

CHAPTER 615  
Amendment 1

HIGHER EDUCATION LOAN PURCHASE PROGRAM

Summary: This rule implements the Higher Education Loan Purchase Program whereby the authority may originate or purchase federally guaranteed student loans from eligible lenders that have entered into a contract with the Authority to provide specified borrower benefits to borrowers.

I. Definitions

- A. Certain terms used in this rule, which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. § 961 and following and in 20-A M.R.S.A. Chapter 417-F shall have the meanings set forth therein, unless clearly specified otherwise or unless the context clearly indicates otherwise.
- B. Defined Terms
1. "Bonds" includes bonds, notes, commercial paper, pass-through instruments or any other evidences of indebtedness.
  2. "Borrower" means
    - a. a person who is attending an institution of higher education eligible to participate in programs under Title IV of the Higher Education Act located in Maine;
    - b. a Maine resident, attending such an institution of higher education located outside of Maine;
    - c. the parent of an individual identified in a or b above; or
    - d. with respect to a consolidation loan only, an individual who received an eligible loan that is to be consolidated while a borrower described in a, b, or c above.
  3. "Borrower benefits" include fee, principal or interest rate reductions or any other enhancement that lowers the cost of borrowing for the loan recipient of an eligible loan financed under the program.
  4. "Chief executive officer" means the chief executive officer of the Authority or a person acting under the supervisory control of the chief executive officer
  5. "Eligible lender" means the Authority and the Federal Government and any financial institution, credit union or institution of higher education that is an eligible lender under the federal Higher Education Act of 1965,

Public Law 89-329, 79 Stat. 1219, Title IV, as amended, or under the federal Health Professions Educational Assistance Act of 1976, Public Law 94-484, 90 Stat. 2243, as amended, as applicable or, in each case, any successor provision, that is approved by the Authority for participation in the program.

6. "Eligible loan or "loan" means a loan originated under the federal Higher Education Act of 1965, Public Law 89-329, 79 Stat. 1219, Title IV, as amended, or under the federal Health Professions Educational Assistance Act of 1976, Public Law 94-484, 90 Stat. 2243, as amended, in each case along with any successor provision, by an eligible lender to a borrower, or under any student loan program administered by the Authority.
7. "Finance" means the origination, acquisition or refinancing of eligible loans, including through loans to eligible lenders.
8. "Maine resident" means a resident of the State as provided in the Higher Education Act or the regulations promulgated thereunder.
9. "Program" means the Higher Education Loan Purchase Program.

## II. Forward purchase contracts with eligible lenders

- A. The Authority may enter into contracts with eligible lenders to purchase eligible loans to borrowers. Each contract may provide:
  1. That the Authority will purchase eligible loans originated by eligible lenders and may limit purchases of loans to eligible loans evidenced by a Promissory Note approved by the Authority.
  2. That one or more servicers selected by the Authority may process the origination of eligible loans at the request of the lender..
  3. That eligible loans held by the Authority will be serviced by one or more servicers selected by the Authority pursuant to a Master Servicer Agreement.
  4. Loans must be held by the Lender for a minimum period of time prior to purchase to be determined by the chief executive officer.
  5. Such other terms and conditions as are customary in the industry, as determined by the chief executive officer.

B. Eligibility

The Authority may enter into a forward purchase contract with any eligible lender.

III. Loan Origination

The Authority may originate any loan under the program, either directly, or indirectly through a lender trustee.

IV. Borrower Benefits

The Authority will provide borrower benefits as determined by the members of the Authority, or by a subcommittee of the members of the Authority specifically delegated that responsibility, on the basis of providing the best combination of borrower benefits based on the projected cash flow and the student loan market, taking into account the probability that a borrower will receive the benefit available. Borrower benefits that are available to all borrowers without request or requirement will be preferred.

V. Bond Terms

The members of the Authority or a subcommittee of the members of the Authority specifically delegated that responsibility will determine the terms of the bonds.

VI. Program Branding

The Authority may offer the program to lenders and schools under a name to be selected by the members. Schools and lenders may use the name as they deem appropriate.

VII. Confidentiality of Borrower Information

A. The Authority will provide in any contract binding the Authority with a servicer or agent for the Program able to access confidential borrower information that the servicer or agent will maintain the confidentiality of all confidential Borrower information and such information will only be available to those employees of the servicer(s) or agents who need to know. All agents and servicers will specifically agree that they will not use information gained from working on the Program to solicit or otherwise contact borrowers, except for the purposes for which they have been specifically engaged.

B. The Authority will not use information in its portfolio of federally guaranteed student loans to solicit consolidation loans.

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

## BASIS STATEMENT (original rule):

This Chapter implements 20-A MRSA, Chapter 417-F, establishing a higher education loan purchase program, enacted by PL 2003, ch. 455.

The members received numerous comments on the rule both at the public hearing held on September 19, 2003 and in written submissions.

Many of the commentors addressed the program overall, in addition to specific provisions of the proposed rule. Of these, several, including Joseph Pietroski, President of the Maine Banker's Association ("MBA"), Timothy Sabo, Managing Director of Nelnet, and Charles Mercer, Sr. Vice President of FISC ("FISC"), suggested that given the current interest rate environment and the student loan activity in Maine, there is no need for the Higher Education Loan Purchase Program (the "Program"). The members considered this viewpoint, but believe that factors such as the availability of tax exempt bond cap and the continually increasing costs of higher education, make a Program that provides Maine residents additional opportunity to lower the costs of education desirable at this time. Other commentors, such as Karen Bissette of Fleet Bank, ("Fleet") and Dana Mignogna, Education Financing Specialist, of Key Education Resources, a subsidiary KeyBank ("Key") each indicated a strong interest in participating in a program that would provide significant benefits to Maine students.

Peggy Crawford, Director of Financial Aid, University of Maine, ("Crawford"), Linda Conant, President of the Maine Association of Student Financial Aid Administrators ("MASFAA") and Ronald Milliken, Director of Financial Aid at University of Maine at Farmington ("Milliken") stated that they had general concerns that the program may not offer sufficient borrower benefits to make it attractive. Crawford suggested that the Program may create administrative hurdles. MASFAA, Crawford and Milliken suggested that implementation be postponed, but all indicated that they would support a program that provides significant borrower benefits and requested that they be kept informed as program implementation progresses. Crawford indicated that the main reason to postpone the program is so that it is available for preparation of financial aid packages on the school's schedule. Although the implementation timetable is beyond the scope of the rule, the members concluded that these questions would arise in the process again if the implementation process was postponed, so it would be best to continue on the current timetable, which provides for benefits to be available in time for use by the schools. MASFAA, Milliken, and Crawford all agreed that front-end benefits would be better for the students. The members noted these comments and agreed that the borrower benefits must be significant and should be "front-end" benefits, not requiring satisfaction of any conditions to receive them. To address this concern (as well as others referenced later in this Basis Statement), the members added language to section IV, Borrower Benefits, creating a preference for borrower benefits that the borrower earns automatically.

Some of the comments, particularly from FISC, addressed the role of a loan servicer. While some of the commentary was not relevant to this rule, so will not be addressed, FISC and MBA questioned whether it is necessary for the loan servicer to originate loans. Both expressed the concern that the Authority not be in direct competition with private sector lenders. To the

extent those comments related to section II.A.2 of the rule, the members have modified the language so that it clearly provides that the servicer may process the origination of loans at the request of participating lenders. There is also a possibility that lender participants will choose to have loans originated by other student loan originators, then sell them to the Authority. This is clarified by the inclusion of a new section II.A.3. The subsequent sections have been renumbered.

Both Nelnet and the MBA suggested that the language in Section III, Loan Origination, gives the Authority an unfair advantage over student loan lenders that might want to consolidate their loans. Nelnet requested that the language be changed to limit the Authority's ability to originate consolidation loans so that the Authority could only originate consolidation loans if the Authority is the sole holder of all the borrower's eligible loans. MBA suggested that FAME is seeking authority to consolidate greater than that available to other lenders. The origination of consolidation loans is strictly regulated by the federal Higher Education Act and the regulations promulgated thereunder. The Authority, like all other eligible lenders, can only originate consolidation loans in accordance with the Higher Education Act. The Authority would have no advantage. The members believe that it is necessary for the Authority to have the ability to originate consolidation loans if the Authority is the holder of any eligible loan. In response to these comments they have added language to the rule specifying that in the case of a borrower with eligible loans held by multiple lenders, the Authority will originate the consolidation loan at the request of the borrower, only if it is in the best interests of the borrower. To coordinate with these changes to section III, the members made changes to section I.B.7.

MBA commented that Section IV of the proposed rule does not provide sufficient basis for calculating borrower benefits or identifying program goals. In response to this comment the section was amended to make it less confusing. The members clarified that the calculation of all benefits must take into account the likelihood that the borrower would actually receive the benefit. In response to member concerns, the comments of others referenced earlier, and comments from FISC, the members added a preference for the provision of borrower benefits that are available to all borrowers without having to qualify or choose.

FISC and MBA commented on Section VI of the proposed rule with Nelnet suggesting that the use of any brand would be tantamount to competition with the private sector lenders and the MBA commented that unless the marketing of the brand was limited to lenders who would offer the loan it would cause confusion in the marketplace and suggest that a particular loan program was endorsed by the State.

The members considered these comments and in response to them modified section VI to incorporate the recommendation of the MBA so that the Authority would only use the program name when introducing the program to lenders and schools. Schools and lenders will not be limited in their use of the name.

In response to concerns raised by the MBA about the Authority or its agents or servicers using access to borrower information to solicit the borrowers, the members added new section VII (and renumbered subsequent sections), which provides that all contracts entered into by the

Authority that would allow access to confidential borrower information by others, will require an affirmative agreement that the agent or servicer will not use that information to contact the borrower or for any purpose other than the purposes for which they have been engaged.

FISC, Nelnet and the MBA suggested that as the state designated guarantor of federally guaranteed student loans, the Authority could use the student information in its guarantor database to solicit loan consolidations. In response to this comment the members added section VII.B. stating that the Authority would not use information in its guaranteed student loan database to solicit consolidation loans.

FISC and Nelnet both provided comments on the Fiscal Impact Note, suggesting that the Program will impose a cost on small businesses and a cost to the State. Nelnet suggests that the program will take market share from lenders currently in the market and that lenders will be forced to sell their loans to the Authority. Since lenders will continue originating loans, the Authority does not expect to take market share from lenders. If lenders choose to participate in the program their market share may be more or less than its current level. Lenders may continue to originate and hold loans under all existing programs and any new programs they choose to offer.

FISC commented that it, a small Maine business, as well as the State, could be harmed by the implementation of the Program, since loans it may have serviced if the program did not exist, may now be serviced by a servicer chosen by the Authority. FISC could have responded to the RFP to be the Loan Program Servicer, and potentially obtained the servicing contract for the servicing of loans held by the Authority. FISC also argues that it provides servicing for lenders that provide a very competitive student loan opportunity. Since the lenders participating in the program serviced by FISC generally prefer to hold their student loans and the significant borrower benefits offered by that program, the Authority believes that it is likely that FISC will continue to retain their level of volume, thus the proposed rule is not expected to have any material impact on FISC.

FISC also suggested that the Authority should make two determinations annually. The matters suggested for determination by FISC were considered by the legislature in enacting the enabling legislation. The legislature did not leave those determinations to the Authority.

**FISCAL IMPACT NOTE (original rule):** The proposed amendment will not impose any cost on municipalities or counties or have a material impact on small businesses.

- A. The rule will provide benefits to the citizens of the State by allowing Maine families and students to obtain the benefits of use of the tax exempt bond cap to help fund higher education.
- B. The changes will require no increase in General Fund appropriations.

- C. The rule will provide economic benefit to Maine families and individuals attending Maine schools who will pay less for the costs of borrowing to pursue higher education.
- D. The rule is not expected to cause any increased costs to the State.

BASIS STATEMENT—Amendment 1 (Non-Emergency)

This amendment provides that the Authority is eligible to originate federal student loans as well as purchase them from other eligible lenders.

The amendment was previously adopted on an emergency basis. This amendment makes the same changes on a non-emergency basis.

Notice of the proposed amendment was published, and the public was provided an opportunity to comment. No comments were received during the comment period.

FISCAL IMPACT NOTE (Amendment 1 Non-Emergency): The proposed amendment will not impose any cost on municipalities or counties or have a material impact on small businesses.

- A. The rule amendment will provide benefits to the citizens of the State by allowing Maine families and students to obtain the benefits of federal student loans to help fund higher education.
- B. The changes will require no increase in General Fund appropriations.
- C. The rule will provide economic benefit to Maine families and individuals attending Maine schools who will have more options to access federal student loans to pursue higher education.
- D. The rule is not expected to cause any increased costs to the State

AUTHORITY: 20-A MRSA §11493(3).

EFFECTIVE DATE: November 23, 2003 [original rule]; May 4, 2009 [Amendment 1-Emergency]; July 12, 2009 [Amendment 1 – Non-Emergency]