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## 3.3

### Action/Information Item

#### *Fiscal Policy and Long-Range Planning Committee*

##### CSAC/EDFUND Operating Agreement Amendment/Extension

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The current Operating Agreement between the Commission and EDFUND has been extended for the past two fiscal years with minor revisions and is set to expire on September 30, 2005.

The Commission's Performance Review of EDFUND concluded that the current Operating Agreement is outdated and needs to be revised. However, the Chair of the Commission and the Chair of the EDFUND Board have agreed that the roles and responsibilities of EDFUND need to be clarified before a new agreement can be developed. Given the timing, it is unlikely that the Commission will be able to implement a new Operating Agreement by October 1, 2005; thus another extension of the Operating Agreement is required.

EDFUND has informed Commission staff that the 2005-06 Loan Program Business Plan and Annual Operating Budget will not be ready for Commission approval by October 1, 2005. As a result, any extension to the current Operating Agreement would be made without an approved business plan and detailed budget for the new fiscal year.

Items one and two of the enclosed draft amendment/extension are similar to the past two extensions. Three additional amendments to the Operating Agreement have been added based on prior Bureau of State Audits findings and new legislation.

California Education Code Section 69522(d)(2) requires the Commission to submit the Operating Agreement to the Department of Finance and the Joint Legislative Budget Committee prior to Commission approval. The enclosed draft amendment/ extension will be forwarded to these two entities for their review based on your action today.

**Recommended Actions:** Authorize the Executive Director to execute the extension of the Operating Agreement after its review by the Department of Finance and the Joint Legislative Budget Committee. A decision is needed on the length of the extension.

**Responsible Staff:** Janet McDuffie, Acting Chief  
Federal Policy & Programs Division

DRAFT

**AMENDMENT/EXTENSION**

This Amendment dated October 1, 2005, hereby amends the Operating Agreement by and between the California Student Aid Commission and EDFUND entered into on October 1, 2002 and amended on October 1, 2003 and on October 1, 2004, as follows:

1. The term of the Agreement shall be extended until       **DATE**      , unless sooner terminated under Article V.
2. The "California Student Aid Commission's Performance Goals for EDFUND" as contained in the Business Plan pursuant to Exhibit C of the Agreement shall mean the "High-level Organizational Metrics" contained in the 2005-06 Loan Program Business Plan. The Commission will evaluate EDFUND's accomplishments of these goals in the context of the actual competitive student loan industry environment and national economy during the year.
3. **Safeguards and Information Security.** Throughout the term of this Agreement, EDFUND shall implement and maintain appropriate safeguards, as that term is used in the Federal Trade Commission's Safeguards Rule (the "Safeguards Rule") at 16 C.F.R. §314.4(d), for all Customer Information, as defined at Section 314.2(b) of the Safeguards Rule, as well as all Confidential Information, received by EDFUND from or on behalf of the Commission, or is created by EDFUND, or is made accessible to EDFUND by the Commission. EDFUND shall use and disclose Customer Information and other Confidential Information provided to EDFUND by the Commission or by any borrower only as necessary to perform the services as set forth in this contract. EDFUND agrees not to disclose such information provided to EDFUND with any third party other than as expressly permitted in this agreement or as specifically required by Title IV of the Higher Education Act of 1965.
4. During the term of this agreement and on all activities directly related to the services provided to the Commission, EDFUND shall follow best business contracting practices in order to balance administrative and business flexibility with public accountability.
5. During the term of this agreement and as required by California Education Code, Section 69522(c)(2), the Commission may conduct performance reviews of any aspects of EDFUND's activities covered by this agreement. EDFUND will fully cooperate with such reviews. Performance reviews will be conducted to the extent possible to minimize disruption of or impact on EDFUND activities.

All other terms and conditions of the Agreement shall remain unchanged.

**California Student Aid Commission**

**EDFUND**

By: \_\_\_\_\_  
**Diana Fuentes-Michel**  
**Executive Director**

By: \_\_\_\_\_  
**Sam Kipp**  
**Interim President**