

Item 4

(Action Item)

Consideration to elect to wind up and dissolve EdFund

SUMMARY:

This item provides a background information on EdFund and an overview of the dissolution process for the Board's approval.

RECOMMENDATION:

Staff recommends that the EdFund Board of Directors vote to approve staff to continue and complete the dissolution of EdFund including distributing EdFund's remaining assets.

BACKGROUND:

EdFund was incorporated in January 1997 as a nonprofit public benefit corporation for the purpose of promoting and assisting the programs of the Commission. The corporation was organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and was established by the Commission under the authority of Education Code, Section 69522. EdFund was established, in part, to assist with the loan origination or capitalization activities pursuant to an agreement with the U.S. Department of Education. The Articles of Incorporation further stated that EdFund was "organized and operated exclusively for the benefit of, to perform the functions of, and to carry out the purposes of the Commission."

From 1997 until November 2010, EdFund served as the student loan servicing auxiliary for the Commission and was the State's designated guaranty agent of the Federal Family Education Loan Program (FELP). EdFund received fees in the hundreds of millions of dollars annually associated with its responsibilities. In some years, the State of California used a portion of the fees received by EdFund to fund Cal Grants. The Commission also used about \$25 million of the fees to underwrite a three-year outreach campaign, and during the most recent recession, the Schwarzenegger administration considered using some of the funds to support the Commission's operating budget.

The enactment of the federal Student Aid and Fiscal Responsibility Act of 2009 eliminated the FELP and in 2010, the Federal government cancelled the guaranty authority of EdFund and transferred the loan assets and business to the Educational Credit Management Corporation (ECMC). The EdFund organization ceased operations in November 2010; all non-State EdFund employees moved to ECMC and State

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employees working at EdFund returned to the Commission. EdFund has had no employees since 2011.

On February 20, 2014, the Commission directed the EdFund Board of Directors to dissolve the EdFund corporation, and on February 21, 2014, the EdFund Board formally authorized the dissolution. Commission staff began the process of dissolving EdFund and on October 10, 2015, the California Attorney General waived objections to the distribution of EdFund's assets. Commission staff completed the liquidation of known assets and closed the corporate bank account, effective December 31, 2015.

In January 2016, before the final steps of the dissolution process could be completed, the MetLife Insurance Company (MetLife) notified Commission staff of \$103,344.91 that was due to EdFund as a result of unclaimed shares that were issued when the Metropolitan Life Insurance company demutualized in April 2000. The payment had not been anticipated since EdFund had canceled its policy with MetLife in 2008 and it was likely unaware of the existence of shares it held as a result of the demutualization of the MetLife Company. The receipt of these funds effectively halted the dissolution of EdFund until staff could determine the relevant laws and procedures that govern how the funds could be used. A new account was opened with U.S. Bank for EdFund for these funds; the current balance of which is: \$104,816.41.

The Bylaws of EdFund provide that all powers and activities of the corporation shall be managed by the Board of Directors of the corporation (Article IV, Section 1). On June 17, 2016, the Commission designated all Commissioners appointed to the Student Aid Commission to the EdFund Board of Directors effective as of the date of their Oath of Office for the Commission, without requiring additional action by the Commission (Article IV, Section 2).¹ At the September 16, 2016, EdFund Board meeting, the Board amended the Bylaws of EdFund to reflect new officers of the Board, "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 (Article VI, Section 2)."

The last EdFund Board meeting was held on November 18, 2016, where EdFund Board members discussed holding a future meeting to discuss options for dissolving. CSAC staff had been working on determining how to dissolve EdFund and the distribution of assets since Fall of 2016. Based on information in Commission files, prior to 2020, staff was uncertain as to how EdFund assets could be distributed. However, in 2020 current Commission Counsel reached out to the Attorney General's Office regarding distribution of assets. On January 22, 2020, the California Attorney General Office confirmed the Commission is the permissible sole recipient of any remaining assets upon the dissolution of EdFund as specified in EdFund Articles of Incorporation.

¹ CSAC Commission Meeting, Item 20: Consideration of designating Commissioners as Directors of the EdFund Board Keri Faseler Tippins, General Counsel and Chief, Legal and Audit Services Division. https://www.csac.ca.gov/sites/main/files/file-attachments/meetingnotice_29.pdf?1524518508

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Subsequent to receipt of this confirmation, staff began working on determining the process for dissolution and completing the required prerequisite steps.

As listed below, verification of the current status with the Franchise Tax Board (FTB) of the nonprofit corporation is required in order to dissolve; dissolution documents cannot be filed on behalf of a suspended corporation. However, the Secretary of State's website currently lists EdFund's FTB status as "FTB suspended." Since April of 2021, staff have worked with the FTB to revive EdFund's nonprofit tax exemption. However, the FTB rejected staff's request to revive the nonprofit tax exemption but directed staff to request a pre-dissolution tax abatement which would put us in current status with the FTB for the purposes of dissolution. The FTB granted this request in November 2021 and EdFund was given until August 2022 to complete dissolution. This is a conditional approval to complete the entire dissolution process by August 10, 2022, so that the FTB will abate unpaid qualified taxes, interests, and penalties which might otherwise be due because staff have not filed EdFund's state tax returns since 2016. With this letter of approval for pre-dissolution tax abatement, EdFund can officially begin the process of dissolution.

While staff worked on the above-required activities to dissolve EdFund, the Internal Revenue Service (IRS) also made several requests relating to EdFund federal tax returns. Throughout 2021, staff has responded to IRS requests; however, neither IRS approval nor review is required to dissolve EdFund.

Dissolution Requirement/Steps

There are three main steps to dissolve EdFund: (1) a vote to dissolve by the EdFund Board, (2) filing of a final state tax return and verification of current status with the FTB , and (3) obtaining a dissolution waiver from the California Attorney General.²

With the Board's approval, a dissolution packet will be compiled for, and mailed to the Secretary of State (SOS). The dissolution packet must include the Nonprofit Certificate of Dissolution (Form DISS NP). The Form DISS NP³ is a notice that the nonprofit corporation has elected to wind up and is in the process of paying liabilities and distributing assets. The packet also needs to include the FTB's letter of conditional approval, and a copy of the Attorney General dissolution waiver received in 2015 as further described below.

After submission of the packet to the SOS, the status of the dissolution can be checked on the Secretary of State's webpage.⁴ The Secretary of State will also return a copy of a date stamp endorsed file of the form DISS NP.

² Attorney General's Office California Department of Justice, General Guide for Dissolving A California Nonprofit Corporation, <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/dissolving.pdf>

³ Certificate of Election Form DISS NP Instructions, https://bpd.cdn.sos.ca.gov/corp/pdf/dissolutions/corp_npdis.pdf or <https://www.sos.ca.gov/business-programs/business-entities/forms#corp>

⁴ California Secretary of State, Business Search, <https://businesssearch.sos.ca.gov/>

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Staff recommends that the EdFund Board of Directors vote to approve staff to complete the dissolution of EdFund including distributing EdFund's remaining assets.

RESPONSIBLE PERSON(S):

Julia Blair, General Counsel

ATTACHMENT(S):

Secretary of State Dissolution Form
Attorney General Letter (2015)
Attorney General Email (2020)
EdFund Timeline