



**Request for Qualification
Office of the State Treasurer and Receiver General**

Address: One Ashburton Place, 12th Floor, Boston, Massachusetts 02108-1608
Telephone #: 617-367-9333, extension 570; **Fax #:** 617-523-1068
Internet Address: <http://www.state.ma.us/treasury>
RFQ File Name/Title: Small Business Banking Partnership (SBBP)
RFQ File Number: **Small Business Banking Partnership Expansion 2012**
RFQ Contact Person: James A. MacDonald

SECTION I. SUMMARY AND PURPOSE

Small businesses are the cornerstone of the Massachusetts economy. According to state data, small businesses and sole proprietorships make up 85% of businesses in our Commonwealth. Experts say that historically two-thirds of the new jobs created in the Commonwealth come from small businesses. Clearly, a strong small business sector is critical to the recovery from the current economic downturn and to Massachusetts's economic future.

Steven Grossman, Treasurer and Receiver General of the Commonwealth of Massachusetts (the "Treasurer"), requests responses from previously qualified Massachusetts banks, interested in continuing to partner with the Office of the State Treasurer and Receiver General (the "Treasury") to promote small business growth by providing creditworthy enterprises with greater access to bank loans. **The initial expansion period of the program will allocate a total of \$100 million for deposits in previously qualified participating banks.** More detailed descriptions of these services are set forth under Section IV. Phase Two Criteria for Evaluation.

The purpose of this Request for Qualification ("RFQ") is to allow the the Treasury to provide additional deposits in the same established account, up to \$5,000,000, to qualified bank(s). **Banks submitting proposals must certify that they continue to meet minimum criteria detailed in Section III. Phase One Criteria - Requirements, and submit mandatory documents as described in Attachment A - Mandatory Attachment Checklist.** In order to support the program and to ensure ongoing opportunities for interested banks to respond to this RFQ, the Treasury intends to maintain this RFQ as an open and rolling RFQ until **December 31, 2014.**

SECTION II. GENERAL INFORMATION

The Treasury is committed to ensuring an open, fair and competitive process for selecting all goods and services for the Treasury. As part of this policy, the Treasury has developed this RFQ to provide a transparent and fair process to establish a list of pre-qualified banks for this

program. All terms, conditions, requirements and procedures included in this RFQ must be met for a response to be qualified as responsive. A response that fails to meet any material term, condition, requirement or procedure of this RFQ may be deemed unresponsive and disqualified. The Treasury reserves the right to waive or permit cure of nonmaterial errors or omissions. **The Treasury reserves the right to modify, amend or cancel the terms of the RFQ at any time.** Unless otherwise specified, all communications, responses and documentation regarding this RFQ must be in English, all measurements must be provided in feet, inches and pounds and all cost proposals or figures in U.S. Currency. All responses must be submitted in accordance with the specific terms of this RFQ. All responses must be presented using the same numbering and ordering sequence used in this RFQ or as otherwise specified. No electronic responses may be submitted in response to this RFQ.

A. SPECIFICATIONS

1. **Reasonable Accommodation.** Bidders with disabilities that seek reasonable accommodation, which may include the receipt of RFQ information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case-by-case basis. A bidder requesting accommodation may be required to confirm his or her request in writing to the contact person. The request must state that it is based on a disability and specifically identify the accommodation desired. Although entities of the Commonwealth will make all reasonable efforts to accommodate the requests of bidders with disabilities, they reserve the right to reject unreasonable requests.
2. **Public Records.** All responses and information submitted in response to this RFQ are subject to the Massachusetts Public Records Law, Massachusetts General Laws (M.G.L.), Chapter 66, Section 10, and Chapter 4, Section 7, Subsection Twenty-Sixth. Any statements in submitted responses that are inconsistent with these statutes will be disregarded.

Bidders are advised that all proposals are deemed sealed, and therefore their contents will be treated as confidential and will not be disclosed to competing bidders until the evaluation process has been completed.

3. **COMMBUYS Market Center.** COMMBUYS is the official source of information for this RFR and is publicly accessible at no charge at www.commbuys.com. Information contained in this document and in COMMBUYS, including file attachments, and information contained in the related Bid Questions and Answers (Q&A), are all components of the RFR, as referenced in COMMBUYS, and are incorporated into the RFR and any resulting contract.

Bidders are solely responsible for obtaining all information distributed for this RFR via COMMBUYS. RFR Q&A supports Bidder submission of written questions associated with a RFR and publication of official answers.

It is each Bidder's responsibility to check COMMBUYS for:

- Any amendments, addenda or modifications to this RFR, and
- Any RFR Q&A records related to this RFR.

The Commonwealth accepts no responsibility and will provide no accommodation to Bidders who submit a response based on an out-of-date RFR or on information received from a source other than COMMBUYS.

Bidders may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of the RFR, its specifications, or terms and conditions, which change the intent of this RFR are prohibited and may disqualify a response.

- 4. COMMBUYS Subscription.** Bidders may elect to obtain a free COMMBUYS Seller subscription which provides value-added features, including automated email notification associated with postings and modifications to COMMBUYS records. All Bidders submitting a response to this RFR agree that, if awarded a contract: (1) they will maintain an active seller account in COMMBUYS; (2) they will, when directed to do so by the procuring entity, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) they will comply with all requests by the procuring entity to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; (4) Bidder understands and acknowledges that all references to the Comm-PASS website or related requirements throughout this RFR, shall be superseded by comparable requirements pertaining to the COMMBUYS website; and (6) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

The COMMBUYS system introduces new terminology, which bidders must be familiar with in order to conduct business with the Commonwealth. To view this terminology and to learn more about the COMMBUYS system, please visit the COMMBUYS Resource Center.

- 5. Conflict of Interest.** Prior to award of any contract, the vendor shall certify in writing to the procuring agency that no relationship exists between the vendor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the vendor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Treasury may waive this provision, in writing, if these activities of the vendor will not be adverse to the interests of the Commonwealth. No official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this project shall, prior to the completion of the project, voluntarily acquire any personal interest, either directly or indirectly, in this contract or proposed contract.

The bidder shall provide assurance that it presently has no interest and shall not acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder. The bidder shall also provide assurances that no person having any such known interests shall be employed during the performance of this contract.

6. **Best Value Selection and Negotiation.** The Procurement Management Team (“PMT”) and/or the Treasury may select the response(s) that demonstrates the “Best Value” overall, including proposed alternatives that will achieve the goals of the Treasury. The PMT and/or the Treasury and the selected bidder or contractor may negotiate a change in any element of contract performance or cost identified in the original RFQ or the selected bidder's or contractor's response, which results in lower costs or in a more cost-effective or better value than was presented in the selected bidder's or contractor's original response.
7. **Electronic Communication/Update of Bidder's/Contractor's Contact Information.** It is the responsibility of the prospective bidder and awarded contractor to keep current the e-mail address of the bidder's contact person and prospective contract manager, if awarded a contract, and to monitor that e-mail inbox for communications from the PMT, including requests for clarification. The PMT and the Commonwealth assume no responsibility if a prospective bidder's/awarded contractor's designated e-mail address is not current or if technical problems, including those with the prospective bidder's/awarded contractor's computer, network or Internet service provider (ISP) cause e-mail communications sent to/from the prospective bidder/awarded contractor and the PMT to be lost or rejected by any means including e-mail or spam filtering.
8. **Minimum Bid Duration.** Bidders responses/bids made in response to this RFQ must remain in effect for 120 days from the date of bid submission and thereafter until either the bidder withdraws the response in writing, a MOU is executed or the procurement is cancelled, whichever occurs first.
9. **Restriction on the Use of the Commonwealth Seal.** Bidders and contractors are not allowed to display the Commonwealth of Massachusetts Seal in their bid package or subsequent marketing materials if they are awarded a contract because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law.
10. **Prohibition against Selling or Distributing Information.** Any bidder awarded a contract under this RFQ is prohibited from selling or distributing any information collected or derived from the contract and/or procurement process, including lists of participating or eligible Treasury employee names, telephone numbers or addresses.

The PMT reserves the right to modify, amend or cancel the terms of this RFQ at any time.

B. CALENDAR AND RESPONSE REQUIREMENTS

1. **Calendar.** This RFQ will be an open and rolling RFQ. The following is the tentative time schedule. All dates are subject to modification by the Treasury with notice.

Issuance of RFQ	January 19, 2012
Question Deadline	Entire RFQ Period
RFQ Response Rolling Deadlines	Responses will be reviewed upon receipt until December 31, 2014
Qualification Notification	On a rolling basis, beginning January 23, 2012
MOU Negotiations/Execution	Beginning immediately after notification of qualification

When responding to this RFQ, banks should take note of the following provisions:

- The Treasury reserves the right to request additional information from bidders responding to this request.
- The Treasury reserves the right to reject any and all responses to this request, to waive any minor informality in a response, to request clarification of information from any bidder responding, and to effect any agreement deemed by the Treasury to be in the Commonwealth's best interest with one or more of the bidders responding. The Treasury reserves the right to amend or cancel this RFQ at any time. All responses and their contents will become the sole property of the Commonwealth upon receipt by it.
- The Treasury will not reimburse any bidder for any costs associated with the preparation or submittal of any response to this request or for any travel and/or per diem incurred in any presentation of such responses.
- The written response shall be limited to replies totaling no more than five pages. Any response over five pages, excluding the requested attachments and exhibits, will not be considered. The five pages must be single spaced, single sided, submitted in 12-point font, with at least three-quarter inch margins left and right and one-inch margins top and bottom. Additionally, the response must be printed on three-hole punched paper.

Questions concerning the RFQ may be submitted to the RFQ Contact Person in writing (NO PHONE CALLS):

James A. MacDonald, First Deputy Treasurer
Office of the State Treasurer and Receiver General
One Ashburton Place, 12th Floor
Boston, Massachusetts 02108-1608
jmacdonald@tre.state.ma.us
Fax: 617-523-1068

2. **Instructions for Submission of Responses.** The original, plus two (2) hard paper copies, a CD of the bidders responses and attachments must be delivered in the same sealed package. The written response shall be limited to replies totaling no more than five pages. A facsimile response will not qualify as a “submission” for deadline purposes in advance of or in lieu of a hard copy submission. Responses and attachments should be delivered to:

Office of the State Treasurer
ATTN: Small Business Banking Partnership
One Ashburton Place, 12th Floor
Boston, Massachusetts 02108-1608

3. **Disqualification of Proposals.**
- a. **Nonresponsive Proposals:** Proposals, which are not responsive, or which fail to comply with mandatory requirements of the RFQ, shall be deemed nonresponsive. Nonresponsive proposals shall include, but not be limited to those, which fail to address or meet any mandatory item, and those submitted in insufficient number or in incorrect format.
 - b. **Collusion:** Collusion by two or more bidders agreeing to act in a manner intended to avoid or frustrate fair and open competition is prohibited and shall be grounds for rejection or disqualification of a proposal or termination of the contract.
 - c. **Debarred Bidders or Subcontractors:** A bidder, who is currently subject to any Commonwealth or federal debarment order or determination, shall not be considered for evaluation by the PMT. If a bidder’s proposal is dependent upon the services of a named subcontractor and the disqualification of this named subcontractor would materially alter the proposal, then that proposal shall be deemed unresponsive if the named subcontractor is found to be debarred. Proposals that indicate that subcontractors will be used but do not rely on any specifically named subcontractor shall not be deemed unresponsive if the disqualification of a proposed subcontractor will not materially alter the proposal.
4. **Evaluation Process.** The RFQ Evaluation Process will be conducted in two phases. The purpose of the Phase One Review is to eliminate any bids that are

nonresponsive to the requirements of the RFQ. Bids that are deemed to be qualified, based on the Phase One Review, will be submitted for Phase Two Review. The PMT will make a recommendation to the Treasurer, who will then accept or reject the recommendation. The Treasurer will make the final selection decision.

Phase One Review: Bidders responses will be reviewed based on listed criteria, completeness of response, including mandatory attachments and compliance to submission criteria (refer to Section III. Phase One Requirements). Bids that do not comply with these components will be rejected and will not proceed to Phase Two Review.

Phase Two Review: Qualified bids, based on the Phase One Review, will be considered for additional review in Phase Two, including but not limited to the following areas:

- a. General experience and stability of the bank.
- b. Philosophy/process of the bank.
- c. Quality, stability, depth and experience of personnel.
- d. Marketing program.

The PMT will apply criteria detailed in Section IV. The PMT will assign a rating of either "Acceptable", or "Unacceptable" to all qualifying proposals. Any proposal receiving a rating of "Unacceptable" in any applicable category will not be considered further.

C. COMPONENTS OF PROCUREMENT

1. **Duration and Renewal Options.** The Treasurer intends to renegotiate the existing Memorandum of Understanding (“MOU”) with the selected bidder(s) for the services solicited in this RFQ. The Treasurer may, at his option, extend the MOU for an additional period, under the same or better terms and conditions as negotiated.

2. **Contract Guidelines.**

- Only the Treasury may contract under RFQ
- Option to allow other Departments/political subdivisions to contract under RFQ
- Statewide Contract
- Multi-Office of the State Treasurer and Receiver General User Contract
- Pre-Qualification List

3. **Contract Performance and Business Specifications.**

- a. **Evaluation and Selection of Contractor:** The Treasury shall have sole authority to evaluate and make the final selection of bidder(s) for qualification.
- b. **Change in Terms:** The Treasury reserves the right to modify the specifications identified in the RFQ at any time prior to the closing date. The Treasury reserves the right to negotiate with the selected bidder(s) as to any element of cost or performance, including without limitation, elements identified in the RFQ and/or the selected bidder's response in order to achieve the best value for the Commonwealth.
- c. **Termination or Suspension:** The Treasury may cancel the contract, with or without cause, upon **no notice** to the vendor. The contractor may not terminate the contract or performance thereunder except upon a minimum of one hundred and eighty- (180) day's prior written notice to the Treasury. Other terms regarding contract termination are subject to negotiation between the selected bidder(s) and the Treasury.
- d. **Rejection of Proposals:** The Treasury reserves the right to reject any and all proposals submitted under this solicitation.
- e. **Contract Expansion:** If additional funds become available during the contract duration period, the Treasury reserves the right to increase the maximum obligation to some or all contracts executed as a result of this RFQ or to execute contracts with contractors not funded in the initial selection process, subject to available funding, satisfactory contract performance, and service or commodity need.
- f. **Executive Order 526:** Banks must certify that they are in compliance, per Executive Order 526, with all applicable federal and state laws, rules and regulations governing fair labor and employment practices; and committing to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

SECTION III. PHASE ONE REQUIREMENTS

Compliance with all criteria listed below is mandatory in order for a bid to be accepted for further review. Lack of compliance will automatically disqualify the bidder.

Phase One of the bidder's response should demonstrate compliance with each of the conditions qualifying an institution to propose as outlined below. The bidder's response to each component should be "yes" or "no" for each mandatory requirement.

PHASE ONE CRITERIA - REQUIREMENTS

Minimum Criteria/Requirements. Banks submitting Proposals must meet the following minimum criteria to be considered further:

- a. The bank must be on the list of banks approved to do business with the Commonwealth, as maintained by the Commonwealth Division of Banks.
- b. The bank must be currently rated at least “satisfactory” under Commonwealth and federal Community Reinvestment Act (“CRA”).
- c. The bank must be adequately capitalized. "Adequately Capitalized" shall mean, consistent with 209 CMR 47.00 et seq., if the bank meets the definition of an adequately capitalized institution as defined under the prompt corrective action provisions of the Federal Deposit Insurance Act, 12 U.S.C. § 1831(o), and the Federal Deposit Insurance Corporation's Capital Adequacy Regulations, 12 CFR § 325.103.
- d. Has previously been approved and has a current MOU for the Small Business Banking Partnership on file with the Treasury.

SECTION IV. PHASE TWO CRITERIA FOR EVALUATION

Phase II requires that the bidder explain how it has met the criteria set forth in the Scope of Services as outlined in the previous RFQ and current MOU. The bidder’s response must enable the Treasury to review and evaluate the bidder’s experiences and capabilities for providing the needed services for the Treasury.

The PMT will assign a rating of either "Acceptable" or "Unacceptable" to all qualifying responses in each of the categories listed below. Any response receiving a rating of "Unacceptable" in any applicable category will not be qualified and returned to the bank for clarification. If a bank is determined to be acceptable, then the bank will be considered “qualified” to participate in this program. The Treasury intends to proceed with banks assigned an acceptable rating initially to negotiate MOUs to advance the program.

SCOPE OF SERVICES

1. **General Experience of the Bank with the Small Business Banking Partnership.**
 - a. Experiences in providing banking services to small businesses under this program.
 - b. Describe a few successes and challenges.

- c. Documentation showing small business loans have been written that are at least 80% of the initial deposit made by Treasury.

2. Quality, Stability, Depth and Experience of Personnel.

- a. Has there been any change in professional staff providing small business services?
- b. Stability of the bank's professional base, as measured by personnel turnover.

3. Philosophy/Process.

- a. Philosophy and lending characteristics that are consistent with the overall structural objectives of the program.
- b. Defined philosophy and consistent process implementation, as measured by loans, diversity of loans among location and ethnic groups, loan review process.

- 4. Rates.** Banks will be expected to offer interest rates to the Commonwealth no lower than the lesser of the prevailing three month LIBOR (London InterBank Offered Rate) as listed by Bloomberg or the Massachusetts Municipal Depository Trust (“MMDT”) at the time the MOU is signed. Rates will be adjusted quarterly and interest earnings will be transferred to the Treasury at the time the rate is adjusted.

- 5. Deposits.** Deposits must be fully secured by insurance or collateralized. Deposits in excess of insurance coverage by the Federal Deposit Insurance Corporation (FDIC) must be collateralized with a perfected pledge of eligible collateral, as defined below, prior to funding of the certificates of deposit. Eligible collateral must be pledged in an amount equal to 102% of the amount of the certificate of deposit that exceeds the FDIC insurance.

Eligible Collateral:

- U.S. Treasury Bills
- U.S. Treasury Notes
- U.S. Treasury Bonds
- Federal National Mortgage Association (Fannie Mae) Notes and Bonds, senior obligations only
- Federal National Mortgage Association (Fannie Mae) mortgage backed securities
- Federal Home Loan Mortgage Corporation (Freddie Mac) Notes and Bonds, senior obligations only

- Federal Home Loan Mortgage Corporation (Freddie Mac) mortgage backed securities
- Federal Home Loan Bank (FHLB) Notes and Bonds, senior obligations only
- Federal Home Loan Bank (FHLB) Letter of Credit
- General Obligations of the Commonwealth of Massachusetts or its political subdivisions with an AA rating or higher
- Government National Mortgage Association (Ginnie Mae) securities

A Collateral Agreement that is approved by the State Treasurer's Office must be (1) signed in multiple original counterpart copies by each financial institution and the State Treasurer's Office, (2) approved by the financial institution's board of directors, (3) filed and maintained in the official records of the financial institution, and (4) filed with the State Treasurer's Office. Sufficient collateral to cover total state deposits in excess of the FDIC insured amount must be pledged and held in safekeeping by a custodian that is approved by and under the control of the State Treasurer's Office no later than 11:00 AM EST on settlement date in order for a deposit to be funded on that day.

Membership by the financial institution in the Depositors Insurance Fund (DIF) or the Share Insurance Fund (SIF) will be accepted by the State Treasurer's Office as alternative security for the certificates of deposit, provided that the financial institution submits proof of membership in the DIF or the SIF, and coverage of the financial institution's certificate of deposit, to the State Treasurer's Office prior to 11:00 AM EST on the settlement date.

Deposits made to any one institution will be no greater than an additional \$5 million under this program and participating qualified banks may accept less than \$5 million. The additional money will be added to the current account used for the SBPP.

6. **Marketing Program.** Banks agree to publicize, market and promote the program to small businesses in their market area. Please provide the marketing plan you established including screen prints of your web site, press releases or other promotional material you have used.
7. **Disclosure and Reporting.** A “qualifying loan” for purposes of disclosure under this program will be a small business loan determined to have resulted from the deposit of state funds per the MOU. The Treasury’s intent was to minimize the regulatory requirements and paperwork associated with this initiative.

To verify the success of the program at your bank and to show that the objective of increased small business lending was achieved, please summarize the following since the inception of the program:

- a. The number and dollar volume of the small business loans from the time the MOU was signed to the present. Also, data on the loans' share as compared to the bank's overall loan portfolio.
 - b. Certify that reports to the Treasury were made on a quarterly basis showing that qualifying loans were made during that time period to small businesses.
 - c. Public Disclosure on the bank's web site or used other ways to show aggregate number and dollar amount of qualifying loans.
 - d. Voluntarily compiled on a semi-annual basis an analysis of the jobs created as a result of their qualifying loans.
8. **Acceptance of State Funds.** In accepting additional state funds, banks must commit to using them to increase their loans to creditworthy small businesses as defined in M.G.L c. 23A, § 57. Alternatively, banks may define a commercial loan of \$1,000,000 or less as a small business loan.

Terms and conditions of the loans will be set by the banks and will not be subject to review by the Treasury.

Banks will make determination of creditworthiness according to their own guidelines and procedures. The Treasury does not seek to encourage, nor will it provide guarantees for loans with excessive risk.

9. **Selection of Providers.** Qualification determinations will be made by the Treasurer and Receiver General of the Commonwealth of Massachusetts, who may accept the recommendations of the PMT to place an additional deposit of up to \$5,000,000. Note that any bank requesting funds under the Small Business Banking Partnership Expansion, must have reached the \$5,000,000 maximum deposit allowed under the Small Business Banking Partnership. In addition, the bank must have used 80% of the initial deposit of \$5,000,000 at the time of submitting a response to this RFQ.

SECTION V. MANAGEMENT AGREEMENT

Qualified banks interested in receiving additional deposits, in the Treasury's Small Business Banking Partnership Expansion will be required to renegotiate the existing MOU that will set the terms of its agreement with the Treasury.

SECTION VI. Contact Sheet

COMMONWEALTH OF MASSACHUSETTS

Small Business Banking Partnership

BANK NAME: _____

ADDRESS: _____

TELEPHONE #: _____

FACSIMILE #: _____

E-MAIL ADDRESS: _____

CLIENT CONTACT: _____

SIGNED: _____

Name (print): _____

Title: _____

Date: _____

Attachment A

MANDATORY ATTACHMENT CHECKLIST

(Complete and Attach to the Cover Letter)

Bank Name: _____

Mandatory items as detailed in Section III:

(Check appropriate box to ensure item is completed and submitted)

- | | | |
|----|------------------|--|
| a. | Cover Letter* | Yes <input type="checkbox"/> (signed) |
| b. | Minimum Criteria | Yes <input type="checkbox"/> |
| c. | Questionnaire | Yes <input type="checkbox"/> (completed) |

***Cover letter must be:**

- Signed by at least one individual who is authorized to bind the bank contractually.

***Cover letter must include:**

- The bank name.
- The bank address.
- The bank telephone/fax number/e-mail address.
- The client contact.
- The title or position that the signer of the cover letter holds in the bank.

Attachment B

GENERAL LAWS OF MASSACHUSETTS

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE III. LAWS RELATING TO STATE OFFICERS

CHAPTER 29. STATE FINANCE

Chapter 29: Section 34. Deposit of public monies

[Text of section as amended by 2006, 139, Sec. 38 effective July 1, 2006. See 2006, 139, Sec. 132.]

Section 34. (a) State officers, departments, institutions and other agencies may deposit a portion of the public monies in their possession in national banks, federal savings banks, and federal savings and loan associations, lawfully doing business within the commonwealth, and in trust companies, savings banks and cooperative banks chartered under the laws of the commonwealth, as shall be designated by the state treasurer from a list of depositories prepared by him and approved at least once in 3 months by the governor and council. The state treasurer shall not include on the list a state-chartered bank having a descriptive rating of (d) or (e) under section 14 of chapter 167 or any federally insured depository institution having an assigned rating of (C) or (D) under section 807(b)(2) of the Community Reinvestment Act of 1977, 12 U.S.C. 2901 et seq.; but the aggregate balance on deposit in any one such depository institution by the state treasurer, by a state officer of funds advanced under section 23, by a state officer, department, institution or other agency of fees or other money as referred to in section 27 of chapter 30 shall not exceed, as of the close of the business each business day, 55 per cent of the depository institution's paid up capital, surplus, capital notes, and undivided profits in accordance with the records of the depository institution. The state treasurer may provide that the depository institution may receive additional deposits not to exceed 85 per cent of its paid up capital, surplus, capital notes, and undivided profits, if the additional deposits are subject to collateral approved by the state treasurer. Deposits of the proceeds from the sale of bonds and notes by the state treasurer shall not be subject to the 55 per cent limit for a period of 7 days from the date of the deposit or other credit to the account of the state treasurer. All certificates of deposit of the depository institution, whether issued directly to the state treasurer or purchased on the open market, shall be considered deposits within the meaning of this section. For the purpose of paying the principal or interest due on any bond, note or other obligation of the commonwealth, which is payable in the city of New York or the city of Chicago, the state treasurer may keep on deposit in those cities in a national bank, federal savings bank, federal savings and loan association, trust company, savings bank, savings and loan association, building and loan association, cooperative bank, industrial bank or other depository institution chartered and regulated under the laws of the federal government or the states of New York and Illinois, the deposits of which are insured by the Federal Deposit Insurance Corporation, approved for the purpose by the governor and council, a sum not exceeding in the aggregate \$25,000; provided, that for a period of 7 days before the date of the payment, the amount may be increased by a sum sufficient to cover the same.

(b) A state treasurer who knowingly makes a deposit in violation of subsection (a) shall be guilty of misconduct and mal-administration in his office within the meaning of the constitution, any other officer who knowingly makes a deposit in violation of subsection (a) shall be guilty of misconduct and mal-administration in his office, and a depository institution knowingly receiving a deposit in violation of subsection (a) shall be disqualified from receiving such monies for the period of 3 years from the date of the deposit.

(c) All interest received on any deposits under this section shall be paid to the commonwealth.

Chapter 29: Section 38. Investment of commonwealth funds; loans

Section 38. With the exception of funds used in connection with a deferred compensation program for state employees, and funds of the state employees' retirement system or the teachers' retirement system, all funds over which the commonwealth has exclusive control shall be invested by the state treasurer with the approval of the governor and council as follows:

(a) In the public funds of the United States or of the District of Columbia or of this commonwealth, or in the legally authorized bonds of any other New England state, or of any other state of the United States, other than a territory or dependency thereof, which has not less than seven hundred and fifty thousand inhabitants as established by the last national census, and which has not within the twenty years prior to the making of such investment defaulted in the payment of any part of either principal or interest of any legal debt.

(b) In the bonds or notes of a county, city or town of this commonwealth.

(c) In the bonds or notes of an incorporated district in this commonwealth whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes.

(d) In the bonds or notes of any city of Maine, New Hampshire, Vermont, Rhode Island or Connecticut, whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes; or of any county or town of said states whose net indebtedness does not exceed three per cent of such valuation; or of any incorporated water district of said states which has within its limits more than ten thousand inhabitants, and whose bonds or notes are a direct obligation on all the taxable property of such district, and whose net indebtedness does not exceed three per cent of such valuation; provided, that there is not included within the limits of such water district, either wholly or in part, any city or town the bonds or notes of which are not a legal investment.

(e) In the legally authorized bonds for municipal purposes of any city of any state of the United States, other than one of the New England states, whose bonds are eligible under subdivision (a) of this section; provided, that such city was incorporated as such at least twenty-five years prior to the date of such investment, and has at such date not less than thirty thousand nor more than one hundred thousand inhabitants, as established by the last national census preceding such date, and that its net indebtedness does not exceed five per cent of the valuation of the taxable property therein, to be ascertained by the last preceding valuation of property therein for the assessment of taxes.

(f) In the legally authorized bonds for municipal purposes of any city of any state of the United States, other than one of the New England states, whose bonds are eligible under subdivision (a) of this section; provided, that such city was incorporated as such at least twenty-five years prior to the date of such investment, and has at such date more than one hundred thousand inhabitants, established in the same manner as is provided in subdivision (e) of this section, and that its net indebtedness does not exceed seven per cent of the valuation of the taxable property therein, to be ascertained as provided in said subdivision (e).

(g) In subdivisions (d), (e) and (f) of this section the words "net indebtedness" mean the indebtedness of a county, city, town or district, omitting debts created for supplying the inhabitants with water and debts created in anticipation of taxes to be paid within one year, and deducting the amount of sinking funds available for the payment of the indebtedness included.

(h) The state treasurer, with the approval of the attorney general and of the governor and council, may consent to any refunding plan relative to securities held in funds over which the commonwealth has exclusive control and may do such incidental acts as may be necessary in connection with such refunding.

(i) In the promissory notes of an industrial, commercial, finance, banking, railroad or public utility corporation conducting business in this state when such notes mature not later than one year subsequent to their respective dates of issue; provided, however, that, at the time of any such investment, (1) such corporation has capital stock, premium thereon and surplus of at least twenty-five million dollars, (2) the securities of such corporation are eligible for investment by life insurance companies authorized to do business in the commonwealth, and (3) all outstanding debt obligations of such corporation which have any rating from two or more standard rating services are rated within the three highest classifications established by at least two such rating services, or, if none of the outstanding debt obligations of such corporation has any rating from two such rating services, that such outstanding debt obligations are rated at the time of investment within the three highest classifications established by at least two such rating services, or the notes of such corporation at the time of investment are rated prime by the National Credit Office; provided, further, that the commonwealth's investment in the notes of any one company shall not exceed twenty per cent of the capital and surplus of such company.

(j) In bankers acceptances and bills of exchange eligible for purchase by federal reserve banks and which have been accepted by a bank, a trust company, a private banker or an investment company, or by a banking corporation which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system.

(k) In repurchase agreements secured by United States Treasury obligations or United States Treasury obligations bearing a maturity date not later than one year.

[Subdivisions (l) to (o) of the first paragraph added by 2006, 139, Sec. 40 effective July 1, 2006. See 2006, 139, Sec. 132.]

(l) In shares of beneficial interest issued by money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, operated in accordance with section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating from at least 1 nationally recognized statistical rating organization. The purchase price of shares of beneficial interest purchased pursuant to this section shall not include a commission charged by the money market funds.

(m) In any other security that qualifies for inclusion in a fund operated in accordance with section 270.2a-7 of Title 17 of the Code of Federal Regulations, as amended.

(n) In investment agreements or guaranteed investment contracts rated, or with a financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time the agreement or contract is entered into, in 1 of the 2 highest rating classifications by a nationally recognized rating service if the agreements or contracts do not exceed 1 year in duration.

(o) In investment agreements with a corporation whose principal business is to enter into the agreements if: the corporation and the investment agreements of the corporation are each rated in 1 of the 2 highest rating classifications by a nationally-recognized rating service; the commonwealth has an option to terminate each agreement in the event that the rating is downgraded below the 2 highest rating classifications; and the agreements or contracts do not exceed 1 year in duration.

The state treasurer may purchase with a portion of the State Lottery Fund, as established and defined in section thirty-five of chapter ten, from insurance companies lawfully doing business in the commonwealth, annuities payable to the commonwealth to be used for payment of lottery prizes. Such annuities shall not be subject to the provisions of section one hundred and eighteen of chapter one hundred and seventy-five limiting payment of annuities to individuals, and shall, to the extent that such annuities are payable to the commonwealth, be exempt from taxation under section twenty of chapter sixty-three. Contracts for the purchase of such annuities shall be subject to competitive bidding and shall be awarded to the lowest responsible bidder. All such bids and contracts shall be public records.

The state treasurer may also purchase with a portion of the said State Lottery Fund, bonds, notes, shares in combined investment funds or other interest bearing obligations in accordance with the standards set forth in subdivision (3) of section twenty-three of chapter thirty-two.

Funds in connection with a deferred compensation program for state employees may be invested by the treasurer pursuant to section sixty-four; provided, however, that such funds, whether or not invested, shall remain in the sole control of the treasurer, and may be used by the commonwealth at any time and for any purpose.

The treasurer may lend securities purchased from funds authorized by this section, provided that at the time of the execution of the loan at least one hundred per cent of the market value of the security lent shall be secured by cash or securities guaranteed by the United States government or any agency of the United States government. At all times during the term of each such loan the collateral shall be equal to not less than ninety-five per cent of the full market value of the security and said collateral shall not be more than one hundred thousand dollars less than the full market value of the security.

Chapter 29: Section 38A. Investment funds; establishment; sale of participation units

Section 38A. Notwithstanding any contrary provision of law, the state treasurer may establish, with the advice of the investment advisory council, one or more combined investment funds for the purpose of investing funds of the commonwealth, trust funds, and funds under the custody of agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth; provided, that the state treasurer shall adopt appropriate accounting procedures from which the exact interest of such funds so combined for investment can be determined. The state treasurer may adopt such rules and regulations as may be necessary to administer the provisions of this act.

The state treasurer is authorized to sell to all agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth, participation units in any such combined investment fund. Such participation units issued by the treasurer are made legal investments for all the funds under the custody of such agencies, authorities, commissions, boards, political subdivisions and other public units within the commonwealth. With the advice of the investment advisory council, the state treasurer shall adopt rules and regulations as may be necessary to administer the provisions of this section.

The state treasurer may invest in only those instruments permitted within this chapter or chapter thirty-two.