

MAINE STATE LEGISLATURE

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1999 Annual Report

MAINE COLLEGE SAVERS PROGRAM

**Making Higher Education Affordable
for Students and Families in Maine**

Prepared for:

**The Joint Standing Committee
on Education and Cultural Affairs
January 29, 1999**

Prepared by:

**The Honorable Dale McCormick
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Timeline of Events

During the Second Regular Session of the 118th Maine Legislature, State lawmakers enacted, and Governor Angus S. King, Jr. signed into law, important legislation authorizing the Finance Authority of Maine (FAME) and the State Treasurer to implement a college savings program for the people of Maine.

This status report details the nature, purpose and goals of the program as authorized by Federal and State law, describes the implementation process as it has unfolded to date and outlines the remaining steps necessary to make this opportunity available to the people of Maine.

Summary Timeline

May 1, 1998	FAME and State Treasurer initiate discussions and meetings with potential service providers; including investment banking firms, lenders, servicers, etc., regarding <i>Maine College Savers Program</i> .
July 9, 1998	Law establishing the <i>Maine College Savers Program</i> takes effect.
August 17, 1998	FAME and State Treasurer publish Request for Information seeking a provider or providers of administrative, marketing and investment services for the <i>Maine College Savers Program</i> .
September 15, 1998	Responses received from Forum Financial Group, Collegiate Capital Group, and TIAA-CREF. Letters of interest received from Key Bank and Peoples Heritage Bank.
September 17, 1998	FAME Board of Directors approves a proposed rule governing the operation of the <i>Maine College Savers Program</i> and sets public hearing.
October 9, 1998	Governor Angus S. King, Jr., appoints members to the Advisory Committee on <i>Maine College Savers Program</i> .
October 15, 1998	Board of Directors of the Finance Authority of Maine holds a public hearing on the proposed rule for the <i>Maine College Savers Program</i> .
October 16, 1998	First meeting of Advisory Committee on College Savings meets in Augusta. Committee members meet with prospective contractors. Committee requests FAME and State Treasurer to explore additional provider options.
October 19, 1998	Advisory Committee holds conference call to develop follow-up questions to Request for Information respondents.
November, 1998	State Treasurer and FAME contact additional vendors.
November 4, 1998	State Treasurer and FAME meet with group of Maine banks regarding participation in <i>Maine College Savers Program</i> .
November 10, 1998	Final Rule approved by FAME Board of Directors for administration and operation of <i>Maine College Savers Program</i> .
November 18, 1998	Advisory Committee meets to consider proposals.
November 20, 1998	Conference calls with Bank of New York to discuss possible proposal.
December 1, 1998	Proposal received from Merrill Lynch.
December 3, 1998	Advisory Committee meets to interview Merrill Lynch and re-interview Collegiate Capital Group/Prudential.
December 10, 1998	State Treasurer designs procedure to allow portion of funds from <i>Maine College Savers Program</i> to be invested in Maine financial institutions.
December 15, 1998	Advisory Committee meets again with Merrill Lynch.
January 13, 1999	Advisory Committee meets and selects Merrill Lynch as the provider for the <i>Maine College Savers Program</i> .

Legislative History

Paying for higher education has become an increasingly heavy burden for students and families in Maine. Financial aid programs are available to help with the cost of higher education, but for most students, this aid comes in the form of loans that must be repaid rather than as opposed to grant and scholarship assistance. These trends have created a *crisis of affordability* for too many. At the same time, while the cost of education continues to rise, the importance of higher education to a successful future has never been greater.

In response to these conditions, the federal government and specifically designated agencies in states across the country (Finance Authority of Maine in the State of Maine) have created programs designed to begin shifting the means of financing a college education from debt-based strategies to savings and/or prepayment plans. Simply stated, a *college savings* plan is designed to encourage parents to begin saving for college when their children are young, with the amount saved and accumulated earnings available to be used for any legitimate higher education expenditures. A *tuition prepayment* plan offers parents an opportunity to “purchase” all or a portion of the future cost of college tuition at designated institutions for a fixed sum or a fixed series of payments.

These plans received a tremendous boost over the past several years through changes enacted under the U.S. Internal Revenue Code. Under current law, for *qualified* state-sponsored college savings or tuition prepayment programs, income on amounts deposited into the program is not taxable under federal law until the money is actually withdrawn for higher education. Funds withdrawn from a *qualified* state-sponsored college savings or tuition prepayment programs that is used to pay for college is taxed at the student’s rate, which is typically significantly lower than the income tax rate of the depositor, who is usually a parent or grandparent. Federal law was changed again recently to allow savings from a *qualified* state-sponsored plan to be used for the cost of room, board, books and related expenses in addition to tuition.

In Maine, a number of college savings bills were introduced during the First Regular Session of the 118th Legislature. Those bills were carried over to the Second Regular Session of the 118th Legislature and considered at great length by the Joint Standing Committee on Education and Cultural Affairs. Ultimately, the Legislature enacted P.L. 1998, Chapter 732, **An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education**, a copy of which is attached.

The new law, which took effect in July 1998, established the ***Maine College Savers Program*** within the Finance Authority of Maine, the State's higher education finance agency. The ***Maine College Savers Program*** was designed to take full advantage of the federal Internal Revenue Code tax deferral provisions, and it added the additional incentive of an exemption from State of Maine income taxes on amounts withdrawn and used for eligible higher education expenses. In summary, the program works as follows:

- Participants, typically parents or grandparents can make contributions into the ***Maine College Savers Program***, either in lump sums or regular payments, for one or more named beneficiaries. Income and other gains on the contributions are not taxed while funds remain in the Program.
- In Maine, contributors will be able to go to participating banks or investment professionals to make contributions. This flexibility to make contributions through a variety of sources is unique to the ***Maine College Savers Program***.
- Post-secondary institutions will also be given the opportunity to offer "prepaid tuition" commitments through the ***Maine College Savers Program***. In effect, the institution will agree to ***guarantee*** tuition in exchange for contributions into the program of a designated amount. The risk that the cost of attendance increases faster than income accrues on the investment is borne by the participating college rather than by the State of Maine. Another unique aspect of the ***Maine College Savers Program*** is that a student with a prepaid tuition ***guarantee*** need not attend the institution offering the guarantee. Rather, the student can take his or her account with all accrued earnings to any eligible educational institution in the nation.
- FAME, with the guidance of the Advisory Committee on College Savings, administers the Program accounts and reports to the contributors on a regular basis.
- The State Treasurer, with the advice of the Advisory Committee on College Savings, will determine appropriate investment strategies for funds received by the Program.
- When the beneficiary is ready to attend an eligible post-secondary institution, he or she withdraws the necessary funds, which are used to pay the student's costs of attendance (room, board, books, tuition, and other qualified fees). In the year that funds are withdrawn, the student is obligated to pay federal income tax on the amount of the withdrawal that is income, not on the amounts contributed to the account. That student does not have State income tax liability in Maine for any income received on the account.

- If the student decides not to pursue higher education, or if there is more money in the account than the student needs to pay for eligible costs, the contributor has the option of transferring the funds to another child. If funds are not used for eligible higher education costs, the account balance is returned to the contributor and the contributor is taxed under both federal and state law on the income accrued on that account balance. In addition, there would be a penalty of 10% of the amount of income earned on the account.

Program Implementation

Since the enactment of the *Maine College Savers Program* legislation, the Finance Authority of Maine and State Treasurer have been working to implement the legislation and establish the new program as expeditiously and efficiently as possible. During this time, there has been a great deal of activity and change nationally with respect to college savings programs. The program implementation process in Maine has, of necessity, adapted to the continuing changes in federal regulation as well as changes in market forces.

Advisory Committee Established

The *Maine College Savers Program* legislation established the Advisory Committee on College Savings to advise the Finance Authority of Maine and the State Treasurer on the implementation of the new program. By law, the members include the Treasurer, who serves as chair, and six members appointed by the Governor including representatives of higher education institutions and the Maine Education Assistance Board. The Advisory Committee's current membership is as follows:

The Honorable Dale McCormick
Chair
State Treasurer
Augusta, Maine

B. Russell Smith
Chief Financial Officer and Treasurer
University of Maine System
Bangor, Maine

Eileen Monahan
Principal
Monahan & Associates
South Portland, Maine

J. Barry Lin, Ph.D.
Coordinator of Finance and
International Business Program
Husson College
Bangor, Maine

Michael Boyson
First Vice President
Salomon Smith Barney
Portland, Maine

Lisa Connor
Director of Financial Aid
University of New England
Biddeford, Maine

Governor Angus S. King, Jr. appointed the members of the Advisory Committee on October 9, 1998. The first formal meeting of the Committee was held on October 16, 1998. The Advisory Committee held a conference call on October 19, 1998 and has subsequently held meetings on November 18, 1998, December 3, 1998, December 15, 1998 and January 13, 1999.

Guiding Principles

At the first meeting of the Advisory Committee, held October 16, 1998, the members reviewed the legislative history of the *Maine College Savers Program*, models from other states as well as the proposals received as a result of the Request for Information sent to prospective service providers. The Advisory Committee proceeded to discuss the guiding principles and goals for the program. There was general agreement that the *Maine College Savers Program* should:

- Offer the maximum flexibility to contributors and beneficiaries permitted under federal Internal Revenue Code limitations;
- Seek to make the program available through as many financial providers in Maine as possible, so that people could participate through their local bank or investment professional;
- Seek to offer contributors at least two investment track alternatives, one offering safety and modest returns, and one more aggressive option offering higher returns but some principal risk, using age-banded pools to reduce market risk for children closer to college age;
- Seek to offer a “prepaid tuition” option based on voluntary participation by higher education institutions, with the risk of future tuition increases borne by the institutions;
- Be administered by a highly professional account management firm to assure impeccable account servicing at a reasonable cost;
- Be promoted widely and effectively, but in a way that helps assure that contributors understand their college savings alternatives; and
- Set a standard of value, creativity and excellence that would be a model for other states.

Banks & Investment Advisors

During the legislative deliberations surrounding the creation of the *Maine College Savers Program*, the members of the Joint Standing Committee on Education and Cultural Affairs expressed a desire and intent to include Maine banks in the Program. On November 4, 1998, the State Treasurer and the Finance Authority of Maine hosted a meeting of a representative group of bankers to discuss how Maine financial institutions could participate in the *Maine College Savers Program*. Banks invited to participate in this meeting included Peoples Heritage Bank, Key Bank, Maine Bank & Trust, Merrill Merchants Bank, Bangor Savings Bank and Norway Savings Bank.

The representatives of these institutions all expressed significant interest in participating in the *Maine College Savers Program*. They also urged that an effort be made to retain some of the invested dollars in Maine. There was general agreement that all banks and credit unions in Maine be offered an opportunity to participate as long as they meet all appropriate state and federal regulations. Having the Maine College Savers Program purchase Certificates of Deposit in proportion to the investments that result from their efforts will compensate participating financial institutions for their efforts in promoting the program to their customers.

Based on these comments, the Advisory Committee, the State Treasurer, and FAME included a requirement in all of our negotiations that Maine banks be offered an opportunity to participate and that Program funds be invested in participating financial institutions to the extent possible. In addition, the Advisory Committee believed that other investment professionals (stockbrokers, financial advisors and financial planners) should be allowed to participate in the Program in order to help ensure that people in Maine have the widest possible access to the Program through their existing financial advisors.

The Rulemaking Process

On September 17, 1998, the Board of Directors of the Finance Authority of Maine approved for public hearing a proposed rule governing the operation of the program. This rule was published in newspapers throughout the State, and a public hearing was held on October 15, 1998 in Augusta. Incorporating comments received during the public hearing process, the final rule was approved by the FAME Board of Directors on November 10, 1998. A copy of the rule for the *Maine College Savers Program* is included with this report.

During this period of time, the Internal Revenue Service began their own rulemaking process on college savings and tuition prepayment programs. Their draft rules were published on August 24, 1998. The Internal Revenue Service held a public hearing on their draft rules on January 6, 1999. As of January 28, 1999, the Internal Revenue Service has not issued final rules on college savings and tuition prepayment programs. However, any rule implemented by the Internal Revenue Service will have significant importance to the implementation of a program in Maine as well as other States considering such a program.

Selection of Service Provider

Even before the Advisory Committee was convened, FAME and the State Treasurer commenced discussions and meetings with potential service providers, who had the expertise to offer quality account servicing, strong investment options, and demonstrated marketing ability. These potential providers initially included Collegiate Capital Group (administrator of the Connecticut and Rhode Island college savings programs), Fidelity Investors (administrator of the New Hampshire program), TIAA-CREF (administrator of the New York program), Forum Financial Group and Federated Investors.

These initial discussions allowed the Finance Authority of Maine and the State Treasurer to frame a Request for Information, designed to solicit proposals from interested entities with the capability to provide the necessary account maintenance, reporting, investing and marketing capabilities. This Request for Information was issued on August 17, 1998 to a wide range of investment banks, college savings program and financial service providers, Maine banks and other potentially interested parties. In addition, notice of the Request for Information was published in the Portland Newspapers on August 23, 1998, in the Wall Street Journal on August 25, 1998.

The Request for Information asked that responses be received by September 15, 1998. By that date, proposals were received from Forum Financial Group, Collegiate Capital Group and TIAA-CREF. Letters expressing interest in participating in some way were also received from Peoples Heritage Bank and Key Bank National Association (Maine affiliate).

At its initial meeting on October 16, 1998, the Advisory Committee on College Savings heard presentations from Forum Financial Group, Collegiate Capital Group (in partnership with Prudential Securities) and TIAA-CREF. Following those presentations, the Advisory Committee and FAME created a list of follow-up questions to submit to each of the interested groups for further response.

The Advisory Committee also decided to undertake further research to determine whether FAME might be able to assemble a team of providers to perform the three main tasks of account management, investment management and marketing of the program, rather than relying on one provider to perform all three. The State Treasurer and FAME contacted more than 10 additional entities seeking to explore different implementation options.

The Advisory Committee on College Savings subsequently met on November 18, 1998 to review all of the existing proposals as well as options to select different providers for different aspects of the program administration. Neither the Advisory Committee, the State Treasurer nor FAME were convinced that the proposals that had been received at that point adequately met the criteria that had been set forth in the Request for Information. As a result, efforts to negotiate with the entities that had submitted proposals, as well as to pursue other alternatives, continued.

On December 1, 1998, a completely new proposal was received from Merrill Lynch. While Merrill Lynch had been approached about the program earlier, the company had not previously been in a position to present a proposal in the earlier time frame set forth. Merrill Lynch had recently made a decision to aggressively pursue a college savings plan, and hired the professional that created the New Hampshire college savings program for Fidelity Investors.

The Advisory Committee met on December 3, 1998, inviting both Merrill Lynch and the team of Collegiate Capital and Prudential Securities to make presentations. At this meeting, it became clear to all involved that the Merrill Lynch proposal came closest to meeting the goals initially set forth by the Advisory Committee, the State Treasurer and FAME. Further discussions ensued with Merrill Lynch with regard to the structure and pricing of a college savings program, the inclusion of banks and investment professionals, the prepaid tuition option, as well as other investment options.

The Advisory Committee met again with Merrill Lynch representatives on December 15, 1998 and on January 13, 1999. Based on interviews with all applicants as well as extensive efforts to find other prospective providers of program management services, the Advisory Committee unanimously decided to select Merrill Lynch as the provider of the *Maine College Savers Program*.

Merrill Lynch brings with it a strong understanding of the particular features and qualities that the Advisory Committee envisioned for the *Maine College Savers Program*. Further, Merrill Lynch has the proven ability to offer high quality account administration; a range of quality investment options; and the company has demonstrated a strong commitment to aggressively market the *Maine College Savers Program* in full cooperation and participation with the Finance Authority of Maine, the State Treasurer and the Advisory Committee on College Savings.

As part of its commitment to the Maine program, Merrill Lynch has committed \$200,000 for up-front implementation and contract negotiation costs. In addition, Merrill Lynch has agreed to spend a minimum of \$350,000 per year in marketing the program in Maine. Merrill Lynch's commitment is further demonstrated by its plan to offer the Maine College Savers Program nationwide through its investment professionals, ensuring that the Maine "platform" will receive its full attention as well as a national financial commitment of at least \$4,000,000 to implement and market the program. The administrative fee charged to account holders for account maintenance will not exceed 0.6% per year, and Merrill Lynch's annual \$50 per account charge will be waived for Maine residents and beneficiaries. The broad array of Merrill Lynch mutual funds will be used, at least initially, to craft investment pools for funds invested in the *Maine College Savers Program*.

Remaining Steps to Program Launch

While the Finance Authority of Maine and Merrill Lynch have reached a preliminary agreement, that agreement needs to be executed in the form of a comprehensive contract for long-term operation of the *Maine College Savers Program*. While that contract is being negotiated, and after it is executed, four major steps will be undertaken:

- The account administration structure must be created for the Program within Merrill Lynch, including all of the back office groundwork necessary to ensure that thousands of accounts can be managed efficiently and precisely, including appropriate reporting to beneficiaries and taxing authorities. This work is already under way at Merrill Lynch.
- Legal review must be initiated to ensure that the Maine College Savers Program meets all applicable legal requirements, including the requirements of the Internal Revenue Code and securities laws and regulations. The Internal Revenue Service is still in the process of developing rules and regulations to govern college savings programs, and the IRS deliberations may well affect how the Maine College Savers Program can be implemented. It is also possible that a *no-action* letter from the Securities and Exchange Commission (SEC) may be needed to ensure that the unique features of the Maine College Savers Program do not violate any securities law requirements.
- The investment plan must be finalized, so that participants will be able to select either a low risk, lower return track or a higher risk, structured investment track with age-banded pools providing appropriate investments for each account based on the age of the beneficiary.

- The marketing strategy must be developed. The first goal will be to develop publicity, disclosure and application materials that will clearly explain the benefits and structure of the Program to prospective participants, along with alternatives they may want to consider. Participating banks and investment professionals must be instructed in the marketing of the Program. An appropriate Program launch event must be developed along with an appropriate media campaign.

The Finance Authority of Maine and the State Treasurer currently expect the Maine College Savers Program to be launched by the end of May 1999. While this launch date is later than was anticipated when the legislation was enacted in Maine last year, there has been a great deal of activity nationally with respect to college savings programs over the past year. Many of these developments have been very positive for the Maine program, both in terms of clarifications from the Internal Revenue Service on how the program can be structured, and in terms of the entry of new players like Merrill Lynch into the field.

The rapid change that has characterized college savings programs nationally over the past year is likely to continue. New players will enter the market, the Internal Revenue Service will (hopefully) issue their final, official regulations, new options will become available to participants, and legislation at the federal level may expand the benefits of the program.

Currently, legislation is pending in the U.S. Congress to exempt program earnings from income taxes entirely. Such a change would be very positive for the program, sending a strong message that saving for higher education is a smart financial choice. Currently, students withdrawing money to pay for college expenses must find the money to pay the tax on the income accrued in the account. This can be an unanticipated financial burden for students, but that burden would be eliminated by the proposed legislation.

The Advisory Committee, the Finance Authority of Maine, and the State Treasurer will continue to monitor program changes and developments in an effort to ensure that the *Maine College Savers Program* is among the best available anywhere in the country. Annual Reports detailing the activities of the *Maine College Savers Program* will be provided to the Joint Standing Committee on Education and Cultural Affairs, the Governor, and members of the Maine State Legislature each year. In addition, important developments involving program implementation and delivery will be transmitted on a regular basis.

APR 15 98

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STATE OF MAINE

BY GOVERNOR

PUBLIC LAW

—
 IN THE YEAR OF OUR LORD
 NINETEEN HUNDRED AND NINETY-EIGHT
 —

S.P. 622 - L.D. 1825

An Act to Authorize a Tuition Savings Plan to Encourage
 Attendance at Institutions of Higher Education

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-I, sub-§18-B is enacted to read:

<u>18-B.</u>	<u>Advisory</u>	<u>Not</u>	<u>20-A MRSA</u>
<u>Education:</u>	<u>Committee</u>	<u>Authorized</u>	<u>§11484</u>
<u>Financial</u>	<u>on College</u>		
<u>Aid</u>	<u>Savings</u>		

Sec. 2. 10 MRSA §1013, sub-§§14 and 15, as enacted by PL 1997, c. 97, §4, are amended to read:

14. University of Maine System Scholarship Fund. The University of Maine Scholarship Fund, as established in Title 20-A, chapter 419-B; and

15. Scholarships for Maine Fund. The Scholarships for Maine Fund, as established in Title 20-A, chapter 419-C; and

Sec. 3. 10 MRSA §1013, sub-§16 is enacted to read:

16. Maine College Savings Program. The Maine College Savings Program, as established in Title 20-A, chapter 417-E.

Sec. 4. 20-A MRSA c. 417-E is enacted to read:

CHAPTER 417-E

MAINE COLLEGE SAVINGS PROGRAM

§11471. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Advisory committee. "Advisory committee" means the Advisory Committee on College Savings established in this chapter.

2. Authority. "Authority" means the Finance Authority of Maine, which serves as administrator of the Maine College Savings Program.

3. Beneficiary. "Beneficiary" means any person designated by a participation agreement to benefit from payments for higher education expenses at an institution of higher education.

4. Benefits. "Benefits" means the payment of higher education expenses on behalf of a beneficiary by the Maine College Savings Program during the beneficiary's attendance at an institution of higher education.

5. Board. "Board" means the board of directors of the Finance Authority of Maine.

6. Contributions. "Contributions" means amounts deposited by a participant to an account within the program fund.

7. Higher education expenses. "Higher education expenses" means the certified expenses for attendance at an institution of higher education as those expenses are defined by rule of the authority consistent with applicable provisions of the Internal Revenue Code and its regulations addressing qualified state tuition programs.

8. Institution of higher education. "Institution of higher education" means an institution of higher education that meets the requirements established by rule of the authority consistent with applicable provisions of the Internal Revenue Code and its regulations addressing qualified state tuition programs.

9. Participant. "Participant" means any person who has entered into a participation agreement pursuant to this chapter.

10. Participation agreement. "Participation agreement" means an agreement between a participant and the authority

providing for the establishment by the participant of one or more accounts within the program fund and for the administration of those accounts for the benefit of the participant and of one or more beneficiaries.

11. Program earnings. "Program earnings" means all interest, dividends, premiums, fees, profits upon disposition of assets and other revenue actually received by or on behalf of the program with respect to any assets held within the program fund to which that asset may be credited, less all administrative costs of the program and the program fund, as periodically determined by the authority.

12. Tuition. "Tuition" means the charges imposed to attend an institution of higher education and required as a condition of enrollment.

§11472. Maine College Savings Program

The Maine College Savings Program, referred to in this chapter as the "program," is established to encourage the investment of funds to be used for higher education expenses at institutions of higher education. The authority shall administer the program and act as administrator of the program fund.

§11473. Maine College Savings Program Fund

1. Creation. The Maine College Savings Program Fund, referred to in this chapter as the "program fund," is established as a nonlapsing fund to be directed and administered by the authority and held by the Treasurer of State. The Treasurer of State shall keep the program fund segregated from all other funds held by the Treasurer of State and shall invest and reinvest the program fund for the benefit of the program under the direction of and with the advice of the advisory committee. The program fund so administered is a fund held on behalf of participants and beneficiaries who are deemed specifically named persons for the purposes of Title 5, section 135-A.

2. Sources of money. The following sources of money must be paid into the program fund:

- A. All money appropriated for inclusion in the program fund;
- B. All interest, dividends or other pecuniary gains from investment of money in the program fund;
- C. All money received pursuant to participation agreements;
- D. Any grants, gifts and other money from the State and

from any unit of federal, state or local government or from any person, firm, partnership or corporation for deposit to the program fund. Contributions may be limited in application to specified classes of beneficiaries; and

E. Any other money available to the authority and directed by the authority to be paid into the program fund.

3. Application of program fund. Money in the program fund may be applied to carry out any power of the authority under or in connection with this chapter. All money in the program fund must be continuously applied by the authority to carry out this chapter and for no other purpose. Assets of the program fund must at all times be preserved, invested and expended only for the purposes of the program and must be held for the benefit of the participants and beneficiaries. Assets may not be transferred or used by the State or the authority for any purposes other than the purposes of the program. All amounts in the program fund, except for contributions and program earnings that have been credited to an account, may be used by the authority to pay the administrative costs of the program and program fund, as determined by the authority.

4. Accounts within program fund. The authority may divide the program fund into separate accounts for any purpose it determines necessary or convenient for carrying out the purposes of this chapter, including, without limitation, the establishment of appropriate reserve funds for investment and operating expenses.

5. Common investment of funds. The authority may commingle amounts credited to some or all accounts for investment purposes and may provide for the application of program earnings to pay any administrative costs of the program fund prior to crediting program earnings to participants' accounts.

§11474. Powers of the authority

The authority, in the capacity as administrator of the program fund, in addition to all of the powers set out in Title 10, section 969-A, may:

1. Enter into contracts. Make and enter into contracts necessary for the administration of the program fund, including, without limitation, agreements with any financial institution or institution of higher education or with the State or any federal or state agency or any other entity;

2. Invest funds. With the advice of the advisory committee, direct the Treasurer of State to invest and reinvest

money in the program fund in any investments determined by the authority to be appropriate, notwithstanding any general statutory limitations on investments of public funds specifically determined to be inapplicable to the program fund. The authority must invest money from the program fund in financial institutions located in the State to the extent determined reasonable by the authority;

3. Participation agreements. Enter into participation agreements with participants in accordance with the requirements of section 11475;

4. Make payments. Make payments to beneficiaries and to institutions of higher education on behalf of beneficiaries;

5. Make refunds. Make refunds to participants on the termination of participation agreements pursuant to the provisions, limitations and restrictions set forth in this chapter;

6. Appoint a program administrator. Appoint a program administrator and other employees necessary to carry out the duties of this chapter;

7. Carry out studies. Carry out studies and projections to advise participants regarding present and future estimated higher education expenses and levels of financial participation in the program required to enable participants to achieve their educational funding objectives;

8. Participate in programs. Participate in any federal, state or local governmental program for the benefit of the program or the program fund, including, without limitation, soliciting, establishing and participating in a program providing limits on future increases in the costs of education at participating institutions of higher education on those terms and conditions that the authority may negotiate with the institutions;

9. Procure insurance. Procure insurance against any loss in connection with the property or assets or activities of the program or the program fund;

10. Administer the program fund. Administer the program fund;

11. Borrow money. Borrow money the authority determines necessary and prudent to the administration of the program and the program fund. Loans may be obtained from any source, including other funds of the authority;

12. Transfer investments. Sell, assign, transfer and dispose of any of the securities and investments of the program. All investments must be clearly marked to indicate designation to the program fund and, to the extent possible, must be registered in the name of the program. All interest derived from investments and any gains from the sale or exchange of investments must be credited by the authority to the account of the program;

13. Employ investment managers and consultants. Contract for goods and services and engage personnel and consultants, including investment advisors and managers, actuaries, managers, counsel, marketing consultants, fiduciaries and auditors, and evaluation services or other services as determined necessary by the authority for the effective and efficient operation of the program. Directly or through an investment consultant, the authority may contract to provide services that are a part of the comprehensive investment plan or as determined necessary by the authority or the consultant, including, but not limited to, providing consolidated billing, individual and collective record keeping and accounting and asset purchase, control and safekeeping; and

14. Fund costs and expenses. Fund all costs and expenses incurred in connection with the exercise of its powers under this chapter as administrative costs of the program and the program fund. The authority may not assess the program fund a fee in excess of 1% of the balance in the fund in any year for the administrative costs and expenses of the program.

§11475. Participation agreement

The authority may enter into a participation agreement with a participant on behalf of a beneficiary pursuant to the following terms and conditions.

1. Periodic payments. A participation agreement may require or permit a participant to invest a specific amount of money in the program fund for a specific period of time for the benefit of a specific beneficiary. Periodic deposits may be made through a payroll deduction plan or an automatic deposit plan or through assignment of state tax refunds. A participation agreement establishing such a periodic deposit plan may include provisions to adjust scheduled deposits on the basis of change in a participant's economic circumstances or a beneficiary's educational plans and may provide for penalties on a participant's failure to make deposits as scheduled. A participation agreement establishing such a plan must provide for the limitation of scheduled deposits by the authority as

necessary to ensure that a participant's account does not exceed the amount necessary to pay the beneficiary's projected higher education expenses.

2. Lump-sum payments. A participation agreement may permit a participant to make one or more lump-sum deposits to an account for the benefit of a specific beneficiary. Lump-sum deposits may be made through the assignment of state tax refunds.

3. Designation of beneficiaries. A participation agreement must designate the name and date of birth of the beneficiary. A beneficiary designated in a participation agreement may be designated from date of birth to an age the authority may require by rule.

4. Change of beneficiary. A beneficiary may be changed as permitted by rule of the authority upon written request of the participant, provided that the substitute beneficiary is eligible.

5. Amendment. A participation agreement may be freely amended throughout its term to enable a participant to increase or decrease the level of participation, change the designation of a beneficiary and carry out similar matters.

6. Enrollment fee. The authority may not charge an enrollment fee for participation in the program.

7. Cancellation. A participation agreement must provide that the participation agreement may be canceled upon the terms and conditions of the agreement and upon payment of the fees, expenses and penalties set forth in rules adopted by the authority.

8. Separate accounts. A participation agreement must require that the authority maintain each participant's account separately, subject to commingling for investment purposes, and report the status of each participant's account to the participant on a periodic basis, as established by rule of the authority.

9. Rights and obligations. A participation agreement must include any other rights and obligations of the participant, the beneficiary and the authority.

10. Terms and conditions. A participation agreement may include other terms and conditions the authority determines necessary, including a limitation on liability of the authority to the extent funds are disbursed in good faith.

11. No guaranty of admission. The execution of a participation agreement by the authority does not guarantee in

any way that higher education expenses will be equal to projections and estimates provided by the authority or that the beneficiary named in any participation agreement will:

- A. Be admitted to an institution of higher education;
- B. Be allowed to continue attendance at the institution of higher education following admission; or
- C. Graduate from the institution of higher education.

§11476. Investment options and parameters

The authority, with the advice of the advisory committee, may provide investment options for a participant within the program fund to the extent permitted by Internal Revenue Code provisions addressing qualified state tuition programs. The authority, with the advice of the advisory committee, shall invest the amounts on deposit in the program fund in a reasonable manner to achieve the objectives of each fund, exercising the discretion and care of a prudent person in similar circumstances with similar objectives. A participant or designated beneficiary may not direct the investment of any amounts on deposit in the program fund, except to the extent allowed pursuant to provisions of the Internal Revenue Code addressing qualified state tuition programs. The authority shall give due consideration to rate of return, term or maturity, diversification and liquidity of investments within the program fund or any account in the program fund pertaining to the projected disbursements and expenditures from the program fund and the expected payments, deposits, contributions and gifts to be received.

§11477. Early termination or overfunding of participation agreement

1. Cancellation. The authority may by rule establish fees and penalties applicable to early termination, overfunding of accounts or failure to use the program fund for an eligible purpose.

2. Death or disability. The authority may not levy or assess an administration refund fee or penalty upon a participant's termination of a participation agreement under the following circumstances:

- A. Death of the beneficiary;
- B. Permanent disability or mental incapacity of the beneficiary; or

C. Receipt by the beneficiary of a scholarship or educational funding, identified by rule of the authority, resulting in an excess of funds in the account not needed to pay higher education expenses.

§11478. Ownership of account; transfer of ownership rights

For all purposes of the laws of the State, the following provisions apply.

1. Participant retains ownership. The participant retains ownership of all contributions and all program earnings credited to a participant's account under a participation agreement up to the date of utilization for payment of higher education expenses for the beneficiary and, notwithstanding any other provision of law, an amount credited to any account is not susceptible to levy, execution, judgment or other operation of law, garnishment or other judicial enforcement and the amount is not an asset or property of either the participant or the beneficiary for purposes of any state insolvency laws. Notwithstanding this subsection, an amount credited to the participant's account may not be included in any gross estate of the participant for purposes of state tax law, except to the extent that the amount may be includable in any gross estate for purposes of federal tax law.

2. Institution of higher education is owner upon payment. The institution of higher education obtains ownership of the amounts disbursed from an account to the institution of higher education with respect to the higher education expenses paid to the institution at the time each disbursement is made to the institution, subject to any applicable refund policy or other policies of the institution.

3. Transfer of ownership. A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to a minor beneficiary pursuant to Title 33, chapter 32; except that, notwithstanding any provision of Title 33, chapter 32, the transfer must be effected and the property distributed in accordance with rules adopted by the authority or the terms of the participation agreement.

4. Jurisdictional effect. A person may not be deemed a resident of the State or be deemed as present in the State for jurisdictional purposes solely by reason of being a beneficiary or participant of an account.

5. Not security. A person may not pledge any interest in an account as security for a loan or other debt.

§11479. Tax exemption

The assets of the program fund, all program earnings and any income from operations are exempt from all taxation by the State or any of its political subdivisions. A deposit to any account, transfer of that account to a successor participant, designation of a successor beneficiary of that account, credit of program earnings to that account or distribution from that account used for the purpose of paying higher education expenses of the designated beneficiary of that account pursuant to this chapter does not subject that participant, the estate of that participant or any beneficiary to any state income or estate tax liability. In the event of cancellation or termination of a participation agreement and distribution of funds to a participant, the increase in value over the amount deposited in the program fund by that participant may be taxable to that participant in the year distributed.

§11480. Rights of participants and beneficiaries to assets of the authority

Participants and beneficiaries do not have access or rights to any assets of the authority other than program fund assets credited to the account of that participant or beneficiary. An account may not be deemed a debt or obligation of the authority or of the State.

§11481. Release of information

Notwithstanding any other provision of law, including, without limitation, Title 1, chapter 13, subchapter I and Title 10, section 975-A, the authority may provide information regarding individual participation accounts as required by federal law and laws of the state of residence of any participant or beneficiary.

§11482. Exemption from registration

A participation agreement offered pursuant to this chapter is not a security as defined in Title 32, section 10501, subsection 18. The authority may obtain written advice of legal counsel or written advice from the United States Securities and Exchange Commission, or both, that the offering of a participation agreement is not subject to federal securities laws but is in compliance with those laws and is not in violation of other applicable laws.

§11483. Compliance with federal law

The authority may take any action necessary to ensure that the program complies with the federal Internal Revenue Code of 1986, Section 529, as amended, and any successor provisions and other applicable laws, rules and regulations adopted pursuant to that provision to the extent necessary for the program fund to constitute a qualified state tuition program with the benefits of eligibility under provisions of the federal Internal Revenue Code addressing qualified state tuition programs.

§11484. Advisory Committee on College Savings

The Advisory Committee on College Savings, referred to in this chapter as the "advisory committee," is created to provide advice to the authority on the operation of the program and investment of the program fund.

1. Membership. The advisory committee consists of 7 members as follows:

A. The Treasurer of State, who serves as the chair of the advisory committee;

B. Two members appointed by the Governor from the members of the Maine Education Assistance Board;

C. Two members appointed by the Governor with experience in and knowledge of institutional investment of funds; and

D. Two members appointed by the Governor representing institutions of higher education with experience in and knowledge of higher education financial and investment matters. One member must be appointed to represent public institutions of higher education and one member must be appointed to represent private institutions of higher education.

2. Terms. Members of the advisory committee are appointed for terms as follows:

A. Members representing the Maine Education Assistance Board serve a term coterminous with their appointment to the Maine Education Assistance Board; and

B. Two of the remaining members appointed by the Governor under subsection 1, paragraphs C and D must be appointed for initial terms of 2 years and the other 2 members must be appointed for initial terms of 4 years. Thereafter, members

must be appointed for terms of 4 years. Members may be removed for cause.

3. Compensation. Members of the advisory committee are compensated in accordance with Title 5, chapter 379.

§11485. Rulemaking

The authority must establish rules for the implementation of the program established by this chapter, including rules establishing fees and penalties and rules necessary to ensure treatment as a qualified state tuition program for federal tax purposes. Rules adopted pursuant to this section, including those setting fees and penalties, are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. The authority shall submit a report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by January 30, 1999 on the rules and rule-making process to implement a program providing limits on future increases in the costs of education of participating institutions of higher education pursuant to section 11474, subsection 8.

§11486. Liberal construction

This chapter must be construed liberally in order to effectuate its legislative intent.

Sec. 5. 36 MRSA §5122, sub-§2, ¶H, as amended by PL 1995, c. 639, §16, is further amended to read:

H. For each taxable year subsequent to the year of the loss, an amount equal to the absolute value of the net operating loss arising from tax years beginning on or after January 1, 1989, but before January 1, 1993, for which federal adjusted gross income was increased in accordance with subsection 1, paragraph H and that pursuant to the Code, Section 172 was carried back for federal income tax purposes, but only to the extent that:

- (1) Maine taxable income is not reduced below zero;
- (2) The taxable year is within the allowable federal period for carry-over; and
- (3) The amount has not been previously used as a modification pursuant to this subsection; and

Sec. 6. 36 MRSA §5122, sub-§2, ¶I, as amended by PL 1995, c. 639, §17, is further amended to read:

I. For income tax years beginning on or after January 1, 1991, an amount equal to the amount by which federal taxable income was reduced because of vessel earnings from fishing operations that were contributed to a capital construction fund; and

Sec. 7. 36 MRSA §5122, sub-§2, ¶J is enacted to read:

J. Any amount constituting a qualified withdrawal from an account established pursuant to Title 20-A, chapter 417-E and used for paying higher education expenses.

Summary: This rule establishes the procedures, standards and eligibility requirements for investment in College Savings accounts, into which a participant may invest funds to be used by individual beneficiaries to pay the cost of attendance at an institution of higher education. The College Savings Program is established as a qualified state tuition program pursuant to section 529 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

1. Definitions

The following terms, some of which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. §961 et seq. (the "Act") shall have the following meanings in this rule. All terms which are defined in federal requirements shall have the same meanings herein as in the federal requirements.

- A. Account. "Account" means the formal record of transactions relating to a particular designated beneficiary established for purposes of the program.
- B. Advisory Committee. "Advisory committee" means the advisory committee on college savings accounts.
- C. Authority. "Authority" means the Finance Authority of Maine, which serves as administrator of the program.
- D. Beneficiary. "Beneficiary" means any person who: (i) is designated by a participation agreement to benefit from payments for higher education expenses at an institution of higher education or else is eligible to receive benefits pursuant to such participation agreement in accordance with program procedures and guidelines; and (ii) constitutes a designated beneficiary for purposes of federal requirements.
- E. Benefits. "Benefits" means the payment of higher education expenses on behalf of a beneficiary by the Authority during the beneficiary's attendance at an institution of higher education.
- F. Chair. "Chair" means the Treasurer of State serving as Chair of the advisory committee on college savings accounts.
- G. Chief Executive Officer. "Chief executive officer" means the Authority's chief executive officer or any person acting under the delegated authority and supervision of the chief executive officer.

- H. Contributions. "Contributions" means amounts deposited by a participant to an account within the program fund.
- I. Early Termination Event. "Early termination event" means any of the following, if documented in compliance with program procedures and guidelines:
- (1) the death of a beneficiary;
 - (2) the permanent disability or mental incapacity of the beneficiary, as determined by certification of a physician;
 - (3) a rollover distribution; or
 - (4) an award of an eligible scholarship, to the extent of the amount thereof.
- J. Eligible Scholarship. "Eligible scholarship" means any allowance or payment described in section 135(d)(1) (B) or (C) of the Internal Revenue Code or any scholarship.
- K. Federal Requirements. "Federal requirements" means the provisions of the Internal Revenue Code addressing qualified state tuition plans, any regulations promulgated or, if so determined by the chief executive officer, proposed thereunder and any rulings thereunder addressed, or in the opinion of counsel, applicable to the Authority.
- L. Financial Institution. "Financial institution" means a credit union or financial institution authorized to do business in the State of Maine under Title 9-B and that meets standards established by the Authority.
- M. Internal Revenue Code. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.
- N. Higher Education Act. "Higher Education Act" means the Higher Education Act of 1965, as in effect on August 5, 1997.
- O. Institution of Higher Education. "Institution of higher education" or "institution" means an institution which is described in section 481 of the Higher Education Act, and which is eligible to participate in a program under Title IV of such Act. Such institutions generally are accredited post-secondary educational institutions offering credit toward the attainment of associate, baccalaureate, graduate level or professional degrees or another recognized post-secondary credential. The institution must be eligible to participate in United States Department of Education student aid programs.

- P. Members. "Members" means the members of the Board of Directors of the Finance Authority of Maine.
- Q. Participant. "Participant" means any person who has entered into a participation agreement pursuant to this rule.
- R. Participation Agreement. "Participation agreement" means an agreement between a participant and the Authority providing for the establishment by the participant of one or more accounts within the program fund and for the administration of those accounts for the benefit of the participant and of one or more beneficiaries.
- S. Program. "Program" means the Maine College Savings Program as described in and governed by the Act, the program act and this rule.
- T. Program Act. "Program act" means 20-A MRSA §11471 *et seq.*
- U. Program Procedures and Guidelines. "Program Procedures and guidelines" means such operating procedures and guidelines for program administration, consistent with the Act, the program act, this rule and federal requirements, as may be established by the chief executive officer.
- V. Qualified Higher Education Expenses. "Qualified higher education expenses" means:
- 1) The certified costs of tuition, fees, books, supplies and equipment required for the enrollment or attendance of a beneficiary at an institution of higher education; and
 - 2) To the extent allowable in accordance with program procedures and guidelines, the reasonable costs of room and board of a beneficiary incurred while attending an eligible institution of higher education and enrolled at least half-time, provided that the costs of room and board shall not exceed the maximum room and board allowance set forth in federal requirements.
- W. Rollover Distribution. "Rollover distribution" means a distribution or transfer from an account which (i) is transferred to or deposited in another program account or is otherwise applied in accordance with program procedures and guidelines; and (ii) which constitutes a rollover distribution pursuant to federal requirements.
- X. Tuition. "Tuition" means the charges imposed to attend an institution of higher education and required as a condition of enrollment.

2. Program Implementation

The administration of the program is delegated to the chief executive officer.

3. Advisory Committee on College Savings

- A. The Treasurer of State serves as chair of the advisory committee. The chair shall be responsible for the conduct of each meeting.
- B. The advisory committee shall elect a vice chair from among its members. The vice chair shall be responsible for the conduct of a meeting in the absence of the chair.
- C. A quorum of four members must be present to conduct the business of the advisory committee.
- D. The advisory committee shall provide advice to the Authority, pursuant to the program act, on the operation of the program and investment of the program fund and, in addition, on such other matters as the chief executive officer may request. In order to carry out the program act, the chief executive officer shall provide to the advisory committee, prior to implementation, investment guidelines, program guidelines, proposals for selection of investment managers and consultants and other elements of fund investment and program operation, and shall report to the advisory committee from time to time concerning such matters.
- E. The advisory committee shall adopt bylaws governing the conduct of its business, including the provision for meetings from time to time of the advisory committee.

4. Opening an account

- A. Each applicant shall submit an application to the chief executive officer or any agent or contractor designated by the chief executive officer on such forms and with such attachments as the chief executive officer may require.
- B. The application shall contain the following:
 - 1) The name of the proposed beneficiary. Beneficiaries may be changed to any eligible individual as permitted by the program procedures and guidelines then in effect, upon the receipt of a written request signed by the participant;

- 2) Any minimum investment required by the chief executive officer to open an account;
- 3) The birth date of the beneficiary;
- 4) The social security number of the beneficiary. For newborns the social security number must be provided to the Authority within six months following the date the application is submitted. Distributions from accounts that lack a valid social security number may be subject to penalties or the withholding of taxes at the time of distribution; and
- 5) Such other information as the Authority may require including such factual representations as the Authority may reasonably require to evidence compliance with the program procedures and guidelines, which representations shall be deemed, if false, to constitute unsworn falsification within the meaning of 17-A MRSA §453.

5. Participation Agreements

- A. The Authority will enter into a participation agreement with all program participants.
- B. The participation agreement may include the following:
 - 1) The name and address of the participant and the beneficiary;
 - 2) The tax identification numbers of the beneficiary and the participant;
 - 3) The maximum amount of funds which may be contributed by the participant annually or as a lump sum;
 - 4) A schedule for the deposit of funds to provide sufficient, but not excess funds for the higher education expenses;
 - 5) Any obligations of the Authority, the participant and the beneficiary;
 - 6) A summary of the fees and penalties which may be assessed against the account, the participant or the beneficiary;
 - 7) The manner in which funds may be withdrawn by the beneficiary and by which the ownership rights of the account may be transferred

- 8) Provisions for periodic reporting of the status of participant accounts;
 - 9) Such other information as the Authority may determine to be necessary or appropriate, including such factual representations as the Authority may reasonably require to evidence compliance with the program procedures and guidelines, which representations shall be deemed, if false, to constitute unsworn falsification within the meaning of 17-A MRSA §453.
- C. Participation agreements may be amended in order to enable participants to increase or decrease the amount contributed, change the beneficiary and carry out similar matters. Changes that affect the ownership and registration (e.g. mailing address, name of beneficiary) of the account must be in writing and signed by the participant.

6. Limitations on Contributions

- A. No participant or beneficiary may directly or indirectly direct the investment of any contributions or of any other amounts held by the program. Members of the advisory committee will not be deemed to be directly or indirectly directing the investment of any account on which they are the participant. At the time a participant opens an account, a participant may choose among any account options offered by the Authority.
- B. A participant may contribute to an account by making cash contributions in the form of:
- 1) Lump sum payment;
 - 2) Installments;
 - 3) Electronic funds transfer from an existing account of the participant;
 - 4) Employer payroll deduction, if provided by the employer.
- C. Contributions may be made at any time subject to any minimum deposit requirements.
- D. Total contributions to an account may not exceed the amount projected to be necessary to pay qualified higher education expenses of the beneficiary to attend five years of undergraduate enrollment based on the average highest cost private colleges nationwide, as published by the

College Board or, if the College Board discontinues publication of such data, by any other similar organization selected by the chief executive officer. The Authority will prohibit additional contributions to an account when the balance in the account reaches an amount to be specified, which will be determined for each group of beneficiaries based on their expected year of enrollment.

7. Ownership of Contributions and Earnings

- A. The participant shall retain ownership of all contributions made under any participation agreement and earnings on those contributions up to the date of utilization for payment of higher education costs for the beneficiary, and all contributions and earnings derived from the investment of contributions made to the account shall be deemed to be held in trust for the benefit of the beneficiary.
- B. In the event the participation agreement is terminated by the participant prior to payment of higher education costs for the beneficiary, the participant shall retain ownership of all contributions made under the participation agreement and a right to receive earnings (less any applicable taxes and/or penalties and administrative fees) on all contributions to the program account.
- C. The institution of higher education shall own payments made to it for qualified higher education expenses at the time each is made to the institution.

8. Withdrawals for the Payment of Higher Education Expenses

- A. To withdraw funds from an account for the payment of qualified higher education expenses, the Authority must first be advised in accordance with program procedures and guidelines of the institution the beneficiary will attend and the date of anticipated enrollment. The Authority requires evidence from the institution of higher education confirming the beneficiary's enrollment at the institution of higher education.
- B. Upon receipt of documentation required in accordance with program procedures and guidelines (including copies of invoices and/or proof of disbursement), the Authority will make distributions to the specified institution for the benefit of the beneficiary, will make distributions to the specified institution and the beneficiary on a copayment basis or, if consistent with program procedures and guidelines, to another party as expressly authorized in writing. Distribution of benefits will begin within thirty (30) days after receipt by the Authority from the participant of a

notice to use program savings and shall continue, as authorized pursuant to documentation satisfactory to the Authority, throughout the beneficiary's period of enrollment at an institution of higher education or until the account balance has been exhausted, whichever comes first.

- C. To make withdrawals from an account for the payment of off campus room and board, and other allowed qualified higher education expenses, the Authority requires satisfactory documentation from the participant reflecting the expenses being submitted for payment in a form acceptable to the Authority. If a beneficiary resides off campus, the Authority will pay to the participant or, if consistent with program procedures and guidelines, whomever is designated by the participant, in addition to the amounts paid to the institution, an amount, not in excess of that permitted by federal requirements with respect to the cost of lodging and meals for an academic period.
- D. The Authority may make distributions to a beneficiary prior to the expenditure if the beneficiary certifies prior to the distribution that the distribution will be expended for qualified higher education expenses of the beneficiary within a reasonable time after the distribution and within 30 days of the distribution the beneficiary provides substantiation satisfactory to the Authority that the amounts disbursed were used for the payment of qualified higher education expenses. Distributions made pursuant to this section may be made only to the extent the Authority retains a sufficient amount in the beneficiary's account to pay any penalty which may accrue if the beneficiary fails to provide timely valid substantiation of the qualified education expense.
- E. All distributions made during a tax year may be treated as one distribution when necessary to comply with federal requirements.

9. Participating Financial Institutions

- A. The Authority may enter into agreements with financial institutions which agree to:
 - 1) Permit deposits to be made into accounts by payroll deposit or other electronic funds transfer on a periodic or lump sum basis;
 - 2) Participate in such marketing and public awareness programs as requested by the chief executive officer; or
 - 3) Such other terms and conditions as the chief executive officer deems appropriate.

- B. Any financial institution in the state is eligible to participate in the program.

10. Administration Agreements

The Authority may enter agreements for assistance with the implementation and administration of the program, including terms and conditions the chief executive officer determines to be necessary or appropriate.

11. Fees and Penalties

- A. Each participation agreement may provide for an annual administrative fee based on amounts in the program fund accrued daily at an annualized rate not to exceed 1%. Such fees may be used only for the cost of administration of the program. Customary and usual investment costs may be deducted from the program fund in connection with the investment thereof and are not included in the administrative fees.
- B. Except upon the occurrence of an early termination event or the overfunding of an account, if the participant terminates the participation agreement prior to the use of all funds for an eligible purpose, the participant must pay an early termination penalty not to exceed 15% of the portion of the distribution attributable to investment earnings on amounts contributed to the account.
- C. If the participant or a beneficiary receives distributions except for application to qualified higher education expenses or as a result of an early termination event, the recipient must pay, subject to the following sentence, an overfunding penalty equal to 10% of the portion of the distribution attributable to investment earnings on excess amounts contributed to the account. An account may be overfunded if more than one participant designates the same beneficiary, creating an aggregate overfunding for the beneficiary, even if each account is not overfunded. A participant may rollover amounts remaining in any account to the account of another eligible beneficiary.
- D. If the Authority determines that the participant or the beneficiary have made any material misrepresentations on the application form, in requests for disbursements or in any other communications with the Authority, the account may be involuntarily liquidated by the Authority and any such misrepresentations shall be deemed to constitute unsworn falsification within the meaning of 17-A MRSA §453. If the Authority liquidates any account pursuant to this provision, the participant will be entitled to a refund subject to a penalty of not less than 10% and not to exceed 15% of

the portion of the refund attributable to investment earnings on amounts contributed to the account.

- E. All amounts attributable to refund penalties remain the property of the Authority, and may be used for purposes of the program.
- F. When a penalty is assessed the chief executive officer may (i) require that the amount of the penalty be set off from any funds remaining in the account or (ii) will collect penalties by retaining a sufficient balance in an account to pay the amount of the penalty.
- G. All penalties are in addition to all State and Federal taxes which may be due on the distribution. The Authority may withhold an amount equal to any such taxes from a distribution.

12. Withdrawals For Purposes Other Than Higher Education Expenses

- A. After an account has been open for at least two years, a participant may withdraw funds from the account, subject to the penalties identified in section 11. In addition, a fee may be levied by the Authority to reasonably compensate the Authority for its costs incident to the participant's account.
- B. A participant may withdraw funds from an account prior to the expiration of two (2) years from the date the participant opened the account and receive one hundred percent (100%) of the principal of all contributions made to the account provided however that investment earnings which have been credited to the participant's account will be retained by the Authority as a penalty and provided further that investment losses will be deducted from the principal amount of contributions. In addition, a fee may be levied by the Authority to reasonably compensate the Authority for its costs incident to the participant's account.
- C. Except as otherwise specifically provided herein, only the designated participant for each account may close an account or receive a refund of amounts contributed (and earnings).
- D. Refunds will not be made to anyone other than the designated participant for each account, unless the designated participant directs the Authority in writing in accordance with program procedures and guidelines to provide the refund to another person.
- E. When the beneficiary receives an eligible scholarship, as determined pursuant to the Internal Revenue Code, refund payments in an amount equal to the eligible scholarship may be issued to the designated

participant each academic term as long as the eligible scholarship is effective. Proof of the eligible scholarship must be submitted in a form acceptable to the Authority in accordance with program procedures and guidelines. Refund payments may be subject to a processing fee.

- F. If the beneficiary dies or becomes disabled, the amount of savings remaining available in the account may be refunded or the benefits transferred to another beneficiary. If a change of beneficiary is not requested, a lump sum refund will be made to the participant, provided proof of death or disability is submitted in a form acceptable to the Authority consistent with program procedures and guidelines. Refund payments may be subject to a processing fee.
- G. The Authority shall notify the participant of any account in which a balance remains: (i) upon graduation of the beneficiary from an institution of higher education; (ii) upon the completion of any two year period, subsequent to the initial withdrawal, during which period no withdrawal will be made; (iii) upon the completion of the last period of beneficiary usage projected upon account establishment; or (iv) upon determination by the Authority that no eligible beneficiary exists, of the amount of such balance and shall request directions from the participant as to the application of such balance, consistent with program procedures and guidelines. If the participant fails to provide such direction with respect to all or part of such balance within 75 days, the Authority may conclusively deem the account to be overfunded in an amount equivalent to the portions of such balance for which no direction has been received.

13. Transfer of Ownership

- A. The participant may transfer ownership rights of an account to another eligible participant, provided the transfer is accomplished without consideration in accordance with program procedures and guidelines. All requests for substitution of a participant must include:
 - 1) The account number;
 - 2) The name, address, social security number and telephone of the successor participant;
 - 3) The reason for the transfer of ownership;
 - 4) The signature of the participant and successor participant; and
 - 5) Such other information as the Authority may require.

- B. On the death of all persons designated as a participant on an account, if the participant has so elected in accordance with program procedures and guidelines, the account will be transferred to the designated successor named in the participation agreement or otherwise, in writing, and that designated successor will become the new participant. If no one is designated as a successor, the account will become property of the deceased participant's estate.
- C. If an individual becomes ineligible to be a beneficiary, the participant may designate another beneficiary.
- D. Neither the participant nor the beneficiary may use any rights to or interest in the account as security for a loan, including as security for a loan to purchase such interest in the program.

14. Tax Consequences

Withdrawals from accounts are exempt from taxation pursuant to 36 M.R.S.A. §5122(2)(J).

15. Appeal to the Members

In the event that there is a dispute between a participant or beneficiary and the chief executive officer, it may be appealed to the members. Notice of the appeal, together with a statement of the reasons why the decision should be reversed or modified, shall be given to the chief executive officer, in writing within 30 days after the date of the decision. The appeal will be heard at a meeting of the members. The appellant may request to be present at the meeting. If the appellant does not request to be present at the meeting the members may make a decision based on the materials presented or may require the presence of the appellant at the next meeting. The appeal shall be based on the record before the chief executive officer. The decision of the members shall be final agency action appealable to the Superior Court.

16. Waiver of Rule

The chief executive officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act or the program act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

17. Conflict of Interest

No member of the advisory committee may vote on any matter in which the member or any organization the member works for has a conflict of interest or which may be perceived as a conflict of interest.

EFFECTIVE DATE: December 9, 1998.

AUTHORITY: 10 MRSA §969-A; 20-A MRSA §11485

BASIS STATEMENT

The rule is based on the following:

1. The Finance Authority of Maine Act, 10 M.R.S.A., §961 *et seq.*, and particularly 20-A MRSA §11485, *et seq.*, and P.L. 1997, Ch. 732 ("An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education")
2. Standards of similar programs operating in other states; and
3. The expertise and experience of the members and employees of the Authority, who represents a broad and diverse background in business, finance and government.

Standards for the contents of the application and the criteria for entering into contracts with administrators are intended to promote selection of organizations that evidence the ability to effectively manage the program funds and produce the best investment return for participants and beneficiaries.

The rule provides that the chief executive officer will administer the program and the rule. A process for appealing decisions to the members of the Authority is provided.

A public hearing on the rule was held on October 15, 1998. Ronald Milliken, Director of Financial Aid at the University of Maine at Farmington and Scott MacDonald, Director of Financial Aid at Southern Maine Technical College appeared and stated their support for and interest in the program generally.

Treasurer of State Dale McCormick, made written and oral comments proposing various changes to section 3.D, the addition of section 3.E and the addition of a definition of chair. Each of the changes proposed by Ms. McCormick concerned the role and operation of the Advisory Committee to be chaired by the Treasurer and were included in the final rule.

Walter Moulton, Director of Financial Aid at Bowdoin College, appeared at the hearing and requested various clarifications. Mr. Moulton suggested that the Authority remove the reference to the Higher Education Act as in effect on August 5, 1997, noting that it has recently been amended. The Authority did not make the change, noting that

the date of August 5, 1997 is set forth in the provisional regulations promulgated by the Department of the Treasury, regarding qualified tuition savings plans under section 529 of the Internal Revenue Code.

Mr. Moulton also urged that the Authority adopt a minimum initial deposit requirement, as well as a minimum monthly investment. The Authority determined that it would not do so in the Rule, but may in program procedures and guidelines.

With regard to section 6.D Mr. Moulton urged the Authority to assure that the maximum contribution would allow a beneficiary to attend a private college. The Authority believes the provision as proposed allows that, so is making no change based on that comment.

Mr. Moulton requested that the reference to "owner" in section 7.C. be clarified. And further suggested that the process should require that any amounts the school is required to refund be returned to the account administrator. The last sentence of section 7.C. was deleted in response to this comment.

Mr. Moulton suggested that the Authority lengthen the time a participant has to respond to a notice that the account will be terminated. The Authority increased the time to 75 days.

With regard to section 9.B, Mr. Moulton expressed his concern that the money collected in the program fund not be spread out among too many financial institutions. The Authority determined to retain the provision with the intention that the provision is to allow financial institutions to assist in collecting funds and distributing literature and potentially holding some funds in a manner transparent to the participant and the beneficiary.

Mr. Moulton suggested that there should be a provision to recapture the State tax exemptions if the funds are not used for an eligible use. The Authority believes that must be governed by the Bureau of Taxation.

Priscilla Gray, of Forum Financial Group, attended the public hearing and submitted the written comments of Benjamin Niles of Forum Financial Group. Both the written and oral comments concerned technical aspects of service provision and compliance with section 529 of the Internal Revenue Code. The Authority made several changes in response to the comments provided by Forum Financial Group. These include a change to section 7.C. clarifying the distribution of account balances after undergraduate graduation of a beneficiary and on other events. Section 8(C) was amended to refer to the limitations established in the federal regulations, which are likely to change over time. Additionally, section 8.E. was deleted in response to a comment from Forum Financial Group. Section 11(D) was modified to set a maximum and minimum penalty amount in the rule, but leaving flexibility on the actual penalty amount.

Kenneth Roberts of Hawkins, Delafield and Wood submitted written comments suggesting technical changes to the rule to assure compliance with section 529 of the Internal Revenue Code. The Authority adopted changes to sections 1; 1.A; 1.D; 1.I (3) and (4); 1.K.; 1.M.; 1.T.;1.U.(2); 1.V.; 3.A.; 3.B.; 3.C.; 4. 1); 4,B. 5) 5.B.8) (addition); 5.B.9); 5.C.; 6.A.; 7.C.; 8.B.; 8.C.; 8.F.; 11.A.; 11.B.; 11.C.; 11.D.; 11.H.; 12.A.; and 13.C. as proposed by Mr. Roberts.

The benefits of the rule outweigh any potential costs, which include the risk of loss or loan defaults; the rule maximizes social benefits by establishing a financing program aimed at providing assistance to those saving for higher education. There do not appear to be any viable alternatives to the provisions set forth which would involve less cost to society. The rule will have no harmful effect on small businesses.

FINANCE AUTHORITY OF MAINE
83 Western Avenue
PO Box 949
Augusta, ME 04332-0949
Telephone: (207) 623-3263 Fax: (207) 623-0095
Email: info@famemaine.com

REQUEST FOR INFORMATION

A. Introduction

The Finance Authority of Maine (the "Authority") is requesting proposals for services in connection with the implementation and management of its College Savings Program (the "CSP" or the "Program") for residents of the State of Maine.

The CSP was established by P.L. 1997, ch. 732 [10 M.R.S.A. §1013 (16) and 20-A MRSA §11471 et seq.] (the "Law"). A copy of the enabling legislation is attached as an exhibit to this request. The CSP was established to promote and enhance the affordability and accessibility of higher education for State of Maine residents. The Authority is authorized to establish individual accounts for all participants and to receive and invest moneys on behalf of participants. The College Savings Program will be administered as a "qualified state tuition program" under Section 529 of the *Internal Revenue Code* of 1986, as amended (the "Federal Act"). The State of Maine has not budgeted any funds for the Program and it is not contemplated that any moneys will be appropriated for the Program. The Authority is authorized by the Act to enter into one or more contracts for services for the CSP and this request for information is being issued pursuant to such authorization. The Authority has set December 14, 1998 as the target implementation date for the CSP.

Specifically, respondents are being asked to address the following components of the Program:

- 1) the implementation of the Program, including development of the rules and regulations of the Program, the application forms and related processes and procedures and timing;
- 2) the administration of the Program and account servicing, including Program and individual account recordkeeping and reporting;
- 3) the marketing and promotion of the CSP, including advertising and planning methods of enrollment of CSP participants; and
- 4) the management of monies deposited in Program accounts, including recommended investment strategy and investment vehicles.

B. Response

Respondents may submit a response for one or more of the services identified above. A respondent should identify all Program partners and their role in providing the identified services.

Responses should include a letter of transmittal, signed by a representative of the respondent authorized to commit the respondent to the terms of the response, together with nine (9) copies of the response to:

Finance Authority of Maine
83 Western Avenue
PO Box 949
Augusta, ME 04332-0949
Attention: College Savings Program

Responses must be received in the Authority's office not later than 5:00 p.m. September 15, 1998. Responses must be delivered in an envelope sealed and clearly marked and addressed as indicated above. The signer of the response shall be considered the principal contact of the respondent with respect to the response.

No response in excess of twenty (20) pages will be considered. The response to each question should be clear and easily identified with the question asked.

1. Miscellaneous Instructions.

- a. Any firms considered for a contract may be required to give an oral presentation.
- b. All responses to this RFI must conform to these instructions. Failure to conform may be considered cause for rejection of the response.
- c. The Authority is exempt from the payment of excise, transportation and sales tax imposed by the Federal Government and/or the State. Such taxes must not be included in prices.
- d. An authorized official must sign the proposal. The proposal must also provide name, title, address and telephone number for individuals with authority to negotiate and contractually bind the company, and of those who may be contracted for the purpose of clarifying the information provided.
- e. All cost estimates will be considered as "not to exceed" quotations, against which time and expenses will be charged.

2. Conditions. Any prospective contractors must be willing to adhere to the following conditions and must positively state them in the proposal:

- a. Acceptance or Rejection by the Authority. The Authority reserves the right to accept any or all Responses submitted for consideration.
- b. Conformance with Statutes. Any contract awarded as a result of this RFI must be in full conformance with statutory requirements of the Authority, the State of Maine and the Federal Government.

- c. Ownership of Responses. All responses to this RFI are to be the sole property of the Authority and subject to the provisions of 1 MRSA § 401 et seq. and 10 MRSA § 975-A (re: Freedom of Information).
- d. Ownership of Subsequent Products. Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of this RFI is to be the sole property of the Authority unless stated otherwise in the RFI or contract.
- e. Timing and Sequence. Timing and sequence of events resulting from this RFI will ultimately be determined by the Authority.
- f. Stability of Proposed Prices. Any price offerings from venders must be valid for a period of 365 days from the due date of responses.
- g. Oral Agreements. There will be no oral agreements with regard to the CSP. Any alleged oral agreement or arrangement made by a vendor with an agency or employee will be superseded by the written agreement.
- h. Amending or Canceling Requests. The Authority reserves the right to amend or cancel this RFI, prior to the due date and time, if it is in the best interests of the Authority and the State of Maine.
- i. Rejection for Default or Misrepresentation. The Authority reserves the right to reject the response of any vendor which is in default of any prior contract or for misrepresentation.
- j. The Authority's Clerical Errors in Awards. The Authority reserves the right to correct inaccurate awards resulting from its clerical errors.
- k. Rejection of Qualified Responses. Responses are subject to rejection in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFI.
- l. Vendor Presentation of Supporting Evidence. A vendor, if requested, must be prepared to present evidence of experience, ability, service facilities, and financial standing necessary to satisfactorily meet the requirements set forth or implied in the proposal.
- m. Changes to Proposal. Except as specifically requested by the Authority during any negotiations, no additions or changes to the original response will be allowed after submittal. While changes are not permitted, clarification at the request of the Authority may be required at the bidder's expense.
- n. Collusion. By responding, the vendor shall be deemed to represent that the proposal is not made in connection with any competing vendor submitting a separate response to the RFI, and is in all respects fair and without collusion or fraud.
- o. Contacts with the Authority. Potential respondents are not prohibited from contacting the Authority during the time given for preparation of responses to this request for information. The Authority has met with several potential respondents while developing this RFI and may meet with additional firms or individuals as it continues to develop the Program.

3. Evaluation of Responses. Each Proposal will be evaluated by a screening committee against the following criteria to determine which vendor is most capable of implementing the Authority's requirements:

- a. Vendor's ability to do specified work within the time guidelines.

- b. Vendor's understanding of the project and its purpose and scope, as evidenced by the proposed approach and the level of effort.
- c. Competitiveness of proposed cost.
- d. Availability and competence of personnel.
- e. Conformity with specifications contained in RFI.
- f. At the option of the Authority: presentation to a screening committee.

It is expected that determinations will be made in the Authority's discretion on the basis of the quality and responsiveness of the response submitted taken as a whole.

4. **Rights Reserved to the Authority.** The Authority reserves the right to award in part, to reject any and all Responses in whole or in part, to waive technical defects, irregularities and omissions if, in its judgment, the best interests of the Authority will be served.

C. **Information Requested**

1. **Executive Summary.** Provide an overview of your firm, the experience and background of those who would be assigned to the implementation and management of the CSP, the services that you would intend to provide to the Authority, your understanding of the Program and the objectives of the Authority in connection with this Program, the distinguishing characteristics of your firm and your response submitted and the reasons why your firm should be selected to perform the functions for which it has responded. *(Please limit your response to these questions to no more than two pages.)*

2. **General Information.**

- a. State the name, address, telephone and fax number of your firm and the principal contact.
- b. Name the functions that you are interested in being considered for, the individuals who would be responsible for the specific tasks that you are responding to, and provide background and experience information on each such individual as it relates to such function.
- c. Indicate the term of the proposed contract for your services and any other feature or requirement that you believe is necessary in order to accept an engagement for services to the Authority.
- d. Describe any litigation to which your firm is currently a party, or in the last three (3) years has been involved in, either as a plaintiff or as a defendant, as it relates to any functions which you propose to provide to the Authority or relates to any state qualified tuition program, including the current status of such litigation, management's opinion as to the likely outcome of such litigation and whether such litigation or outcome is likely to result in a material adverse impact on your firm's operations or affairs so as to affect your firm's ability to effectively serve the Authority.
- e. Indicate whether your firm currently provides any services to any qualified state tuition program, the nature of such services and the length of such period of such service or if your firm has provided any services to any such program during the last three (3) years and, if applicable, the reason for the termination of services to such program. Provide a list of all such programs,

- including the name, address, telephone number and e-mail address (if available), and a primary contact person as a reference for each program.
- f. Describe the products that you currently offer to State of Maine residents that compete with the CSP. Indicate whether you would agree to contract with the Authority to refrain from directly or indirectly offering any competing product for so long as you are providing services to the CSP.
 - g. How do you propose to protect the Authority and the CSP in the event you become unable or unwilling to perform under the contract.

3. Financial Information

It is anticipated that significant costs will be incurred for marketing, start up expenses and other necessary expenditures. Bids must include a statement of your ability to undertake these and your proposed budget for these expenses.

- a. Describe your legal entity and organization, including the state of incorporation or formation. You must submit your most recently audited financial statement, consisting of a balance sheet and an income statement. The income statement may be an operating statement or a profit and loss statement.
- b. Provide the most recent credit rating from a nationally recognized ratings agency if you are a publicly traded entity.

4. Program Implementation.

- a. Describe what initial steps you would take and you would advise the Authority staff to take to initially implement the CSP and prepare it for its initial enrollments.
- b. Describe the timetable for implementation
- c. Describe the experience that responsible parties within your firm have in servicing state instrumentalities and their familiarity with agencies, authorities and instrumentalities of the State of Maine.
- d. Describe, in brief, (1) the necessary rules, procedures and policies that you believe would be necessary for the implementation of an efficient and easy-to-use program, including, but not limited to: contract requirements for participants; penalties (including those required by the Federal Act): release of funds; and minimum contribution required; (2) what assistance you are qualified and prepared to offer in this regard and (3) how long you estimate this process would require prior to the Authority being able to accept applications for the CSP.
- e. Describe your ability to provide necessary services, including legal services, to obtain all regulatory approvals necessary and appropriate for the successful implementation of the Program in a timely manner (e.g. a private letter ruling from the Internal Revenue Service, a no-action letter from the Securities and Exchange Commission; compliance with State regulations).
- f. Describe how you propose to accept and process applications, your experience and ability to process applications and to establish and maintain

individual accounts and to ensure compliance with the enabling legislation and the Federal Act.

- g. Describe the approximate cost for such services and the proposed method and means of payment.

5. Administration and Account Servicing.

- a. Describe your experience in individual account administration and recordkeeping, including the number of years that you have provided this service, the number of accounts you are currently responsible for, the frequency and volume of individual transactions that you process on a daily and weekly basis and the approximate dollar value of such accounts. Describe any specific experience you have in individual account administration and recordkeeping for college savings programs.
- b. Describe your ability to prepare account statements and reports, the frequency of such reports and the method of transmittal.
- c. Describe your ability to prepare total Program reports, including among other things, information on the number of participants, geographic and socioeconomic distribution of participants, total yearly savings by all participants, methods used by participants to make payments, total fees collected, and participant satisfaction with the Program, the frequency with which such reports would be available and the method of transmittal.
- d. Describe your ability to accept coupon payments, lump sum deposits and pre-authorized ACH transfers.
- e. Describe your ability to provide account balances via telephone or on-line and your ability to calculate answers to "what-if?" questions.
- f. Describe your ability to ensure compliance with the Law and the Federal Act.
- g. Describe the resources you would devote to customer services (e.g. telephone lines, Internet inquiry of account balances and status, staffing).
- h. Describe the approximate cost to the Authority for such services and the proposed method and means of payment.

6. Marketing and Promotion.

- a. Provide an overview of your plan of marketing and promotion of the CSP for the first five years of operation with special attention devoted to the initial rollout.
- b. Describe your plan to maximize participation in the CSP.
- c. Indicate your projections for participation enrollment over the next 1, 3 and 5 years.
- d. Describe how you would evaluate the effectiveness of marketing, promotion and customer service aspects of the Program.
- e. Describe interactive software or other techniques you would develop for use in counseling potential savers about the value of saving for college and helping them evaluate options available to them.

- f. Indicate any additional programs that could enhance the appeal of the CSP and in your view whether legislation would be necessary for such complimentary programs to be offered.
- g. Describe the approximate cost to the Authority for such services and the proposed method and means of payment.

7. Investment Strategy and Program.

- a. Describe your investment strategy for the CSP and how such approach assists the Authority's objective of maximizing returns while preserving capital, i.e., the deposits made by individuals .
- b. Describe the investment vehicles you would propose utilizing and provide background on past performance of such investment vehicles and the management responsible for such investment vehicles.
- c. Describe your ability to advise participants in the CSP, given their individual situations, as to contributions required to meet forecasted tuition requirements.
- d. The Federal Act provides that an account participant or beneficiary may not direct investment choices; however, the Authority welcomes input on single versus multiple investment pools and the methodology of assigning participants to investment vehicles while complying with the Federal Act.
- e. Describe the approximate cost of such services and the proposed method and means of payment.

8. Selection Process

The Authority reserves the right to reject any and all responses to this RFI. The Authority may choose to compile a list of finalists and seek additional information from these companies to clarify best and final offers and/or permit an oral presentation to the Authority and/or the Advisory Committee on College Savings. The Authority will determine which submission offers the best means of servicing the interests of the Authority and the potential participants and beneficiaries.

9. Evaluation Criteria

Responses will be evaluated based on the following criteria:

- a. Competitiveness of earnings performance and product features;
- b. Financial stability and strength of company;
- c. Experience in providing similar products;
- d. Costs charged to any account or any other entity;
- e. Statewide accessibility;
- f. Marketing strategy;
- g. Administrative capacity and strategy;
- h. Use of Maine businesses and/or financial institutions;
- i. Any other qualities or characteristics deemed in the best interests of the Authority or the State.

D. Year 2000 Statement of Compliance

The successful respondent's computer system must be year 2000 compliant. Specifically, the computer system to be used by the successful respondent to manage the CSP must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations, and all other critical systems must not be materially affected by the change in dates during such period.

Every response must include a statement of either compliance or non-compliance with Year 2000 standards. A statement of compliance would state that the bidder's system is currently year 2000 compliant as defined in this RFI. A statement of non-compliance may state that the respondent's computer system is not currently year 2000 compliant, but the respondent intends that it will be prior to the arrival of the year 2000 (such a statement must include a description of the bidder's plan for achieving year 2000 compliance and a detailed report as to the current status of that plan).

The contract to be executed by the successful bidder to this RFI will contain substantially the following language:

The contractor hereby warrants to the Authority (1) that the contractor's computer system will be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations; (2) that said computer system will be set up such that data stored and used relating to the CSP will not be corrupted or affected by attempts of third parties to communicate with the contractor's computer system using any other system which is not year 2000 compliant; and (3) that all other systems will not be materially affected by the change in dates during such period.

The contractor is responsible to the Authority for the year 2000 compliance, as described above, of not only contractor's computer system, but also for the systems of any subcontractors or third parties with whom the contractor may contract while managing the CSP.

The contractors will indemnify the Authority for any costs or damages incurred by the Authority due to lack of year 2000 compliance.