

CHAPTER 417-F

HIGHER EDUCATION LOAN PURCHASE PROGRAM

§11491. Purpose; program established

The Legislature finds and declares that the provision of a higher education for all residents of this State and for nonresidents attending institutions of higher education within this State who desire a higher education and are properly qualified is important to the welfare and security of this State and consequently is an important public purpose. Many qualified students are deterred by financial considerations from completing their education, with a consequent irreparable loss to the State of talents vital to the welfare of the State and its citizens. Accordingly, there is established the Higher Education Loan Purchase Program to provide greater access to federal loan program loans at a lower cost, enabling all residents of this State as well as nonresidents attending an institution of higher education in this State to attend the institutions of higher education of their choice. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11492. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 455, §2 (NEW).]

1. Authority. "Authority" means the Finance Authority of Maine established in Title 10, section 961 and its successors or assigns.

[PL 2003, c. 455, §2 (NEW).]

2. Bonds. "Bonds" includes bonds, notes, commercial paper, pass-through instruments or any other evidences of indebtedness the authority issues under this chapter.

[PL 2003, c. 455, §2 (NEW).]

3. Borrower. "Borrower" means a person who is obligated as a borrower to make payment of an eligible loan.

[PL 2003, c. 455, §2 (NEW).]

4. Eligible lender. "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.

[PL 2003, c. 455, §2 (NEW).]

5. Eligible loan or loan. "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.

[PL 2003, c. 455, §2 (NEW).]

6. Finance. "Finance" means the origination, acquisition or refinancing of eligible loans, including through loans to eligible lenders.

[PL 2007, c. 520, §3 (AMD).]

7. Program. "Program" means the Higher Education Loan Purchase Program established by this chapter.

[PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW). PL 2007, c. 520, §3 (AMD).

§11493. Higher Education Loan Purchase Program

1. Program. The authority is authorized to carry out the program by issuing bonds for the purpose of financing eligible loans and may use any net earnings on those bonds to administer the program, to pay or further secure the bonds and to make eligible loans.

[PL 2007, c. 520, §4 (AMD).]

2. Authorization.

[PL 2007, c. 520, §5 (RP).]

3. Rules. The authority shall adopt rules to implement and administer the program. All rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW). PL 2007, c. 520, §§4, 5 (AMD).

§11494. Records confidential

1. Confidential information. Records containing any information acquired by the authority or a member, employee or agent of the authority from borrowers whose loans are financed by the authority are confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

[PL 2003, c. 455, §2 (NEW).]

2. Wrongful disclosure prohibited. A member, employee, agent, other representative of the authority or other person may not knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types:

A. Impersonal, statistical or general information; [PL 2003, c. 455, §2 (NEW).]

B. Information to an eligible lender or credit reporting service; [PL 2003, c. 455, §2 (NEW).]

C. Information necessary to comply with the federal Higher Education Act of 1965, Public Law 89-329, 79 Stat. 1219, Title IV, as amended, or 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, or any administrative requirement under either of those Acts or of any other federal or state law or rule or with any agreement pertaining to financial assistance; [PL 2003, c. 455, §2 (NEW).]

D. Information, the disclosure of which the authority determines is necessary or convenient to the sale or transfer of its bonds or loans; [PL 2003, c. 455, §2 (NEW).]

E. Information necessary to ensure collection of any obligation in which the authority has or may have an interest; [PL 2003, c. 455, §2 (NEW).]

F. In any litigation or proceeding in which the authority has appeared, any information obtained from records declared confidential by this section; and [PL 2003, c. 455, §2 (NEW).]

G. Information required pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom confidential information sought pertains or belongs and provided that any

such order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 2003, c. 455, §2 (NEW).]
[PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11495. Bonds

1. Issuance; purpose; payment; authorization; interim receipts or certificates. The authority may issue bonds for the purposes of this chapter, including financing eligible loans, which may include originating eligible loans, including consolidation loans, financing loans to eligible lenders to fund the origination of eligible loans and acquiring existing portfolios of eligible loans from eligible lenders. The bonds of each issue must be authorized by the authority and be payable only from such sources specified in the agreement with bondholders, which may include, without limitation, payments on or with respect to eligible loans from any source, including sale proceeds; reserves established by the authority for the bonds; payments pursuant to agreements with financial institutions, credit unions, educational institutions or any governmental entity; payments pursuant to interest rate exchange agreements; investment earnings from funds or accounts maintained pursuant to a trust agreement or other document; proceeds of refunding bonds; and other fees, charges or revenues of the authority.

Bonds issued by the authority for the purposes of this chapter, the resolution authorizing the issuance of such bonds or any trust agreement securing such bonds may include such provisions, which may be part of the contract with the holders of the bonds of such issue and with any 3rd-party credit or liquidity provider or counterparties to interest rate exchange agreements, as the authority considers necessary or convenient to the security or issuance of the bonds, including without limitation:

A. Specifying the terms of bonds, including the basis upon which interest accrues on those bonds, which may be fixed, variable, auction-based or adjustable; the date from which interest begins to accrue; the time and manner of principal payment upon scheduled maturity or redemption; the denominations and form, which may include coupon, registered, coupon and registered or book entry; and such privileges as to conversion and for the replacement of mutilated, lost or destroyed bonds as the authority may establish; [PL 2003, c. 455, §2 (NEW).]

B. Providing that bonds be payable in lawful money of the United States at a designated place or be payable in another form of currency if the authority so designates and be considered to be negotiable instruments issued under the laws of the State within the meaning and for all purposes of Title 11, Article 3-A, whether or not of the form or character to so qualify under the terms of Title 11, Article 3-A, subject only to the applicable provisions of any trust agreement; [PL 2003, c. 455, §2 (NEW).]

C. Providing that bonds be executed by the manual or facsimile signatures of the officers or designees of the authority; [PL 2003, c. 455, §2 (NEW).]

D. Providing that bonds be sold in the manner and upon the terms determined by the authority at public or private sale, with or without public bidding; [PL 2003, c. 455, §2 (NEW).]

E. Pledging or assigning revenues, contractual rights and other assets to secure the bonds; [PL 2003, c. 455, §2 (NEW).]

F. Establishing loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds and other accounts and their regulation, investment and disposition; [PL 2003, c. 455, §2 (NEW).]

G. Providing for the issuance of additional bonds and refunding bonds; [PL 2003, c. 455, §2 (NEW).]

H. Defining the acts or omissions that constitute a default in the duties of the authority or its obligations to bondholders and providing the rights or remedies of such bondholders in the event of a default; [PL 2003, c. 455, §2 (NEW).]

I. Providing for guarantees, letters of credit, lines of credit, insurance policies, surety bonds, purchase agreements or similar instruments or other security for the benefit of the bondholders; [PL 2003, c. 455, §2 (NEW).]

J. Providing for interest rate or exchange agreements; and [PL 2003, c. 455, §2 (NEW).]

K. Any other matter relating to the bonds that the authority determines appropriate. [PL 2003, c. 455, §2 (NEW).]
[PL 2007, c. 520, §6 (AMD).]

2. Credit not pledged. Bonds issued under this chapter do not constitute or create any debt or liability on behalf of the State, of any political subdivision of the State or the authority, a loan of the credit of the State or a pledge of the faith and credit of the State, of any political subdivision of the State or the authority, but are payable solely from the funds provided for the payment of those bonds. All the bonds issued under this chapter must contain a statement to the effect that the State, any political subdivision of the State or the authority is not obligated to pay the bonds or the interest on the bonds, except from funds provided for the payment of those bonds pursuant to one or more agreements, and that neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged to the payment of the principal of, premium, if any, or the interest on such bonds. The issuance of bonds under this chapter does not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any form of taxation whatever or to make any appropriation for the bonds' payment.
[PL 2003, c. 455, §2 (NEW).]

3. Liability of members. A member or employee of the authority or any person executing the bonds may not be held liable personally on the bonds or subject to any personal liability by reason of the issuance of the bonds.
[PL 2003, c. 455, §2 (NEW).]

4. Interest rate exchange agreements. In connection with, or incidental to, the issuance or carrying of bonds issued under this chapter or carrying of any investment, the authority may enter into agreements with financial institutions or credit unions that the authority determines to be necessary or appropriate to place the obligation or investment of the authority, in whole or in part, on the interest rate, cash flow or other basis as determined by the authority.
[PL 2003, c. 455, §2 (NEW).]

5. Purchasing, refunding or refinancing by authority. The authority may purchase its bonds out of any available funds and may hold, pledge, cancel or resell the bonds subject to and in accordance with agreements with bondholders. The authority may refund or refinance any of its bonds.
[PL 2003, c. 455, §2 (NEW).]

6. Conclusive authorization. All bonds of the authority are conclusively presumed to be fully authorized and issued under the laws of the State, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution or delivery by the authority.
[PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW). PL 2007, c. 520, §6 (AMD).

§11496. Trust agreement; pledge of security

1. Trust agreement. Any bonds issued under this chapter may be secured by a trust agreement by and between any or all of the following: the authority, a financial institution, a credit union and a

corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State.

[PL 2003, c. 455, §2 (NEW).]

2. Pledge of security. This subsection governs a pledge of security pursuant to this chapter.

A. All money received by the authority or received on behalf of the authority by any eligible lender, servicer, trustee, custodian or collection agent, pursuant to any resolution, trust agreement or any other agreement authorized by this chapter and pledged pursuant to a resolution, trust agreement or other agreement for the benefit of the bondholders, whether as proceeds from the sale of bonds or as revenues, is deemed to be trust funds to be held and applied solely as provided in such resolution, trust agreement or other agreement. Subject to the provisions of any such resolution, trust agreement or other agreement, any such money may be invested in such investments and investment agreements as may be approved by resolution of the authority. Any eligible lender, servicer, custodian or collection agent with which such money is deposited is deemed to be holding such money in trust for the benefit of the authority or the bondholders, as specified in the applicable resolution, trust agreement or other agreement and shall apply such money solely for the purposes of this chapter, subject to such restrictions as this chapter, the applicable resolution, trust agreement or other agreement may provide. [PL 2003, c. 455, §2 (NEW).]

B. Any pledge made by the authority of income, revenues or other property is valid and binding from the time the pledge is made. The income, revenue or other property so pledged and received after being pledged by the authority, or received on behalf of the authority by any eligible lender, servicer, trustee, custodian or collection agent, pursuant to any resolution, trust agreement or other agreement that is authorized by this chapter and pledged pursuant to a resolution, trust agreement or other agreement for the benefit of the bondholders, is immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, or such other recipient on behalf of the authority, irrespective of whether such parties have notice of that lien. Notwithstanding any other provision of law, neither possession nor the filing of any financing or continuation statement is necessary with respect to any such income, revenues or other property to establish or evidence the lien of any such pledge, including the creation, perfection, priority or enforcement of such lien, with respect thereto. A resolution authorizing bonds, a trust agreement or other agreement described in this section or any other instrument by which such a pledge is created does not need to be recorded. [PL 2003, c. 455, §2 (NEW).]

[PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11496-A. Capital reserve funds; obligation of the State

1. Capital reserve fund. The authority may create and establish one or more capital reserve funds and may pay into any capital reserve fund any money appropriated and made available by the State for the purposes of any such fund, any proceeds of the sale by the authority of bonds to the extent determined by the authority and any other money available to the authority. The authority may not create or establish any capital reserve fund under this subsection after June 30, 2010.

[PL 2009, c. 83, §2 (AMD).]

2. Application. Money held in any capital reserve fund established pursuant to subsection 1, except as provided in this subsection, must be used solely with respect to bonds, the repayment of which is secured by any such fund, and solely for the payment of principal of the securities, the purchase or redemption of the securities, including any fees or premiums, or the payment of interest on the securities. In addition, if the authority obtains a letter of credit, insurance contract, surety bond or

similar financial undertaking to establish and fund a capital reserve fund under subsection 1, money in that capital reserve fund may be used to pay, as and when due, all reimbursement obligations of the authority established in connection with that letter of credit, insurance contract, surety bond or similar financial undertaking, including, but not limited to, all fees, expenses, indemnities and commissions. Money in excess of the reserve requirement established pursuant to subsection 3 may be transferred to other funds and accounts of the authority.

[PL 2007, c. 665, §1 (NEW).]

3. Capital reserve requirement. For purposes of this section, the capital reserve requirement applicable to a capital reserve fund established pursuant to subsection 1 is:

A. The amount stated in the applicable trust agreement or other document used to establish the capital reserve fund, with respect to any capital reserve fund established before June 30, 2010; or [PL 2009, c. 83, §3 (AMD).]

B. If paragraph A does not apply, the amount of principal of the bonds directly secured by that capital reserve fund becoming due by reason of maturity or a required sinking fund payment, and interest on bonds directly secured by that capital reserve fund, in any succeeding 12-month period. [PL 2007, c. 665, §1 (NEW).]

[PL 2009, c. 83, §3 (AMD).]

4. Withdrawals from capital reserve fund. Money in any capital reserve fund may not be withdrawn at any time in an amount that would reduce the amount of that capital reserve fund to less than the applicable capital reserve requirement under subsection 3, except for the purposes of:

A. Paying the amounts of principal and interest due on bonds directly secured by that capital reserve fund:

(1) At a maturity or sinking fund payment date of those bonds;

(2) On any date on which accelerated principal payment is required pursuant to a credit facility or liquidity facility applicable to those bonds; or

(3) On any interest payment date with respect to those bonds; or [PL 2007, c. 665, §1 (NEW).]

B. Paying any other amount expressly permitted by subsection 2. [PL 2007, c. 665, §1 (NEW).]
[PL 2007, c. 665, §1 (NEW).]

5. Issuance limit. The authority may provide in the applicable trust agreement or other document used to establish a capital reserve fund pursuant to subsection 1 that it may not issue bonds directly secured by the capital reserve requirement under subsection 3 with respect to bonds outstanding and then to be issued that are or will be directly secured by that capital reserve fund that will exceed the amount of that fund at the time of issuance, unless the authority, at the time of issuance of the bonds, deposits in that fund from proceeds of the bonds to be issued, or from other sources, an amount that, together with the amount then in that fund, is not less than the capital reserve requirement. [PL 2007, c. 665, §1 (NEW).]

6. Appropriation. On or before December 1st, annually, the authority shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund established pursuant to subsection 1, in accordance with the trust agreement or other document pursuant to which bonds secured by the capital reserve fund were issued, to the capital reserve requirement under subsection 3. The Governor shall transmit directly to the Legislature that certification and a statement of the amount, if any, remaining to be paid. The amount certified must be appropriated and paid to the authority during that state fiscal year.

[PL 2007, c. 665, §1 (NEW).]

7. Maturity of bonds. Notwithstanding Title 10, section 1044, subsection 5, a series of bonds that is directly secured by a capital reserve fund described in this section must mature no more than 50 years from its issue date.

[PL 2007, c. 665, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 665, §1 (NEW). PL 2009, c. 83, §§2, 3 (AMD).

§11497. Loan transactions

The authority may finance, sell, service, pledge, invest in, hold, trade, accept as collateral or otherwise deal in, acquire or transfer, all on such terms and conditions as the authority may specify, any eligible loan or portfolio of loans or loan pass-through certificate, pledge, including any pledge of loan revenue, loan participation certificate or other loan-backed or loan-related security. Any such transaction may be conducted by public or private offering. In connection with the financing or sale of an eligible loan or of a beneficial interest or participation in an eligible loan or portfolio of eligible loans, or other interest in eligible loans, the authority may enter into one or more agreements providing for the origination, guarantee, financing, purchase, sale, servicing, custody, control and administration of such eligible loan or portfolio of eligible loans. Any such agreement may provide that the authority, any other eligible lender, a financial institution, a credit union or other person may act as trustor, trustee or custodian under the agreement. Any such agreement may provide that, with respect to loans governed by the agreement, title to such eligible loans or portfolio of eligible loans or other interest in eligible loans is deemed to have been transferred on terms and to the extent specified in that agreement and that the effect of a sale of an interest in a loan is the same as a sale of a loan. The authority may issue or cause to be issued certificates or other instruments evidencing the holder's fractional interest in a pool of loans, which interest may be undivided or limited to one or more specific loans. Whether or not the certificates or instruments are of such form or character as to be negotiable instruments under Title 11, Article 3-A, the certificates or instruments are made negotiable instruments within the meaning of and for all purposes of Title 11, Article 3-A, subject only to such registration requirements as the authority may establish. [PL 2007, c. 520, §7 (AMD).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW). PL 2007, c. 520, §7 (AMD).

§11498. Tax exemption

Bonds issued under this chapter constitute a proper public purpose and the securities, their transfer and the income from them, including any profits made on their sale, are at all times exempt from taxation within the State, whether or not those securities, their transfer or the income from them, including any profits made on their sale, are subject to federal taxation. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11499. Bonds as legal investments

Bonds issued by the authority under this chapter are securities in which all public officers and public bodies of the State and its political subdivisions; insurance companies and associations and other persons carrying on an insurance business; trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations; financial institutions; credit unions; building and loan associations; investment companies; executors, administrators, trustees and other fiduciaries; pension, retirement funds and profit-sharing plans; other persons carrying on a banking business; and all other persons may properly and legally invest funds, including capital in their control or belonging to them. These bonds are made securities that may properly and legally be deposited with and received by any state, municipal or public officer or any agency or political

subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11499-A. Taxable bond option

With respect to all or any portion of any issue of any bonds or any series of bonds that the authority may issue in accordance with the limitations and restrictions of this chapter, the authority may covenant, elect and consent that the interest on the bonds be includable under the federal Internal Revenue Code or any subsequent corresponding internal revenue law of the United States in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the federal Internal Revenue Code or any subsequent law. Bonds issued pursuant to this section are not subject to any limitations or restrictions of any law that may limit the authority's power to issue those bonds. The grant of power in this section may not be construed as limiting the inherent power of the State or its agencies under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders under the federal Internal Revenue Code or any subsequent law. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11499-B. Agreement of the State

The State pledges to and agrees with the holders of any bonds issued under this chapter and with those parties who may enter into any contract with the authority pursuant to this chapter that the State will not limit, alter, restrict or impair the rights vested by this chapter in the authority until the bonds issued pursuant to this chapter, together with interest, including interest on any unpaid installment of interest and all costs and expenses in connection with any actions or proceedings by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this chapter precludes that limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds and of those parties entering into contracts with the authority. The authority is authorized to include this pledge and undertaking for the State in those bonds or contracts. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11499-C. Chapter cumulative; no notice required

This chapter may not be construed as a restriction or limitation upon any powers that the authority might otherwise have under any laws of this State and this chapter is cumulative of any such powers. Neither the making of contracts nor the issuance of bonds pursuant to this chapter need comply with the requirements of any other state law applicable to the making of contracts, the issuance of bonds or the construction, acquisition or management of any project undertaken pursuant to this chapter. No proceedings, notice or approval is required for the issuance of any bonds or any instrument as security for those bonds, except as is provided in this chapter or in the federal Internal Revenue Code, if applicable. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

§11499-D. Chapter liberally construed

This chapter being necessary for the welfare of the State and its inhabitants must be liberally construed so as to effect its purposes. [PL 2003, c. 455, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 455, §2 (NEW).

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