

## Chapter 611: MAINE COLLEGE SAVINGS PROGRAM, AMENDMENT 12

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

## 1. Definitions

The following terms, some of which are defined in the Finance Authority of Maine Act, 10 MRSA § 961et seq. (the “Act”) shall have the following meanings in this rule. All terms that are defined in federal requirements shall have the same meanings herein as in the federal requirements.

- A. Account. “Account” means a repository of all Contributions identified by a formal record of transactions, in respect to a particular participant and beneficiary established for purposes of the program.
- B. Advisory Committee. “Advisory committee” means the advisory committee on college savings.
- C. Authority. “Authority” means the Finance Authority of Maine, which serves as administrator of the program.
- D. Beneficiary. “Beneficiary” means any person who: is designated by an application or participation agreement or subsequent change directed by the participant and accepted by the program manager to benefit from payments for higher education expenses at an institution of higher education or is named by a governmental entity or 501(c)(3) as a beneficiary on an account on which the governmental entity or 501(c)(3) is the participant and is a designated beneficiary for purposes of federal requirements.
- E. [Repealed effective March 2, 2003]
- F. Chair. “Chair” means the Treasurer of State serving as Chair of the advisory committee on college savings.
- 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.
- G-1. Consumer Price Index. “Consumer Price Index” means the average over a 12-month period of the National Consumer Price Index, not seasonally adjusted, published monthly by the Bureau of Labor Statistics, United States Department of Labor, designated as the “National Consumer Price Index for all Urban Wage

Earners – U.S. City Average”.

- H. Contributions. “Contributions” means amounts deposited to an account.
- I. Early Termination Event. “Early termination event” means any of the following if documented as required by the Authority and the program manager:
  - 1) the death of the beneficiary;
  - 2) the disability of the beneficiary within the meaning of Section 72(m)(7) of the Internal Revenue Code;
  - 3) a rollover distribution;
  - 4) an award of an eligible scholarship, to the extent of the amount thereof;
  - 5) a claim of a Hope tax credit (also known as American Opportunity tax credit in 2009 and 2010) or a Lifetime Learning tax credit to the extent allowable in conformance with federal requirements; or
  - 6) attendance of the beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of such advanced education, as defined by Title 10 United States Code § 2005(e)(3), as in effect on the date of enactment of the Military Family Tax Relief Act of 2003.
- J. Eligible Scholarship. “Eligible scholarship” means any allowance or payment described in section 25A(g)(2) of the Internal Revenue Code.
- J-1a. Expected Family Contribution. “Expected family contribution” means the amount that a student and his or her family may be reasonably expected to contribute towards post-secondary education for the academic year for which the student seeks a program scholarship, determined using federal methodology.
- J-1. Family Adjusted Gross Income. “Family adjusted gross income” means the adjusted gross income reported by the participant and the participant’s spouse, if applicable, on the most recently filed federal income tax return, or as reported on Form W-2 if the participant and the participant’s spouse, if applicable, are not required to file a federal income tax return or through such other evidence acceptable to the Authority.
- K. Federal Requirements. “Federal requirements” means the provisions of the Internal Revenue Code addressing qualified 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 (i) a credit union or financial institution authorized to do business in the State of Maine under Title 9-B or (ii) a broker-dealer authorized to do business in Maine, in each case that meets

standards established by the Authority or federal requirements and enters into a Distribution Agent Agreement with 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 June 7, 2001.
- 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.
- O-1. Maine Accounts. “Maine account” means any account opened by a participant who is a resident of Maine or for a beneficiary who is a resident of Maine.
- O-2. Maine Administration Fee. “Maine administration fee” means the fee calculated at the annual rate determined by contract between 0% and fifteen hundredths of one percent (.15%) of the average daily net asset value of the amounts invested in the program, received by the Authority.
- 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 an account and for the administration of each account for the benefit of the participant and of a beneficiary.
- 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. [Repealed effective March 2, 2003]
- U-1. Program description. “Program description” means the official offering statement for the program.
- U-2. Program manager. “Program manager” means the company or companies contractually responsible for aspects of the operation of the program, as well as its marketing and distribution, which is currently Merrill Lynch, Pierce, Fenner & Smith Incorporated, or such successor thereto as the Authority may appoint.
- V. Qualified Higher Education Expenses. “Qualified higher education expenses” means:

- 1) The costs of tuition, fees, books, supplies and equipment required for the enrollment or attendance of a beneficiary at an institution of higher education;
  - 2) The costs of special needs required by a special needs beneficiary, which costs are incurred in connection with enrollment or attendance at an institution of higher education;
  - 3) To the extent allowable in accordance with federal requirements, 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; and
  - 4) In calendar years 2009 and 2010 only, expenses for the purchase of certain computer technology or equipment (as defined in Section 170(e)(6)(F)(i) of the Internal Revenue Code) or Internet access and related services, if such technology, equipment or services are to be used primarily by the beneficiary while enrolled at an eligible institution of higher education, but not including expenses for computer software designed for sports, games or hobbies unless the software is predominantly educational in use.
- V-1. Resident. “Resident” means a person who is a resident of the State of Maine for other than educational purposes or a person who is a resident of the State of Maine notwithstanding attendance at an institution of higher education outside of the State of Maine.
- W. Rollover Distribution. “Rollover distribution” means a distribution or transfer from an account that (i) is transferred to or deposited in another program account; and (ii) 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, 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.

4. Opening an account

- A. Each applicant shall submit an application to the Authority 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, unless the account participant is a 501(c)(3) or a governmental entity. Beneficiaries may be changed to any eligible individual, as permitted by federal requirements then in effect, upon the receipt of a request of the participant in the form designated by the Authority and the program manager;
  - 2) Any minimum investment required by the chief executive officer to open an account;
  - 3) The birth date of the beneficiary, unless the account is owned by a 501(c)(3) or governmental entity;
  - 4) For individuals, the social security number or valid taxpayer identification number of the participant and the beneficiary . Distributions from accounts that lack a valid social security number or taxpayer identification 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 participation agreement, the program description and federal requirements, 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 participants.
- B. The participation agreement may include the following:
  - 1) The name and address of the participant and the beneficiary;
  - 2) [Repealed effective January 14, 2006]
  - 3) [Repealed effective January 14, 2006]
  - 4) [Repealed effective December 3, 2001]

- 5) Any obligations of the Authority, the participant and the beneficiary;
  - 6) A summary of the fees and penalties that may be assessed against the account, the participant or the beneficiary;
  - 7) The manner in which funds may be withdrawn 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 participation agreement, the program description, and federal requirements, 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 from time to time. Changes that affect the ownership and registration (*e.g.*, mailing address, name of beneficiary) of the account must be submitted by the participant in the form designated by the Authority and the program manager.

#### 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. A member of the advisory committee will not be deemed to be directly or indirectly directing the investment of any account on which the member is the participant. At the time a participant opens an account, a participant may choose among any account investment options offered by the Authority and may alter such choices in accordance with federal requirements, as permitted by the Authority.
- B. A participant may contribute to an account by making cash contributions, which may be in the form of electronic funds transfer or employer payroll deduction.
- C. Contributions may be made at any time subject to any minimum contribution 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: (i) five years of undergraduate enrollment based on the average highest cost private colleges in New England, as published by the College Board, or, if the College Board does not publish such data, by any other similar organization selected by the chief executive officer, provided, that in no event shall such amount exceed five times the actual amount then necessary to pay qualified higher education expenses of the beneficiary if enrolled as an undergraduate student in the most expensive program at a high cost private university in New England selected by the chief executive officer; and (ii) two times the actual amount then necessary to pay qualified higher education expenses of the beneficiary if enrolled as a graduate student in the most expensive program at a high cost private university in New England selected by the chief executive

officer. The Authority may announce a lower maximum contribution amount. A contribution to an account will be prohibited if the contribution would cause the total of all account balances maintained on behalf of a designated beneficiary to exceed the total amount necessary to pay qualified higher education expenses, limited as described in the first sentence of this subsection.

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 withdrawal.
- 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, administrative fees and investment losses) 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 except to the extent the institution is required to refund such payments in accordance with its refund policies.

8. Withdrawals

- A. To withdraw funds the participant must request a withdrawal in the format currently approved by the Authority. The participant is responsible for the maintenance of records evidencing the use of any withdrawal for qualified higher education expenses. The Authority has no obligation to maintain records evidencing the use of any withdrawal.
- B. Upon receipt of a properly completed withdrawal form, the program manager 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 will make distributions to another party as expressly authorized in writing.
- C. [Repealed effective June 4, 2002]
- D. [Repealed effective June 4, 2002]
- E. All distributions made during a tax year may be treated as one distribution as necessary to comply with federal requirements.

9. Participating Financial Institutions

- A. The Authority may enter into agreements with financial institutions which agree to:
  - 1) [Repealed effective March 4, 2001]

- 2) Participate in such marketing and public awareness programs as requested by the chief executive officer; and
- 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 program purposes including administrative expenses, the refunding of fees paid by participants or any class of participants, the matching of contributions made by participants or any class of participants or the use of funds to provide scholarships to beneficiaries attending institutions of higher education. 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. Customary and usual account maintenance fees may be deducted from an individual account opened by a participant who is not a Maine resident, unless it is opened on behalf of a beneficiary who is a Maine resident.
- B. Except upon the occurrence of an early termination event, if the participant makes a withdrawal for any purpose other than the payment of qualified higher education expenses, the participant must pay an additional tax or other penalty as provided in federal requirements.
- C. [Repealed effective December 3, 2001]
- D. If the Authority determines that the participant or the beneficiary has made any material misrepresentations on the application form, in requests for disbursements or in any other communications with the Authority or with the program manager in its capacity as program manager, 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 disbursement subject to a penalty of 15% of the portion of the disbursement attributable to investment earnings on amounts contributed to the account.
- E. Any additional tax payable shall be payable directly to the United States Department of Treasury in accordance with federal requirements.
- 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; (ii) collect penalties by retaining a sufficient balance in an account to pay the amount of the penalty; or (iii) collect any unpaid penalties through a set off against Maine

income tax refunds pursuant to 36 MRSA §5276-A. This provision will only be applicable to penalties assessed under section 11.D.

- G. All penalties are in addition to all State and federal taxes that may be due on the distribution.

## 12. Withdrawals For Purposes Other Than Higher Education Expenses

- A. A participant may withdraw funds from the account, subject to the penalties or additional tax identified in section 11. Any 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.
- B. [Repealed effective July 1, 1999]
- C. Except as otherwise specifically provided herein, only the participant for each account may close an account or direct a withdrawal.
- D. Distributions will not be made to anyone other than the participant for each account, unless the participant directs the program manager in writing to provide the distribution to another distributee and such instruction is accepted by the program manager.
- E. [Repealed effective June 4, 2002]
- F. [Repealed effective June 4, 2002]
- G. The Authority may 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 five year period, subsequent to the initial qualified withdrawal, during which period no withdrawal is made; (iii) upon the completion of the last period of beneficiary usage projected when an account is established; or (iv) upon determination by the Authority that no eligible beneficiary exists, of the amount of such balance and may request directions from the participant as to the application of such balance. If the participant fails to provide such direction with respect to all or part of such balance within 75 days, the Authority may close the account and disburse all amounts remaining to the participant.

### 12-A. Rescission of Purchase.

A participant (either personally or through the participant's agent) may request that a contribution be rescinded, provided that the participant notifies the Authority or the program manager of the basis for the rescission within 30 days of making the contribution, but not later than December 15 (or the previous business day if December 15 is not a business day) of any year for a contribution made in that year. The Authority may, in its sole discretion, decline to grant any such rescission if the Authority determines that the proposed rescission could have a material adverse effect upon the program or its participants. Except as set forth below, such rescission will provide for both the participant and the program to be in the same position as if the contribution had

not been made, except as otherwise provided by federal requirements. For the rescission to be completed, the rescission proposal must provide:

- A. For the participant to be made whole by a party other than the Authority or the program for any investment losses incurred on the participant's contribution.
- B. Any investment gains on the contribution to be rescinded will remain the property of the Authority to be used for the benefit of program participants.
- C. The Authority, the Program and (if it is not the agent of the participant) the program manager will be indemnified from any cost, expense, liability or damage directly or indirectly arising out of or resulting from the Authority's agreement to the rescission of the contribution.

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. All requests for substitution of a participant must include:
  - 1) The account number;
  - 2) The name, address, social security number or valid taxpayer identification number, and telephone number of the successor participant;
  - 3) [Repealed effective June 4, 2002]
  - 4) Such evidence of verification, including, without limitation, the signature of the participant, as may be accepted by the program manager; 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, 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 be treated as provided in the then current Program Description or in such manner as the Authority and the program manager shall determine.
- C. [Repealed effective December 3, 2001]
- 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 for qualified higher education expenses are exempt from taxation by the State of Maine pursuant to 36 MRSA § 5122(2)(J).

15. Appeal

In the event that there is a dispute between a participant or beneficiary and the chief executive officer, the decision of the chief executive officer shall be final agency action appealable to the Maine 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, the program act or federal requirements, 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.

18. Use of Maine Administration Fee

The Authority may use any amounts received from the Maine Administration Fee charged to participants first to pay all costs of program administration, including the maintenance of a reserve for administrative expenses in any amount the Authority may determine to be necessary from time to time. The Authority may use the remaining amounts to fund each of the following programs: the fee rebate or waiver program; the matching grant programs; and the scholarship programs.

A. Matching Grant Programs

- 1) Initial Matching Grant Program. Any Maine account opened after January 1, 2005 and before January 1, 2007 with an initial contribution of at least \$50 is eligible to receive an initial matching grant of \$200, provided the participant's family adjusted gross income is not greater than \$52,500, which amount shall be adjusted on January 1 annually according to the Consumer Price Index. Any Maine account opened in 2007 with an initial contribution of at least \$50 is eligible to receive an initial matching grant of \$200, provided the participant's family adjusted gross income is not greater than \$75,000. Any Maine account opened on or after January 1, 2008 with an initial contribution of at least \$50 is eligible to receive an initial matching grant in an amount to be determined annually by the Authority, provided the participant's family adjusted gross income is not greater than \$75,000. To receive an initial matching grant, the application must be received by the Authority within twelve months from the date the account is opened. The initial matching grant will be applied based on the income eligibility level in effect in the year in which the account is opened.
- 2) Annual Matching Grant Program.
  - a) From January 1, 2005 through December 31, 2006, any existing Maine account receiving contributions of at least \$50 in a calendar year is eligible to receive an annual matching grant of 50% of all amounts contributed up to a maximum grant for any one beneficiary of \$200, provided the participant's family

adjusted gross income is not greater than \$52,500, which amount shall be adjusted on January 1 annually according to the Consumer Price Index.

b) Beginning January 1, 2007, any existing Maine account receiving contributions of at least \$50 in a calendar year is eligible to receive an annual matching grant of 50% of all amounts contributed up to a maximum grant for any one beneficiary of \$200, provided the participant's family adjusted gross income is not greater than \$75,000. Beginning January 1, 2008, any existing Maine account receiving contributions of at least \$50 in a calendar year is eligible to receive an annual matching grant of 50% of all amounts contributed up to a maximum grant for any one beneficiary in an amount to be determined annually by the Authority, provided the participant's family adjusted gross income is not greater than \$75,000. Beginning January 1, 2011, any existing Maine account receiving contributions of at least \$50 in a calendar year is eligible to receive an annual matching grant in such amount and up to a maximum grant for any one beneficiary as may be determined annually by the Authority, provided the participant's family adjusted gross income is not greater than \$75,000.

c) An application for an annual matching grant must be received by the Authority no later than the close of business December 31 annually (or the first business day thereafter if December 31 is a weekend) for a grant related to funds contributed in the most recently completed calendar year, except that for an annual matching grant related to funds contributed in 2009, the application must be received by the Authority no later than the close of business June 30, 2010.

3) [Repealed effective March 6, 2003]

3A) First Step Matching Grant Program. An account opened within twelve months of the date of birth of a Maine resident child born on or after January 1, 2006 until and including December 31, 2007 is eligible to receive a one-time grant of \$50 upon opening an account. An account opened within twelve months of the date of birth of a Maine resident child born on or after January 1, 2008 is eligible to receive a one-time grant upon opening an account in an amount to be determined annually by the Authority. If eligible, the first step grant may be deemed the initial contribution to an account necessary to receive an initial matching grant.

4) Matching Grant Programs Generally. Unless specifically identified below, the following will apply to each of the matching grant programs.

a. Reserved.

b. Initial matching grants and first step matching grants will be applied by the Authority at least quarterly. Amounts may be applied up to 120 days after receipt of the application following contribution of the funds eligible to receive the matching grant.

c. Only one account per beneficiary is eligible to receive matching funds; however, if otherwise eligible, the beneficiary may receive a first step matching grant and an initial matching grant in the same account. In the event more than one eligible individual opens an account for the same

beneficiary, the first account application received will receive the first step and/or initial matching grant. In the event the account applications are received the same day, an account will be chosen for application of the matching grant at the discretion of the Authority. In the event that two or more program accounts for the same beneficiary are eligible to receive an annual matching grant, the annual matching grant will be made to the account of the first eligible account participant to apply for an annual matching grant. If more than one application for an eligible matching grant is received on the same day, the annual matching grant will be awarded at the discretion of the Authority.

- d. Although allocated to a particular account, matching grant funds will remain the property of the Authority until withdrawn for qualified higher education expenses. Matching grant funds, including earnings on matching grant funds eligible for use should be fully used before other contributions to the account or earnings thereon are used for qualified higher education expenses. To use matching grant funds, the participant must certify that such funds are being used for qualified higher education expenses on such form as required by the Authority.
- e. All matching grant funds will be invested at the discretion of the Authority. The participant has no ability to direct the investment of matching grant funds.
- f. Neither amounts contributed through a matching grant nor earnings on a matching grant are considered when determining eligibility for the next annual matching grant.
- g. In the event a participant is no longer eligible to receive a matching grant because the participant fails to meet the income limitations or the account is no longer a Maine account, all matching grants allocated will remain allocated to that account, but that account will not be eligible to receive future matching grants, unless the participant and the account become eligible again.
- h. The Authority reserves the right at all times to require evidence of eligibility to receive a matching grant and may conduct audits to determine eligibility without obtaining additional consent from the participant after a matching grant has been allocated to an account. In the event a subsequent audit reveals that the matching grant was obtained through the submission of erroneous information, the Authority shall immediately revoke the matching grant. If matching grant funds have been withdrawn prior to the determination that the application or request for withdrawal contained erroneous information, the Authority may deduct the amount so obtained from any funds remaining in the account.
- i. Matching grant funds will be returned to the Authority in the following circumstances:
  - (i) The account is closed;

- (ii) The account is rolled over to another beneficiary;
  - (iii) The account fails to receive at least \$200 in contributions to the account within five years of receipt of an initial matching grant;
  - (iv) The amount remaining in the account after the participant makes a nonqualified withdrawal is less than the amount that had been matched; or
  - (v) The participant makes a lifetime transfer of an account to another participant, other than the beneficiary.
- j. A participant may not request a withdrawal of the amounts allocated to an account by an initial matching grant for twenty-four (24) months after the account to which the matching grant is allocated is open, provided however, if the account is established by and for an individual participating in the Maine Lifelong Learning Accounts (LILA) program established by the Maine Department of Labor, the participant may use the funds allocated to an account by an initial matching grant in twelve (12) months.
  - k. No account or account beneficiary may receive an initial matching grant and an annual matching grant in the same calendar year.
  - l. The Authority shall announce annually the amount of the matching grant in each of the matching grant programs. The Authority may also announce different categories of grant awards within each program, with each category receiving a different grant amount.

B. Fee Rebate or Waiver Program.

- 1) The Authority may rebate to Maine accounts or provide a waiver of an amount approximately equal to the Maine administration fee charged to that account as measured on the last business day of each month for each month of the previous calendar year. Such amount will approximately equal the Maine administration fee. Any fee rebate or waiver will be applied to the account annually. Only accounts with an account balance of \$1000 or more at the end of the calendar year are eligible to receive a fee rebate or waiver.

C. Scholarship Programs. The Authority may establish one or more program accounts to fund scholarships to Maine beneficiaries.

- 1) Access Scholarships.
  - a) Scholarships may be awarded to individuals attending an institution of higher education;
    - (1a) who, are attending on a part-time basis, as established by the policy of the institution of higher education, and file a Free Application for Federal Student Assistance (FAFSA) on or before May 1 (or the first business day after May 1); or
    - (1b) who are attending full-time or on a part-time basis as established by

the policy of the institution of higher education and file a FAFSA after the first business day after May 1;

(2) who are matriculated as undergraduates;

(3) [Repealed effective July 13, 2004]

(4) [Repealed effective June 5, 2006]

(5) who are residents of Maine and have graduated from an approved secondary school (or matriculated at an approved post-secondary school prior to high school graduation) or successfully completed a general education development examination or its equivalent;

(6) who, if filing a FAFSA after May 1, have not previously received a NextGen Access Scholarship or a Maine State Grant award and are entering students at the institution of higher education attended by the students ; and

(7) who have an expected family contribution that is not greater than the applicable expected family contribution that is set annually by the Authority for individuals who file a FAFSA on or before May 1 (or the first business day after May 1) and a lower expected family contribution for individuals who file a FAFSA after the first business day after May 1.

b) Scholarships may be in an amount for full-time students and for part-time students set annually by the Authority, not to exceed the beneficiary's cost of tuition, fees, books, supplies and required equipment at the institution of higher education attended by the beneficiary.

c) Scholarships will be awarded to Maine students attending out-of-State institutions of higher education located in states that provide grants to residents of that state may be used at Maine institutions of higher education.

d) [Repealed effective June 5, 2006]

e) If a recipient of an award withdraws from an institution and the student is entitled to a refund of tuition, fees, or other charges, the institution shall make a repayment of the award directly to the Authority.

2) Special Opportunity Scholarships. The Authority may designate a NextGen Scholarship account to be used to provide scholarships to individuals in Maine's incumbent workforce. These scholarships may be used in a program for training or attaining specialized skills in a program that may lead to a certificate or degree. The Authority may require that an employer provide matching funds. The designation of each situation as eligible will be made by the chief executive officer.

3) Special Occasion Scholarships. The Authority may designate a NextGen Account in an amount to be determined annually by the members of the Authority to be used for scholarships in an amount not to exceed \$1000 per student to be awarded

by the Authority.

4) Enhanced Need Scholarships.

a) Scholarships of up to an amount that is set annually by the Authority may be awarded to individuals with an expected family contribution that is greater than the greatest eligible expected family contribution to receive a Maine State Grant award with priority given to the next lowest expected family contribution as determined by the Authority.

b) Scholarships may be awarded to Maine residents who have graduated from a secondary school or the equivalent who have been accepted into an institution of higher education pursuing a first baccalaureate degree.

c) The award of the scholarship must not cause the recipient's financial assistance to exceed the cost of attendance as published by the institution of higher education the recipient will attend.

d) Scholarships will be awarded based on the priority established in Section 18.C(4)(a) up to an aggregate amount determined by the members of the Authority's board annually.

5) Gold Star Scholarships

a) Eligibility.

(1) Any dependant child of a member of the U.S. armed services killed while deployed in support of combat operations in Iraq or Afghanistan during such period of time as may be determined by the Authority from time to time, as certified by the State of Maine Bureau of Veteran's Services, provided the child is a resident of Maine on the date of the parent's death and under the age of 22;

(2) The family of the eligible child must provide any information the Authority needs to open the Account on or before close of business on such date as may be set by the Authority;

(3) The child must be otherwise eligible to be the Designated Beneficiary of an account;

(4) For purposes of eligibility for a Gold Star Scholarship, the Authority will determine whether the deceased parent was a resident of the State based on the facts of that individual's situation. In making that determination the Authority will consider

(a) Whether the deceased parent lived in Maine prior to active duty in the United States armed services;

(b) Where the deceased parent paid taxes; and

(c) Where the deceased parent maintained a driver's license.

For purposes of (a) and (b) above, the Authority will take into consideration

whether and when the deceased parent was deployed prior to deployment to support combat operations in Afghanistan or Iraq.

b) Amount of Scholarship. A Gold Star scholarship account will be opened by the Authority for each eligible child within 60 days of the Authority learning of the eligibility of the child and receiving the information necessary to open the account. For the initial round of scholarships, the Authority shall allocate an amount of up to \$250,000 to eligible accounts, with the amount awarded to each account based on the age of the child who is the beneficiary of the account, such that each account beneficiary will receive an approximately equal amount on the beneficiary's 18th birthday, assuming the investment return of the principal plus portfolio (or other substantially equivalent guaranteed return or stable value investment option, in the event the Authority no longer offers the principal plus portfolio) as of the day of the investment in making the present value calculation. For subsequent rounds of scholarships, the amount awarded to each eligible account shall be based on the age of the child who is the beneficiary of the account such that the value of the account at the time of the beneficiary's 18th birthday is an amount determined in the discretion of the Authority for that round of scholarships, assuming the foregoing investment return. If the child is 18 years or older, the account will be fully funded at inception.

c) Use of funds. The amounts contributed to each Gold Star Scholarship account, will be available to the beneficiary only upon certification that the funds sought to be withdrawn will be used for qualified higher education expenses and may not be used for amounts in excess of the beneficiary's cost of attendance. The Authority may undertake investigation to assure that the Gold Star Scholarship recipient is enrolled in an institution of higher education.

d) Termination of Accounts. In the event there has been no request for withdrawal of funds from a Gold Star Scholarship account prior to the beneficiary's 29<sup>th</sup> birthday, the account shall be terminated as of the beneficiary's 29<sup>th</sup> birthday. If the beneficiary has withdrawn funds from the account prior to the beneficiary's 29<sup>th</sup> birthday, the beneficiary may continue to withdraw funds until the designated beneficiary's 35<sup>th</sup> birthday, at which time the account will be terminated. In the event the account is terminated while funds remain in the account, all remaining funds shall be returned to the authority to be used for program purposes.

EFFECTIVE DATE: June 13, 2010, Amendment 12; February 5, 2008, Amendment 11; May 12, 2007, Amendment 10; June 5, 2006, Amendment 9; January 14, 2006, Amendment 8; May 21, 2005, Amendment 7; July 13, 2004, Amendment 6; March 2, 2003, Amendment 5; June 4, 2002, Amendment 4; December 3, 2001, Amendment 3; March 4, 2001, Amendment 2; July 1, 1999, Amendment 1; December 9, 1998, original rule.

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

## BASIS STATEMENT

### Amendment 12

The rule amendment acknowledges that for 2009 and 2010, the Hope Scholarship tax credit is also known as the American Opportunity tax credit and qualified higher education expenses include computers and certain related equipment, Internet access, and software. The rule amendment clarifies that a taxpayer identification number may be acceptable in the absence of a social security number, where required. The rule amendment changes the deadline for applications for annual matching grants related to contributions made to accounts in 2009 to June 30, 2010 and permits the Authority to determine not only the maximum amount of an annual matching grant but the basis for determining amounts of annual matching grants, if any, beginning in 2011. Finally, the rule amendment clarifies the method for establishing the amount of Gold Star Scholarships. A public hearing was not held or requested. No comments were received during the public comment period.

The rule amendments are 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, employees and agents of the Authority, who represents a broad and diverse background in business, finance, student financial assistance and government.

Fiscal Impact Note: Amendment 12. The rule amendment will not have any fiscal impact on municipalities or counties.