

Action/Information Item

California Student Aid Commission

Approval of April 13, 2007, April 18, 19 & 20, 2007, and May 1, 2007, Minutes

Recommended Action: The Commission is asked to approve the minutes.

**CALIFORNIA STUDENT AID COMMISSION
TELECONFERENCE MEETING**

**MINUTES
APRIL 13, 2007**

A meeting of the California Student Aid Commission convened on Friday, April 13, 2007, at various locations listed on the Notice of Teleconference Meeting dated April 3, 2007.

Chair Louise McClain called the meeting to order at 1:54 p.m.

The following Commission Members were present:

Louise McClain, Chair
Dean Johnston, Vice Chair
Chad Charton
Rory Diamond
Daniel Friedlander
Dennis Galligani
Lorena Hernandez
Alice Perez

The following Commission Members were absent:

Michelle Dyke, Secretary
Sally Furay
David Roth

AGENDA ITEM 1 – CONSIDERATION OF APPROVAL OF STATE NURSING ASSUMPTION PROGRAM OF LOANS FOR EDUCATION OF NURSES IN STATE FACILITIES (SNAPLE NSF) REGULATIONS

Ms. Catalina Mistler, Chief of Program Administrative Services provided an overview of the State Nursing Assumption Program of Loans for Education for Nurses in State Facilities (SNAPLE NSF) and the proposed regulations. Ms. Mistler reported that this program is for students who agree to become employees of specified 24-hour state facilities and who agree to work full time for four consecutive years as a registered nurse in an eligible position. She added that the program provided forty new awards for 2006-07 and provides a maximum of \$20,000 in loan assumption.

On **MOTION** by Commissioner Friedlander, **SECONDED** and **CARRIED**, the Commission **APPROVED** by Roll Call Vote the staff recommendation to adopt the proposed regulations and accompanying documents, request that the effective date of the regulations be the date of filing, and authorize staff to complete the necessary documents and take the necessary steps to complete the regulatory process.

AGENDA ITEM 2 – UPDATE AND CONSIDERATION OF PORTIONS OF THE OPERATING AGREEMENT BETWEEN THE COMMISSION AND EDFUND THAT MAY INCLUDE DISCUSSIONS OF THE ROLES AND RESPONSIBILITIES OF THE COMMISSION, EDFUND AND THEIR RESPECTIVE STAFFS

Ms. Janet McDuffie, Chief of Management Services and Acting Chief of Federal Policy & Programs, reviewed the material provided to the Commission for consideration, which includes:

- EDFUND and CSAC staffs' perspectives and recommendations regarding:
 - Issue #1 – Loan Program Business Goals
 - Issue #2 – Loan Program Oversight
 - Issue #3 – Dispute Resolution
- Clean version of the proposed Operating Agreement dated April 10, 2007
- Red-lined version of the proposed Operating Agreement dated April 10, 2007
- Current Operating Agreement

Commissioner Johnston expressed some concern that there are many policy issues that the Commission will be reviewing next week, which overlap and conflict somewhat with the policies in the Operating Agreement (OA). He recommended finishing the Commission's policy manual before making decisions about the Operating Agreement.

Ms. McDuffie explained that the timeframe allows for a couple of weeks at the end of June for the Commission to continue working through issues, including any comments from the Department of Finance and the Joint Legislative Budget Committee. Commissioner Johnston indicated that the Commission should be able to finish its policy discussion next week to incorporate it into the OA or simply refer to the policy wherever appropriate.

Commissioner Galligani commented that he views the policies as the overarching document and the OA carries out the Commission's overall policy structure. He agreed with Commissioner Johnston's suggestion to include references to the policies in the OA where appropriate after completing the policies next week. Commissioner Galligani mentioned that, for example, the guiding principles, governance policy and Commission goals for EDFUND listed in Exhibit C of the current OA are in many ways duplicative of the issues the Commission is attempting to clarify in its policies. He indicated that those kinds of issues could either be eliminated from, or referenced in, the OA.

Commissioner Friedlander asked Commissioner Johnston whether the areas in the policies that conflict with the proposed OA are limited to the three specific issues being presented today. Commissioner Johnston responded that the areas of conflict involve the three issues, but are also broader, such as the activities and procedures of the Federal Policy & Programs Division.

Commissioner Perez requested that for next week's meeting, the Commissioners be provided with any other documentation necessary to help them make their decisions. Commissioner Galligani mentioned that the only other information pertains to the Ad Hoc Committee's suggestions regarding the standing committee structure.

Mr. David Reid, General Counsel and Vice President of EDFUND Legal Services, explained that CSAC and EDFUND staffs have mutually agreed upon approximately 95 percent of the language in the proposed OA. The Commission will be discussing the three outstanding issues. He noted that both staffs agreed that some areas, which are identified in the proposed OA, may be changed when the roles and responsibilities are finalized.

Agenda Item 2.b - Issue #1: Loan Program Business Goals

Mr. Reid explained that EDFUND supports the development of annual business goals and proposes that the Commission's goals currently in the Exhibits be brought forward and placed in the body of the OA. He clarified that the Commission's goals would remain as they are, but the annual goals would be developed on an annual basis. Additionally, EDFUND proposes language indicating that EDFUND needs to develop annual goals that are reasonable but not easy to accomplish. In the proposed process, EDFUND identifies the following hard dates by which certain functions and activities must occur:

- May 15—EDFUND provides a high level overview of the business plan, budget and goals
- July 15—EDFUND provides a consulting process with CSAC staff or any individual designated by the Commission
- August 31—EDFUND Board adopts the business plan, budget and goals
- September 1—Documents are transmitted to the Commission for review, edits and eventual adoption.

Mr. Reid explained that the difference between EDFUND and CSAC staff's perspectives is that EDFUND believes the annual goals should be developed in coordination with the annual business plan and budget process due to the dynamic and changing environment.

Commissioner Perez expressed concern that if the Commissioners establish goals in May for the following year, the Commission would only have a three-month timeframe to examine trends. She asked how the issue of the changing environment will be addressed and whether the proposed process allows flexibility to adjust the goals based on new market information.

EDFUND President Sam Kipp explained that the annual goals are set in relationship to the budget process, which is on an October 1 through September 30 cycle. The specific goals are tied to various key components of overall performance of EDFUND through the budget and this process is closely aligned with the process in the governance policies. EDFUND forecasts loan volume and other estimates by federal fiscal year and, therefore, has the entire prior year as a base in addition to the experience they garner as they make the final adjustments up to the final budget that is presented for the heavy volume fourth quarter. The normal February budget adjustment process takes those changes into consideration. The May deadline begins the development process, but the goals and metrics will be adjusted up until the time that the budget is finally approved.

Ms. McDuffie explained that the business plan, annual goals and major policies are the key business drivers to the Commission's participation in the Federal Family Education Loan (FFEL) Program and it is incumbent upon the Commission to be actively involved in articulating the overall goals for the loan program and the yearly business goals. If the Commission only reviews and approves the goals developed by EDFUND, they are delegating their responsibility for setting the loan program goals to EDFUND. The Commission would be vesting the responsibility to a non-governmental agency and its personnel who do not necessarily have accountability to the State or an obligation to perform in the public interest, but instead, act in the best interest of EDFUND, which may differ from that of the State.

Ms. McDuffie added that in setting the goals, the Commissioners would provide EDFUND with a clear understanding of what they want EDFUND to accomplish for the next year and allow EDFUND to develop a business plan, focusing on achieving those specific goals. The current OA requires that EDFUND's strategies for fulfilling the Commission's goals are included in the

business plan, which must include specific measurable goals. CSAC staff is asking the Commission to consider adding a section called "Commission's Annual Loan Program Goals," which requires the Commission to set the goals to which EDFUND would respond in the business plan. Ms. McDuffie commented that the Commission would accomplish this through a consultation process with EDFUND, which could possibly begin during the May timeframe. CSAC and EDFUND staffs have already agreed to have CSAC staff begin reviewing the high-level concepts at that time. She suggested that if the review were also done at the Commission level, then the Commission would be able to provide guidance to both staffs on the appropriate direction of the goals. The Commission would have to rely on staffs to bring information forward, but the Commission is obligated to understand enough of the loan program to make decisions on it and take that responsibility.

Commissioner Friedlander commented that he thinks the act of approving the goals fulfills the Commission's responsibilities. The general principles under the EDFUND proposal would be set out within the OA. He questioned why having EDFUND initiate the annual goals through a process of consultation would be inappropriate, as opposed to CSAC staff consulting with EDFUND. The business plan, budget and goals would still all come to the Commission for approval together.

Chair McClain questioned the idea that the Commission cannot delegate the development of the goals. She stated that the Commissioners themselves do not operate the company and she does not see that it is their job, nor do they have the expertise, to write the goals.

Deputy Attorney General Kathy Lynch remarked that it is the Commission's responsibility to figure out what the roles and policies will be. The Commission may receive guidance from CSAC and EDFUND staffs or others, but they cannot delegate the ultimate responsibility to make the final decision. Oversight does not mean simply reporting or, in other words, rubber-stamping.

Commissioner Charton commented that the agreed upon language is advantageous with regard to involving CSAC staff earlier in the process and allowing them sufficient time to form an independent evaluation. Commissioner Perez added that if there is any disagreement in staff's recommendations, the timeline must allow the Commission enough time to consider that.

Mr. Reid clarified that this year, for example, the EDFUND Board is scheduled to meet and consider these items on August 10. The Commission meeting is scheduled for September 10, allowing one month for review prior to adoption. Commissioner Perez pointed out that the Commission will have the information, but no forum for discussion so she is concerned that the Commission will not have enough time to discuss and resolve any discrepancies of opinions prior to the October 1 effective date.

Executive Director Diana Michel commented that the Commission should have an overall strategic plan for the grant program and the loan program. She thinks we are pushing hard to have something in place for the loan program without examining the overarching issues that the Legislature and the Governor's staff will be considering when reviewing the OA. The first question the Commission should be asking itself is whether it wants to continue participating in the loan program. If so, then the second question is whether the current delivery system, having an auxiliary organization with one line of business, makes policy and financial sense. The third question pertains to the issue of expectations. When examining the proposed OA, the Legislature and Governor will be considering how this agreement protects the administration of the Cal Grant program and all its subsidized programs. There has been a lot of discussion

regarding expectation of revenues and they will also be considering what the Commission says about its goals as they relate to revenues. Finally, there has never been consultation at the front end to allow partnership and mutual consensus in terms of developing overall goals. If there is agreement on whether they should participate in the loan program, then California should be the Commission's primary focus and out-of-state and in-state issues should be addressed moving forward. The fundamental problem with this process is that we do not agree on what we are attempting to achieve. Is it the Commission's vision to have an integrated program for the State of California that is not only going to save money, but also benefit students? She believes we have been so focused on what role belongs to whom that we have lost focus on why we are in this business. The Commission needs to determine the purpose.

Commissioner Perez observed that the strategic planning process is where there should be clear definition of the purpose of the organizations, as well as the goals. She indicated that the Commission has been so focused on the Bureau of State Audits (BSA) audit and on accomplishing day-to-day tasks that they have not had an opportunity to examine strategically where this organization is going. This area addresses an annual process that must take place, but in addition, there must be an annual process that gives staff enough time to develop and review a strategic plan. Executive Director Michel added that the Commission has not had an updated strategic plan and, given the existing circumstances in relationship to the financials, it is not something that can be put aside.

President Kipp clarified that strategic plans for the grant and loan programs, a clear delineation of the responsibilities and who is involved is all laid out in the latest governance policy document recommended by the Ad Hoc Committee.

Commissioner Friedlander commented that a statement from the current OA should include EDFUND's proposed language indicating the annual plan shall include implementation strategies for achieving goals, which are specific and measurable. Mr. Reid agreed to revise the language.

Commissioner Perez requested that the language reflect that EDFUND will develop an annual loan program business plan, budget and goals that align with the strategic plan. She encourages using the same language in both documents for the sake of clarity. Commissioner Johnston responded that is why the Ad Hoc Committee will be recommending that there be a reference in the OA to the guiding principles the Committee is developing in the policy manual. He commented that the issues being raised now have more to do with procedure, which is what the Ad Hoc Committee has been attempting to address. He indicated that the Commission has not provided guidance and it needs to review, analyze and develop policies and procedures for the Federal Policy & Programs Division (FPPD) to use in its approach to oversight. He agrees that the Commission needs long-range planning, but the issue of how the Commission functions on a day-to-day basis has been very dysfunctional and needs to be fixed.

Commissioner Friedlander asked if anyone disagreed with the general EDFUND approach that it resides within the EDFUND organization to initiate the annual goals, in consultation with CSAC staff and with approval by the Commission. Commissioner Hernandez expressed concern that the Commission has not been reviewing and following the process as they should be. Given the turnover in Commission membership, she wanted to be very specific with regard to who is doing what to safeguard moving forward should any of them leave the Commission. She agrees with the principles EDFUND stated in its recommendation. She has not reviewed the latest version of the governance policies but she thinks much of this language is probably included. As long as

there is language in the OA that stipulates the guiding principles are the overriding document, she is comfortable with it.

Deputy Attorney General Lynch commented that the important aspect is while the Commission can receive certain help from staff as well as EDFUND, EDFUND should not be establishing the Commission's goals. She advised the Commission to be careful that these are the Commission's goals and not EDFUND's goals. Commissioner Galligani clarified that the question is who begins the process, not who takes responsibility. Deputy Attorney General Lynch responded that the Commission must be part of the process all along.

Chair McClain announced that the Commission would not be taking action on this issue; however, there is some recommended verbiage change.

Agenda Item 2.c - Issue #2: Loan Program Oversight

Mr. Reid explained that EDFUND developed a clear and concise outline of what exactly is oversight, which they base on two different areas: audits and reports. He noted that CSAC and EDFUND staffs are still discussing which reports are necessary to include. He stated that EDFUND believes they should have an independent certified public accountant (C.P.A.) provide unbiased opinions, review the processes within EDFUND and provide reports. He summarized the various audits outlined in section 8.2.

With regard to Item B—Annual Audit of Internal Controls, Mr. Reid pointed out that EDFUND is making a significant change by implementing an annual SAS 70 Type 2 audit, which is one of the most comprehensive audits that exist. While the SAS 70 is used for system controls, it can be tailored to any criteria, including non-system controls. EDFUND staff is willing to do this audit, which comes at some cost, is quite extensive and is a significant time commitment.

Mr. Reid clarified that Item H—Other Audits & Evaluations refers to reviews agreed upon by the Commission Audit Committee in consultation with the EDFUND Audit Committee, which the Commission approves, in consultation with the EDFUND Board. He stated that in neither case would the EDFUND Board or the EDFUND Audit Committee have to approve it.

Mr. Reid explained that the way EDFUND sees oversight is to streamline and create efficiencies, not make it overly burdensome, but provide the Commission and its staff more information that it has ever been provided before in a comprehensive manner, especially with the SAS 70.

Chair McClain remarked that this section is very detailed and asked whether the detail could be eliminated and referenced in the policy. Commissioner Johnston responded that the Ad Hoc Committee has attempted to address this issue. Whether the Commission can move in that direction will be based on whether there is agreement on what the Committee has done.

Ms. Diane Manning, Vice President of EDFUND Audit Services, encouraged the Commission to keep this level of detail because it clearly demonstrates how much EDFUND is audited. Commissioner Johnston advised that this area should parallel what the Commission decides to include in the policy manual. If there are any differences, the policy manual should override that. Commissioner Galligani agreed and added that the policy is the overarching policy construct, whereas the OA includes the detail suggested by EDFUND, as long as it is not inconsistent.

President Kipp commented that six of the eight audits listed are mandated for guaranty agencies and are currently conducted on an annual basis. Items B and H are being added to produce what EDFUND feels were virtually the only gaps in the certification of the accuracy and reliability of the data and procedures.

Commissioner Johnston noted that the SAS 70 audit could cost up to \$500,000. Ms. Manning clarified that after the first year, the cost would decrease because everything would already be documented and they would just be maintaining and updating their internal controls.

Ms. McDuffie reported that the Higher Education Act (Act) indicates that if a guaranty agency delegates the performance of any of the FFEL Program functions to another entity, it is not relieved from its duty to comply with the requirements of the Act, which includes monitoring the activities of the entity for compliance. CSAC staff feels the OA needs to articulate clearly, for the Commission and EDFUND, the nature and extent of what that management and oversight responsibility is for both the loan program and the EDFUND services in support of the program. She indicated that the biggest difference between CSAC and EDFUND staff's recommendations is that CSAC staff contends that oversight is not simply receiving reports or audits that are conducted after the fact. She reiterated Deputy Attorney General Lynch's statement that the Commission must be involved in the process.

Ms. McDuffie added that CSAC staff was glad to see that EDFUND agreed to include the SAS 70 in Item B. There has been a finding in the BSA single audit for the past five years that there needed to be better controls and checkpoints on the systems in EDFUND and, as a result, CSAC staff has been recommending this type of audit. Ms. Manning indicated for the record that she does not believe BSA has stated that EDFUND needs broader controls. She interprets what they say as the Commission could have more testing of the controls.

Ms. McDuffie pointed out that CSAC and EDFUND staffs have not had an opportunity to finish their discussion of the reports; therefore, it is difficult to conceptualize accurately what might be considered an oversight report versus other reports, which CSAC staff feels are also valuable to an oversight and monitoring function.

Commissioner Perez questioned how the Commission would go about understanding the process if there is not a second set of eyes, opposed to the Commission just receiving a report at the end. It is unclear to her where this issue is addressed. Ms. McDuffie commented that staff has been grappling with this issue and is hoping to get a sense of the Commission's standpoint, whether the Commission agrees with EDFUND staff's perspective, that oversight is audits and reports, or with CSAC staff's perspective, that it is something more.

Commissioners Friedlander and Perez both agreed that oversight needs to be more than audits and reports. Commissioner Friedlander indicated that he thought CSAC staff's proposal with regard to oversight sounded fine, but questioned what it really means when it comes to the details. He indicated that the Commission needs to develop its policy manual in order to provide some guidance.

Mr. Reid interprets CSAC staff's proposal as daily oversight and interaction. If this high level of complexity and daily oversight is added into EDFUND's functions, then he would recommend to EDFUND that they remove the SAS 70 because the staff cannot handle dealing with both.

President Kipp indicated that some of these issues will become clearer after the Commission has had an opportunity to review the latest governance policies. However, he is troubled by

CSAC staff's perspective because it treats management and oversight as if they were the same. He noted that how the Commission chooses to manage the actual operations of the loan program is fundamentally different from how it chooses to exercise its oversight responsibilities to make sure that management is performed. He indicated that the issue of delegation and clarity is in the latest governance policies and urges that this issue be sorted out after the Commission has had a chance to review and discuss it.

President Kipp interprets CSAC staff's perspective as hands-on managing of what EDFUND does by constantly looking over the staff's shoulders. He believes EDFUND has a long enough track record to demonstrate that it is totally unnecessary and not required for oversight. He mentioned that the consultants reported it is certainly not required for federal oversight. The first paragraph of the Higher Education Act reads that there are countless other guaranty agencies that delegate the responsibility for the management of their loan programs to another entity without anything approaching what is suggested by CSAC staff. He indicated that those guarantors have never been cited with non-compliance to federal or state government requirements. He clarified that they do require a SAS 70 because it is not done after the fact; it examines and tests the controls and procedures to ensure a degree of assurance that they are performed on a regular basis.

Commissioner Perez thinks it is important for the Commission to have set expectations with regard to monthly, quarterly and annual oversight, and to be very clear on what they are setting forth. Additionally, she wanted to clarify that she does not want to delegate her responsibility to the EDFUND Board because ultimately, it is her responsibility and she does not know to what extent they take their role in this process.

Commissioner Friedlander pointed out that the EDFUND Board's responsibility is to EDFUND and the Commission's responsibility is to the State of California.

President Kipp commented that the monthly and quarterly reporting is spelled out in great detail the latest governance policies. Commissioner Perez responded that the EDFUND Board does not send her a report or provide any input. President Kipp stated that the latest governance policies are very explicit as to what their responsibilities are regarding reporting to the Commission on a regular basis and what they are to report. Commissioner Perez clarified that she is not delineating her responsibility to a Board of volunteers, as opposed to staff whose jobs are at stake.

Mr. Reid mentioned that EDFUND's proposed language indicates that the Commission or its designee will be involved in the process from the beginning. The audits and reports will be happening constantly throughout the year. He anticipates that the Commission would designate FPPD to receive all of the reports and audits to review and make recommendations to the Commission, which may or may not be the structure.

Commissioner Johnston remarked that there is a tremendous amount of staff resources in both EDFUND and CSAC utilized for oversight. He thinks that is why it is fiscally responsible for the Commission to examine in detail FPPD's procedures and oversight function so they all understand exactly what is being done on a daily, weekly, or monthly basis. The Commission should attempt to streamline it, stop the duplication where possible and ensure the Commission is getting the proper oversight and monitoring of this function. He believes that possibly millions of dollars are being wasted on a dysfunctional oversight function; therefore, the Commission is obligated to develop policies and procedures that all agree are the effective oversight function.

Mr. Bill Connor, Consultant for FPPD, commented that there is no expectation on anyone's part of daily interaction between CSAC and EDFUND staffs and looking over people's shoulders. Secondly, a SAS 70 audit is a useful tool to ensure the accuracy of the controls that are in place and is generally required in the financial community, but in no way does it replace the Commissioner's responsibility for managing the loan program, and does not provide the leadership information that the Commission needs to make business decisions. EDFUND's proposal discusses after-the-fact reports of audits. Mr. Connor indicated that if the Commission does not want FPPD staff to manage the program, the Commissioners will need to do it because their responsibility is not merely to oversee the performance of EDFUND as required in the OA, but also to manage the success of the loan program. To do that, Mr. Connor believes the Commission needs active involvement and cooperation between both groups.

Executive Director Michel commented that the Commission needs to talk about the process for determining the performance review, which is one of the expectations of the Legislature. In talking with legislative staff while preparing for the budget hearing, she understands that they are very interested in periodically conducting an independent, third-party review of EDFUND as part of the OA. She clarified that CSAC staff does not perform the daily oversight and interaction as described by EDFUND; however, CSAC staff must validate invoices and expenditures in terms of reimbursing EDFUND. There are questions on a daily basis that staff may make related to payment of monthly invoices. Outside of that process, it is the preparation of the agenda materials and the discussion of reports and planning exercises that occur at EDFUND. In response to the comment that there are extensive resources and duplication of effort in FPPD, she indicated that is simply not true. CSAC staff has a program to manage and they do so with very limited staff and resources, which are not generously funded. Commissioner Johnston responded that his comment was not specifically addressed at CSAC resources; there is a tremendous amount of resources on compliance and oversight at EDFUND. He is concerned about both CSAC and EDFUND.

Mr. Reid mentioned that the performance evaluation to which Executive Director Michel referred is included in the introductory paragraph of EDFUND's proposed section 8.2 as well as Item H.

Commissioner Galligani commented that the issue is still to what extent do all of these items listed assist the Commission in carrying out its fiduciary responsibilities for oversight. If there are gaps, what are those gaps and what is the most efficient way of carrying them out?

Mr. Michael Wright, The Results Group, commented that the oversight area of the OA has been central to the Ad Hoc Committee's discussion on how the policies establish the roles and responsibilities of oversight. He indicated that there is a big overlap. Mr. Wright reported that the consultants have been working with both organizations regarding the current oversight mechanisms and structure, including the kinds of reports that are received. The Ad Hoc Committee is examining what oversight activities are currently taking place and how they all fit together. Mr. Wright indicated that he is not sure if the complete assessment could be provided to the Commission prior to next week's meeting, but he would be able to present a summary at that time.

Agenda Item 2.d - Issue #3: Dispute Resolution

Mr. Reid explained that over the last eight years, the OA has had a binding arbitration clause and EDFUND staff supports the continuation of the arbitration clause, whereas CSAC staff does not. EDFUND has developed a new process that includes a set of graduated steps to be taken prior to reaching the level of binding arbitration. In this process, the contract managers first

attempt to resolve the differences. If the contract managers cannot resolve the issue, it is elevated to the EDFUND President and Executive Director. If they are unable to resolve it, it is brought to the Chairs of both the EDFUND Board and Commission at which time the EDFUND Board and Commission would meet in joint session to attempt resolution. If still unresolved, the issue goes to mediation and if resolution cannot be achieved, the issue would then go to binding arbitration. Mr. Reid remarked that resolving the issue in binding arbitration would help to keep it out of the courts and the press.

Ms. McDuffie reported that CSAC and EDFUND staffs both agree the OA needs to include those initial measures to enable the organizations to resolve their differences as much as possible informally. However, CSAC staff recommends that if the issue cannot be resolved by the Executive Director and the EDFUND President, the issue should ultimately be brought to the Commission. Ms. McDuffie clarified that this is not a legal issue. Staff consulted with Deputy Attorney General Lynch on how arbitration should be handled in the OA. The Commission needs to examine this issue from the policy perspective that the Commission has the ultimate authority for the FFEL Program and the oversight of EDFUND. She added that the Commission is responsible for the program and should not relinquish its authority to a third party through arbitration or mediation. She pointed out that CSAC staff did not intend to limit the right of EDFUND, as an organization, or the Commission, as a state agency, to sue. CSAC staff's recommendation that the Commission's decision is to be considered final was a policy decision that signifies that is where it should end.

Commissioner Friedlander remarked that he did not understand the distinction made in EDFUND's proposed language that it would provide for reimbursement of arbitration costs for EDFUND, but not for CSAC, if CSAC prevails in the arbitration. Ms. McDuffie explained that EDFUND has no funds other than the State's Operating Fund; therefore, the expense of mediation, arbitration or litigation would all come from the Commission's Operating Fund.

Commissioner Friedlander agreed with EDFUND's model up to the point of binding arbitration and understands CSAC staff's perspective with regard to a state agency giving its final decision making authority to an arbiter. He asked if non-binding arbitration would be persuasive with the Commission, as it would not totally tie the Commission's hands in terms of giving its authority, as a public entity, over to a third party.

Ms. Cathy Reynolds, EDFUND's Assistant General Counsel, clarified that the Commission would be giving the authority to a judge that has been selected and is knowledgeable, which is no different from a courtroom judge. The critical issue is that in arbitration, the information remains confidential and between the entities, which is preferred. With regard to non-binding arbitration, Ms. Reynolds indicated that it would be like taking away all of the issues as to why they would go to a binding arbitration. If there were disagreement, then it would result in litigation. The process is duplicative and there would be no resolution or confidentiality; therefore, arbitration is favored.

Commissioner Friedlander pointed out that the OA is a contract and there must be a means of resolving disputes. Ms. Reynolds stated that it is just the difference between a private judge or an elected judge. Commissioner Diamond commented that he likes the arbitration agreement.

Deputy Attorney General Lynch indicated that mediation is favored and most factually based cases are settled that way because it takes a long time to go through a court trial. She added that there is some benefit to having confidentiality. She believes the issue is more about the process; however, instead of turning things over to a third party, it is about having another set of

eyes, beyond the Commission, examining the issue, which is also beneficial. She questions whether the Commission needs both mediation and arbitration because arbitration can turn into a mini trial, whereas, mediation can be confidential. Ms. Lynch added that it all depends on what the Commission wants, but she does not think the Commission needs both levels of third-party review. She explained that, in her experience, cases are resolved much faster through mediation rather than arbitration. Even in binding arbitration, the parties may still appeal the decision to the court, so it would not stop litigation and the parties may still request a judge to review the case. She clarified that a judge will defer to the arbitrator's opinion, assuming there is no abuse of discretion, but that does not necessarily stop litigation. Ms. Lynch indicated that she has done both mediation and arbitration and favors mediation; however, there is no reason why the Commission cannot have both if that is what is preferred.

Deputy Attorney General Lynch explained that mediation is more informal. The parties agree to a mediator to whom each party would provide confidential letters. The mediator meets with both parties separately and each party attempts to point out the weaknesses of the other's argument. She would advise that the parties select a judge or an ex-judge as a mediator. In arbitration, evidence is reviewed and testimony provided as though it were a mini-trial and ultimately there is no united decision, whereas there is more of a consensus reached in mediation. She indicated that she personally does not like to be involved in arbitrations because she has found them to be fruitless over the years. The binding arbitration is much more intense than a regular non-binding arbitration. Ms. Lynch indicated that if the Commission goes to court, it will probably be referred to an alternative dispute resolution, either mediation or arbitration, unless the case falls within one of the exceptions.

Mr. Reid stated that while EDFUND generally prefers arbitration because it is cleaner, he thinks they would be open to mediation. If the issue were not resolved in mediation, the case would go to litigation, although he hopes there would never be an instance that an issue would reach mediation.

Ms McDuffie pointed out that EDFUND staff's proposal calls for a joint meeting of both the Commission and EDFUND Board; whereas CSAC staff recommends that it is left to the Commission only.

Commissioner Hernandez expressed concern that the ultimate decision should go to the Commission rather than the Chairs of the Commission and EDFUND Board. Commissioner Perez expressed concern that the EDFUND Board's commitment is to EDFUND and the Commission's commitment is to the process as a whole. She is concerned about sitting in a meeting with people that have half a commitment to the process and believes resolution will never be reached that way. She believes the decision should go to the Commission.

President Kipp stated that the EDFUND Board has legal obligations as a State not-for-profit corporation with fiduciary responsibilities every bit as significant as what the Commission has. If there is a dispute of such magnitude, the EDFUND Board cannot simply exclude itself from the process because it would probably involve an issue that the Board feels they would be in violation of their fiduciary responsibilities and legally liable.

Commissioner Hernandez clarified that she is not recommending that the EDFUND Board be excluded from the process, but the ultimate decision must be that of the Commission.

Ms. Reynolds responded that the Commission cannot have a final decision because that would take away the Constitutional right to a jury trial. The Commission and EDFUND Board should attempt, together, to resolve the issue prior to going through the formal process of mediation, in

which the Commission and EDFUND Board would meet with an experienced judge. She indicated that the EDFUND Board has to be part of the process in coming to a resolution; however, there would be no decision made between the Commission and the EDFUND Board. She clarified that EDFUND staff's position was that the Executive Director would not be the one to forward information to the Commission because that would be one-sided. EDFUND believes the issues will likely be resolved at the staff level; however, if there is a point where there is disagreement between the Commission and EDFUND, both parties need to be involved in resolving the issue.

Executive Director Michel noted that both parties have been in court before, so it is important that the Commissioners understand that it could happen. Additionally, she indicated that the Legislature and the Governor view the Commission as the final judgment. They would not want to see the Commission and EDFUND in court and would not understand how that could be an option. Ms. Reynolds pointed out that the California Constitution gives EDFUND the right. Deputy Attorney General Lynch agreed that they do have the right to sue and be sued.

Mr. Keith Yamanaka, Chief Deputy Director, explained that from the Commissioners' standpoint, this is a policy issue. If EDFUND ever sues the Commission, the Legislature and the Governor would ask why the Commission is in this relationship in the first place and the Commission would have to deal with that politically. Whether or not mediation is appropriate for dispute resolution from a legal standpoint, the Legislature and Governor will be concerned that the Commissioners whom they appointed to run the loan program are unable to come to a decision with their own auxiliary on how to deal with the program.

Mr. Reid indicated that the Commission needs to consider that if it decides to exclude the EDFUND Board from the process and a lawsuit ensues, then the question will be whether the EDFUND Board communicated with the Commission and the answer would be "no" because it was not allowed.

Commissioner Perez clarified that she was not recommending that the EDFUND Board be excluded from the process. The EDFUND Board definitely needs to be involved to provide their perception and perspective, but ultimately, it is the Commission's responsibility to oversee both functions. She believes that the EDFUND Board's decision process is based on what is best for that organization. The Commission's decision process should be based on what is best for both organizations and what is best for the overall goals. She added that there can be a meeting of both boards, but after that meeting, the Commission should make the final determination. If the EDFUND Board does not agree with the Commission's decision, then the next step would be mediation. Mr. Reid agreed to draft language to reflect that process.

Ms. Reynolds pointed out that the staff's perspectives continue to differ in how the information is presented. EDFUND staff maintains that both EDFUND and CSAC should present the information; however, CSAC staff recommends that the Executive Director present the information. Ms. McDuffie clarified that the process would be similar to what is currently in practice, which is both sides presenting the information. Ms. Reynolds indicated that they could draft language that would make sense.

Ms. McDuffie provided a brief overview of the draft OA, including the clean and red-lined versions. She noted that both staffs are continuing to discuss certain areas, including the service level agreements, previously known as the exhibits.

CLOSING REMARKS

Chair McClain and Commissioner Friedlander commended both staffs for working on these issues and pressing the areas of agreement and disagreement in a way to help the Commission focus on the issues.

Chair McClain announced that Commissioners Galligani and Perez have agreed to work with staff on planning the June Commission Workshop.

Commissioner Friedlander requested that the Commission receive a copy of the approved guiding principles. In addition, Commissioner Galligani requested that the Commissioners be provided with a copy of a confidential letter discussed during the Commission's March 29, 2007 meeting.

Executive Director Michel cautioned that the Department of Finance views that matter as related to a Budget Change Proposal (BCP), which is administratively handled confidentially. Ms. McDuffie commented that in the past, the Department of Finance has had conversations with CSAC staff regarding BCPs and felt it was inappropriate for Commissioners to be included. That was the basis for CSAC staff not distributing the full set of documents to the Commission.

There being no other business, the meeting of the California Student Aid Commission adjourned at approximately 4:00 p.m.

Michelle Dyke, Secretary

**CALIFORNIA STUDENT AID COMMISSION
COMMISSION MEETING**

**MINUTES
APRIL 18-20, 2007**

A meeting of the California Student Aid Commission was held on Wednesday, April 18, 2007, at 3300 Zinfandel Drive, Rancho Cordova, California.

Chair Louise McClain called the meeting to order at 8:39 a.m.

The following Commission Members were present:

Louise McClain, Chair
Chad Charton
Rory Diamond
Michele Dyke
Daniel Friedlander
Sally Furay
Dennis Galligani
Lorena Hernandez
Dean Johnston
Alice Perez

The following Commission Member was absent:

David Roth

Roll Call was taken and a quorum was recognized.

AGENDA TAB 1 – CHAIR’S REPORT

Chair McClain reported on the following:

- To accommodate staff who are scheduled to attend the California Assembly Budget SubCommittee #2 hearing at 1:30 p.m., announced she will adjourn today’s meeting at 2:45 p.m. In addition, she and Commissioner Johnston will discuss how to streamline the first part of today’s agenda to accommodate this schedule.
- Announced that Commissioner Diamond has accepted a position at a prestigious law firm in Atlanta, Georgia and; therefore, this will be his last meeting as a member of the California Student Aid Commission.
- Announced that Commissioner Hernandez has agreed to serve on the Outreach Committee.
- Expressed her gratitude to Commissioners Johnston and Galligani for working with The Results Group on the Roles and Responsibilities agenda item.
- Expressed her gratitude to all members of the Commission, as well as staff for dedicating the next three days for this month’s meeting.

- Expressed her gratitude to Commissioner Friedlander for attending the Grant Advisory Committee on her behalf.

AGENDA TAB 2 – EXECUTIVE DIRECTOR’S REPORT

Executive Director Diana Fuentes-Michel reported the following:

- The Governor had just appointed Dr. Yasmin Delahoussaye as the California Community College representative on the Commission.
- Staff attended yesterday’s Senate Budget SubCommittee #1 Hearing. No action was taken on the Commission’s budget.

AGENDA TAB 3 – EDFUND PRESIDENT’S REPORT

EDFUND President Sam Kipp reported that staff are close to 90 to 95 percent complete in the terms of the core body of the Operating Agreement, and some of the Service Level Agreements. The key point is the decision about oversight. Discussion continues on this particular subject.

AGENDA TAB 4 – APPROVAL OF MINUTES OF THE FEBRUARY 22-23, 2007, AND MARCH 29, 2007 COMMISSION MEETINGS

On **MOTION** by Commissioner Friedlander, **SECONDED** and **CARRIED**, the Commission approved the minutes of the February 22-23, 2007, and March 29, 2007 Commission meetings with minor edits.

Commissioner Perez abstained.

AGENDA TAB 5 – CONSIDERATION OF RATIFICATION OF CONTRACT AMENDMENT WITH THE DEPARTMENT OF FINANCE TO PERFORM AN AUDIT OF THE CAL GRANT NEW APPLICANT ELIGIBILITY, TO INCREASE THE CONTRACT AMOUNT BY \$109,000 FOR A TOTAL OF \$209,000, AND TO EXTEND THE TERM OF THE CONTRACT

Mr. Robert Illa, CSAC Fiscal Officer, reported that the Executive Director must obtain approval from the Commission prior to entering into a new contract or executing a contract amendment of over \$100,000. However, in the event an emergency approval is necessary, the Executive Director may approve a contract with simultaneous notification to the Commission. The emergency approval must be ratified by the Commission at a Commission meeting.

Mr. Illa explained that in October 2006, the California Student Aid Commission entered into a contract with the Department of Finance to develop an audit program and to conduct an audit of the Cal Grant new applicant eligibility. At the February Commission meeting, the Department of Finance auditors reported that they estimated that an additional \$109,000 was required to complete the audit, and that additional time was necessary to complete their report and provide their findings to the Commission by June 30, 2007. The Executive Director had approved the increase in the contract amount and the extension of the time, with notice to the Commission Chair. Therefore, staff is seeking approval ratification of the extension, as well as the increase in the contract amount.

On **MOTION** by Commissioner Furay, **SECONDED**, and **CARRIED**, the Commission ratified contract amendment with the Department of Finance for an audit of the Cal Grant New

Applicant Eligibility, to increase the contract amount by \$109,000 for a total of \$209,000, and to extend the contract to August 31, 2007.

AGENDA TAB 6 – CONSIDERATION OF AN OPERATING AGREEMENT BETWEEN THE COMMISSION AND EDFUND

Chair McClain deferred discussion of this item until April 19, 2007, after the Commission's discussion of Roles and Responsibilities.

AGENDA TAB 7 – CONSIDERATION OF ROLES, RESPONSIBILITIES AND POLICIES OF THE COMMISSION AND EDFUND AND THEIR RESPECTIVE STAFFS

Mr. Michael Wright, Project Coordinator and Mr. Stephen Thomas, Partner, The Results Group, along with Mr. Larry O'Toole from the Aurora Consulting Group, who participated via conference call, held an open discussion with the Commission, CSAC staff and EDFUND staff on the revisions to the California Student Aid Commission Policies.

Mr. Wright reported that at its April 13, 2007 teleconference, the Commission requested an assessment of the current oversight process for discussion at this meeting. The consultants met with the Federal Policy & Programs Division (FPPD) staff, but have not completed their assessment. He stated that Executive Director Michel agreed it would be more appropriate to complete the FPPD procedures manual after the governance policies and Operating Agreement were completed.

Mr. Wright continued to provide an overview of the three areas that pertain to the roles and responsibilities. He explained that the governance policies document is the overarching document that includes the Commission's philosophy, approach and guidelines. The Operating Agreement, in statute, is intended to describe the services that will be provided by the auxiliary. With regard to the FPPD procedures, the consultants believe that is where many of the issues, with which the Ad Hoc Committee has been struggling, reside in terms of what kind verification and review is appropriate. He added that there is no such FPPD policy manual and, although there are some procedures, those procedures would need to be revised.

Executive Director Michel pointed out that a consultant was hired to work closely with staff to develop the Business Improvement Process (BIP) and document the various processes taking place throughout the entire Student Aid Commission, eventually moving to FPPD staff in terms of documenting their procedures once the Commission provided clear direction. She added that the BIP documentation process provides a detailed outline of the procedures and she suggests using the same process for the FPPD procedures manual to eliminate duplication of effort.

Chair McClain commented that there needs to be a strong commitment to developing a procedures manual and agreed with Executive Director Michel's suggestion. Commissioner Johnston added that, as a caveat, the manual needs to be sanitized. He does not want the Commission to take the staff's existing processes and use those to move forward until the Commission reviews, understands, and agrees to those procedures in terms of what issues are examined, how those matters are reviewed, and areas of duplication, etc.

Discussion ensued regarding the Ad Hoc Committee's proposal to restructure the Commission's Standing Committees. The restructure would consist of no more than four committees, each comprised of five Commission members who can actively participate and expend concerted effort in ensuring effectiveness.

1. Audit Committee - continue the functions as currently assigned.
2. Personnel, Evaluation and Nominations Committee - continue the functions as currently assigned.
3. Planning, Budgeting and Monitoring Committee (new) - this committee would review the long and short term planning documents and budgets provided by the grant and loan programs, including outreach; take the lead in planning efforts directly for Commission involved initiatives; monitor the grant and loan program organizations to ensure compliance with Commission policies.
4. Commission Governance Committee (new) - annually assess the functioning of the Commission and make recommendations, as appropriate, to enhance the effectiveness of the Commission and Commission policies; develop and oversee the orientation process of new commissioners, including an orientation on the Commission's governing process; ensure appropriate involvement of Commission members with key elected and appointed officials.

Executive Director Michel commented that she had provided Chair McClain with a copy of recent legislation, at her request, which spoke to the issue of what audit functions should reside in a state agency. She suggested that the Ad Hoc Committee consider this legislation as well as the structure and description of the existing Audit Committee.

Commissioner Johnston agreed with combining audit matters and possibly some fiscal matters into one committee. He noted that, historically, the ex officio Chair has been burdened with being actively engaged in the committee because other committee members are not. He agrees with having five Commissioners on each of the four committees with all of them participating at a desirable level. He suggested possibly addressing the participation and discipline of Commissioners who do not engage appropriately.

Commissioner Friedlander noted that the standing committees that currently consist of three members also include the chair as a voting member and are essentially four-member committees. He indicated that the Bagley-Keene Open Meeting Act requires a quorum of three for both a four-member and five-member committee. Therefore, the standing committees may as well have five members to eliminate any undue influence in a smaller group, and provide a greater degree of expertise within a larger group.

Commissioner Charton cautioned that a large membership loses its effectiveness despite the fact that there may be a greater degree of expertise or participation. He advised keeping the committees relatively small to promote an intimate working relationship among the members, which has been the most effective in his experience.

Commissioner Furay agreed with having five committee members, but cautioned against requiring a certain number of members due to the Governor's appointment process, which may not provide appointments in a timely manner, resulting in a smaller number of available Commissioners.

Commissioner Friedlander responded that the quorum requirement for a committee of five is no different from the current legal requirement for the existing committees. The Chair should have the opportunity to fill temporary vacancies to ensure that there will be a quorum, including himself or herself as a voting member for the period of time that it is required.

A question was raised whether the Chair should serve as an ex officio voting or non-voting member, if needed. Ms. Kathy Lynch, Deputy Attorney General, indicated that she would need to review that issue in order to provide the Commission with guidance. Commissioner Perez advised the Commission to be mindful of what situations the Chair may become a voting member because there may be a situation when the Chair wishes to voice his or her opinion and, as a result, the Chair may put himself or herself on a committee to participate in the vote. Chair McClain agreed that is a valid concern.

Chair McClain also raised the issue of the Commissioner Liaisons to the Commission's advisory committees and Commissioner Galligani indicated that the Ad Hoc Committee had not examined that issue. Commissioner Perez recommended that the Commissioner who chairs the committee should serve as liaison to the advisory body.

Commissioner Furay added that the Loan Advisory Council (LAC) and Cal-SOAP Advisory Committee are statutory, but may not require a Commissioner liaison. However, she believes it is critical that the Grant Advisory Committee (GAC), which is not statutory, has a Commissioner Liaison because it is so essential to this Commission. Commissioner Johnston indicated that LAC has become less essential to the Commission in terms of how it is structured. He indicated that he might discuss with Executive Director Michel possibly changing the legislation regarding LAC because at this time it is a dysfunctional committee.

Commissioner Galligani pointed out that the policies are dynamic and will need more work in the future, so he suggested that the proposed Commission Governance Committee revisit the advisory group relationships.

Executive Director Michel noted that the Bureau of State Audits (BSA) audit had an issue with Commissioners serving on the EDFUND Board. She advised the Commission to consider the potential conflict with regard to Commissioners who serve on the EDFUND Board also serving on the Commission's Governance Committee as well as the Audit Committee.

With regard to timing, it was clarified that the Commission is expected to adopt the most important policies by today, April 18. The Commission will have further discussion on April 20 and the week of April 30 to finalize the policies. In addition, the Commission plans to discuss the Operating Agreement on May 1 for purposes of sending it to the Department of Finance and the Joint Legislative Budget Committee for review and comment 45 days prior to the June 30 expiration date. Lastly, the Commission expects the development of the FPPD procedures manual to be completed 90 days from May 1.

Commissioner Johnston requested that the FPPD procedures manual be presented to the Commission earlier than at the September meeting. Executive Director Michel suggested that she be given an opportunity to discuss the timeframe with staff in consideration of their workload and bring back a recommendation.

Mr. Wright reported that the revisions discussed by the Commission at its March 30 meeting have been incorporated into the policies document. He provided a brief summary to familiarize the Commissioners with the affected areas, including the introduction, ends policies and governance process. He added that the Commission is now expected to discuss the delegation policies, executive parameters, and monitoring and oversight policies.

Delegation Policies

Ms. Lynch commented that she has reviewed the delegation policies and there are many statutory provisions that may come into effect. She will need to study that language. She recommended including applicable law in the policies because statutory language exists pertaining to the grant program. Although it will take some time to review, she noted that it should not prevent further discussion on the rest of the policies as the Commission is focused on the Operating Agreement and EDFUND.

Additionally, Ms. Lynch advised using another term for “delegation” in relation to EDFUND because it has a legal meaning. Commissioner Johnston suggested using the word “linkage” and clarified that the idea behind it was not to have the board interacting with staff directly, but rather through the leaders of the organization. Commissioner Furay noted that another issue has been that the Commission has had to referee the differences of opinion between the two staffs, which is not the role of a board.

Ms. Lynch noted that the Commission has statutory authority to delegate to the Executive Director what the Commission can lawfully delegate. However, the Commission does not have statutory authority to delegate to EDFUND in the same sense. Commissioner Perez suggested that in some areas, the policies indicate that the EDFUND Board has the authority, subject to approval by the Commission.

Commissioner Furay pointed out that EDFUND has a different set of laws, specifically, the enabling statute states that EDFUND will operate under the Non-profit Corporation Code of the State of California. There are a number of items that are “delegated” in the policies, which cannot be delegated because EDFUND already has the authority, unless the enabling statute states otherwise.

Commissioner Hernandez asked Ms. Lynch about the time needed to complete her review of the policies and determine whether they align with the statutory requirements. Ms. Lynch explained that she has been continually reviewing and researching the areas that would be addressed; however, she has not done any work with regard to the grant program issues she mentioned earlier. She clarified that this will not be a barrier to signing the Operating Agreement, and it is her understanding that these policies will continue to be developed over time. Commissioner Johnston suggested that when issues of legal conflicts arise, the Commission should raise the discussion to a higher level of overarching language in order to keep moving forward with completing the document.

Executive Director Michel mentioned that the Department of Personnel Administration (DPA) approves the Executive Director’s job description, which includes specific authorities. She is concerned that the policies document does not address what responsibility the Executive Director has for the overarching program, approximately \$1.7 billion of the entire budget. The oversight responsibility is the Commission’s responsibility; however, the day-to-day responsibility is the Executive Director’s. Although not defined in statute, this is defined in the Executive Director’s job description. As a result, the Commission needs to determine how they will redefine it.

Ms. Lynch noted that she needs to study the statutes and discuss with staff their role in establishing the guidelines for the grant program, which may already be established in statute and regulations. The policies may be asking the Executive Director to do what she does not have the legal authority to do. Ms. Lynch indicated that the Commission may be able to make reference to some general language that the Executive Director has the authority to perform the day-to-day function of the Commission pursuant to applicable law.

Due to time constraints, Chair McClain agreed to move forward to discussion of monitoring and oversight policies.

Global Policy: Monitoring

Commissioner Friedlander suggested revising the Global Policy to include the Commission Chair and committees.

Monitoring Policy 1: Overall Compliance with Commission Policies

Commissioner Perez offered a suggestion with regard to the policy statement that the Executive Director and EDFUND Board will each present a report indicating their organization's compliance with the Commission's policies. She recommended adding the phrase "as outlined in this policy." Commissioner Friedlander questioned whether it was realistic to assume that people would report on their lack of compliance. Mr. Wright explained that this policy was intended to allow the entity to report any ways in which it was unable to comply. Ms. Lynch pointed out that the policies are not the law and the Executive Director and EDFUND President cannot use the excuse that they are following policies if they would be in violation of the law. She advised including the applicable law in this section.

Monitoring Policy 2: Ends

Commissioner Friedlander asked for clarification regarding the policy that "the Commission will review and accept a report of programmatic accomplishments, etc." It was suggested that the term "accept" be changed to "approve," and "review" be changed to "take appropriate action." Executive Director Michel noted that the issue is related to performance and completion of a task. She asked whether this report would be included in the Commission's evaluation of the Executive Director's performance or whether it would be a sidebar activity since the Commission sets performance goals for the Executive Director. She commented that she views acceptance as approval, which is important in terms of assessing performance.

Commissioner Perez recommended adding a formalized standard outline that provides a structure of the actions that must be reported. Executive Director Michel informed the Commission that the grant and outreach programs have internal reporting requirements to the Administration through the Department of Finance (DOF), which includes the information requested in sections A and B of this section. The Commission typically does not review this information at meetings because it is baseline information provided to DOF in September and adjusted again in April. To request this information quarterly would not have much value because it is prepared twice a year through existing internal processes. She is concerned with creating more workload for staff as this is a tremendous amount of work.

Commissioner Johnston remarked that the policy is intended to provide the Executive Director and EDFUND President with the opportunity to indicate if there are any issues. Commissioner Perez added that it would provide a high-level overview that identifies any issues that need to be addressed. There was consensus among the Commissioners that the report should be provided quarterly. Commissioner Perez requested that the report include the number of applicants to provide an idea of the success of outreach efforts.

With regard to the role of FPPD, Commissioner Friedlander commented that he sees the underlying problem as a statutory framework that is not clear and that is contradictory. Statute

clearly delineates the EDFUND Board as being the governing body of the auxiliary. The same statute also indicates that the Commission will remain responsible for the administration of all financial aid programs, programmatic policy and evaluation. Should the Commission be asking for statutory clarification? He indicated that his position on oversight would be to take a very conservative point of view with regard to the Commission's substantial oversight responsibilities, as noted by the Legislative Analyst and the BSA audit, and fulfill those responsibilities until such time that the Commission has statutory clarification. Commissioner Friedlander added that if the Commission is going to take a leadership position on education policy, the Commission could suggest what that clarification ought to be, which could be doing away with the Student Aid Commission and having a non-profit that administers both the grant and loan program. The Commission needs to exercise leadership and deal with the inherent basic underlying problem, which is a very unclear and ambiguous statute.

Commissioner Hernandez mentioned that she has reviewed the BSA reports and observed the same issues recurring. She concurred with Commissioner Friedlander that it may take the Commission's leadership to attain that clarification through legislation.

Executive Director Michel responded that there are existing requirements with which the Commission must comply. She is concerned whether the list of reports actually meets all of the requirements of a guaranty agency; however, she agrees with the Commissioners about the need to deal with the underlying problem.

President Kipp remarked that the question they must address today is not who should administer the program, but how it should be administered. He noted that while there are a number of items that are on target in the Legislative Analyst's report, the Commission needs to finish developing its policies in order to have a new Operating Agreement in place by June 30. He advised having that larger conversation later. Chair McClain requested that staff ensure the issue is on the agenda for a future meeting.

With regard to item L pertaining to loan program portfolio performance data, Commissioner Perez recommended incorporating the potential impact of the portfolio performance on the annual budget. Commissioner Furay clarified that this section should be revised to indicate "portfolio performance data, as specified by the Commission, that will include default aversion, claims paid, and desegregated data on defaulted loan collections, including consolidation and rehabilitation."

Ms. Janet McDuffie, Chief, CSAC Management Services Division/Interim Chief, CSAC Federal Policy and Programs Division, made a comment regarding Item M pertaining to information on the competitive and political actions. She indicated that FPPD not only examines EDFUND's activities, but also examines how EDFUND compares to the competition. She recommended that the Commission consider adding more language that further illustrates how FPPD brings those issues forward to the Commission to assist in its decision making regarding the program.

Monitoring Policy 3: Commission Governance

Mr. Wright suggested that the proposed Commission's Governance Committee review the Commission's compliance as required annually by the policy. Commissioner Hernandez questioned whether an annual basis was sufficient in terms of oversight responsibility and asked if it would be more appropriate not to include a timeframe. Commissioner Galligani noted that more detail will need to be developed and suggested that the standing committee continue

to keep those issues in front of the Commission. Chair McClain suggested that the assessment of the Commission's effectiveness be completed on an on-going basis.

Monitoring Policy 4: Delegation

There was consensus to change the term "Delegation" to "Assignment."

On behalf of Commissioner Perez who left the meeting temporarily, Commissioner Friedlander shared her comments from a previous draft policy document dated March 21 as opposed to April 10. Commissioner Perez wished to ensure that the EDFUND summary performance evaluation of the President include the next year's goals. In addition, she asked how the EDFUND Board performance assessment would occur. Mr. Wright responded that the Commission's Monitoring and Compliance Committee would examine whether the assignments it requested were accomplished. Commissioner Hernandez added that the Commission should also ensure the deadlines are being met accordingly. Mr. Wright suggested that the committee develop a work plan.

Monitoring Policy 5: Strategic and Annual Planning

Executive Director Michel noted that the Commission has not had a strategic plan. Until five years ago, the overarching plans for the grant and loan programs could be separated from each other. However, since the grant program depends on the loan program for many services, the Commission needs to address what process it will take to bring both areas together for deliberation and discussion of the goals for the loan program, which include the revenue and expenditure expectations as well as what services EDFUND will provide to the Commission. She added that, with regard to the annual plan, staff has developed over the last two years an annual plan process that management has been using with measurable goals. She indicated that the Commission's Personnel, Evaluations and Nominations (PEN) Committee has reviewed the plan, agreed with it and encouraged staff to continue.

Chair McClain pointed out that the Commission anticipates working on the strategic plan at its annual workshop in June. Commissioner Hernandez asked why there has not been a new strategic plan since 2005. Executive Director Michel responded that there has not been agreement about the direction in terms of an organization as a whole. The staff has attempted to develop an annual plan so as to focus on grant and outreach areas; however, staff needs guidance from the Commission with regard to EDFUND. She is concerned about the synergies in terms of improving delivery of services. When examining oversight and the administration of the program, there should be concern about that relationship, and how it is monitored and planned. She added that schools will require service improvements and the issue of priorities will need to be addressed in a strategic plan process that includes both organizations.

President Kipp commented that while there could be more accomplished in the strategic planning process on the loan program side, it is not outside the realm of what EDFUND does every year as part of the annual business plan and development. This includes identification of long-term goals, short-term strategies and specific annual goals, which feed into the budget process and which comes before the Commission.

Commissioner Hernandez indicated that the Commission is now reshaping that process, providing more clarification and putting the process in place within the policies so that in the future, the Commission can ensure that the planning takes place on a consecutive basis.

Executive Director Michel stressed that the Commission needs to be concerned about priority setting, particularly when resources are constrained. For example in the area of information technology, in her opinion, the Commission has been crippled for the last ten years because of its 1970 batch system. Now that the Commission is in a place where it is catching up for the first time, she does not want to be in the same position five years from now in which the priorities for the grant program are not addressed because the Commission was not attentive to those synergies when developing the strategic plan. She believes this is extremely important given the financial crisis the Commission averted in the budget process because it had an auxiliary organization. It is essential to the strategic plan and the relationship, as well being able to maintain the Commission's programs.

President Kipp acknowledged the link, but commented that the centerpiece is not simply a concern over resources for the grant program. As long as the loan program is expected to generate all of the resources to fund either all or part of the operations of the grant program and the administration, then one should also be attentive to the well-being, financial vitality and effectiveness of the loan program.

There was consensus to add language regarding the synergies between the programs.

Monitoring Policy 6: Fiscal Operations ~ Grant Program

Commissioner Hernandez asked whether there was a contingency plan if the Commission is not meeting certain budgets. Executive Director Michel explained there is a deficiency process. Mr. Wright suggested adding language to that effect.

Before continuing this discussion, Executive Director Michel raised a concern related to the Delegation Policies ~ Personnel Practices. She questioned why the CSAC internal auditor function is being separated out from the Executive Director. She is concerned from a legal and personnel perspective because in any state agency, that responsibility, administratively, is the Director's and the Commission has not had the overall discussion about the audit function and where appropriately it lies. It is key to the oversight discussion and the Commission needs to address it today because it has to be part of the overall presentation to the Operating Agreement. If the issue is not addressed by the Commission, it will be addressed by the Legislature. Commissioner Friedlander also questioned the use of the term "or the grant program internal auditor" because it seems it is within the responsibilities of the Executive Director and his/her staff to provide the Commission with the information. Executive Director Michel added that the legislation was recently enacted that specifies the responsibilities as it relates to the executive in each agency.

Commissioner Friedlander, referring to Delegation Policy 1, Item F, asked whether the statement "The Commission's Audit Committee has the authority to hire, manage programmatically and terminate the internal auditor" follows State civil service procedure. Executive Director Michel clarified that it does not. Ms. Glenda Smith, Personnel Manager, explained that the Executive Director hires the internal auditor and would make the determination, through the civil service due process, if the employee should be terminated. She added that the Commission's Audit Committee could be included in that process in terms of making recommendations to the Executive Director.

There was consensus to remove the language in Delegation Policy 1, Personnel Practices, Item F stating that the Audit Committee has authority to hire, manage and terminate internal audit

staff. The policy will be revised to reflect that the internal auditor would report administratively to the Executive Director, but functionally to the Commission's appropriate committee.

Ms. Lynch commented that the chief internal auditor is accountable to the Commission, but more discussion needs to take place and she can provide the legal guidance if she is given the factual context. Executive Director Michel suggested that the Commission direct staff to work with Personnel to develop a starting point for those conversations. It was decided that the Ad Hoc Committee would continue to work on the details with appropriate staff.

President Kipp urged the Commission to move forward with discussing the overall policies for, not only the grant program, but also the loan program because of the urgency of the Operating Agreement.

Returning to the discussion of Monitoring Policy 6, Commissioner Friedlander asked to ensure that Item A.2, which pertains to the annual financial, system, and compliance audits of the grant program, is in accordance with State entity auditing practices. Mr. Robert Illa, CSAC Fiscal Officer, mentioned the various audits including those conducted by the Department of General Services, Bureau of State Audits, State Controllers and the internal auditor. He suggested linking Section A.2 with Section C.2 pertaining to the periodic audits and reviews of the grant program. He also suggested the reports be given different reporting time period as opposed to reporting at each regularly scheduled Commission meeting, because of the various processes and timing related to the Governor's Budget and the Budget Act. Commissioner Furay commented that it is data that anyone on a board or commission should know. Mr. Wright suggested that the reporting time period be changed to a quarterly basis, with the understanding that there may be nothing to report and that the policy may be changed in the future.

Monitoring Policy 6: Fiscal Operations ~ Loan Program

Ms. McDuffie remarked that the Commission should ensure that the policies and the Operating Agreement conform with regard to the interactive process, including the Commission and EDFUND Board and staff when developing annual business plans and budgets. Executive Director Michel requested clarification on the reports in terms of the process, the overall function, the Commission's responsibility and that of the Executive Director. She pointed out that the BSA or U.S. Education Department audits are directed to the Chief Executive Officer of the guaranty agency, not the EDFUND President. She asked what the outcome is in terms of reporting and monitoring compliance as it relates to the audit function and what the role of the Executive Director is. She is concerned that the Commission has not discussed it and time is limited.

Mr. Martin Scanlon, Chief Financial Officer and Vice President of EDFUND Finance & Administration, made a comment regarding Item E.1.b, which requires the EDFUND Board/President or Internal Auditor to report any budget variances that exceed a certain percentage of the original budget projection based on the categories determined by the Commission. Mr. Scanlon suggested that the budget variances percentages are material enough to be reported. Mr. Wright noted that the Commission would have to define that as it changes from time to time, and the percentage of variance would be removed for the time being.

Ms. McDuffie noted that the policies do not address the fact that the funds supporting the program, the Student Loan Operating Fund and the Federal Fund, are held in the State

Treasury, and are monitored and reviewed by the CSAC accounting office. She suggested that there should be language recognizing that CSAC, as the State entity, has fiscal reporting responsibilities, not only for the grant or loan programs, but for the funds. Executive Director Michel clarified that the State of California gave \$20 million to EDFUND to start their accounts, and there are also equity funds. Those funds are controlled and owned by the State through the Commission. She indicated that it is not just a matter of monitoring; it is a fiscal management responsibility that is not delegated to EDFUND. With regard to monitoring, CSAC staff must report any concerns about fiscal issues directly to her.

Monitoring Policy 7: Personnel Practices

Executive Director Michel strongly recommended that the personnel related policies, in terms of the Executive Director's responsibilities, be examined comprehensively in the future. The Commission currently has a policy of delegation of responsibility; the Commission took action to give the Executive Director direct line authority over the EDFUND President. The Executive Director's responsibility also includes being involved in salary setting or executive compensation and the termination policy. Commissioner Friedlander acknowledged that the BSA report states the Commission met on November 21, 2003 and "adopted a policy placing the ultimate authority for EDFUND operation with Student Aid's Executive Director and stated that all actions of EDFUND should be carried out with this line of authority in mind." Commissioner Furay clarified that what the Commission did at a certain point in time, it can either confirm or undo. Executive Director Michel stressed that this issue needs to be resolved particularly since there are some assumptions being made by the Legislature in regards to salary setting and executive compensation as it relates to incentive compensation and to overall authority of the Director.

Commissioner Galligani remarked that if the Executive Director and EDFUND President have a list of issues, it would be beneficial if they could lay them out for the Commission so that it is clear where the conflict is when the Commission is discussing delegation.

Executive Director Michel clarified that the Executive Director represents the Commission and its policies; however, the Director has an ethical and legal responsibility to represent the public interest. She has had to look at this issue very carefully because there have been some instances in which Commissioners have asked her to do things which she believes were inappropriate. Commissioner Johnston commented that there needs to be a process by which the Executive Director can have an independent place to adjudicate his/her issues. Commissioner Furay suggested a process that would allow the Executive Director to consult with the Chair. If the Chair is the problem, the Director can go to the Vice Chair; if the issue cannot be resolved that way, then the Director can go to the Governance Committee. Commissioner Hernandez suggested, and Chair McClain agreed, that the Executive Director should go directly to the Governance Committee rather than the Chair and Vice Chair. Any appeals would go to the full Commission.

Commissioner Johnston raised the issue of confidential information for which the Commission may be responsible, but does not have access. Executive Director Michel explained that the budget negotiation process is considered a confidential process by the Department of Finance (DOF) and the Administration. DOF is concerned that the Executive Director is communicating information to members of the Commission who have both public representation for the institutions and private representation, before the Administration makes its decision. She is concerned about maintaining the trust of both DOF and the Legislative Analyst's Office in the budget development process. Commissioner Friedlander drew a distinction between an item discussed at the last Commission meeting, which involved a special request made by the Commission to communicate certain information to a State agency, for which a copy of the

communication was not provided to the Commission, and information that is clearly confidential. Executive Director Michel commented that the Commission should discuss more broadly what kind of information it would like to be articulated, understanding that this is a public meeting and she has been advised by counsel what she can do in terms of written correspondence.

Ms. Lynch commented that it is each Commissioner's responsibility to indicate whether he or she has a conflict and if so, he or she should refuse the information. She added that the Commission can make the request for information and the Executive Director should respond by providing the information or stating for the record that he/she disagrees; it depends on the situation. She suggested that the Executive Director indicate those general items to which she must be able to respond which may not require the Chair's involvement and those issues that do.

Commissioner Johnston suggested a hierarchy that includes a low-level request that does not need Commission involvement and relies on the Executive Director's judgment call, an intermediate level where the Chair is informed, and a high level at which nothing is provided until the Commission takes action.

Commissioner Perez remarked that all of the Commissioners can sign a conflict of interest statement. Additionally, the Commission can formalize requests for information, providing justification for the request. Formulating a process will discourage people from asking for information that they might not need to request. If the request is deemed inappropriate, then a response can be returned with a copy to the appropriate committee. However, there needs to be an opportunity to disclose the issue to the full Commission to ensure transparency and communication.

Commissioner Perez also expressed concern about the authority and accountability of the EDFUND Board. Commissioner Furay pointed out that the accountability of the Commission, as well as the EDFUND Board and President, is not just to the State and/or the Commission, but to the Federal government. The Commission holds the guaranty, so it has total responsibility to the Federal government.

In the interest of time, President Kipp urged the Commission to discuss Delegation Policy 2, which goes to the heart of the roles and responsibilities issue. He suggested replacing the terms "delegated" and "authority" with the phrase "assign the responsibility."

Delegation Policy 2: EDFUND Board and President

Commissioner Furay noted that the Legislature states the EDFUND Board has a given authority and that the question is what aspects of CSAC oversight preempt the nonprofit code. Commissioner Friedlander agreed and suggested that the preemption come within the same statute, Section 69525(a), which discusses the Commission's responsibility with regard to administration of financial aid programs and programmatic policy evaluation. He also pointed out that the BSA audit states that "federal law and regulations make it clear the Student Aid is responsible for ensuring FFEL Program compliance and, therefore, it should not be negotiating oversight issues with EDFUND." With regard to the role of the EDFUND Board, the policies should acknowledge the conflict or the dichotomy in the statute in terms of what the Commission's responsibilities are.

Commissioner Perez indicated that the EDFUND Board may be required to do certain things regardless of the Commission's responsibility, but asked what their responsibility is to report back to the Commission to make the final decisions.

Ms. Lynch clarified that the EDFUND Board governs itself as far as being a private nonprofit entity; the EDFUND Board does not have a governance role in the Commission organization. The Commission needs to focus on what it should do to oversee EDFUND. She views EDFUND as conducting its business and reporting to the Commission while the Commission monitors and reviews, performing a critical thinking process. The Commission does what is necessary, through its staff, to accomplish that process and then communicates to EDFUND whether the Commission wants it to continue to move in that direction. She advised having a certain amount of reporting from EDFUND so that there is no duplication of effort in the State system.

There was consensus that the Commission is the ultimate authority and needs to perform an oversight role of EDFUND; however, EDFUND runs its business under the nonprofit rules and regulations.

Mr. Keith Yamanaka, Chief Deputy Director, commented that this is about the State's participation in the loan program. The Commission has been authorized by law to participate as a state agency in the program. If the Commission were to contract the administration of the loan program services to Sallie Mae or Nelnet, for example, that contractor would perform according to an operating agreement, but would be a separate corporation with its own interests. It may make suggestions to the Commission about what it should be doing, what its business plan could be and where its strengths lie as a guaranty agency; however, it is up to the Commission to use its staff and consultants, if necessary, to advise on how best to accomplish that. The Commission would not necessarily be accepting at face value the suggestions from the contractor. The fact that the Commission has an organizational construct of a non-profit auxiliary for which it appoints the Board members, does not necessarily mean that the Commission has to accept what the auxiliary says because the Commission is in charge of the program.

Mr. Yamanaka added that if the Commission rejects the concept that EDFUND is a separate corporation, that because it is the Commission's auxiliary it should run the loan program and that the Commission does not want CSAC staff to be involved in any way, preferring to take advice directly from EDFUND, then the Commission needs to say so. There will continue to be conflict because CSAC staff will continue to assert their State responsibility and EDFUND will continue to assert their responsibilities under the Non-profit Corporations law until the State public officials in charge of the program provide direction.

He pointed out that the Commission needs to state exactly what it means by oversight because there are areas of ongoing responsibility for the Student Loan Operating Fund, which involves all the revenues and expenditures from the loan program operations for which the State is responsible. That is an ongoing State function that the Commission cannot direct staff not be involved in because that is what staff is required to do. Staff cannot sign off on expenditure reports and the documents that must go to the control agencies unless they have a method of assurance, through the State process, that all the money is accounted for in the Student Loan Operating Fund. If the Commission does not want CSAC staff to be involved in ongoing monitoring, then the Commission needs to state that. Otherwise, the Operating Agreement negotiations will never end.

President Kipp responded that in every assignment of responsibility in the policies, he does not see the Commission giving away any authority or ultimate responsibility. In each area, the policy indicates that the responsibility is assigned to the EDFUND Board and/or the President, subject to approval by the Commission. The fundamental difference is understanding that it does not relinquish the Commission's responsibility. The oversight validation piece is about how the Commission would make sure that the auxiliary did what it said it would do. There is conflict in the statute, but fundamentally, the Commission is not giving away its responsibility or authority over the administration of a program if it assigns a portion of the responsibility of delivering that for the Commission to another entity, with appropriate controls and review.

With regard to the EDFUND Board and President's responsibility being subject to the Commission's review and approval, Mr. Yamanaka requested clarification regarding the level of review and approval. Commissioner Friedlander indicated that the Commission's approval process should always include advice and input from independent CSAC staff. To make decisions based only on the information provided by the auxiliary without having some independent advice from staff is not fulfilling the Commission's function. Commissioner Galligani indicated that everyone agrees there is a role for FPPD; however, the question is to what extent does the staff play that role. Commissioner Johnston agreed that CSAC staff is a critical part of the oversight function.

Commissioner Friedlander noted that the policies do not include the early involvement of the staff, which would be helpful in terms of flushing out issues before they reach the Commission level. President Kipp responded that there is already the verification/validation process as well as the review and approval process of the annual plan, the strategic plan, the budget and the goals, which must go through the Commission. He questioned the point of having an auxiliary organization if everything it does is being done in consultation. He is not arguing against consultation, but it defeats the whole purpose of the flexibility and the ability to be responsive and operate as a business. Commissioner Friedlander clarified that he was not referring to every single issue, but rather consultation with regard to fiscal matters such as the annual budget development. To address Commissioner Friedlander's concern, President Kipp recommended taking the consultation process mutually agreed upon in the Operating Agreement and incorporating it into the policies related to the annual business plan, budget and goals.

Mr. David Reid, General Counsel and Vice President of EDFUND Legal Services, indicated that the Operating Agreement states "CSAC, and EDFUND staff, and the Board shall adhere to all FFEL program policies adopted by the Commission provided that they are not inconsistent with this agreement." He indicated that the Operating Agreement would take precedence so it is not necessary to insert language from the Operating Agreement into the policies. There was some discussion among the Commissioners that this is problematic as there had been a general consensus that the policies would be the overarching document. Ms. Lynch cautioned against incorporating items into the Operating Agreement because it would essentially mean amending it and requiring another 45-day review period. The policies should be consistent with the Operating Agreement, but should be more detailed to allow more room for the Commission to maneuver.

Mr. Reid clarified that a contract is a meeting of the minds of two parties who agree to certain terms and conditions. There can be a reference in the contract to a policy in general and, by doing so, the parties must agree if the policy changes. If there is direct conflict within the Operating Agreement, or contract, that states one thing, but the Commission adopts a policy that says something different, the contract remains in force.

With regard to EDFUND Board/President Personnel Practices, Item F, Executive Director Michel raised a question regarding the Commission’s responsibility for the civil service assigned to EDFUND. She indicated that there is a commitment by EDFUND management to follow the suspension and termination policies, to provide training to its managers and to communicate and notify CSAC management when issues arise. Mr. Wright indicated he would clarify that section. Executive Director Michel requested that the promotional opportunities be addressed in the policies as well. President Kipp noted that the Department of Personnel Administration has frequently turned down EDFUND’s attempts to promote civil service employees because the positions do not fit into the State civil service structure.

Executive Director Michel also recommended that, with regard to the EDFUND Board’s responsibility for determining the EDFUND President’s salary, there should be no involvement of the Executive Director in bonuses as it relates to the individual performance.

Commissioner Perez requested clarification regarding EDFUND Board/President Fiscal Operations, Item C, which states that authorizations of expenditure of funds for use outside of the EDFUND’s normal business operations shall be approved by an officer of the Commission and in accordance with Commission policy. She wanted to ensure that the officer is not a Commissioner who serves on the EDFUND Board because that would not ensure controls.

Further discussion on Tab 7 was continued to Thursday, April 19, 2007.

CLOSING REMARKS

Commissioner Hernandez expressed her thanks to Executive Director Michel and Ms. Darrine Distefano, Governmental and Public Affairs, who participated in the Latina Action Day. There were 600 Latinas from the State of California who participated in the “Education Reform Town Hall” where financial aid was a key topic.

At 2:44 p.m., Chair McClain recessed the meeting of the Commission, so appropriate staff, as well as members of the Commission could attend the California State Assembly Budget Sub-Committee #2 hearing scheduled to begin at 3:30 p.m. at the State Capitol.

*****C

Chair Louise McClain reconvened the meeting of the California Student Aid Commission on Thursday, April 19, 2007, at 8:36 a.m.

The following Commission Members were present:

- Louise McClain, Chair
- Chad Charton
- Rory Diamond
- Michele Dyke
- Daniel Friedlander
- Sally Furay
- Lorena Hernandez

Dean Johnston
Alice Perez

The following Commission Member was absent:

Dennis Galligani
David Roth

Roll Call was taken and a quorum was recognized.

Chair McClain directed the designated CSAC and EDFUND staff working on the new Operating Agreement to continue working on the document at a separate location, and bring back an agreed upon draft Operating Agreement to the Commission for approval by Friday, April 20, 2007.

AGENDA TAB 8 – PRESENTATION BY THE CALIFORNIA COMMUNITY COLLEGES STUDENT FINANCIAL AID ADMINISTRATORS ASSOCIATION (CCCSFAAA) TO PROVIDE INFORMATION ON POST HIGH SCHOOL GRADUATION CONFIRMATION

Ms. Beth Asmus, CCCSFAAA President provided a presentation to the Commission entitled *Post High School Graduation Confirmation*.

AGENDA TAB 9 – GRANTS AND PROGRAMS

Item 9.a – Grant Advisory Committee (GAC) Chair’s Report

Ms. Mary Lindsey, Chair of CSAC’s Grant Advisory Committee presented a Powerpoint presentation entitled *Grant Delivery – Policy and Partner in Grant Delivery System*.

Ms. Lindsey also asked that the Commission to waive the attorney-client privilege and release a copy of the Attorney General Office’s Confidential Legal Opinion on the High School Graduation Eligibility Requirement for Cal Grant Entitlement Award to the members of GAC.

On **MOTION** by Commissioner Friedlander, **SECONDED**, and **CARRIED**, the Commission waived the attorney-client privilege for the Attorney General Office’s on its Legal Opinion on the High School Graduation Eligibility Requirement for Cal Grant Entitlement Award, and authorized staff to provide a copy to the members of GAC, as well as to the members of the public.

Prior to presenting Tab Item 9.b, Commissioner Friedlander, Chair of the Grants and Programs Committee, and Commissioner Furay complimented staff on the quality of work product, as well as the thorough agenda item. They also extended their appreciation and acknowledgement of all the hard work put into putting together the presentation.

Item 9.b – Consideration of Institutional Participation Agreement (IPA)

Ms. Catalina Mistler, Chief, CSAC Program Administration and Services Division, Mr. Tom Mays, CSAC Public Affairs Director, Mr. Bryan Dickason, Acting Manager, CSAC School Support Services Branch, Mr. Tae Kang, Associate Financial Aid Analyst, CSAC Cal Grant Operations Branch and Ms. Lori Nezhura, Financial Aid Analyst, CSAC School Support

Services Unit, presented the final draft of the new Institutional Participation Agreement for approval.

The final draft includes recommendations developed by Commission staff, members of the Grant Advisory Committee (GAC), segmental representatives, and other education stakeholders.

Acknowledging the need for the Commissioners to discuss roles and responsibilities pertaining to the loan program, Commissioners noted that the IPA item presented complicated issues and expressed concern about the relatively short time available to discuss these issues. Commissioners then discussed the alternative of adopting an IPA for the 2007-08 academic year, and returning to consideration of a long-term IPA at the September Commission meeting.

On **MOTION** by Commissioner Friedlander, **SECONDED** and **CARRIED**, the Commission approved entering into an interim IPA for the time period July 1, 2007 to June 30, 2008, with the commitment to bring the final new IPA for the period July 1, 2008 through June 30, 2009, to the Commission for approval at the September 2007 Commission meeting, and approved the four following items:

1. The Commission's high school graduation student self-certification form (G-8) was approved by the Commission in September 2006. Approval at the April 2007 meeting reaffirmed the use of the G-8 for the 2007-08 Cal Grant award year.
2. The decision to require institutions to keep Cal Grant funds in interest-bearing accounts as approved in September of 2006 was reaffirmed for inclusion in the interim IPA with no stipulated mandate regarding commingled or separate accounts.
3. The final Cal Grant reconciliation deadline was moved from October 15th to December 31st for inclusion in the interim IPA.
4. The new Information Security section (Article VI) was approved for inclusion in the interim IPA.

The Commission requested that Commission staff and members of GAC further discuss the California Residency, High School Graduation Confirmation, and maintenance of Cal Grant funds in Separate Accounts, and other remaining issues, with the goal of presenting a mutually agreed-upon new IPA at the Commission's September 2007 meeting. The members of the Commission stated their commitment to have the new 2007 IPA implemented on July 1, 2008.

Public comments were presented by:

- Mary Robinson, representing the California State University Chancellor's Office
- Kate Jeffrey, representing the University of California Chancellor's Office
- Mary Lindsey, representing the Grant Advisory Committee

AGENDA TAB 10 – OUTREACH ITEM

Commissioner Dyke, Chair of the Outreach Committee, opened the outreach discussion by introducing:

- Mr. Tom Mays, CSAC Public Affairs Director
- Ms. Cheryl Lenz, Administrator of the 2006-07 Public Awareness Campaign

- Ms. Despina Costopoulos, CSAC Cash for College Coordinator

Item 10.b – Consideration of Funding for a Public Awareness Campaign and California Cash for College Campaign for the 2007-08 Academic Year

Mr. Mays reported that staff is requesting \$2.2 million of the remaining outreach funds to be used to extend funding for the Cal Grant Public Awareness Campaign and California Cash for College Program. These funds will provide for a year-round campaign and program activities in 2007-08 for the next Cal Grant application cycle.

On **MOTION** by Commissioner Perez, **SECONDED**, and **CARRIED**, the Commission approved by Roll Call Vote, the use of \$2,206,500 in outreach funding in 2007-08 to fund the 2008-09 Cal Grant application cycle as follows:

1. \$1,719,000 for the Cal Grant Public Awareness Campaign and the amendment of the contract with Runyon, Saltzman and Einhorn for this purpose; and,
2. \$487,500 for the California Cash for College (CCFC) Program, including the amendment of the CCFC contract for this purpose.

Commissioners Charton and Diamond opposed.

AGENDA TAB 11 – GOVERNMENTAL RELATIONS ITEMS

Commissioner Friedlander, Chair of the Governmental Relations Committee, opened the Legislative discussion by introducing Mr. Steve Caldwell, Chief, CSAC Governmental and Public Affairs Division. Mr. Caldwell introduced two new staff members:

- Ms. Darrine DiStefano – CSAC’s State Legislative Representative
- Ms. Ann Shimasaki – CSAC’s Federal Legislative Representative

Item 11.a – Update on State Issues and Legislation and Consideration of Positions on Bills Affecting the Commission

Mr. Caldwell presented the recommended positions to the Commission for their approval on the following legislative bills:

- Assembly Bill (AB) 175 (Price) – Requires the maximum award for Cal Grant B access costs, beginning in the 2008-09 award year, to be in an annual amount that equals at least \$1,551.

On **MOTION** by Commissioner Friedlander, **SECONDED** and **CARRIED**, the Commission adopted a SUPPORT position on AB 175.

Commissioner Diamond opposed.

- Assembly Bill (AB) 1540 (Bass) – Establishes the Cash for College Program under administration of the California Student Aid Commission. Appropriate funds will come from the Student Loan Operating Fund.

On **MOTION** by Commissioner McClain, **SECONDED**, and **CARRIED**, the Commission adopted a SUPPORT, if amended position on AB 1540.

Commissioner Perez opposed.

- Assembly Bill (AB) 302 (DeLaTorre) – Allows tuition and fees for a Cal Grant B award to be paid in the first year of enrollment at an eligible institution.

On **MOTION** by Commissioner McClain, **SECONDED**, and **CARRIED**, the Commission adopted a SUPPORT position on AB 302.

Staff will include the Commission's appreciation for all of his continued support to Assemblymember DeLaTorre in the letter to his office.

- Assembly Bill (AB) 1578 (Leno) – Would establish the Competitive Grant Program for the purpose of providing comprehensive support on college and university campuses to students who are former foster youth.

On **MOTION** by Commissioner Furay, **SECONDED**, and **CARRIED**, the Commission adopted a SUPPORT position on AB 1578.

- Senate Bill (SB) 160 (Cedillo) – Requires that a person who has attended and graduated from secondary school, rather than high school, in the State is exempt from paying non-resident tuition at the Community Colleges and the California State University.

On **MOTION** by Commissioner Perez, **SECONDED**, and **CARRIED**, the Commission adopted a SUPPORT position on SB 160.

Commissioner Diamond opposed.

Item 11.b – Update on Federal Issues and Legislation and Consideration of Positions on Bills Affecting the Commission

Mr. Caldwell provided an informational overview on new Federal Legislation that affects the Commission and/or financial aid programs.

Item 11.c – Consideration of Recommendation from the Loan Advisory Council on Guiding Principles for Federal Legislation and Reauthorization of the Higher Education Act

Mr. Caldwell presented the recommendation from the Loan Advisory Council on the Guiding Principles for Federal Legislation and Reauthorization of the Higher Education Act.

On **MOTION** by Commissioner McClain, **SECONDED**, and **CARRIED**, the Commission approved the Federal Legislative Principles as discussed by the Loan Advisory Council.

Commissioner Johnston added that the Commission may need to look at the structure of the Loan Advisory Council, due to the lack of participation by the current membership. The lack of participation becomes problematic in staff's attempt to schedule a meeting, due to a lack of quorum.

**** AGENDA TAB 6 – CONSIDERATION OF AN OPERATING AGREEMENT BETWEEN THE COMMISSION AND EDFUND (Continuation)**

Ms. Janet McDuffie, Chief, CSAC Management Services Division/Interim Chief, CSAC Federal Policy and Programs Division, and Mr. David Reid, Vice President and General Counsel, EDFUND Legal Services Division reported that staff are approximately 99 percent complete with the language and have agreed on: oversight, standards, safe guards and security. Staff requested Commission direction on the following three items:

- Legal Services

Ms. McDuffie reported that EDFUND is requesting authorization to sign various documents, such as certification of bonds and lender agreements.

Ms. Kathy Lynch, Deputy Attorney General, stated that it is generally improper for a private entity to sign a State contract that serves a public purpose. She indicated that a State agency should not delegate bonds to any private entity because the disclosure requirements are extremely high. She added that, from a policy standpoint, it is a good practice for this Commission to continue to sign lender agreements; the Commission may encounter legal problems if it delegates that responsibility to a private entity.

Ms. Cathy Reynolds, Assistant General Counsel, EDFUND Legal Services, explained that EDFUND produces and provides all of the loan program information needed for the bonds. Once EDFUND receives the bond request, it reviews the documentation and certifies that the data is true and correct. Up until two years ago, EDFUND was handling all of the bond documentation on behalf of the Commission because EDFUND has possession and personal knowledge of the information; however, that process has changed.

Mr. Yamanaka provided additional background information on bond deals in general, noting that, to the extent that bond counsel requests certification from the guaranty agency, they are requesting a State representation that the information is true and correct. Any falseness of the statement, including omission of material information, is a violation of securities laws and can be fraud. Mr. Yamanaka indicated that when he served as the Commission's special counsel, he developed a process where EDFUND certified the information to CSAC. EDFUND would certify some, but not all, of the material. CSAC counsel would then ask CSAC staff if they are aware of any information that would contradict the material CSAC has been asked to certify.

Ms. Reynolds commented there have been problems with completing the bond certifications because the Attorney General's Office has been untimely in its responses, which impacts EDFUND's lender relations. Mr. Yamanaka pointed out that the process of bond deals starts months in advance and it is possible for the bond counsel to notify CSAC and EDFUND that a certification will be needed at that time.

President Kipp clarified that from the time EDFUND is notified of the bond deal, there is no delay in providing the information to the Commission or the Attorney General. He indicated that issuing State bonds is fundamentally different from issuing asset-backed securitizations because they involve more than one guarantor and potentially up to three billion dollars at a time. He indicated that it is only a matter of time before a lender realizes that all the other guarantors involved in the deal have responded promptly, but CSAC and EDFUND have not, and may consider leaving CSAC and EDFUND out of the deal. He does not care who does the final

signing, but he believes it cannot be a bureaucratic process that drags on for a month or two. He added that there is no liability to the Commission or to the State.

Mr. Reid indicated that several bond deals were botched last year. Mr. Yamanaka responded that the timing between EDFUND and CSAC is not an issue; he suggested asking the lenders or bond issuers to notify CSAC and EDFUND when the process begins. Additionally, there are situations where it becomes very significant what information is disclosed. He explained that there was a situation where the Attorney General's Office was not willing to sign off on the level of disclosure that EDFUND was willing to accept because it would have put the Commission in a position of violating securities laws. This issue was resolved when EDFUND agreed to a higher level of disclosure, but the bond counsel and issuers had decided to close the bond deal before CSAC had provided the certification, and at that point, CSAC was under no obligation to provide any kind of certification.

Ms. Reynolds commented that EDFUND believes part of the problem is the Attorney General's workload and suggested that if the Commission had general counsel on site, these issues would be resolved. Mr. Yamanaka responded that the process may be shortened but the important point is that the Commission's certification cannot be delegated. It is the State's authority and liability that the Commission would be exposing by doing anything other than a full, independent review.

Commissioner Furay remarked that in any organization, there may not always be experts in bond issues. She noted that although there is enormous expertise in the Attorney General's Office, it may not reside within the counsel assigned to the Commission. She asked whether it were possible to have an arrangement with the Attorney General's Office that regardless of the assigned counsel, the Attorney General's bond expert would handle the Commission's bond deals.

Ms. Lynch commented that she is personally offended by some of the remarks made by EDFUND regarding the Attorney General's Office because they work quickly and diligently, and sometimes there is disagreement, which does not mean the Attorney General's Office is holding up the bond deal. She added that it is improper to criticize the Attorney General's Office when that particular individual is not present to defend herself. Ms. Lynch then indicated that it is a good idea to have bond counsel from the Attorney General's Office. She explained that the Commission would not be able to obtain private bond counsel because that expertise is available in the Attorney General's Office. In addition, the Attorney General has an attorney/client relationship with the Commission, not EDFUND, so the Attorney General's Office must consult with their client first.

Commissioner Furay commented that the Commission must do everything it can to make EDFUND as effective as possible. The Commission should have an agreement with the Attorney General's Office to have its bond expert handle their bond deals. She agreed with Mr. Yamanaka, that the process could include a request to the bond issuers to notify CSAC and EDFUND well in advance, if the rest of the Commission agrees that would be appropriate. Mr. Reid agreed to work with CSAC staff to develop a solution for the bond certifications and lender agreements.

The Commission reached consensus to have CSAC staff continue to sign these documents.

- Incentive Compensation

Ms. McDuffie expressed CSAC staff's concern that EDFUND, as a pre-condition, should meet all of the performance standards in the Operating Agreement in addition to the surplus requirement prior to the approval of any incentive compensation plans for executive bonuses.

Ms. Reynolds indicated that EDFUND disagrees with the condition that all of the standards listed in the Service Level Agreements be met because the failure of one individual would impact the entire company's incentive compensation. She explained that EDFUND already ensures that any individuals who fail to perform are not eligible for incentive compensation for both either the individual or the company performance. EDFUND recommends that the Operating Agreement state that EDFUND will pay incentive compensation based upon the Commission and EDFUND's policy.

Commissioner Furay remarked that the incentive compensation is currently based on the company's performance of five major goals, whereas the Operating Agreement includes a huge amount of detail related to routine operations; she added that this is the first time she has heard of this concern. Commissioner Perez agreed that if the Commission has stated EDFUND needs to meet five key goals to receive 100 percent of incentive compensation then that should be all that is required. Commissioner Friedlander commented that the incentive compensation policy is only based upon EDFUND's performance in the loan program.

Executive Director Michel responded that this is the first time the Commission has significantly amended the Operating Agreement since 2002. She noted that the existing synergies between the two entities require a certain level of service in order for the Commission to be successful in administering its grant program and the Commission should consider the question as it is ultimately responsible for running the grant program.

Commissioner Friedlander suggested adding a sixth goal for overall support services that can be weighed at some percentage. President Kipp indicated that overall support services might be a sixth performance measure but it should not be incorporated into the Operating Agreement because it is related to the Commission policies on defining the goals. If the Commission adds that goal, the goal should reflect a level of materiality and exclude the word "all."

The Commission agreed to remove the word "all" and directed staffs to continue working on appropriate language.

- Exhibit C – Guiding Principles and Goals for EDFUND

Ms. McDuffie requested clarification on whether the goals that are in the current Operating Agreement are to be included in the revised Operating Agreement.

Commissioner Friedlander pointed out there is a difference between the general goals, which are in the Operating Agreement, and the annual goals, which are developed annually through a process that includes consultation with CSAC staff and the Commission. The Commission agreed that the general goals, or Commission's goals for EDFUND, would be included in the Operating Agreement.

In addition, Commissioner Friedlander noticed that his draft of the Operating Agreement did not include the revision he previously requested to ensure that the goals are measurable. Mr. Reid assured him that the change was made.

Commissioner Perez commented that incentive plan goals should be reviewed on an annual basis. She advised, when reviewing the goals, the Commission should be mindful of the market conditions as well as what is appropriate for an incentive compensation plan, from an accountability perspective.

With regard to the rest of the Operating Agreement, Ms. McDuffie pointed out that the former Operating Agreement exhibits are now Service Level Agreements containing standards, which are yet to be fully developed. She explained that staff is attempting to add language regarding the Service Level Agreements to allow them to be reviewed annually and changed, if necessary, without amending the Operating Agreement and requiring the 45-day review and comment period by the Department of Finance and the Joint Legislative Budget Committee. Mr. Reid explained that the language indicates that the Commission and EDFUND will perform best practices in general and, in addition, EDFUND will adhere to certain high-level standards that will be adopted pursuant to an amended Service Level Agreement no later than a specific date. He indicated that staff considered July 31 as the date, but suggested that it may be more appropriate for it to be some time after the Federal budget is passed.

Commissioner Friedlander commented that there are still some underlying issues with regard to delegation to executives and the EDFUND Board, which the Commission will be discussing. He wanted to ensure that any changes that would impact the Operating Agreement, based on that conversation, will be incorporated into the Operating Agreement. Otherwise, the Commission will have done exactly what the Bureau of State Audits said the Commission cannot do, which is negotiate away its oversight responsibilities.

Mr. Reid mentioned that the one-year response to the Bureau of State Audits must be issued by Monday morning. He suggested that if the Commission is able to come to an agreement on these issues, then the response could indicate that the Commission has succeeded in agreeing to an Operating Agreement, noting that it must still be shared with the Legislature and the EDFUND Board. He indicated the letter can also state that the Commission is developing policies and procedures that may require some additional work.

CSAC and EDFUND staffs will resume their meeting and will bring forward a completed Operating Agreement for approval to the Commission on Friday, April 20, 2007. The Commission will meet on May 1 to review edits to, and consider approval of, the Operating Agreement.

AGENDA TAB 7 – CONSIDERATION OF ROLES, RESPONSIBILITIES AND POLICIES OF THE COMMISSION AND EDFUND AND THEIR RESPECTIVE STAFFS (Continuation)

Mr. Michael Wright, Project Coordinator and Mr. Stephen Thomas, Partner, The Results Group, continued the open discussion with the Commission, CSAC staff and EDFUND staff on the revisions to the California Student Aid Commission Policies.

Ms. Kathy Lynch, Deputy Attorney General, commented that if the policies conflict with the Operating Agreement, then the policies would be of no use. If a conflict arises during the life of the Operating Agreement, the Commission may need to amend it because the agreement takes precedence. She advised that if something needs to be in the Operating Agreement, then the Commission should ensure that it is included, rather than leaving it to the policies.

Assignment Policy 2: EDFUND Board and President - Personnel Practices

Referring to the Commission's previous discussion on the EDFUND internal auditor, Item F.2, Commissioner Friedlander commented that the Commission disagreed with the Ad Hoc Committee's recommendation that the chief internal auditor for CSAC would be responsible for hiring internal auditor personnel because that policy does not conform to requirements. However, he noticed that the Ad Hoc Committee had not suggested the same policy for the EDFUND chief internal auditor and questioned the difference in approach.

President Kipp explained the reason the policies were not parallel is probably because the responsibility of establishing EDFUND's personnel policies belongs to the EDFUND Board and is not a Commission Policy. Commissioner Furay clarified that the Nonprofit Corporation Code provides a series of responsibilities. Commissioner Hernandez suggested that the policies explicitly state that for future reference.

Assignment Policy 1: Executive Director – Internal and External Communications

Executive Director Michel requested clarification on whether the communication to all Commission staff includes civil service staff assigned to EDFUND. She raised the issue because when she began serving as the Executive Director, the civil service employees at EDFUND had expressed concern that there had been no interaction in the past. As a result, she began having scheduled meetings with them; however, she became aware of the sense among the EDFUND managers that the Executive Director should not be meeting with the civil service assigned to EDFUND.

Commissioner Furay suggested that it be left to the Executive Director's judgment to include the civil service at EDFUND. Commissioner Johnston indicated that he understands the Executive Director meeting with EDFUND civil service on issues such as retirement programs, but he believes that a direct link between the Executive Director and EDFUND classified staff would be inappropriate. He added that the Executive Director may be responsible for them from an administrative standpoint, but not from a functional standpoint.

Executive Director Michel pointed out that the final decision pertaining to any disciplinary action against a civil service employee, regardless of whether they are assigned to CSAC or EDFUND, belongs to the Executive Director. Ms. McDuffie explained that, in those cases, the EDFUND manager over the civil service staff conducts an initial evaluation and CSAC's Personnel Office reviews it to ensure that the evaluation was completed in accordance with State standards. CSAC Personnel works with EDFUND Human Resources Office and the manager to resolve any issues and ensure that State processes are being followed. In addition, the CSAC Personnel Office assists in determining whether the individual's workload meets the civil service classification requirements set by the Department of Personnel Administration.

Executive Director Michel added that the issue also pertains to the responsibility of the EDFUND President and its management in terms of communicating. She mentioned that there have been termination issues in the past that were not handled appropriately.

Commissioner Johnston stated that staff should seek direction from the manager who would then interact with the Executive Director to resolve and adjudicate problems. He does not believe staff should have two bosses. Commissioner Hernandez commented that she views CSAC staff similar to being union representation. She added that EDFUND would direct the work, but the Executive Director would communicate civil service issues to those employees, with an appropriate copy to the EDFUND President. However, an employee must have an

avenue to discuss his/her issues and she views CSAC as playing that role for the employee. She indicated that CSAC would have an obligation to communicate back what those issues are.

Executive Director Michel raised the issue of access to information as it relates to personnel and investigations. She indicated that the California Highway Patrol has investigated instances at EDFUND involving both civil service and non-civil service employees and CSAC staff was denied access to the information in EDFUND's possession. She noted that there were no policies in place with regard to protocol at that time. She emphasized that the issue needs to be dealt with so that management knows what the policies and procedures are and complies with State law. Ms. McDuffie added that the Operating Agreement includes basic language requiring the managers to be trained on the proper treatment of civil service, but it may not fully address the issue raised by the Executive Director.

Mr. Wright suggested, and Executive Director Michel agreed, that when issues arise regarding the civil service employees assigned to EDFUND, it is considered a personnel matter and coordination will occur between the Executive Director, the EDFUND President and the personnel offices of both entities.

Executive Director Michel mentioned that a BSA audit report noted an issue with regard to access to information. She asked for clarification on the policy and process for providing access to State records requested by law enforcement or a State auditor. Ms. Lynch explained that with respect to a BSA audit, if the auditor requests information, the State agency must respond because the auditors stand in the shoes of the agency. If the BSA auditor is examining an attorney/client document, it would still be protected because the auditor would keep it protected, so that level of protection is always there. With regard to EDFUND, Ms. Lynch indicated that the recommendations will examine how other auxiliaries handle that.

Before moving on, Commissioner Friedlander indicated that the issue of whether the Executive Director has a line of authority over the EDFUND President needs to be resolved one way or another. Commissioner Furay explained that the EDFUND President reports to the EDFUND Board, which hires and fires the President. Commissioner Friedlander agreed, but pointed out that this is contrary to the decision made in 2003, and that the Commission needs to make a decision about that and have clarity for the Executive Director and the EDFUND President.

Chair McClain commented that unless there is a compelling reason why not, it seems that one would be responsible to the body that can hire and fire that person. Commissioner Furay added that this is included in the EDFUND bylaws, which cannot be overridden except by changing them.

Executive Director Michel suggested that the EDFUND termination policies need to be adapted to whatever decision the Commission makes. With regard to the incentive compensation and executive compensation policies, the Commission and EDFUND Board have in their policies a line of responsibility of the Executive Director for making a recommendation to the EDFUND Board and the Commission. She wants to ensure there is conformity.

President Kipp commented that, in his mind, there has never been any ambiguity about this issue. He was hired by the EDFUND Board and is evaluated by the EDFUND Board. If the EDFUND Board chooses to let him go, they can do that. There is not a role, whatever the relationship between the Commission and the auxiliary is, that involves the Executive Director exercising any authority over those areas involving him. He thinks that it is probably time to rescind the statement made by the Commission in 2003. He does not know that the

Commission needs to wait until the policies are completed before rescinding that decision, but he thinks it is important that there be clarity as to who is responsible to whom and for what. Mr. Thomas commented that once the Commission creates the policy and approves it, then that would be its decision.

It was clarified that the Commission does not have final approval regarding the hiring of the EDFUND President. Commissioner Perez indicated that it did not make sense to her since the Commission had already discussed the fact that the Commission ultimately has oversight and authority over the EDFUND Board. She indicated that if the EDFUND Board makes the hiring decision, then the President reports to the EDFUND Board. If the Commission has final approval of the hiring decision, then the President would report to the Commission. Commissioner Diamond agreed and indicated that he would feel more comfortable if the Commission actually repealed the decision made in 2003.

Executive Director Michel reiterated that there needs to be conforming policies regarding the responsibility of the Executive Director in terms of executive compensation and incentive compensation. The Commission should vest all that responsibility to itself. That is currently a delegated responsibility of the EDFUND Board. Commissioner Furay indicated that the responsibility is already with the Executive Director and the Chair, not the Commission, unless the decision is appealed, which spreads the intermediate sanctions liability.

Executive Parameters Policy 6: External Communications

Mr. Wright explained that the Assignment Policies on Internal and External Communication are parallel to Executive Parameters Policy 6 on External Communications. Commissioner Friedlander remarked that he does not think that in all circumstances they would be parallel for the Executive Director and the EDFUND President. For example, he understands there have been issues in the past when CSAC staff has had discussions with the Legislative and Executive Branch agencies when EDFUND staff was not included or unavailable. He does not think that should be the practice when it is practicable. He also understands that there are probably some circumstances when CSAC staff is involved in conversations with the Office of the Secretary of Education, the Department of Finance or some other control agency. He thinks it would be going too far to say that CSAC staff can never discuss an issue pertaining to EDFUND without EDFUND staff present.

Executive Director Michel commented that the control agencies like the Department of Finance and the Governor's Office through the Office of the Secretary of Education or legislators and legislative staff would typically contact the Executive Director on any issue affecting the California Student Aid Commission. She would be concerned that there was a limiting policy that would restrict her ability to communicate with any of those individuals without having the EDFUND President present. That is not a realistic policy because it often times happens that the Executive Director has no control over that. They may want to talk to the Executive Director and staff without the presence of EDFUND and that is their prerogative. If the Executive Director is given the direction that if a loan program issue is discussed, then it is really a judgment issue. However, if the Commission wants the intent to be stronger, then the Commission should express that.

Commissioner Charton suggested that paragraph B include a caveat stating that "whenever possible" the Executive Director and EDFUND President will not carry out items 1 through 4. He commented that one of the issues encountered in the recent past is that during the budget hearings, the Commission has been summoned to participate when it would be perfectly

appropriate for EDFUND to be present, but that has not happened. He believes the policies should include language that alludes to mutual participation when reasonable and appropriate. He also suggested that paragraph B.1 should include the word “involvement” meaning that representation will not always occur in the form of a physical presence, but the other party should be afforded the opportunity to be involved in the discussions with the executive and legislative branches.

President Kipp commented that with regard to paragraphs B.1, B.4 and C.1, he has the same concern as the Executive Director. He stated that the policy is written in a way that is fundamentally unworkable, where the Executive Director, on a grant issue, or the EDFUND President, on a loan issue, cannot talk to anyone about a matter that is of significance without bringing in the Commission Chair or others. He is very sympathetic, yet, at the same time, he would like to be included in some of those meetings just as the Executive Director may want to be included in other meetings. He stated that everyone must be able, in whatever role the policies delegate, to use common sense and judgment and not misrepresent the policy of the Commission or the EDFUND Board, if they establish a position. However, they have to be able to have those conversations about significant issues, such as the restoration of guarantor access to the National Student Loan Data System (NSLDS) database, which does not involve the Commission. He noted that he has seen progress in being included in most of the conversations with regard to loan program finances.

Commissioner Johnston remarked that, from a committee standpoint, this has been a major problem, and is the reason it is in the policy; however, if the Commission does not agree this should be a limitation, then it should be removed.

Commissioner Friedlander agreed with President Kipp that paragraphs B.1, B.4 and C1 are problematic and do not appear to work. He thinks that they should be phrased in terms of the importance of inclusion when representing or discussing one program with other entities. In reality, because of the Commission’s responsibilities as a State agency, there may be some distinctions with regard to the delegation to the Executive Director that may be somewhat different from the EDFUND President.

Commissioner Friedlander commented that the Executive Director is in a unique position with regard to the dealings with the Secretary of Education and the Department of Finance, and in the course of other conversations, questions that are to be posed to him or her, that ought to be able to be discussed without necessarily the presence of EDFUND staff, but that the Executive Director should always be very inclusive with regard to presenting issues that affect EDFUND.

Commissioner Furay noted that the Commission is the guarantor, but the external agencies do not contact the Commission, they contact the head of the student loan agency because they are accustomed to dealing with that person. The Commission should be involved because it holds the guarantee. She also indicated that the Commission can use the word “delegate” in terms of the Executive Director because it is in statute. However, in terms of the EDFUND President, the Commission is not delegating what the Nonprofit Code already gives them. The Commission has to determine where the oversight is.

Executive Director Michel clarified, and Commissioner Furay agreed, that the operational interaction between the Federal government and the EDFUND President and his staff occur daily. However, when policy issues come for implementation of action, those come to the Executive Director. The policy needs to express how responses are coordinated between the Executive Director and the EDFUND President, as well as a full Commission response. State

agencies are expecting a response by the Executive Director because the Director represents the Commission.

Commissioner Johnston agreed, but pointed out that it is what is in that representation that is overstepping. They can use judgment if the Commission wants to be vague, or the Commission can be more explicit. The Ad Hoc Committee began from a very restrictive standpoint, but the Commission can be less so and that appears to be the direction the Commission is taking.

Executive Director Michel commented that when communications deteriorate to nothing, it fundamentally hurts the Commission and the EDFUND Board, so it is not just a matter of one or the other.

Commissioner Hernandez remarked that the Commission has two great leaders and she would hope that they would be allowed to take that leadership role.

Ms. McDuffie requested clarification regarding paragraph A, which indicates that the Executive Director and the EDFUND President cannot convey confidential information. The Executive Director had discussed the need to respond and provide information to the Governor. Executive Director Michel explained that a representative of the Governor, for example, may call in regards to the status of a loan program issue, usually in the budget context, which is confidential. She indicated that since the Governor signs off on her employment and her raises, she has to have a relationship with the Governor's Office that is freely open. She pointed out that she has always reported back to the Commission Chair, but she has not sought approval to answer the phone call.

Commissioner Johnston asked the Executive Director to elaborate on that relationship. Executive Director Michel explained that although the Commission hires the Director and approves salary increases, the Governor's Office has final approval of those decisions. Commissioner Johnston stated that from a perception standpoint, he wished to make it clear that the Executive Director understands that she works for the Commission and there should be no confusion that there is some connection with the Governor's Office, where the Governor is thought to be the one in charge.

Executive Director Michel indicated that she did not make that statement. However, as a public State official, one has responsibility to the Governor and the Legislature, and is required to be open to both those parties and provide information as requested. She believes that has been part of the difficulty that some Commissioners have had in understanding the process. If this were an Executive Branch, there would not be a Commission because there would be a direct line of authority to the Governor and one would report through an agency secretary directly into the Cabinet. The Office of the Secretary of Education, even though it is not established as a Cabinet entity, the Secretary of Education sees the Secretary as responsible for any educational policy of the state. She explained that part of the problem is that it is not a constitutionally established office, but in practicality, one has some responsibility to the Secretary.

Commissioner Furay pointed out that the Commissioners are public officials appointed by the Legislature and the Governor, so they have some responsibility as public officials as well. Executive Director Michel agreed, indicating that it is just a matter of reporting to the Commission issues that arise from those entities and then fairly and accurately representing the positions of the Commission to those individuals.

Commissioner Hernandez voiced her concern that the issue of providing confidential information was not resolved. Commissioner Perez suggested that this issue be raised again tomorrow when the Deputy Attorney General is expected to be present and able to advise on the issue.

Chair McClain recessed the Open Session of the meeting of the California Student Aid Commission at 6:04 p.m. The meeting will reconvene on Friday, April 20, 2007 at 8:30 a.m.

Chair Louise McClain reconvened the meeting of California Student Aid Commission on Friday, April 20, 2007 at 8:40 a.m.

The following Commission Members were present:

- Louise McClain, Chair
- Chad Charton
- Rory Diamond
- Michele Dyke
- Daniel Friedlander
- Sally Furay
- Lorena Hernandez
- Dean Johnston
- Alice Perez

The following Commission Members were absent:

- Dennis Galligani
- David Roth

Special Recognition

The Commission presented a Resolution to former Chair, James Fousekis, for his unwavering commitment, professional leadership and dedicated service to the Commission and the students of California.

AGENDA TAB 11 – GOVERNMENTAL RELATIONS ITEMS (Continued)

Item 11.a – Update on State Issues and Legislation and Consideration of Positions on Bills Affecting the Commission

Mr. Steve Caldwell, Chief, CSAC Governmental and Public Affairs Division, provided a summary of Assembly Bill 1652 (Lieber) which does the following:

- Includes intent language for higher education to both correct any abuses and dispel any unfair stigmatism of honest and ethical personnel in higher education;
- Requires the Legislative Analyst’s Office to prepare a report by January 31, 2008 summarizing the allegations made by New York Attorney General Andrew Cuomo and describing the student lending practices in California;
- Requires the student financial aid and lending community to report on the ethical standards currently in place in each of the institutions or agencies; and
- Requires the Commission to amend its Institutional Participation Agreement with regard to the limitation of gifts.

Mr. David Reid, General Counsel and Vice President, EDFUND Legal Services and External Relations Division, provided additional background information on New York's legislation related to a code of conduct resulting from Attorney General Cuomo's investigation into student lending practices.

On **MOTION** by Commissioner Johnston, **SECONDED**, and **CARRIED**, the Commission approved Commission and EDFUND staffs to move forward and work with Assembly Committee staff regarding recommended language for AB 1652.

AGENDA TAB 12 – AUDIT ITEMS

Item 12.a – Consideration of Response to the Bureau of State Audits Report

Ms. Diane Manning, Vice President, EDFUND Audit Services Division, presented the one-year draft response to recommendations made by the Bureau of State Audits (BSA) in the audit report dated April 2006. Commissioners and staff suggested minor changes.

On **MOTION** by Commissioner Charton, **SECONDED**, and **CARRIED**, the Commission approved the one-year draft response to BSA, as amended.

Item 12.b – Consideration of Policies and Procedures for Commission and EDFUND Meetings

Ms. Kathy Lynch, Deputy Attorney General, and Mr. David Reid, EDFUND General Counsel, presented the proposed policies and procedures for Commission and EDFUND meetings. Ms. Lynch and Mr. Reid reported that they had no concerns and mutually agreed upon the document.

On **MOTION** by Commissioner McClain, **SECONDED**, and **CARRIED**, the Commission approved the policies and procedures for Commission and EDFUND meetings, as presented.

Item 12.c – Consideration of 2006-07 Loan Program Incentive Compensation of 75% Methodology

Ms. Janet McDuffie, Chief, CSAC's Management Services Division/Interim Chief, CSAC's Federal Policy and Programs Division, and EDFUND President Sam Kipp presented the respective staffs' recommendations regarding the 2006-07 Loan Program Incentive Compensation 75% Methodology. CSAC staff recommends that EDFUND achieve a 75% level of improvement above the prior year's performance before earning a bonus, whereas EDFUND staff recommends that EDFUND earn a bonus if they achieve at least 75% of their goal, even if the achievement level is below the prior year's performance because the changing market conditions must be taken into account.

On **MOTION** by Commissioner Diamond, **SECONDED** and **CARRIED**, the Commission approved EDFUND's recommendation as follows:

- 1) Set the 75% minimum achievement level that qualifies for incentive compensation as the level that is at least 75% toward goal achievement;
- 2) Determine the score EDFUND receives for any one of its five equally weighted performance metrics based on the extent to which EDFUND achieves that specified goal;

- 3) Calculate EDFUND's overall score as the weighted average of the five scores; and
- 4) If the goals are changed as a result of the February budget adjustment process, identify any goal that was affected by that process so that the Commission understands it is formally acting and accepting that revised goal at that time.

At Commissioner Furay's request, Chair McClain decided to take agenda item 12.e out of order.

Item 12.e – Consideration of Policy on EDFUND Incentive Compensation

Ms. Janet McDuffie, Chief, CSAC Management Services Division/Interim Chief, CSAC Federal Policy and Programs Division, explained CSAC staff's concern that the precondition statement in EDFUND's proposed Incentive Compensation Policy does not necessarily meet the Commission's expectations regarding the loan program surplus (also known as "Loan Program Revenues Net of Expenses") as approved by the Commission in the budget.

Discussion continued regarding changes to CSAC staff's recommended precondition statement.

On **MOTION** by Commissioner Friedlander, **SECONDED** and **CARRIED**, the Commission approved by Roll Call Vote the following precondition statement in the Commission Policy on EDFUND Incentive Compensation as follows:

"A precondition for incentive compensation requires that the year-end Loan Program Revenues Net of Expenses will be a surplus and no less than 75% of the Loan Program Revenues Net of Expenses as approved by the Commission in the annual Loan Program Business Plan and Budget and any subsequent approved change to the budget."

Commissioners Diamond and Furay opposed.

More discussion ensued regarding the approval processes outlined under the "Non-Executive Incentive Compensation Plans" and "Discretionary Executive Incentive Compensation" portions of the draft Commission Policy on EDFUND Incentive Compensation with regard to conformity with the Commission's roles and responsibilities, once finalized.

The Commission reached a general consensus to defer further discussion on this issue and request that the EDFUND Personnel and Nominations Committee review the policy and develop alternatives for the Commission's consideration at its June 2007 meeting.

Item 12.d – Consideration of Policy on EDFUND Executive Compensation

The Commission reached a consensus to defer discussion of the proposed EDFUND Policy on Executive Compensation until the issues discussed under Agenda Tab 12.e can be resolved.

Item 12.f – Update and Consideration of Authority to Proceed with Hiring a Chief Internal Auditor

This tab item was not discussed.

AGENDA TAB 13 – FISCAL POLICY AND LONG-RANGE PLANNING ITEMS

Item 13.a – Loan Advisory Council (LAC) Chair’s Report

Ms. Carrie Steere-Salazar, Loan Advisory Council (LAC) Chair, reported that LAC is delaying its request for the Commission to take action on the following LAC recommendations developed at its March 30, 2007 meeting until clarification is provided to the Department of Finance regarding the fiscal implications related to recommendation 2 below:

1. Repeal of Title 5 California Code of Regulations Section 30901 (5 CCR §30901) which requires LAC to review and make recommendations on the insurance premium fee and the fiscal soundness of the reserve fund, a regulation that is now obsolete.
2. Repeal of 5 CCR §30904, which requires the Commission to cancel a loan, which remains in a guaranteed, but non-disbursed status, on the Commission’s database for more than 150 calendar days after the anticipated disbursement date.

In addition, Ms. Steere-Salazar reported that LAC re-endorsed the 2005 Reauthorization Guiding Principles as good policy directions to be used in moving forward on legislative issues. Lastly, Ms. Steere-Salazar encouraged wide participation with community members to ensure there is a mechanism for students to be directed to the best and lowest cost loans available.

Chair McClain decided to defer discussion of the Closed Session (Agenda Tab 16) due to time constraints and the informational nature of the Closed Session agenda.

In addition, to allow CSAC and EDFUND staffs to continue working on the Operating Agreement between the Commission and EDFUND, Chair McClain decided to discuss Agenda Item 15 out of order.

AGENDA TAB 15 – CONTINUATION OF CONSIDERATION OF ROLES, RESPONSIBILITIES AND POLICIES OF THE COMMISSION, EDFUND AND THEIR RESPECTIVE STAFFS

Mr. Michael Wright, Project Coordinator and Mr. Stephen Thomas, Partner, The Results Group, continued the open discussion with the Commission, CSAC staff and EDFUND staff on the revisions to the California Student Aid Commission Policies. The Commissioners reviewed the edits made to the draft policies on April 19, provided clarification, and continued their discussion on additional changes to the remainder of the document.

Assignment Policy 2: EDFUND Board and President – Internal and External Communication

Commissioner Friedlander wished to acknowledge that there was a disagreement with regard to the role of CSAC versus EDFUND in terms of representation to the federal government and there was a substantial change to the language. Executive Director Michel noted that there has to be some recognition in terms of operation versus policy.

Executive Parameters Policy 6: External Communications

Commissioner Furay mentioned that there is some ambiguity regarding the policy that the Executive Director, EDFUND Board, EDFUND President and their respective staffs will not take a position contrary to the Commission. She indicated that the ambiguity is hard on management

staff and questioned how one would know the position of the Commission. If some Commissioners, or a committee, held a position, would that be considered an official position? The Commission agreed to clarify the policy by defining an official or formal position as one adopted by the Commission.

Regarding the policy related to the public and media, Ms. Lynch advised against using the term “unless” because the Commission is telling the Executive Director and EDFUND Board/President what authority they have, but also telling them that, at their discretion, they can communicate policy that the Commission has not adopted. Their position is not to make policy; it is the Commission’s decision to make policy. She advised that perhaps they would need to inform the Chair immediately or the Commission could hold an emergency meeting, but the existing language reads as if the Commission is giving them some discretionary judgment. She also advised against using the term “official position” because they are not official positions from the Commission.

Executive Director Michel also expressed concern about the use of the term “unless” because the area of media requires a coordinated editorial policy in terms of a review process when issues arise. She added that in terms of parameters, much of these activities are delegated to staff. She is also concerned about the lack of coordination on issues where there should be coordination and feels that the Commission should express the intent that CSAC and EDFUND do coordinate. She mentioned that both teams should be working together on issues such as the code of conduct now being raised at the State Legislature and within the federal government.

Executive Director Michel explained that the existing protocol for media calls that come into CSAC, where time constraints are an issue, involves an intake system in which CSAC’s public relations staff returns the initial call. A judgment is made on whether or not the Executive Director needs to consult with the Commission Chair. If so, the Executive Director contacts the Chair to notify him/her of what the reporter is expected to ask, and indicate what she plans to do, i.e. explain the policy, or indicate that the Commission has no policy or is debating it. Typically, one attempts to discover whether the reporter is seeking background or comments for attribution. If it is for attribution, then one can structure those comments. She added that one would have to use judgment when dealing with reporters seeking immediate comment at a legislative hearing, for example, and state whether the Commission has a policy or is debating the issue.

Commissioner Hernandez agreed that there should be collaboration between CSAC and EDFUND when issues arise so that there is a coordinated response. She prefers that the policies be very clear so that future Commissioners will interpret them as they were intended.

Commissioner Friedlander pointed out that there may be circumstances with regard to State government in which CSAC staff may be in a position where they are not able to collaborate with EDFUND staff on an immediate basis and vice versa. However, the level of responsibility is somewhat different in terms of the CSAC Executive Director, as the director of a public agency and entity that is responsible for EDFUND. He thinks that this policy needs to be bifurcated because there are separate issues regarding the roles of CSAC and EDFUND in terms of representation with the federal government.

Mr. Thomas clarified that the Commission’s approach to deciding how to manage the two organizations and determine where these activities would reside is to keep in mind that the most knowledgeable staff member would respond to inquiries. Commissioner Friedlander added that

it would be done with the understanding of the other parties' statutory obligations and responsibilities.

Commissioner Friedlander noted that the issue of providing confidential information had not been resolved at the conclusion of the Commission's discussion April 19, 2007 because Ms. Lynch was not present to provide legal counsel. Commissioner Hernandez explained that one issue related to legislative staff requesting information and the other related to the California Highway Patrol requesting access to records in an investigation. Commissioner Friedlander pointed out that it would also include requests from the Secretary of Education or the Department of Finance.

Commissioner Furay clarified that the question was whether it would be a violation of the Bagley-Keene Open Meeting Act, for example, to waive the attorney/client privilege and reveal confidential information disclosed in a closed session.

Executive Director Michel also clarified that, although the Office of the Secretary of Education has no constitutional standing as a Cabinet Secretary position, the staff is part of the Governor's Office of Planning and Research and, therefore, they represent the Governor and the State of California. She indicated that when someone representing the Governor's Office contacted her in the past, there was an issue as to whether or not to respond to questions about items discussed in closed session. Her response has been that the information must be released as provided by the constitutional provision that the Governor may require agencies and their employees to furnish information about their duties.

When asked to comment, Ms. Lynch responded that these questions are very broad and hypothetical, and indicated that she can only advise from her perspective as a lawyer and from the standpoint of the Executive Director. She stated that any calls from State government should be taken very seriously and in the vein of providing assistance. She is concerned about immediately providing confidential information or closed session material in which EDFUND's proprietary information could be disclosed and asked if it were possible for the Executive Director to place a call to the Chair in those circumstances.

Executive Director Michel explained that there is no time to call the Chair when representatives of the Governor contact her at home late at night as they are closing down and have finally received a decision from the Governor and are asking for interpretation, not only on technical questions, but also on policy questions. The Department of Finance together with the Office of the Secretary of Education may contact her by conference call, requesting input on implementation language or strategy. She needs the flexibility to respond immediately.

Chair McClain indicated that the Commission does not want to tie the Executive Director's hands in those circumstances.

Commissioner Johnston indicated that he had no problem with that and added that the EDFUND President has somewhat similar issues at the federal level, to a certain extent. He asked Ms. Lynch what roadmap the Commission could provide the Executive Director and EDFUND President to define judgment. In his opinion, if the Executive Director is asked a question by a federal or state agency about an issue, and she has knowledge that it is contentious with the Commission, then the Chair should be involved or contacted. He would not want either the Executive Director or the EDFUND President to be hung up on judgment because the Executive Director's judgment may be different from his judgment.

Ms. Lynch responded that the Executive Director and EDFUND President are the people that the Commission wants representing them. There is some judgment there and they are going to make decisions, so the Commission needs to trust them. However, if there are areas of disagreement that can be delayed, then they should be delayed. On the other hand, if the Governor's Office is calling late at night and requesting interpretation, then the Executive Director would most likely be able to respond readily.

Mr. Thomas suggested that in all instances where it would appear that there would need to be some kind of communication with an official of the Commission, either a Committee chair or the Commission Chair, and there is time to do that, then the Executive Director or EDFUND President would take the opportunity to consult. If an immediate response is required, they will use their best judgment. The Commission could then set a roadmap afterwards that provides examples. Ms. Lynch reiterated that the Commission would have to trust them on some issues, and if there is time to consult and collaborate, then they should do so.

Commissioner Johnston stated that he is trying to protect the Executive Director and the EDFUND President because it is the Commission's policy but they are accountable in terms of limitations.

Executive Director Michel questioned what the role of the Vice Chair is when the Chair is unavailable and indicated that the policy should be consistent. She raised the question because it has been an issue in the past that a Chair was unavailable during certain negotiations and the Vice Chair was available, but disagreed with the Chair.

Chair McClain indicated that the policy should include a communication stream between the Chair and Vice Chair. Ms. Lynch suggested that the policy indicate the Executive Director and EDFUND President will make a reasonable effort to make contact. Commissioner Furay stated that underlying all of this, but not with respect to policy, is a recognition and an attitude by the Commission that mistakes will be made and advised the Commission not to go after the Executive Director or the EDFUND President when they are doing the best they can.

Commissioner Friedlander remarked that with regard to the federal government, he considers the EDFUND President as the day-to-day liaison, understanding that CSAC is the guaranty agency and the responsible entity, which needs to be taken into account. In addition, there needs to be the understanding that as a 501(c)(3) corporation, EDFUND can provide information but cannot lobby; the Commission sets policy and adopts positions. With regard to the State government, the Executive Director, as the chief executive of the State agency, has lead responsibility with regard to the entities of State government. However, with regard to matters pertaining to the auxiliary, the Executive Director incorporates, involves and utilizes the full input from those that are responsible on a day-to-day basis for the loan program. Mr. Wright indicated that the consultants would incorporate Commissioner Friedlander's language into the policy.

Commissioner Furay mentioned that the Non-profit Corporations Code establishes the fact that nonprofits cannot spend more than a certain percentage of time providing information. Executive Director Michel explained that 501(c)(3) restrictions limit the threshold to ten percent. She also remarked that the Legislature and the Governor's Office will be examining these policies in terms of who is ultimately responsible for the State's guaranty agency. In that regard, she thinks the language should be along the lines of understanding the importance of involvement, but making a distinction about the official who is representing the Commission in terms of State representation.

Commissioner Friedlander indicated that, at the April 13 meeting, the Commission had agreed to reconsider the principles adopted by the Governmental Relations Committee in terms of being able to propose legislation. Within that purview is also a consideration of federal legislation, with the understanding that it is subject to the policies adopted by the Commission.

Commissioner Perez expressed her support for Commissioner Furay's point that if there is specific statute, which establishes certain things, then it should be incorporated in the policies. There should be no vagueness for the next Commissioners who come take office.

Commissioner Friedlander refined and restated his suggested language as follows: The EDFUND President has the day-to-day responsibility with regard to contacts with the federal government pertaining to the loan program, with the understanding that CSAC is the guaranty agency and subject to the policies and positions that have been adopted by the Commission, and in recognition of the proscriptions of law pertaining to the ten percent threshold.

Mr. Wright indicated that the Commission would need to revisit the subject of lobbying. President Kipp commented that he did not want to disagree with the Chair of the EDFUND Board, but he does not think they should raise the issue of whether or not EDFUND is lobbying, when the discussion was mainly about regular communications. He indicated that a good example of this process is the collaboration between him and the Executive Director on letters opposing a reduction in reinsurance levels because they are damaging.

In response to Commissioner Johnston's question about the reason to bifurcate this policy, Commissioner Friedlander stated that CSAC is the total entity and has the responsibility for an auxiliary. The responsibilities of the Executive Director with State government are different from the responsibilities of what a part of the entity, the EDFUND President, would be.

Assignment Policy 2: EDFUND Board and President - Authority Vested in the EDFUND Board

Moving on, Mr. Wright clarified that they will replace the words "delegated authority" to "responsible for." With regard to the policy on the "Authority Inherently Vested in the EDFUND Board," Ms. Lynch advised deleting the word "inherently." Mr. Wright added that they would cite the relevant statute as well. Ms. Lynch stated that if the policy is going to refer to statutes, then the actual language needs to be used.

Commissioner Perez questioned the area of the policy that indicates the EDFUND Board provides a report to the Commission because she has never received a formal report from the EDFUND Board. President Kipp responded that the responsibility is delegated to the EDFUND President or his staff who very often provides that information to the Commission. Mr. Thomas suggested changing the policy to indicate that the EDFUND Board/President will report regularly to the Commission. Commissioner Perez cautioned the consultants to be careful how they incorporate the language because it would be inappropriate to place it in relation to the "hiring and evaluation of the EDFUND President." She agreed with Mr. Wright that he could add the words "as appropriate" but cautioned the Commission to ensure there is as much clarity as possible.

Commissioner Friedlander noted that the language under items 3 and 4 imply that the Commission does not have to approve the strategic plan, the annual business plan or the operating budget. Mr. Wright responded that he would add language indicating that many of the

areas are subject to review and approval by the Commission or to oversight by the Commission as explained elsewhere in these policies.

The Commission continued to review the following items under section J and clarified whether the EDFUND Board or President would provide the regular report to the Commission:

- 1) EDFUND's compliance with the laws, regulations of Commission or EDFUND Board policies – The Commission agreed that the EDFUND Board is responsible.
- 2) The stewardship and management of loan program resources – Some indicated this responsibility lies with the President. Commissioner Furay and President Kipp clarified that the President performs this, but the fiduciary responsibility belongs to the Board. Ms. McDuffie pointed out that the loan program funds are in the Commission's hands. Commissioner Johnston commented that the Commission has oversight and they want to check that stewardship, but the EDFUND Board is responsible for the stewardship and management. Ms. Lynch remarked that this is an example of taking a statute and incorporating one's own language into it, thereby creating something else. She reiterated that the Commission needs to use the statutory language with introductory paragraphs and offered to work with the consultants on that.
- 3) Review and approval of EDFUND's strategic plan, annual operating plan and operating budgets – There was agreement that this would be provided by the EDFUND Board, subject to approval by the Commission. Ms. Lynch advised that if the policy conflicts with the Education Code, the Education Code takes precedence.

At this point, President Kipp suggested that Ms. Lynch review the rest of the items under section J so that the Commission could move on with its discussion of the rest of the policies. Before moving on, Commissioner Friedlander stated that item 6—review and approval of EDFUND's human resources policies including policies and procedures for establishing Executive Compensation, etc. – directly relates to the incentive compensation policy the Commission discussed earlier and it is very important to state that the Commission has a role in it. Mr. Wright clarified that the policies will be revised to state that all of the items in section J are subject to Commission oversight.

Assignment Policy 4 – Federal Policy & Programs Division (FPPD)

Mr. Wright explained that the consultants incorporated into the policy the language that was mutually agreed upon in the Operating Agreement. The Commission discussed a more appropriate reference to the staff that would perform the oversight function. Ms. McDuffie suggested using the phrases “FPPD, or its successor” and “CSAC staff as designated by the Commission.” She explained that the policy does not address other staff, such as accounting, that have some role in oversight because they monitor the funds and work in conjunction with FPPD. She clarified that the oversight pertains to oversight of EDFUND as well as the loan program.

Commissioner Johnston remarked that he does not know what FPPD does. Commissioner Friedlander commented that it is important to acknowledge that this is the best the Commission can do for now. However, the key recommendation and finding in the BSA audit was that CSAC staff does not independently verify. He added that the Commission is deferring discussion of what is oversight and verification until July when they expect to receive the first annual oversight plan. He understands why the discussion is being deferred, but thinks that the Commission is

not fulfilling its responsibilities. Furthermore, he understands that the annual oversight plan may change from year to year based upon new programs, but pointed out that there are functions that will be on-going and fixed in place, that constitute oversight and that should not be revisited and argued about every year. Another key statement in the BSA audit was that the Commission cannot negotiate its oversight responsibility.

Commissioner Johnston commented that the Commission cannot intelligently make decisions about policy until the Commission understands what it is currently doing in oversight. He is uncomfortable with Commissioner Friedlander's comment that the Commission is not fulfilling its responsibilities because he believes they are doing as much as they can. Mr. Wright mentioned that the Commission's May 1, 2007 meeting on the Operating Agreement should clarify that issue somewhat since the agreement includes a lot of specificity on the reports.

Commissioner Furay remarked that, with all due respect, she does not want to canonize every word from BSA. It is unreasonable to expect several boxes of documentation to be reviewed every month by such a small group of staff. Ms. McDuffie clarified that much of the documentation is provided electronically. Commissioner Perez questioned whether the Commission needs all of that documentation if there is no time to review it. Ms. McDuffie explained that, in working on the Operating Agreement, staff has eliminated many reports that were deemed unnecessary.

Ms. McDuffie commented she does not consider item 2 to be oversight because it is more than just receiving, reviewing and verifying information; it has a much broader scope. CSAC staff analyzes the information, identifies issues, and makes and reports recommendations to the Commission. Commissioner Perez questioned whether the Commission wants CSAC staff to continue to perform that function. Commissioner Johnston indicated that he was not sure he wants to go further with that issue until he understands what FPPD does.

Ms. McDuffie raised a question regarding one of the activities that FPPD performs. She indicated that FPPD monitors the receipt of all the Operating Agreement deliverables and services from EDFUND. She mentioned that it might be in the annual oversight plan, but she raised the issue because the Commission needs to discuss it.

President Kipp added that the focus of the policies has been on roles and responsibilities, as well as oversight of the auxiliary organization. Another area of responsibility is the monitoring and oversight of the performance of the grant programs, which is not addressed in the policies.

Commissioner Furay also mentioned that the Commission should not only examine how EDFUND fulfills its obligations in accordance with the Operating Agreement, but also how CSAC fulfills its obligations. President Kipp remarked that the Operating Agreement is a contractual agreement and asked what kind of provision is there for monitoring whether the Commission is complying with its side of the agreement. Commissioner Perez responded that the Commission would monitor that. Commissioner Johnston thinks it would be an internal audit function. Mr. Wright indicated that he would add language about monitoring the Operating Agreement to the policies.

Ms. Lynch suggested revising the policy statement that "FPPD operates under the administrative direction of the Executive Director and the functional direction of the Commission's Committee." She recommended that it state "the functional direction of the Commission and its committee" so as not to limit it to a specific committee. Ms. McDuffie requested clarification on this area of the policy because FPPD staff works through the

Executive Director to make sure staff understands what to do. Commissioner Perez asked whether the Executive Director directs the activity of FPPD or if she participates with them. Ms. McDuffie indicated that is what needs to be clarified. Ms. Lynch responded that oversight is with the Commission, which is delegating ministerial type tasks to staff. Staff is helping the Commission by gathering information, etc. To the extent that the Executive Director helps, that is fine because she has expertise and can do that. However, that is not the oversight function. She is part of the machine with her leadership skills. Ms. Lynch stated that if her comments are inaccurate, the Commissioners need to clarify that for staff when they start developing their policies and they also need to tell her because that is not how she sees it.

Commissioner Charton commented that FPPD has been responsible for presenting information prepared by EDFUND and he thinks that, during his short time on the Commission, much has been lost in the translation. He thinks it is perfectly appropriate and necessary for the principal staff that are responsible for preparing the information to also be charged with presenting it and should retain primary responsibility for presenting it.

Commissioners Perez and Friedlander disagreed. Commissioner Friedlander responded that both parties should have joint responsibility to prepare the material and do the presentation, and he would like that to be written in the policies. Commissioner Perez explained that the staff report would be similar to the reports provided recently to the Commission, which include areas of agreement and disagreement along with the staff's separate viewpoints. With regard to that process, she is not comfortable with having EDFUND then present the report after FPPD reviews it because the purpose of FPPD is to administer some oversight on the Commission's behalf and, as such, the staff needs to be able to communicate their findings to the Commission.

President Kipp clarified that Commissioner Charton was referring to items such as the quarterly financial statements that are presented to the EDFUND Board and the Commission. The staff members who are in the best position to present that information are the staff who prepared it. This issue is specific to the regular reporting, not the oversight area. Commissioner Perez disagreed and explained that she sees the process as EDFUND staff preparing the information, FPPD performing its oversight, EDFUND providing the initial presentation, both staffs presenting their viewpoints and outlining any areas of disagreement so that the Commission can make educated decisions. President Kipp agreed with Commissioner Perez's sequential process.

Commissioner Friedlander pointed out that in terms of every agenda item, the staff report should be a collaborative document that, in and of itself, points out any differences in terms of points of view. Both viewpoints should be provided together in the agenda packet, not separately from one another so that both sides are aware. Commissioner Perez added that there also needs to be adequate consideration of time for staff as well as the Commissioners to review and respond.

Executive Director Michel clarified that, in the past, staff has summarized the EDFUND financials and provided an analysis, focusing on issues that should be brought to the Commission's attention, so that the Commission can ask the necessary questions and have comfort with the decisions it makes. The difference now is that EDFUND will have responsibility for the presentation and then the Commission can focus on the analysis.

Global Policy: Executive Parameters

President Kipp suggested using a more positive tone than currently stated. Ms. Lynch asked why it was necessary to differentiate between the grant and loan programs in the global policy.

For instance, if President Kipp noticed an area related to the grant program that needed to be brought to the Commission's attention, he has an obligation to raise the issue. President Kipp commented that, in terms of the different roles, when the policy refers to the EDFUND President on certain issues and the Executive Director on others, then groups them together, it is then very difficult to lay out where each might be inserted with respect to each particular program. Ms. Lynch indicated that she does not want anyone to have blinders on.

Executive Parameters Policy 1: Strategic and Annual Planning

Commissioner Perez asked whether it was realistic to have the Commission set five to ten-year goals. Mr. Wright suggested changing the language to "long-term" but clarified that this refers to the Commission establishing a five to ten-year vision statement, not the goals.

Executive Parameters Policy 2: Program Operations

Commissioner Friedlander commented that items B and E under the Grant Program could also be re-written in a more positive tone. Mr. Wright agreed to do that for all of the areas the Commission points out should be rewritten.

Executive Parameters Policy 3: Fiscal Operations ~ Grant Program

Commissioner Friedlander remarked that item A.4, which requires CSAC staff to provide administrative cost projections in sufficient time for EDFUND to incorporate them into its budget planning process, implies that the Commission is the auxiliary as opposed to being the other way around. Executive Director Michel added that CSAC staff can provide multi-year projections, but she does not see how relevant projections beyond one year would be. Even if there was a Feasibility Study Report for an information technology project, the multi-year projections may only be two to three years out, not five. She noted that if there was a five-year strategic plan, then one could do the projections. President Kipp indicated that one can use a forecasting process, knowing what is involved.

Mr. Robert Illa, CSAC Fiscal Officer, raised a question with regard to item A.1, which states that the Executive Director will provide sufficient information to the Commission to demonstrate credible projection of revenues and expenses, capital expenditures, and cash flow. Mr. Illa clarified that there will be expenditure projections and cash flow, but not projection of revenues. Ms. McDuffie explained that for the grant program, the Commission receives an appropriation from a certain fund and it is basically the authority to spend.

With regard to item A.3, Ms. McDuffie explained that the current process is that once the Budget Act is approved, CSAC staff reports on that. She indicated that Mr. Illa had developed some language and provided it to The Results Group in terms of the reporting structure and the reports that will reflect the appropriation and expenditures over time for that specific year. Through that process, CSAC staff brings the Budget Change Proposals (BCPs) for the following year to the Commission for consideration. Executive Director Michel added that CSAC staff develops ideas that are basically concept papers which turn into BCPs based on a plan and which are brought forward to the Commission. Ms. McDuffie clarified that money saved in operations cannot be moved to the grant program because the grant program is viewed from the State perspective of entitlements.

Commissioner Friedlander questioned the appropriateness of the language in item B.1, which requires the Executive Director to ensure that grant program expenditures do not result in a total year-end variance amount that does not exceed the operating contingency established in the approved budget. He commented that the grant program is an entitlement program, and there may be a variance with budget, or a need for a deficiency appropriation, or the Legislature may implement new mandates. He questioned whether this language is appropriate. There was a general consensus that the language as written was not appropriate. Ms. McDuffie clarified that the State does not budget operating contingencies. Commissioner Furay suggested that Ms. McDuffie and Mr. Illa work with The Results Group to develop the appropriate language because she does not know enough to be able to do that. Ms. McDuffie suggested that, if the Commission is comfortable with the idea, CSAC staff can work with the consultants on the entire section.

With regard to item B.2 pertaining to grant program purchases, Ms. McDuffie explained that CSAC staff must follow all State contract and procurement rules and she would prefer that the policies include a general statement to that effect. Ms. Lynch reminded the Commission that if any of the policies conflict with State law, the law takes precedence. Commissioner Charton commented, and Commissioner Perez agreed, that internal staff may reference the policy before referencing applicable State law, so it would be due diligence to include a brief statement that reinforces the need to follow State rules. Mr. Wright suggested changing item B.2 to a single statement that “grant purchases be made such that they are in compliance with applicable State and federal requirements” with the assumption that conflict of interest and best value requirements are covered. Commissioner Johnston agreed with that approach.

Moving on to item B.3 pertaining to contracts over \$100,000, Ms. McDuffie reminded the Commission of its previous resolution to allow the Executive Director to enter into a contract on an emergency basis if the Commission is unable to meet and approve the contract immediately. She suggested that similar language be included in the policy and Commissioner Johnston agreed.

With regard to item B.5, Mr. Illa indicated that tax payments do not apply to CSAC because it is tax exempt. However, he recommended keeping the reference to government-ordered payments. He added that the State Administrative Manual (SAM) clearly states how CSAC is supposed to collect.

Regarding Section C – Asset Protection, Ms. McDuffie explained that CSAC does not maintain insurance. The State in total has an umbrella insurance clause, so separate insurance is not required. She added that there is some insurance under the EDFUND policies, but it is not applicable to maintaining insurance. Ms. McDuffie offered to work with the consultants on the appropriate language for this area.

Executive Parameters Policy 3: Fiscal Operations - Loan Program

Commissioner Friedlander raised a question with regard to item E.3 pertaining to the policy that the EDFUND President will not enter into contracts for amounts greater than the approved amount without the EDFUND Board’s prior written approval and the Commission’s prior consent. He asked whether “prior consent” meant verbal or written consent. Commissioner Furay clarified that the Commission’s consent would be either verbal or written.

Mr. Martin Scanlon, EDFUND Chief Financial Officer, commented on item E.1, which states that loan program expenditures remain within the multi-year expense projections and efficiency

targets established by the EDFUND Board and the Commission, and result in a total year-end variance amount that does not exceed the operating contingency established in the approved budget. Mr. Scanlon pointed out that there are some expenses that sometimes exceed the budgeted parameters such as collection agency fees. The staff came across this issue in the Operating Agreement and mutually agreed that staff would seek approval if there was any material deviation from the operating budget. Commissioners Johnston and Furay agreed.

Commissioner Perez remarked that it can be good in some cases, but there might be situations in which it is not good. If the Commission is giving blanket authorization, the question becomes how one distinguishes between the two. Mr. Scanlon suggested that it would be based on good judgment; he would not want to overly burden the Commission with every issue. Commissioner Perez responded that she would rather be burdened than give blanket authorization on unknown matters, which could impede the decision in which she is supposed to be involved. Ms. McDuffie asked whether this is an area the Commission would assign as oversight. Commissioner Perez indicated that it could potentially be an area. President Kipp explained that this information comes to the EDFUND Board and the Commission receives tracking information as it develops. Mr. Scanlon added that the normal process EDFUND goes through involves a budget augmentation, typically, in February and the Commission would be apprised of it. Commissioner Perez concluded that EDFUND does not need to have blanket authorization.

Ms. McDuffie commented on item E.2 pertaining to loan program purchases. She explained that EDFUND has its own procurement policies that are different from the State policies and wanted to ensure that EDFUND is not being held to the State policies. She suggested that the language indicate that all purchases are made in conformance with the approved policy. President Kipp suggested that they be made in conformance with the EDFUND contract and policy, which was approved by the Commission.

President Kipp indicated that the term "grant program" in section F should be replaced with "loan program." Commissioner Friedlander recommended using the same language in item F.1 pertaining to asset protection as that used in item C.1 pertaining to grant program asset protection.

Commissioner Perez made a comment regarding item F.7, which requires the EDFUND Board/President to ensure that investing or holding long-term investment funds in investments are in keeping with the Commission or EDFUND Board approved investment philosophy and policies. She recommended that the word "or" be replaced with "and" because the use of "or" implies that one overrides the other.

Commissioner Perez raised a concern with regard to item F.8, which states that the Executive Director will not use any long-term reserves to cover annual operating expenses, acquire, encumber or dispose of real property without prior approval and consent from the EDFUND Board and the Commission. President Kipp clarified that the term "Executive Director" in item F.8 should be replaced with the term "EDFUND President." Commissioner Perez asked whether EDFUND Board approval is really necessary and whether the Commission has ultimate authority. Commissioner Furay responded that the Commission has ultimate responsibility but she thinks issues could be raised about those matters by the EDFUND Board. Commissioner Perez recommended indicating that there will be consideration of the EDFUND Board, but not that both the EDFUND Board and the Commission need to approve. Commissioner Johnston agreed.

Commissioner Furay explained that the EDFUND Board has to approve it because of its fiduciary responsibility. Whether it is approval plus recommendations is semantics, but the EDFUND

Board needs to do more than just consider it; they need to approve it. President Kipp stated that the EDFUND Board has to take action and not just make a recommendation.

Ms. McDuffie explained that technically, the matter would go to the EDFUND Board because the Board has to approve the budget. The Commission can direct them and then the EDFUND Board has a conforming action to approve that budget. Commissioner Perez asked what happens when the Commission decides to go in one direction, but the EDFUND Board decides not to go in that direction. Mr. Thomas asked whether this issue is covered in the Operating Agreement. He commented that EDFUND cannot be doing something that is not in the Operating Agreement. Chief Deputy Director Keith Yamanaka remarked that the Commission might have to replace the EDFUND Board. Ms. McDuffie added that there are dispute resolution provisions. Commissioner Furay mentioned that in previous times, the EDFUND Board attempted to overturn the Commission. She hopes that would never happen again, but in the event that it does, she wants to ensure that there are protective provisions in place.

President Kipp pointed out that although they attempted to establish a long-term reserve, there are no longer any term reserves either of the Operating Fund or at EDFUND. Mr. Wright commented that the issue is now moot. The Commission later decided to eliminate this item from the policy.

Executive Parameters Policy 4: Personnel Practices ~ Loan Program

Commissioner Friedlander noted that the Commission still needs to address Item K pertaining to compensation and benefits. The Commission agreed to include this item in its June meeting agenda. Mr. Wright indicated that, as a placeholder, the policies would state that provisions regarding the compensation and benefits will be consistent with the EDFUND Board and Commission policies.

Executive Director Michel added that Ms. Smith, CSAC's Personnel Manager, has provided the consultants with language for Item J pertaining to civil service staff assigned to EDFUND.

Executive Parameters Policy 5: Internal Communications and Support to the Commission

Mr. Wright commented that the Commission discussed this area at length earlier. Commissioner Furay recommended adding language stating that the Executive Director and EDFUND Board/President will keep the Commission adequately informed "on their respective programs."

Commissioner Friedlander raised a concern about Item C, which requires the Executive Director and EDFUND Board/President to advise the Commission if the Commission is not in compliance with its own Governance Policies, particularly in the case of Commission behavior that is detrimental to the working relationship between the Commission and the Executive Director or EDFUND Board/President. He recommended deleting this item. Mr. Wright suggested adding language to Commission Governance Policy 2 to address this issue. Governance Process, Item C, states that the Commission will evaluate its governance effectiveness annually and take steps to improve its effectiveness as a governing body. Mr. Wright suggested that the Commission might request input from the Executive Director and EDFUND Board/President confidentially.

Commissioner Friedlander requested clarification on Item F, and asked if the language, in terms of dealing with the Commission as a whole, means that the Executive Director can never have a

conversation with an individual Commissioner unless he or she is responding to a request for information. He understands the underlying principle, but it seems restrictive.

Commissioner Johnston explained that it was supposed to be restrictive. Commissioner Friedlander responded that when he thinks of the Executive Director or the EDFUND President, he thinks of their respective staffs. His policy is to listen and talk to anyone who wishes to provide him with information, including stakeholders; he does not think that is inappropriate. Mr. Thomas commented that it is never appropriate to be able to collect information, but it is inappropriate for people to lobby specific members of the Commission, without the other Commissioners' knowledge. Commissioner Friedlander indicated that the policy as written does not state that and is actually more restrictive.

Commissioner Johnston asked for clarification on the professional protocol if a Commission has a question for a member of the Executive Director's staff or the EDFUND President's staffs. Commissioner Friedlander explained that the direction and request the Commissioners have received from the Executive Director is to contact the Chief Deputy Director, via carbon copy, with any requests or inquiries. Commissioner Johnston asked whether the Executive Director should contact individual Commissioners, a committee or the Chair, if she has an issue.

Executive Director Michel explained that if Commissioners have questions or issues, ranging from a conference request to resources and information for a presentation, she will inform the Chair during the regular weekly updates. She thinks that part of the issue is that there is a difference between those circumstances and a Commissioner contacting her for her perspective on a legislative bill position or expenditure, which has happened before.

Chair McClain clarified that if the Executive Director had an agenda and felt that certain Commissioners would side with her agenda and help to campaign the full Commission, then that would be inappropriate. She indicated that the issue is not about an exchange of information.

Executive Director Michel indicated the Commission needs to address how to deal with questions coming from EDFUND to the Commission. If the EDFUND President wishes to address an issue to the Commissioners, is the Executive Director made aware of the issue? Chair McClain and Commissioner Johnston agreed that it is the same issue. Commissioner Johnston asked Mr. Wright to work on the language.

Monitoring and Oversight Policies

The Commission reviewed the changes made to this area based on the Commission's previous discussion.

Monitoring Policy 6: Fiscal Operations

Mr. Illa presented draft language under item A.2 pertaining to the grant program compliance audits performed by an independent audit firm. He proposed eliminating item A.2 because all audit activities must be performed by the State Controller, Bureau of State Audits or Department of Finance. He proposed moving item A.4, pertaining to a report reviewing procedures to ensure that all reasonable and prudent measures are being taken, to section B. Section B would then indicate that the Executive Director or Internal Auditor would provide the Commission with such a report in accordance with all laws and requirements of the Financial

Integrity and State Manager's Accountability Act (FISMA). Mr. Illa explained that all State agencies will have to comply with this recent legislation.

Mr. Illa proposed changing paragraph C to reflect that the "dashboard" report on the operating budget would be provided at mid-year, third quarter and year-end as opposed to each regularly scheduled Commission meeting. He explained that in the very beginning half the time, there is no budget and there is a delay of three to four weeks before the reports are released. Commissioner Perez voiced her concern that this is inconsistent with what the Commission is requiring of EDFUND, which must report quarterly. She recommends that there be consistencies between the two organizations as far as reporting timeframes and suggested that if there is nothing to report, then the report should say that it is not applicable and explain the reasons why. As a result, Mr. Wright indicated that the reporting timeframe would still be changed to a quarterly basis.

There was some discussion regarding Mr. Illa's proposal to change item C.1.b pertaining to the report of any budget variances. He asked whether the variance should be ten percent and larger than \$10,000 of the previous budget projections. Commissioner Johnston and Chair McClain agreed that they did not want to deal with variances of \$10,000. Commissioner Perez suggested that the budget variance be set at ten percent and \$50,000. Commissioner Furay pointed out that this can be changed in the future if necessary.

Mr. Scanlon commented that the Commission discussed the loan program budget variances previously and settled on the term "significant variance," so that the variance levels can be contoured to the report. The Commission agreed to that language.

Mr. Illa proposed eliminating item C.1.c because there is no contingency in the State budget. Additionally, he proposed adding paragraph D, which states that upon release of the Governor's Proposed Budget, May Revise and Year-End Report on the Grant Program Funding (Local Assistance), the Executive Director or Internal Auditor will provide a summary report describing the budgeted levels of the grant program funding (Local Assistance) based on the categories to be determined by the Commission with any significant changes to the budget. Lastly, Mr. Illa proposed revising item E.2 pertaining to periodic reports on audits or reviews of the grant program performed or required by the State or federal government. He suggested adding the following language: "including the State Controller's required independent annual audit of the SLOF and Federal Fund."

Commissioner Furay reminded the Commission to make sure that item D.1 in particular is in conformance with the Operating Agreement. Item D.1 pertains to the requirement that the EDFUND Board/President will annually provide the Commission with the operating budget for the loan program approved by the EDFUND Board, which complies with the Commission's Financial Planning and Budgeting Policy and which is consistent with the loan program strategic and annual goals adopted by the Commission.

As there were no additional comments regarding the remainder of the policy document, Mr. Wright summarized the changes previously made, and members of the Commission and staff provided clarification on those changes, as necessary. The following discussion pertains to additional changes to the policy document.

Commissioner Friedlander requested clarification regarding Ends Policy 3: Maximizing of Services and Revenues. He asked whether the third priority includes the administrative costs of

Cal-SOAP and outreach. Commissioner Johnston indicated that, to him, it does include those costs.

President Kipp pointed out that he had provided language earlier, which he thinks is in conformity with the Commission's adopted policy with respect to the budget. He stated that EDFUND's loan program operations need to be included under the "Second Priority" statement, and the "Third Priority" statement needs to be prefaced with a statement that, to the extent that funds are available, fund the administrative costs and operations of CSAC. He also suggested eliminating the examples given in the "Third Priority" paragraph.

Executive Director Michel commented that the Commission's obligation is to maximize and increase participation in the grant program in terms of the General Fund. Therefore, the Ends Policy should include a statement that addresses the priority of the Commission to expand financial aid through both the loan and grant programs. In addition, particularly in the outreach area, the Commission needs to be looking at private funds and partnerships with private foundations such as the California Education Financing Commission and others. She added that the Commission already has some partnerships and is currently attempting to formalize the process in Assembly Bill 1540 in terms of garnering support for accepting reimbursements into the State General Fund. She remarked that the language in Ends Policy 3 is restrictive and focuses only on maximizing revenue to the loan program, and recommended that the consultants work on that language.

Moving on, Commissioner Hernandez recommended referencing the Operating Agreement under Global Policy: Commission Governance Process.

Commissioner Charton emphasized that Commission Governance Policy 1: Governance Philosophy should state that in deliberating and making decisions, the Commission should maintain a central theme of serving the interests of students.

Commissioner Friedlander requested that the Commission Governance Policy 2: Commission's Role include a reference to the California Public Records Act under the Governance Process, item D. He also raised again his concern about item E, which states that all Commissioners will, in their role as Commissioners, speak with a single voice and act accordingly. He commented that this becomes very problematic in terms of Policy 5: Commissioner Role and Code of Conduct, which discusses the restrictions placed on individual Commissioners. He indicated that when a Commissioner represents the position of the Commission, he or she represents that Commission as an official voice. It was agreed to revise Governance Policy 2 to refer to "a single official voice."

Commissioner Furay asked for clarification of item L.1.d under section Loan Program pertaining to the development of policies for the expenditure of funds derived from indirect costs payments. There was consensus to delete the language since the meaning was unclear.

Commissioner Friedlander raised a concern about item B under Governance Policy 3: Commission Chair's Role, which states that the Chair's role is to ensure that meeting discussion focuses on those issues, which, according to Commission policy, clearly belong to the Commission to decide or to monitor. His concern is that the prerogative of the Chair, with regard to the interpretation as to whether issues that staff may wish to bring to the Commission's attention are in accord with the Chair's sense of what should be discussed, is very restrictive. Commissioner Furay explained that can be handled through Parliamentary law. Everyone in the room has the right to challenge the decision of the Chair.

Commissioner Friedlander responded that he will be communicating with the consultants about this issue because repeatedly throughout the policy, it refers to Commissioners taking official positions. There is no official position that a Commissioner can take. The right of the individual to express a point of view is not inconsistent with being supportive of the Commission and the decisions that it takes in terms of articulating that point of view.

Chair McClain raised a concern regarding item F, which states that the Chair executes all documents authorized by the Commission, which she currently does not do. It was agreed to indicate that the Chair executes applicable documents.

Executive Director Michel asked how the Commission would be dealing with the concern she raised earlier about access to all information attendant to the responsibility of the Executive Director, who is the CEO of the agency. Commissioner Johnston responded that once the Commission drills down on FPPD so that they understand what the staff is doing, the Commission will address that issue.

Mr. Wright commented that he has identified four areas where he thinks there is reference to the Executive Director in terms of the loan program, and which still need to be clarified:

1. Administrative responsibility for FPPD as opposed to functional responsibility;
2. Collaboration with the EDFUND President on the development of the strategic plan, civil service employees, external communications, etc.;
3. CSAC staff assigned to EDFUND; and
4. Representation.

Mr. Wright noted that under Assignment Policy 1: Executive Director, there are no authority and responsibility statements about the loan program. He commented that if the policy document goes forth and does not speak to the Executive Director's role regarding the loan program, then BSA or the Legislature may approach the Executive Director about it. Commissioner Johnston mentioned that this would be through oversight. Executive Director Michel remarked that the Commission has an overarching responsibility for the administration of all of its programs, but the Executive Director represents the Commission. If the Commission is saying that, with regard to representation, the Executive Director has lead responsibility for that, but administratively, the Commission will place all the administrative functions with FPPD, they will need to be clarified later.

Executive Director Michel indicated that other issues that still need to be addressed later include audits. However, with regard to personnel, there are civil service laws that drive that area so that is very clear. She added that the only other areas where the Legislature would be concerned is budget and legislation, or representation. With regard to the budget, the issue goes to fiscal accountability, which relates to access to information when issues arise. That has been her question all along in terms of how one can access information that must be certified to be true and correct; this issue still needs to be clarified.

Commissioner Furay suggested that the policy document include a reference to the fact that certain issues continue to be discussed. President Kipp suggested that the policy state that the Executive Director has a responsibility in four areas that are delineated elsewhere in the governance policies.

After finishing the review of the changes, Chair McClain announced that the Commission needed to revisit the action taken by the Commission at its November 21, 2003 meeting. She indicated that if the Commission wishes to rescind the action, they must do so now. The November 21, 2003 motion is as follows:

“On a motion by the Joint Committee and carried, the Commission adopted the following language as Commission policy; ‘the ultimate authority for the operations of EDFUND rests with the California Student Aid Commission, through its Executive Director, and all actions of EDFUND shall be carried out with this line of authority in mind.’”

Commissioner Perez commented that she cannot vote on a motion if she does not know the ultimate impact of it, and she does not know what the Commission is putting in place of it. Commissioner Johnston responded that the policy manual would take the place of that action.

Commissioner Friedlander remarked that he had raised this issue because it was mentioned in the BSA report and by the Executive Director. If it is not the Commission’s intent to have such a line of authority, then that should be clarified and the Commission should probably rescind that action, which he believes the Commission is doing by acceptance of the policies.

Commissioner Furay noted that in the summer of 2004, the Commission refused to take action on a proposal to have the EDFUND President report to the Executive Director and make the EDFUND Board an advisory body. She agreed that the issue needs to be clarified.

Executive Director Michel suggested that the Commission address that issue when it discusses the issues related to FPPD and the role of the Executive Director. Commissioner Perez remarked that she feels more comfortable with that suggestion. President Kipp added, and Executive Director agreed, that Commission can defer the formal rescinding of that action until the policies are adopted because the policies, in essence, rescind it. Commissioner Furay suggested postponing until a time certain. Mr. Wright clarified that if the policies are going to be adopted by the Commission on May 1, 2007, then the November 21, 2003 action will be rescinded at the same time.

The consultants requested that the Commissioners and staff submit any additional comments to them by the following business day, April 23, 2007, so that the edits could be incorporated into a draft for review by the Ad Hoc Governance Committee. A final draft would then be presented to the Commission at its May 1, 2007 meeting for consideration and approval.

CLOSING REMARKS

Chair McClain asked the Commissioners to review the draft Operating Agreement and submit their comments via email to Ms. Janet McDuffie and Mr. David Reid in order to help facilitate the Commission’s upcoming discussion on May 1, 2007 and the eventual transmittal to the Department of Finance and the Joint Legislative Budget Committee for review.

Commissioner Charton wished to recognize and express appreciation to Executive Director Michel for co-presenting at a conference for the California Higher Education Student Summit. He also thanked CSAC staff for preparing the information and EDFUND, which was one of the principal sponsors of the event.

Ms. McDuffie acknowledged two very dedicated staff, Ms. Leanna Sinibaldi of FPPD and Ms. Janie Holland of EDFUND Administration, who have been tracking every change that was made to complete the Operating Agreement.

There being no further business, the meeting of the California Student Aid Commission was adjourned at 6:05 p.m.

Michele Dyke, Secretary

DRAFT

**CALIFORNIA STUDENT AID COMMISSION
COMMISSION
TELECONFERENCE MEETING**

**MINUTES
MAY 1, 2007**

A teleconference meeting of the California Student Aid Commission was held on Tuesday, May 1, 2007, at various locations listed on the Notice of Teleconference Meeting dated April 20, 2007.

Chair Louise McClain called the meeting to order at 11:37 a.m.

The following Commission Members were present:

Louise McClain, Chair
Chad Charton
Michele Dyke
Daniel Friedlander
Sally Furay
Dennis Galligani
Lorena Hernandez
Dean Johnston
Alice Perez

The following Commission Members were absent:

Rory Diamond
David Roth

Roll Call was taken and a quorum was recognized.

Hearing no public comment, Commission Chair McClain proceeded with the meeting.

**AGENDA TAB 1 – UPDATE AND CONSIDERATION OF AUTHORITY TO PROCEED WITH
HIRING A CHIEF INTERNAL AUDITOR**

Commission Chair McClain opened the discussion by suggesting that the Commission consider waiving the confidentiality of the communication prepared by Deputy Attorney General Kathy Lynch in order to facilitate the discussion regarding the Commission's chief internal auditor. Commission Chair McClain explained that waiving the confidentiality will make the document public. Deputy Attorney General Kathy Lynch further clarified that once the document is made public that the Commission can no longer assert their attorney-client confidentiality privilege regarding the communication.

On **MOTION** by Commissioner Galligani, **SECONDED** and **CARRIED**, the Commission unanimously approved by Roll Call Vote to waive the attorney-client privilege as it relates to the communication prepared by Deputy Attorney General Kathy Lynch regarding the Commission's Chief Internal Auditor position.

Commission Chair McClain asked Commissioner Johnston to lead the discussion regarding the chief internal auditor. Commissioner Johnston requested Deputy Attorney General Lynch to present her communication.

Deputy Attorney General Lynch summarized the communication she prepared for the Commission. She referenced recent legislation, Government Code section 13887, that states that any state agency that is overseen by a governing body must establish an internal audit operations that meets the following requirements:

1. The chief internal auditor shall be accountable to the audit committee of the governing body.
2. The chief internal auditor shall report audit findings and recommendations made under his or her jurisdiction of the audit committee and the general counsel to the governing body. Deputy Attorney General Lynch stated that audit findings and recommendations would be reported to her as the Commission's current general counsel until a Commission attorney is hired.
3. The operations shall be organizationally outside the staff or line management function of the unit under audit.

Deputy Attorney General Lynch recommended using the advisory provided by Institute of Internal Auditors as a guide. She also recommended that the Commission involve Glenda Smith, Personnel Services Branch Manager, because she is the Commission's personnel specialist and can provide the Commission insight on administrative reporting.

There was a general discussion regarding the reporting structure. Commissioner Friedlander requested Deputy Attorney General Lynch to provide clarification regarding the chief internal audit's authority to supervise or oversee any division unit containing audit staff. Deputy Attorney General Lynch stated that the chief of internal audits should not audit a unit which reports to the chief of internal audits. However, it is expected that the chief of internal audits would be in charge of his/her own auditors unless those auditors were part of another unit subject to audit by the chief of internal audits.

Upon request by Executive Director Fuentes-Michel, Ms. Janet McDuffie, Chief, CSAC Management Services Division/Interim Chief, CSAC Federal Policy and Programs Division, described the Internal Audit Unit structure. Ms. McDuffie indicated that currently the Internal Audit Unit consists of an internal audit chief (Chief Audit Executive) and two audit staff positions. Under the proposal, the Program Compliance Unit would also report to the Chief Audit Executive. The Program Compliance Unit audits schools that participate in the Cal Grant and Specialized programs, including Cal-SOAP. Therefore, the Commission's internal and external audits would report to the internal audit chief.

Commissioner Friedlander requested Deputy Attorney General Lynch to comment on Ms. McDuffie's description. Deputy Attorney General Lynch stated that there is not an issue with the internal audit chief supervising his or her own staff. However, she cautioned that it would be

problematic if the staff auditors are part of other units by function. She would not want a structure set up according to the criteria, and then have it determined that there is really a different structure where there is perceived involvement from people that are not supposed to be in the process. Deputy Attorney General Lynch suggested sitting down and specifying the structure.

Commissioner Johnston suggested waiting to discuss structure until The Results Group finishes its review of the Federal Policy and Programs Division (FPPD) and then move forward with the issue.

Executive Director Fuentes-Michel suggested that the reporting responsibilities are issues that can be worked through with the Department of Personnel Administration (DPA) in terms of the law. Executive Director Fuentes-Michel expressed concern that the Commission focus on the policy decision of the role of the Commission's Chief Audit Executive and whether the person has responsibility over all Commission programs including the loan program or all programs excluding the loan program.

Commissioner Friedlander questioned whether the practice advisory regarding functional reporting and administratively reporting structure along with the issues regarding the appointment, removal and compensation conflicts with State law. Deputy Attorney General Lynch explained that the practice advisories are only advisory. She explained that setting the salary is determined by the State. She suggested involving Ms. Smith to assist with these types of issues. Deputy Attorney General Lynch added that she would anticipate that the Audit Committee would participate in the hiring process; however she would expect the Executive Director would take the lead. She stated that as far as termination, that there is a specific process and it would be advisable to review State law for conformity.

Commissioner Johnston indicated that in order to move forward on the internal audit position that the Commission should wait until the review of FPPD is finalized. He explained that FPPD is the oversight unit that the Commission works through to oversee EDFUND and the audit function is a separate function. He pointed out that his concern is that the internal audit unit audits FPPD and FPPD is a critical part of the oversight function and needs to be reviewed. He explained that FPPD's oversight function is far more than just audits.

Executive Director Fuentes-Michel agreed with the statement that oversight is more than just audits. She suggested that the Commission have a robust conversation about the effective administration of the loan program as it relates to compliance. Executive Director Fuentes-Michel explained that the audit function is different than the compliance activities and has yet to be defined in terms of the annual oversight plan.

Commissioner Friedlander expressed concern that BSA criticized the Commission because without the involvement of the CSAC internal auditor in the overall coordination, review, or approval of the EDFUND audit plan, there is the appearance of organizational and personal impairment and dependence because the responsibility is left to EDFUND.

Commissioner Johnston explained that oversight is not left with EDFUND. It is left with FPPD who should report to the Commission. He continued by explaining that FPPD currently provides the oversight function of EDFUND and EDFUND has several different audit functions as part of their audit plan which is brought to the Commission for approval. Commissioner Johnston stated that if FPPD has any issues regarding EDFUND that they bring them to the Commission,

however, part of the problem is that the Commission does not understand what FPPD does in their oversight function of EDFUND.

Commissioner Friedlander remarked that in terms of auditing, that CSAC has an internal audit function which is led by a chief audit officer who as a State employee is responsible for the overall annual audit plan with regards to all the Commission programs including the loan program. He explained that the day-to-day management would be duplicative, but for the larger responsibility of developing an audit program for all the Commission's programs should involve a State employee.

Commissioner Johnston suggested that the CSAC internal audit chief would be the liaison to the Audit Committee and thereby would have input to the EDFUND Audit Plan, however, it is ultimately the Audit Committee that provides approval.

Upon suggestion by Commissioner Galligani, Commissioner Johnston explained the link between FPPD and the internal auditor. Commissioner Johnston stated that to date, FPPD has not done any work on the grant side because it is FPPD's responsibility to be the Commission's oversight arm for the loan program.

Commissioner Furray suggested that there is confusion because the consultants had not completed the polices as they relate to oversight.

Deputy Attorney General Kathy Lynch encouraged the Commission to focus on the decision to hire an internal auditor or direct staff to move forward on hiring. She indicated it will take awhile to hire and the details can be worked out later.

Executive Director Fuentes-Michel explained that in order to move forward, the Commission needs to decide whether or not the CSAC chief internal auditor has the responsibility for all the Commission programs including the loan program. Commissioner Friedlander agreed and stated that it is a basic, fundamental, philosophical decision that needs to be made in terms of what is the role of the CSAC internal auditor.

EDFUND President Kipp stated that the fundamental issue is the scope of the responsibility for the CSAC internal auditor. He stated that the scope has to be decided before a person can be hired.

Ms. Smith explained that after lengthy discussions with DPA, a Senior Management Auditor level was approved based on the job responsibilities. She further explained that should the Commission decide to change the responsibilities that the position level would likely be lowered.

Commissioner Johnston cautioned the Commissioners that as it is currently written, the CSAC internal auditor would be less qualified than the EDFUND equivalent. Ms. Smith indicated that while the auditor position does not require specific qualifications, the job opportunity lists desirable qualifications.

Commissioner Friedlander remarked that the Commission's hands are tied regarding the qualification issue because that is established by the State. He noted that the basic issue is regarding the scope of the auditor and their role regarding EDFUND. He stressed the importance of making a decision and not postponing it.

Executive Director Fuentes-Michel clarified that there is a distinction between the EDFUND's internal audit function and the Commission's role as coordinator, reviewer, participant in the plan, and how the actual audit reaches a final disposition. Executive Director Fuentes-Michel reminded the Commissioners that it has been a year since the Bureau of State Audits report regarding this issue and by deferring again may open the Commission up for criticism.

Commissioner Perez agreed with the Executive Director and expressed concern that the auditor issue is on-going and that staff addresses Commission concerns and then the Commission raises new issues. She stated that it is important that the Commission make a determination of the scope and move forward with hiring someone. Commissioner Perez suggested that Commissioner Friedlander and Commissioner Johnston as an Ad Hoc Committee work together to present a report to the Commission for review. Commissioner Furay suggested that The Results Group assist the Ad Hoc Committee. The Commission reached a general consensus to move forward and form the Ad Hoc Committee consisting of Commissioner Johnston and Commissioner Friedlander and have them present at the June Commission meeting in order to reach resolution regarding the Chief Internal Auditor position.

Commissioner Johnston stated that the BSA finding was addressed when the Chief Audit Executive for CSAC and EDFUND was bifurcated into the EDFUND internal auditor and the CSAC internal Auditor.

Executive Director Fuentes-Michel and Commissioner Friedlander stated that the BSA finding has not been adequately addressed and that the Commission may be criticized. Commissioner Furay agreed to provide a verbal update regarding this issue at the Assembly Budget Subcommittee No. 2 on Education Finance scheduled for May 2, 2007.

Commissioner Galligani pointed out that the Commissioners have Deputy Attorney General Lynch's communication to assist with the structure of the position.

AGENDA TAB 2 – CONSIDERATION OF OPERATING AGREEMENT BETWEEN THE COMMISSION AND EDFUND

As directed by Commission Chair McClain, Executive Director Fuentes-Michel had emailed the Commission a list of outstanding concerns regarding the proposed Operating Agreement prior to the meeting. The list was distributed as a reference to the discussion. The issues raised by the Executive Director included:

- The annual oversight plan, as proposed, does not clearly define effective oversight.
- The proposed language is silent in regards to the timing, procedures and process used for determining periodic performance reviews.
- The definition of the role of Federal Policy and Program's Division is incomplete.
- The standards are not outlined and are deferred for later development.
- There is not a definition of the role of the Executive Director as the chief executive officer of the State's guarantee agency which oversees the loan program through the operating agreement.

There was a short discussion regarding the outstanding issues raised by the Executive Director. Commission Chair McClain recommended moving forward with a review of the proposed Operating Agreement.

Commission Chair McClain requested Mr. David Reid, EDFUND General Counsel, to provide an update of the April 26, 2007 EDFUND Board Meeting as it relates to the proposed Operating Agreement and Service Level Agreement. Mr. Reid indicated that the EDFUND Board unanimously approved the proposed Operating Agreement and Service Level Agreement with the understanding that staff continues to make small, minor, technical and non-substantive edits. He stated that the EDFUND Board would need to approve any substantive edits proposed by the Commission. Mr. Reid confirmed that the EDFUND Board preferred a five-year agreement.

Ms. Janet McDuffie, Federal Policy and Programs Acting Chief, explained that, in addition to the proposed Operating Agreement, staff also developed a Service Level Agreement, which incorporates most of the exhibits in the current Operating Agreement. It is intended that the Service Level Agreement would have an annual review and periodic amendments or updates. It is not intended that the amendments or updates would trigger the forty-five day review by the Department of Finance (DOF) and the Joint Legislative Budget Committee (JLBC). However, Ms. McDuffie explained that the DOF and JLBC may want to treat the Operating Agreement and Service Level Agreement as one document. Therefore, any changes to the Service Level Agreement may trigger the 45-day review and comment period by JLBC and DOF. Ms. McDuffie proceeded to explain the changes to the proposed Operating Agreement. Commissioner Furay stated that the EDFUND Board congratulated Ms. McDuffie and Mr. Reid for separating the Operating Agreement and Service Level Agreement.

Ms. McDuffie explained that a five-year period is proposed for the Operating Agreement. Commissioner Perez expressed concern that five years is a long time to go without reviewing the document, considering it is a new format. She stated that the Commission should not become complacent with the document and it should be a live, working document. Commission Chair McClain and Commissioner Furay suggested that the review of the Operating Agreement should be included in the policies for an annual or quarterly review. Mr. Reid explained that both CSAC and EDFUND staff reference the document on a daily basis. Deputy Attorney General Lynch reminded the Commission that changes to the Operating Agreement will initiate the amendment process and require mutual agreement. Discussion regarding the five-year period continued and the Commission reached mutual agreement that the Operating Agreement would be annually reviewed at the Joint Commission and EDFUND Workshop.

Upon an inquiry from Commissioner Friedlander, Mr. Reid explained that Section 4.5 references policies that have an impact on the Student Loan Operating Fund. Mr. Reid stated that EDFUND has administrative policies that affect the employees such as the smoking policy that would be signed by the EDFUND President and would not have an impact on the Student Loan Operating Fund, however, CSAC staff would receive a copy of the policy after it was signed by the President.

During the discussion of Section 4.6 regarding the annual Loan Program, Business Plan, Budget and Goals, Commissioner Perez expressed concern for adequate and timely review by the Commission and its staff. It was agreed to insert language into the proposed Operating Agreement that states that the Commission and the EDFUND Board will discuss the annual Loan Program Business Plan, Budget and Goals at the Joint Commission and EDFUND Board Workshop held each July.

During the discussion of the goals, the Commission directed staff to use the proposed language by the EDFUND Board for Goal B that states "provide a reliable and sustainable revenue stream

to ensure the continuation of a strong competitive loan program and to provide resources, where feasible, for the other priorities established by the Commission.” Commissioner Perez questioned the logic of including the statement “where feasible” in the goal language section, stating that if the Commission states they are going to provide resources is it necessary to include qualifying language. Mr. Reid explained that depending on the decisions made in Washington it may not be feasible to provide resources.

Commissioner Friedlander requested clarification regarding Section 5.3, specifically the language “re-negotiate in good faith”. He reminded the Commission that the BSA report specifically stated that the Commission should not be negotiating with EDFUND. Ms. McDuffie explained that the intent is that the Commission provides direction to EDFUND regarding the development of the Annual Loan Program Business Plan. Commissioner Furay explained that the term re-negotiation is used because it is a proposed mid-year budget change that must be negotiated between CSAC and EDFUND. Upon a suggestion by Mr. Reid the word will be changed to negotiate.

Deputy Attorney General Lynch noted that the Operating Agreement references the Service Level Agreement and reminded the Commission that changes to the Service Level Agreement may initiate the amendment process. She commented that it appears that the Service Level Agreement is incorporated into the Operating Agreement. Mr. Reid explained that the Board addressed the issue by approving the Operating Agreement separate from the Service Level Agreement to clarify that the documents are separate. Ms. McDuffie reminded the Commission, that while staff will present the documents as separate to DOF and JLBC; they may view them as one and request a 45-day review and comment period whenever a change is made.

Ms. McDuffie continued her presentation and pointed out that Section 8.2 reflects the various audits, but is open regarding logistics because there is an on-going discussion regarding the CSAC internal auditor position. Commissioner Galligani noted that the lay out of the audits was very helpful and should be able to assist Commissioners Johnston and Friedlander.

Ms. McDuffie explained that the reference to the SAS 70 in Section 8.2.B was removed at the recommendation of the EDFUND Board. She explained that EDFUND was not opposed to the SAS 70 but needed more time to review the costs associated with the SAS 70.

Commissioner Friedlander suggested that the reference to the Audit Committee should be changed to “committee designated by the Commission.” He explained that the Commission has a proposal that might create a new committee structure that would include a committee that has oversight. Mr. Reid explained that to avoid EDFUND staff receiving tons of reports and audits, it is coordinated through the Audit Committee and it makes sense because they approve the Audit Plan. Executive Director Fuentes-Michel stated that the Commission decided to have issues related to oversight go through the Fiscal Policy and Long-Range Planning Committee. She explained that previously the Commission had an actual Federal Loan and EDFUND Oversight Committee which was abolished and responsibilities transferred to the Fiscal Policy and Long-Range Planning Committee. Commissioner Friedlander suggested that the Ad Hoc Committee address this issue in their proposal regarding the creation of the new Planning, Budgeting and Monitoring Committee. Upon a suggestion by Mr. Reid, it was decided that the phrase “or a committee designated by the Commission” would be used.

Mr. Tom Mays, Public Affairs Branch Manager, suggested adding language to Article 9.8 that indicates in addition to the Commission and EDFUND promoting and supporting each other in the marketplace, they would also include the State Legislature, Congress, the press and the

general public. Mr. Mays expressed specific concerns that CSAC and EDFUND staffs do not collaborate on all press releases. Michael Wright, Project Coordinator for The Results Group, suggested that the Operating Agreement language should correlate to the Governance Policies wherever possible. Commissioner Furay pointed out that any substantive change must go back to the EDFUND Board for review. She suggested that if there is another way to accomplish this, it would be preferable.

Deputy Attorney General Lynch reminded the Commission that it cannot approve the Operating Agreement until DOF and JLBC review it, therefore it will not be signed for 45 days. Executive Director Fuentes-Michel and President Kipp commented that DOF and JLBC are likely to provide comments.

President Kipp stated that the suggestion by Mr. Mays would fit better in the Governance Policies and not the Operating Agreement. Mr. Mays stated that as long as it is referenced and that everyone is in agreement it would be fine.

Cathy Reynolds, EDFUND Assistant Vice President and Assistant General Counsel, remarked that the communication issue has been discussed over the past three months and that it is captured in the Service Level Agreement in Section 1 number 8. Mr. Mays stated that he has reviewed that section, and while it addressed some issues it did not specifically address public affairs as it pertains to addressing key issues that affect both CSAC and EDFUND. Mr. Mays explained that EDFUND staff notified CSAC staff that they would only include CSAC staff in external communications if CSAC is mentioned or referenced in the communication. He suggested that this policy could potentially become problematic as in the case with the lease issue. Executive Director Fuentes-Michel explained that in the case of the lease if the Commission does not get approval from the appropriate State agencies, then it can adversely affect the Commission. She stated that while it is appropriate for EDFUND to put out a public announcement regarding the lease, it is important that it is managed correctly so that it does not adversely affect the Commission's negotiations with the Department of General Services.

Mr. Mays suggested that all press releases should be provided to CSAC staff for review and comment. Mr. Reid stated that it is not appropriate to send all of EDFUND press releases to CSAC staff for review. Commissioner Furay referred the Commission to Section 9.8 regarding cooperation between parties. It was agreed to address the issue in the Governance Policies.

Once the Operating Agreement is approved, the Commission directed staff to obtain signatures of the Executive Director, EDFUND President, Commission Chair and EDFUND Board Chair on the Operating Agreement.

On **MOTION** by Commissioner Furay, **SECONDED** and **CARRIED**, the Commission unanimously approved by Roll Call Vote to have a five-year term for the Operating Agreement and to discuss the annual Loan Program Business Plan, Budget and Goals at the Joint Commission and EDFUND Board Workshop held each July.

On **MOTION** by Commissioner Galligani, **SECONDED** and **CARRIED**, the Commission unanimously approved by Roll Call Vote to move the proposed Operating Agreement to the next stage including any other technical non-substantive changes by staff.

Ms. McDuffie reviewed the substantive changes regarding the Service Level Agreement. She explained that the term "performance standards" was changed to "performance expectations" at the suggestion of the EDFUND Board. Ms. McDuffie also noted that staff will be adding language

to indicate that the service levels in the current Exhibit D will continue until staffs have developed new levels.

The Commission directed staff to use the same set of signatures on the Service Level Agreement as with the Operating Agreement.

On **MOTION** by Commissioner Perez, **SECONDED** and **CARRIED**, the Commission unanimously approved by Roll Call Vote to move the proposed Service Level Agreement to the next stage including any other technical non-substantive changes by staff.

Ms. McDuffie indicated that staff is currently drafting a cover letter to DOF and JLBC and anticipate sending it out May 2, 2007.

AGENDA TAB 3 – CONSIDERATION OF ROLES, RESPONSIBILITIES AND POLICES OF THE COMMISSION AND EDFUND AND THEIR RESPECTIVE STAFFS

Upon Commission Chair McClain's direction, Mr. Michael Wright, Project Coordinator for The Results Group, led the discussion regarding the "working draft" of the Commission's Governance Policies. Mr. Wright indicated that the edits he received were incorporated into the document and proceeded to review the edits with the Commission.

During the discussion regarding Ends Policy 1, Executive Director Fuentes-Michel commented that the section was substantially different than the edits she submitted, explaining, as an example, that there was no language regarding programs administered through inter-agency agreement. Mr. Wright indicated that he would incorporate the language back into the section. Commissioner Johnston commented that the language was lengthy and the Ad Hoc Committee was not sure if the detail needed to be incorporated, however, if it is necessary it can be placed back into the document. Executive Director Fuentes-Michel explained that the Administration and Legislature is responsible for authorizing programs and the approval process is distinct from the authorization that comes through the Commission, once another agency or the federal government asks the Commission to approve a program for administration.

Commissioner Johnston noted that in the section "Entity and Programs Names" there should be a distinction between the loan guarantee program and the loan assumption program. Mr. Wright agreed to make the clarification between the two programs by indicating that the Commission's grant programs include the loan assumption program.

During the discussion of Ends Policy 3, Commissioner Friedlander questioned the term "short term viability includes maintaining the minimum reserve levels established by the Commission" stating that this issue was previously discussed. Based on his understanding the Commission does not have the ability to establish a minimum reserve independent of the Department of Finance. Executive Fuentes-Michel indicated that while the Commission may establish policy, that the Administration and Legislature have final control over the issue. President Kipp added that the Commission does not establish the minimum reserve for the Federal Fund; this is established by the Federal Government. He added that it is an ends policy and you may negotiate or not but they need to be considered.

Ms. McDuffie pointed out that FPPD operations has never been part of the General Fund and it has always been part of the loan program funding. Executive Director Fuentes-Michel explained that not only is FPPD funded from the loan program, but that State government would assume that if the State is going to participate in a loan program, there would need to be a level

of oversight. Upon a suggestion by Mr. Wright, language would be removed and replaced with “fund the loan program in a manner that maintains EDFUND’s short and long term financial viability.”

Commissioner Charton explained that the effectiveness of the programs has a profound impact on maintaining the mission and seeing it realized. He requested that this be reflected in the language.

Commissioner Furay suggested inserting language in the section regarding “Global Policy: Commission Governance Process” indicating that the EDFUND Board has all of the powers and duties of a California nonprofit corporation and will operate under that understanding unless there is a conflict with the statute.

Commissioner Hernandez requested that in the area of Internal and External Communication the phrase “in a timely manner to allow for proper review “ be added.

Executive Director Fuentes-Michel noted that the Governance Policies do not address who is responsible for FPPD staff. She stated that based on the current State process the employees in the division report administratively and functionally to the Executive Director. However, by delineating between grants and loans, FPPD staff does not report to the Executive Director. In addition, the issue regarding responsibility for federal government correspondence regarding the loan program is not addressed. Upon a request by Mr. Wright, the Executive Director suggested providing clarifying language in the internal and external communication section. She added that there should also be a discussion about the responsibilities of the Executive Director for oversight. Mr. Wright pointed out that Assignment Policy 3: Federal Policies and Programs Division states that FPPD or its successor operates under the administrative direction of the Executive Director and the functional direction of the Commission.

Upon a request for clarification by Commissioner Johnston, Executive Director Fuentes-Michel explained that she receives correspondence from the federal government that require a response from the guarantee agency and these issues do not necessarily involve FPPD staff and may require other CSAC staff involvement. She also indicated that while the Commission Chair signed the Bureau of State Audit (BSA) response, BSA routinely sends correspondence to the Executive Director, and it is her responsibility to inform the Commission, specifically the Chair of Commission and also to inform EDFUND. Executive Fuentes-Michel stated that there should be a clear understanding about the items the Commission wants to see relating to ongoing communication between the Executive Director and the EDFUND President. Commissioner Johnston suggested proceeding with the review of the edits to see if the issue is addressed further in the document.

During the discussion regarding committees, Commissioner Galligani suggested to Commissioner Perez that a discussion regarding committee structure be added to the June workshop.

During the discussion regarding Assignment Policy 1, Executive Director Fuentes-Michel requested that there be clarification on administrative reporting by the FPPD staff as well at the internal auditor. Mr. Wright suggested using language from the communication regarding the internal auditor that Deputy Attorney General Lynch provided. Deputy Attorney General Lynch clarified that the practice advisory is a good example; however it must be tailored to the State process. Mr. Wright indicated that the Committee would review the communication from the Deputy Attorney General and work on it later.

Mr. Wright agreed to add language on fiscal accountability with State and federal requirements in the Fiscal Operations Section under Assignment Policy 1: Executive Director.

Executive Director Fuentes-Michel requested that in the Personnel Practices section there should be language on appropriate levels of training and attention to progressive discipline because the Executive Director should bring a sense of accountability and fairness to the way employees are treated.

During a discussion on communication, Commissioner Johnston stated that there may be situations for example, where the Executive Director may have a disagreement with EDFUND staff and it would not be appropriate for the Executive Director to be the only communication source to the Commission for decision. A discussion ensued and due to time constraints, Mr. Wright suggested the reporting issues related to administratively and functionally will be discussed and adopted at the June meeting.

Commissioner Perez stated that the Commission is asking the Executive Director to act on behalf of the Commission and it should be clearly explained what is expected. She added that clarifying these items will address some of the BSA issues. Commissioner Perez added that the clearer the Commission makes the lines that there will be less of a struggle when it is time to implement.

Mr. Wright indicated that many of the issues will be addressed in the oversight plan. The oversight plan should clearly define what is effective oversight. He stated that the Commission will need to review the oversight plan in the same manner the Governance Policies have been reviewed.

Commissioner Hernandez commented that there has been a lot of collaboration over the past couple of months and it is the intention to address any outstanding issues outlined by Mr. Wright at the June meeting.

Steven Thomas, Partner The Results Group, commented that staff working on the Annual Oversight Plan have not committed to completing the plan by the June meeting but have agreed to have a progress report available and present accomplishments.

Commissioner Galligani summarized the progress of the Ad Hoc Committee indicating that they have a document to move forward. He stated that the policies will continue to be an iterative process.

Commissioner Charton stated that if there is a prescribed deadline that the Commission should see it materialized. He explained that while there may be tremendous progress it is not completion. Mr. Wright remarked that the work can be viewed as a negative or positive. The Commission has complied with Operating Agreement deadline and should be proud. Commissioner Friedlander agreed with Mr. Wright and added that State control agencies are concerned about roles and responsibilities, specifically oversight and the reality is the Commission did not finish defining roles and responsibilities and will be criticized for it.

Commissioner Hernandez suggested that the Commission make a commitment to put a plan in place of when the Commission is going to complete the oversight plan.

Mr. Mays requested that the issue regarding centralized external communications as it relates to the press be revisited.

Due to limited time, the Commission instructed staff to submit suggested language changes to Mr. Wright for the Commission's review at its June meeting.

On **MOTION** by Commissioner Johnston, **SECONDED** and **CARRIED**, the Commission unanimously approved by Roll Call Vote to adopt the changes to the policies discussed in today's meeting and to provide limited authority to the Ad Hoc Committee with assistance from The Results Group to make additional edits for the Commission's consideration at the June Commission meeting.

CLOSING BUSINESS

Commission Chair McClain requested public comment. Hearing no comments, the meeting of the California Student Aid Commission was adjourned at 4:01 p.m.

Michele Dyke, Secretary