an approach to a major responsibility is unacceptable. A systemic approach to EdFund Board Roles and Responsibilities, Commission oversight and EdFund accountability is essential. Thus, there is compelling evidence for the second preliminary conclusion. The Commission needs to develop a thought-out, organized, coordinated, comprehensive way of implementing the entire process of identifying roles and responsibilities, and of establishing guidelines clarifying what oversight means and what it does not mean. Ideally, though the focus in this document is on Commission responsibility for EdFund, a broad Commission oversight plan could include oversight of grants, outreach, and other Commission programs as well.