

Item 1

Action Item

Consideration of amendments to EdFund bylaws

SUMMARY:

EdFund is the non-profit auxiliary organization of the California Student Aid Commission (Commission) originally organized to administer the Commission's responsibilities as a guarantor of federal student loans for California. On February 20 and 21, 2014, the Commission and the EdFund Board, respectively, voted to dissolve EdFund, and administrative steps were begun to dissolve the corporation after the federal government ended the Commission's guarantor status. However, EdFund recently received a payment of \$103,000, and has learned that other potential payments may exist. Therefore, dissolution has temporarily been suspended pending recovery of potential payments and a determination of the appropriate use of the new funds.

In the meantime, EdFund no longer has employees and is no longer carrying out any guarantor services.

This item presents proposed amendments to EdFund bylaws to conform the EdFund Board officers to the Commission officers. It would also change the requirement for quarterly Board meetings to an annual meeting.

RECOMMENDATION:

Adopt the recommended amendments to EdFund bylaws.

BRIEF HISTORY OF KEY ISSUE(S):

The Commission created EdFund as its non-profit, 501(c)(3), auxiliary organization in 1997, under authority granted by Education Code sections 69522-69529.5. At the time, the Commission was designated by the federal government as a guarantor of federal student loans through the Federal Family Education Loan Program (FFELP). EdFund administered the Commission's responsibilities as a guarantor and received fees in the hundreds of millions of dollars annually.

In some years, the State of California ultimately used some of those fees to fund Cal Grants. The Commission also used about \$25 million of the fees to underwrite a three-year outreach campaign. In addition, EdFund provided administrative support and services to the Commission, thereby saving State General Fund dollars.

However, in 2010, the federal government began emphasizing its direct lending student loan program, ended its FFELP relationship with the Commission, and designated ECMC to be the FFELP guarantor in place of the Commission. The transition from the Commission to ECMC took

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several years, resulting in all the non-State EdFund employees moving to ECMC, and State employees working at EdFund returning to the Commission.

Ultimately, on February 20, 2014, the Commission directed the EdFund Board to dissolve the EdFund corporation, and on February 21, 2014, the EdFund Board voted to dissolve. Regulatory and administrative steps were taken toward dissolution.

However, about May 2016, EdFund received a \$103,000 payment related to EdFund insurance. This payment had not been anticipated. Further, potential funds belonging to EdFund from California and other states' unclaimed property programs were identified.

Therefore, until the potential funds are recovered and the Commission and EdFund Board determine the appropriate use of the new funds, the dissolution process has been temporarily suspended.

This temporary suspension requires some amendments to the EdFund bylaws, since, with the temporary delay in dissolution, changes among the Commission membership have left EdFund without a Chair, Vice Chair and Treasurer.

ANALYSIS:

Staff has determined that some immediate changes to the bylaws are advised, but that we will need more time to determine whether and what additional changes will be required.

The EdFund bylaws in their entirety are included as Attachment 1.1. The first of two sets of amendments to the bylaws involves the officers of EdFund and the election of officers. The amendments would do the following:

- 1) Make the officers of the Commission to be the officers of the EdFund Board, except that the Vice Chair of the Commission will be the Treasurer of the EdFund Board.

The purpose of this amendment is to conform the EdFund Board and Commission leadership. Only Commissioners are EdFund Board members, and there is no reason to have separate leaderships. Further, the amendment will alleviate the need for the EdFund Board to meet just to elect officers.

Further, the Corporations Code prohibits a board chair from acting as the secretary or treasurer. Thus, a vice chair of EdFund, who could assume the authority of the chair, cannot also serve as the treasurer. Since the Commission does not have a Treasurer, and EdFund does not require a vice chair, it is reasonable to deem the Commission's Vice Chair to be the EdFund Treasurer. This would alleviate the need for the EdFund Board to meet just to elect a Treasurer.

- 2) Eliminate the EdFund office of the Vice Chair.

As stated, since the Commission does not have a Treasurer, and EdFund does not require a vice chair, it is reasonable to deem the Commission's Vice Chair to be the EdFund Treasurer. This would alleviate the need for the EdFund Board to meet just to elect a Treasurer.

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The specific changes to the relevant sections of the bylaws are indicated below, with deleted words being struck out and new words underlined. All changes are highlighted in yellow.

ARTICLE VI OFFICERS

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

Section 2. Election. The officers of the Designator, California Student Aid Commission, shall be the officers of this corporation, with the exception that the Vice Chair of the Designator shall serve as the Treasurer of this corporation. Officers of this corporation shall be deemed to have been elected annually by the Board of Directors as of the Designator's annual election of officers, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

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

The second set of amendments would change the frequency of EdFund Board meetings from quarterly to once a year. Since the temporary suspension of the dissolution process is expected to last only as long as it takes to recover payments and determine the appropriate use of the new funds, an annual meeting should be sufficient. The EdFund bylaws allow the chair, the vice chair, or any two directors to call additional meetings as necessary.

The specific change to the relevant section of the bylaws is indicated below, with deleted words being struck out and new words underlined. All changes are highlighted in yellow.

ARTICLE IV BOARD OF DIRECTORS

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

Section 8. Notice. Notice of the quarterly annual meetings and any additional meetings of the Board of Directors shall be given at least ten days before any

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

Further changes may be necessary, depending on the length of time the suspension of dissolution continues. If so, we will bring any additional changes to future EdFund Board meetings.

RESPONSIBLE PERSON(S): Keith Yamanaka
Chief Deputy Director
California Student Aid Commission

ATTACHMENT(S):

Attachment 1.1: Bylaws of EdFund, Amended and Restated as of March 23, 2011