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EDUCATION CODE

TITLE 3. POSTSECONDARY EDUCATION

DIVISION 5. GENERAL PROVISIONS

PART 42. STUDENT FINANCIAL AID PROGRAM

CHAPTER 2. Student Financial Aid Programs

ARTICLE 2.5. Auxiliary Organization

69522. (a) (1) The commission may establish an auxiliary organization for the purpose of providing operational and administrative services for the participation by the commission in the Federal Family Education Loan Program, or for other activities approved by the commission and determined by the commission to be all of the following:

(A) Related to student financial aid.

(B) Consistent with the general mission of the commission.

(C) Consistent with the purposes of the federal Higher Education Act of 1965 (Public Law 89-329) and amendments to that act.

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

(A) The issuance of bonds.

(B) Loan origination or loan capitalization activities. This paragraph shall not preclude the commission or the auxiliary organization from undertaking either of the following:

(i) Other permitted activities that are related to student financial aid in partnership with institutions that conduct loan origination or loan capitalization activities.

(ii) Loan origination or capitalization activities authorized pursuant to an agreement with the United States Secretary of Education for the lender-of-last-resort program.

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

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

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(2) On or after the operative date of Article 2.4 (commencing with Section 69521), the commission shall not authorize the auxiliary organization to perform any new or additional services except those deemed by the Director of Finance to be necessary or convenient either for the operation of the state student loan guarantee program, as defined in Section 69521.2, or to accomplish the goal of maximizing the value of the state student loan guarantee program assets and liabilities pursuant to Article 2.4 (commencing with Section 69521).

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

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

(B) On or after the operative date of Article 2.4 (commencing with Section 69521), the commission shall not approve any operating agreement that permits the auxiliary organization to perform any new or additional services, except those deemed by the Director of Finance to be necessary or convenient either for the operation of the state student loan guarantee program, as defined in Section 69521.2, or to accomplish the goal of maximizing the value of the state student loan guarantee program assets and liabilities pursuant to Article 2.4 (commencing with Section 69521).

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

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

(Amended by Stats. 2008, Ch. 757, Sec. 29. Effective September 30, 2008. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

69522.5. (a) Notwithstanding any other provision of law, employees of the commission may be assigned to work for the auxiliary organization to provide services pursuant to this article. While they are assigned to work for the auxiliary organization, these employees shall remain employees of the

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commission and the status, rights, and benefits of these employees shall be based on their employment as civil service employees of the commission.

(b) Employees of the auxiliary organization shall not be employees of the State of California, and shall not be subject to the requirements of Chapter 10.3 (commencing with Section 3512) of, or of Chapter 10.5 (commencing with Section 3525) of, Division 4 of Title 1 of the Government Code. Employees of the auxiliary organization shall have the right to representation consistent with the National Labor Relations Act (29 U.S.C. Secs. 151 et seq.).

(Added by Stats. 1996, Ch. 961, Sec. 1. Effective January 1, 1997. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

69523. (a) For purposes of this section, the following definitions apply:

(1) "Executive employee" is any management employee with responsibility for the development and execution of the auxiliary organization's policy.

(2) "Full-time employee" is a person who is employed in a permanent position for 40 hours per week or for the required number of hours of a particular work shift, whichever is lesser. Persons employed on a temporary, intermittent, irregular time base, or on a limited-term basis, are not full-time employees unless those employees are engaged on a continuing 12-month basis and are employed for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser.

(3) "Temporary employee" is either of the following:

(A) An employee employed for a research project, workshop, institute, or other special project funded by any grant, contract, or gift.

(B) An employee whose contract of employment is for a fixed term not exceeding three years.

(b) The operating agreement approved by the commission pursuant to Section 69522 may include provisions requiring the board of directors of the auxiliary organization to provide salaries, working conditions, and benefits for the full-time employees of the auxiliary organization that are comparable to those provided commission employees performing similar services.

(Added by Stats. 1996, Ch. 961, Sec. 1. Effective January 1, 1997. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

69524. Retirement benefits for employees of the auxiliary organization may be provided under contract with the Public Employees' Retirement System in accordance with the terms and conditions of the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code), or may be provided by other than the Public Employees' Retirement System.

(Added by Stats. 1996, Ch. 961, Sec. 1. Effective January 1, 1997. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

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69525. (a) The auxiliary organization established pursuant to Section 69522 shall be governed by a board of directors nominated and appointed by the commission. One member of the board of directors shall be an employee of the auxiliary organization, and one member of the board of directors shall be a student enrolled in a California public or private postsecondary educational institution. The commission shall determine the composition of the remainder of the board of directors, including both the size and categories of membership of the board.

(b) The board of directors shall, during each fiscal year, hold at least one business meeting each quarter. The board of directors shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney nor the certified public accountant need be members of the board.

(c) No member of the board of directors shall be financially interested in any contract or other transaction entered into by the board of which he or she is a member, and, except as provided in subdivision (d), any contract or transaction entered into in violation of this subdivision is void.

(d) No contract or other transaction entered into by the board of directors is void under subdivision (c), nor shall any member of that board be disqualified or deemed guilty of misconduct in office under those provisions, if both of the following circumstances exist:

(1) The member's financial interest is disclosed or known to the board of directors and noted in the minutes, and the board of directors thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of that financially interested member or members.

(2) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

(e) Subdivision (d) does not apply if any of the following circumstances exists:

(1) The contract or transaction is between the auxiliary organization and a member of the board of directors.

(2) The contract or transaction is between the auxiliary organization and a partnership or unincorporated association of which any member of the board of directors is a partner or in which he or she is the owner or holder, directly or indirectly, of a proprietorship interest.

(3) The contract or transaction is between the auxiliary organization and a corporation in which any member of the board of directors is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

(4) A member of the board of directors is interested in a contract or transaction within the meaning of subdivision (c) and, without first disclosing that interest to the board of directors at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

(f) It is unlawful for any person to utilize any information, not a matter of public record, that is received by him or her by reason of his or her membership on the board of directors, for personal pecuniary gain,

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regardless of whether he or she is or is not a member of the board of directors at the time that gain is realized.

(g) (1) The board of directors of the auxiliary organization shall conduct its business in public meetings in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(2) Notwithstanding paragraph (1), the board of directors of the auxiliary organization may hold a closed session to consider a matter of a proprietary nature the discussion of which would disclose a trade secret or proprietary business information that could potentially cause economic harm to the auxiliary organization or cause it to violate an agreement with a third party to maintain the information in confidence if that agreement was made in good faith and for reasonable business purposes.

(3) Notwithstanding any other law, the commission may hold a closed session to consider a matter that may properly be considered in closed session by the board of directors of the auxiliary organization pursuant to paragraph (2).

(Amended by Stats. 2004, Ch. 216, Sec. 18. Effective August 11, 2004. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

69526. (a) The board of directors shall approve all expenditures and fund authorizations of the auxiliary organization. Authorizations of expenditure of funds for use outside of the normal business operations of the auxiliary organization shall be approved by an officer of the commission and in accordance with commission policy.

(b) On or after the operative date of Article 2.4 (commencing with Section 69521), and, notwithstanding any approval by the commission or any of its officers or employees or by the board of directors made after August 1, 2007, any expenditure of funds held by the auxiliary organization for the following purposes shall be subject to the prior approval of the Director of Finance:

(1) Increases in compensation or benefits for officers of the auxiliary organization, including discretionary bonuses and retention bonuses.

(2) Outreach programs, public awareness campaigns, or diversification of the auxiliary organization's business or data processing systems that are not deemed by the Director of Finance to be necessary or convenient either for the operation of the state student loan guarantee program, as defined in Section 69521.2, or to accomplish the purposes of Article 2.4 (commencing with Section 69521).

(3) Activities other than any of the following:

(A) Those directly related to providing guarantees under the Federal Family Education Loan Program, which shall not be deemed to include any of the activities set forth in paragraph (2).

(B) Those required to provide operational support services to the commission pursuant to the operating agreement between the commission and the auxiliary organization, which shall not be deemed to include any of the activities set forth in paragraph (2).

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(C) Those deemed by the Director of Finance to be necessary or convenient either for the operation of the state student loan guarantee program, as defined in Section 69521.2, or to accomplish the purposes of Article 2.4 (commencing with Section 69521).

(c) The commission, in consultation with the Department of Finance and the board of directors of the auxiliary organization, shall do all of the following:

(1) Institute a standard accounting and reporting system for the management and operations of the auxiliary organization.

(2) Implement financial standards that will ensure the fiscal viability of the auxiliary organization. The standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.

(3) Institute procedures to ensure that transactions of the auxiliary organization are consistent with the mission of the commission.

(4) Develop policies for the expenditure of funds derived from indirect cost payments not required to implement paragraph (2). The use of those funds shall be regularly reported to the board of directors.

(d) The auxiliary organization shall not accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with the policies of the commission.

(Amended by Stats. 2007, Ch. 182, Sec. 3. Effective August 24, 2007. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

69527. (a) A certified public accountant shall be selected by the auxiliary organization and shall audit all funds of the auxiliary organization in accordance with applicable auditing and reporting procedures developed by the commission and the Department of Finance. The auxiliary organization shall contract for and receive the audit annually, and shall submit the audit to the commission and the Department of Finance. The auxiliary organization shall publish and disseminate its annual audited statement and make it available to any person upon request. Distribution of the published audited statement of financial condition at a regularly scheduled meeting of the board of directors shall be deemed compliance with this requirement.

(b) The Department of Finance may review the performance and operation of the auxiliary organization.

(Added by Stats. 1996, Ch. 961, Sec. 1. Effective January 1, 1997. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

69528. The auxiliary organization may contract with the commission for the provision of support services, which may include, but are not limited to, accounting, personnel, clerical, administrative support, and other services necessary for the administration of the auxiliary organization.

(Added by Stats. 1996, Ch. 961, Sec. 1. Effective January 1, 1997. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)

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69529. The operating agreement with the board of directors of the auxiliary organization, approved by the commission pursuant to subdivision (d) of Section 69522, shall cover all of the following:

- (a) Any support services provided or special programs administered by the auxiliary organization.
- (b) The sources of revenue available to the auxiliary organization, including agreements concerning federal administrative cost allowances, guarantee fees charged to borrowers, and retention of funds obtained through collections on defaulted loans.
- (c) Support and administrative services to be provided by commission staff, including accounting, personnel, clerical, administrative support, and other services necessary for the administration of the auxiliary organization.

(Amended by Stats. 1999, Ch. 636, Sec. 2. Effective January 1, 2000. Repealed conditionally by Stats. 2007, Ch. 184, Secs. 1 and 3.)