

September 9, 1999

Gretchen L. Jones, General Counsel  
Vice President, Governmental and Regulatory Affairs  
Maine Credit Union League  
2 Ledgeview Drive  
Westbrook, Maine 04092

Re: Payment on Shares from Public Units.

Dear Ms. Jones:

You have asked whether receipt of funds by a federal credit union (FCU) from the NextGen College Investing Plan (Plan) qualifies as payment on shares from a public unit or its political subdivision as those terms are defined by the NCUA's regulations. It does not.

You have described the Plan as a tax-advantaged program for Maine consumers to save for the costs of their children's post-secondary education. Earnings on consumer contributions to the Plan are federally tax-deferred and state tax exempt if used to pay for eligible education expenses. You have also indicated that funds held in the Plan are contributed exclusively by consumers and always remain the property of those consumers. You have also indicated that the Finance Authority of Maine and the state treasurer will administer and oversee the Plan. Merrill Lynch will determine where consumer funds are to be invested. You have characterized the state's function as akin to that of trustee.

Within limits, FCUs may receive payments on shares from public units and their political subdivisions. 12 C.F.R. § 701.32. Public unit is defined, in part, as:

[T]he United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof . . . .

12 C.F.R. § 745.1(c). Political subdivision is defined as:

[A]ny subdivision of a public unit . . . or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. . . . Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

12 C.F.R. § 745.1(d). Based on your description of the Plan, we do not believe it satisfies either of the above definitions. The Plan is a pool of funds privately owned and controlled by Maine consumers. The limited roles played by the state treasurer and Finance Authority of Maine in the administration of the Plan are not sufficient to alter the private nature of the funds held in the Plan. Accordingly, the Plan does not qualify as a public unit or a political subdivision of a public unit for purposes of § 701.32.

Sincerely,

Sheila A. Albin  
Associate General Counsel

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