FINANCE AUTHORITY OF MAINE

FAME Action Plan to Address Recommended Management Action
Related to Seed Capital Tax Credit Program

FAME has created and begun to implement the following action plan to address the recommendations of OPEGA found on pages 28-29 of the report:

RECOMMENDATION: OPEGA RECOMMENDS THAT FAME IMPROVE THEIR PROCESSES FOR PROGRAM DATA COLLECTION, ANALYSIS AND REPORTING.

OPEGA has identified the following areas for attention and improvement by FAME:

1. Data collection: FAME should collect consistent and complete program data from participating businesses by:

a. Creating specific guidance for businesses about what information and figures should be included and excluded for each data point required in the annual report.

1) For employment and payroll, the guidance will specify which job-types (full-time, part-time, seasonal, or contractors) are to be included or excluded. Other new items to be reported will include: salary ranges, skill level, and benefits information.

2) For additional investment amounts, guidance will specify which funding sources should be included or excluded.

b. Gathering baseline data on employment, payroll, revenue and any other relevant metrics at the time of investment for each business, and

c. Establishing and implementing effective enforcement mechanisms to ensure businesses submit the required annual reports.

FAME Action Plan: FAME will improve our process for program data collection by:

A. Revising the annual reporting form sent to participating businesses to provide better definitions and/or guidance on what specific terms mean so that all respondents are utilizing common understanding in reporting data and so that data is more consistent and reliable. Examples include: separating employment reporting categories into permanent employees and independent contractors (each on a FTE basis) and defining what is meant by "private" and "public" investment. A copy of the form used for the 2020 reporting period (sent out in 2021) is attached as **Exhibit A.** Additional changes will be considered for the 2021 reporting period form (to be sent out in early 1st quarter 2022) based upon a study of the information received from participating companies on 2020 form, and any additional specific suggestions or requirements generated by the legislative process.

B. Revising annual reporting form sent to participating businesses to ask for more specific information, including information required by PL 2019, ch. 616, Pt. LL, §11, as well as information designed to provide more insight into potential other economic benefits from its operations in Maine. See **Exhibit A** for changes incorporated for 2020 reporting period (sent out in 2021). Additional changes will be considered for the 2021 reporting period form (to be sent out in early 1st quarter 2022) based upon a study of the information received from participating companies on 2020 form, and any additional specific suggestions or requirements generated by the legislative process.

C. Revising the database used to store reporting data to include original (baseline) employment and other data already collected on the program applications, as well as new data points added to 2020 reporting form, to enable identification and tracking of trends and inconsistencies in reported data. A copy of the revised database form is attached as **Exhibit B**. Additional changes will be considered for recording the 2021 reporting period data, including any additional specific suggestions or requirements generated by the legislative process.

D. Revising program Application to ensure that baseline metrics collected match (in both data points and definitions) with data later collected through annual reporting process. To be completed by 12/31/2021.

E. Adding personnel resources to conduct outreach to participating businesses to solicit more timely and complete responses to annual reporting requirements; to answer questions or clarify any issues that businesses raise in the reporting process; and to inquire about any apparent errors or inconsistencies in reported data. To date, we have added modest resources to this effort, but plan on adding additional resources to the program by 12/31/2021 to handle the additional efforts at data collection and analysis, as well as to conduct more direct program oversight.

F. Ensuring that annual reporting requests from FAME to participating businesses are sent out earlier in the year, and ensure that confirmation of compliance with the requirement is included in the administrative steps before approval of new credit applications. This will make the existing penalties for non-responsiveness (ceasing to issue further credits) a more effective enforcement mechanism. We intend to send out 2021 reporting forms no later than March 31, 2022 (with April 30, 2022 due date) and have instructed our program personnel that confirmation of the reporting requirements (after the annual due date for the prior year) must be validated before approval of new credit applications.

G. Adding provision to program rule allowing for monetary penalties on businesses that fail to timely comply with annual reporting requirements in order to further incentivize compliance. This step will not be completed until the next rulemaking process is completed. FAME intends to promulgate amended program rules once legislative reviews are completed so as to include any additional changes at the same time.

H. Creating the ability for businesses to submit annual reporting information electronically in order to make it easier for them to comply. We hope to have this feature implemented by the time the 2021 reporting period forms are sent out, no later than March 31, 2022.

2. <u>Data analysis</u>: FAME should ensure that data analysis provides reliable results and information by:

a. Removing from the analysis those businesses that have qualified for MSCTC, but have not yet received eligible investment, so as to ensure that only participating businesses are included in the analysis and reported results; and

b. Analyzing changes (up or down) in reported business outcomes to identify changes to business outcomes following their first MSCTC investment. For example, rather than relying on a business to identify whether jobs were "created" or "retained," a more reliable approach would be for FAME to analyze changes to total employment.

<u>FAME Action Plan: FAME will improve our process for program data analysis by:</u>

A. Separating data received from participating businesses through annual reporting, segregating that data from businesses that have not yet obtained program investments from data received from those businesses that have obtained investments. Official legislative reporting on the program will only include data from the latter category, while data from the former will only be used to monitor continued eligibility for potential future investments. This separation is already implemented by notation in a field on our program information database.

B. Improving FAME's program database to allow for more internal reports to be generated to facilitate increased data analysis and reporting. This project is targeted for completion by 12/31/2022; until then, the currently updated database format will be used to perform analysis and reporting.

C. Adding personnel resources to conduct data analysis and outreach to businesses to follow-up on any apparent errors or inconsistencies in reported data. To date, we have added modest resources for this effort, but plan on adding additional resources to the program by 12/31/2021 in order to address the additional efforts at data collection and analysis, as well as to provide more direct program oversight.

D. Revising annual business reporting form so as to track a participating company's then total employees rather than employees created or retained over each year, which has resulted in confusion and inconsistent data. This has been completed, as shown on **Exhibit A**.

3. <u>Data reporting</u>: FAME will consistently comply with the annual reporting requirements to the Legislature as set out in 10 MRSA Section 1100-T and follow-up to ensure that the Legislature has the information it needs to provide effective oversight of the program.

<u>FAME Action Plan: FAME will improve our process for program data reporting by:</u>

FAME has undertaken a comprehensive review of all of its legislative reporting obligations across its various business and education finance programs. That data has been used to create an updated annual reporting database, complete with report title, statutory cite, required contents, recipients, due date, and assigned staff responsible. Safeguards involving multiple staff and calendaring have been implemented to ensure timely compliance. The program report referenced by OPEGA is included on this list.

FINANCE AUTHORITY OF MAINE

FAME Responses to OPEGA Recommendations for Improving the Seed Capital Tax Credit Program

OPEGA Recommendation (p. 26): **OPEGA recommends that the Legislature, in consultation with FAME, DECD, and other stakeholders as appropriate, re-evaluate and clearly define program goals and what "success" looks like in terms of outcomes. Thereafter, the program design should be adjusted, through amendments to statute or agency rules as appropriate, to ensure the program requirements align with the goals.**

General FAME Comment: In general, it is FAME's view that there is one overarching goal of the MSCTC program: to increase private investment in Maine companies. The related but important sub-goals are essentially the public benefits that are likely to flow from such increased investment, namely economic benefits like increased jobs, increased economic activity (supply chain purchasing, etc.), and additional state and local revenues from income, payroll, or property taxes. It should be understood that not every investment will result in one or more of these benefits. Some investments will be made in failing businesses which do not provide long-term public benefits (but which may generate significant benefits before failing), and some will be made in businesses that generate one rather than all of the possible public benefits. We recognize that it is important to measure the extent to which the program is contributing to the achievement of these goals, but would caution that the credits are likely only one factor in the investment decision, or in the success of the business post-investment, and thus cannot be definitively shown to have caused the results.

1. **Increasing investment. Consider the source of investment sought and whether investment is intended to be used for a particular purpose. In particular:**

> **a. Whether a time limit should be placed on when the investor may apply for the credit to allow for better defining of program costs after year-end and to exclude those investments where the passage of time suggests that the credit may not have been a driving factor in the decision to invest:**
>
> FAME comment: Most investors submit their applications in a timely fashion; however, it is not uncommon for a few investors to know about, and be counting on, the credit when they invest, but delay filing an application. Often, it is when they are completing their tax filing work the following year that they realize they have not filed an application. This does not necessarily mean that the credit was not an important factor in their decision to invest. That said, it seems reasonable to impose a deadline for such

applications. We would suggest October 15 of the year following the investment, to correspond with the extended tax return deadline.

b. Whether business founders, significant minority owners, and employees should be permitted to receive the credit or whether the intention is to focus on investors who are not already associated with the business:

FAME comment: The current statute and rule focus on how much management control the applicant exercises over the company he or she invests in, rather than an arbitrary relationship or percentage test. We think this is the right approach. The credit is designed to compensate for investment risk faced by so-called "passive investors", those who are not, through control, able to reduce the risk of their investment. An arbitrary ownership interest (below 50%) or relationship test would not be as effective as our current program rules and would exclude people who have some involvement with a company, but still face the same investment risk as someone who has no affiliation with the company. These are often important sources of investments for a company. Some frequent investors in our program are asked to serve as advisors to participating companies and offer valuable perspective. Larger investors like venture capital funds often obtain a seat on the board of directors as a condition of their investment. However, one board seat out of many, and/or a minority ownership interest from their investment, doesn't mean their investment risk is not extremely high and out of their control. We understand how a founder or employee receiving a tax credit for investing in "their own" company might raise concerns; however, neither founders nor employees currently qualify for the program if they exercise control—either by being in management and owning stock, or by owning 50% or more of the company. When such investors have qualified for the credit, it is because their company involvement is (perhaps by dilution, if a founder) at a point where they are unable to exert sufficient control over the company to reduce the risk of their investment.

c. Whether it is a goal of the program to attract out-of-state investment and, if so, how opportunities to achieve this can be maximized:

FAME comment: We believe it is, as evidenced by the addition by the Legislature in 2011 of refundable credits for private venture capital fund (VCF) investments to the program. The program could be expanded to include other out-of-state investors and attract additional investment from this source, as well; however, that would require the credits to be fully refundable to all investors, which would potentially add to the fiscal impact of the program and might cause additional burdens on Maine Revenue Services to process refunds rather than the current, mostly state tax offset model. It is our sense that the program is not significantly weakened by the current absence of refundable credits for other (non-VCF) out-of-state investors, but other stakeholders may have differing views. There is good sense in making a distinction between VCF investors (often from out-of-state) and other out-of-state investors in our view. Not only do VCFs typically invest in greater amounts, they also bring more than investment--they bring significant value in the form of business and industry experience/expertise, as well as relationships that provide additional financing and business development contacts.

d. Whether it is a goal of the program to leverage later, non-MSCTC private equity investment and/or public or quasi-public investment through meeting matching funding requirements for programs such as MTI, MVF, or federal research and development grants:

FAME comment: It is our assessment that investments are synergistic, meaning that they tend to directly or indirectly lead to other investments. Many equity-raising transactions involve a "lead investor" and several others that follow that lead and invest alongside. In addition, the more equity a company has, the more comfortable later investors are that the company will have sufficient funds to be successful. Indeed, the earliest investments tend to be the riskiest and, likely, need the most incentive. Thus, if program credits are awarded for very early-stage investments, later investments are likely to have been facilitated by the earlier program investments. Many other funding sources also have matching requirements. If program investments provide the match for these other funds, these other funds represent additional investment that would not have been made without the credit having been issued. While there can be no question this is beneficial if the other funds are private or federal funds, we understand that there may be a concern if the other funds come from state-supported sources like MTI or MVF. Ultimately, we believe it is not uncommon (and often is necessary) for companies to avail themselves of more than one state-supported incentive to achieve success. Accordingly, we would suggest that all contemporary or later investments from other sources count as leverage assisted by the Seed Capital Tax Credit Program, with appropriate disclosures being made so other public investments can be quantified.

2. Job creation: Consider whether there are particular types of jobs that MSCTC is expected to help create, such as jobs in particular sectors, at specific skill levels, or above an identified salary (some states have found ways to design their programs to be more likely to meet employment goals (see page 22)):

FAME comment: As mentioned previously, job creation and retention is but one goal of the program. There are other economic benefits derived from business activity by participating companies. The current program design focuses on promoting those jobs (and other economic benefits) generated by selected types of businesses, without specific focus on the types of jobs maintained by those businesses. Some eligible companies may tend to employ higher-skilled workers, like those companies in the advanced technology sector. Other eligible companies may tend to employ lowe- skill/lower-wage jobs, like some in the export/tourism or manufacturing sectors. We do not believe the program is only valuable for those companies with high-skill/high-wage jobs. There may be other reasons to stimulate investment in types of companies that don't necessarily require higher level/skilled workers, like supporting legacy industries or bringing capital into the state. Moreover, participating companies are likely to have jobs with a mix of skill levels, regardless of their sector. Accordingly, it is FAME's view that it would be difficult to make a "one-size-fits-all" program limit built around job types or salary levels if the program is to retain its current industry focus. However, the Legislature could certainly choose to narrow the program to only those industries with higher-skilled, higher-salaried jobs, and require a minimum average salary as an eligibility requirement.

3. Municipal taxes: Consider whether increasing municipal taxes is a core goal of the program and if so, how it is expected to achieve this (possible approaches are discussed on page 22):

<u>FAME comment</u>: FAME views municipal tax revenue as an ancillary, not primary or core, benefit associated with many economic development incentives, including this program. However, such revenue can be measured and reported to help quantify the economic benefits that this program has helped to achieve. We would reiterate that it is our view that economic benefits are generated by many factors, and it is likely that the credits from this program are only one of potentially several factors that cause business success and positive economic outcomes.

4. Promoting innovation: Consider whether promoting innovation is a program goal and if so, how this can be meaningfully assessed as part of the business application process. This could be addressed through more focused targeting of eligible businesses and sectors. Possible approaches are discussed in Appendix E:

<u>FAME comment</u>: FAME views promoting innovation as one of many potential ancillary benefits of this program; however, it is likely difficult, if not impossible, to be effectively measured. Not every innovation results in a patent. This program has attempted to promote innovation by incentivizing some types of businesses that are innately innovative, like high-tech companies, but innovation can and does occur in all types of businesses. If the Legislature determines that this is a core goal, the program's eligible industries would need to be more restrictive, excluding some currently eligible industries that may have value and achieve other economic benefits.

<u>Other FAME thoughts:</u>

FAME feels strongly that the Maine Seed Capital Tax Credit Program is an important and valuable economic development tool. We also believe in accountability. The program can and should involve both. Ultimately, from a policy perspective, the Legislature must determine what the program goals are and what the best indicators of success will be. There is definitely room for improvement in program design, but we would caution against over-reliance on "but for" tests or on being too prescriptive in eligibility and business reporting requirements. Part of the program’s success, in our view, is its simplicity and dependability, and the attractiveness of it to participating businesses and investors.

MAINE SEED CAPITAL TAX CREDIT PROGRAM
ANNUAL REPORT FOR CALENDAR YEAR 2020
(**Due September 30, 2021**)

1.	Is the business still in operation as of 12/31/20? If not, what date did the business cease operations and what was the likely cause of that event?	
2A	What is the total amount of **private** (non-governmental) investment received in calendar year 2020 from investors who have applied or will apply for a Maine Seed Capital Tax Credit?	Total Seed Capital Investments 2020 ($)
2B	What **other** (non-Seed Capital participating) investments or grants did the company receive in calendar year 2020 from **private** (non-governmental) sources?	Total other private investments 2020 ($)
2C	What **other** loans, investments or grants did the company receive in calendar year 2020 from **public** (federal or state government) sources? (eg., MTI, MVF, DECD, USDA)	Name of Source Type of funds Amount ($)
2D	To the best of your knowledge, what percentage of the investments qualifying for Seed Capital Tax Credits in 2020 (answer to 2A) would have been made without the credit being available?	
3A	What are the total number of permanent employees (do not include temporary or seasonal employees unless hired on a recurring basis) employees (on an FTE basis) of the business as of December 31, 2020? {*Please list true, paid company employees only, not unpaid principals or advisors, independent contractors or employees of related companies.*}	
3B	How many independent contractors did the company have under contract on 12/31/2020 (on a FTE basis)? (include temporary and seasonal if hired on recurring basis)	

4A 4B	Of the current employees listed in the answer to 3A above, how many of those employees are Maine residents or physically work in Maine, including remote workers ("Maine employees")? *(List number by location of where work performed)* Of the independent contractors listed in the answer to 3B above, how many of those contractors are Maine residents or physically work in Maine, including remote workers ("Maine contractors")? *(List number by location of where work performed)*	Number Location in Maine (city or town) Number Location in Maine (city or town)
5A 5B	Of those Maine employees listed in the answer to Question 4A, how many would not have been created or retained if investments qualifying under the Maine Seed Capital Tax Credit program had not been received by the business, either in 2020 or prior years? Of those Maine contractors listed in the answer to Question 4B, how many would not have been created or retained if investments qualifying under the Maine Seed Capital Tax Credit program had not been received by the business, either in 2020 or prior years?	
6A 6B	What was the company's total annual payroll for all Maine employees (those listed in answer to 4A only) for the calendar year ending 12/31/2020? What was the company's annual payroll for those Maine jobs that would not have been retained or created in absence of the business' receipt of investments that qualified for the Maine Seed Capital Tax Credit (those listed in answer to 5A only), either in 2020 or prior years?	$ $

7A 7B	What was the company's total annual expenses for all Maine contractors (those listed in answer to 4B only) for the calendar year ending 12/31/2020? What was the company's annual expenses for those Maine contractors that would not have been retained or created in absence of the business' receipt of investments that qualified for the Maine Seed Capital Tax Credit (those listed in answer to 5B only), either in 2020 or prior years?	$ $
8	What was the business' total gross revenue from Maine-based operations in the calendar year ending 12/31/20?	$
9	What was the business' total gross revenue from operations based in locations outside of Maine in the calendar year ending 12/31/20?	$
10	What is the total estimated spending by the company in Maine in calendar year 2020, including, without limitation, payroll, state or local taxes, raw materials and supplies, and other goods and services.	$

Certification: the undersigned hereby certifies that the information provided is true, accurate and complete.

BY:_________________________
Name:
Title:
Email:
Date:

For questions, please contact Michelle MacKenzie by telephone at (207) 620-3541 or by email at mmackenzie@famemaine.com.

Submit form via email at mmackenzie@famemaine.com, or via fax at (207) 213-2641.

COMPANY	Still in Operation? (if not, why?)	Seed Eligible Private Investments	Other Investments (Private)	Other Investments (Public) (Sources?)	% Of Seed Investment Not Dependent on Credit	Original # Employees (Application)	Total Employees	Employees Dependent on Credit	Independent Contractors	Contractors Dependent on Credit	Maine Employees	Maine Employee Locations	Maine Contractors	Maine Contractor Locations	Total Maine Payroll	Maine Payroll Dependent on Credit	Total Maine Contractor Expenses	Maine Contractor Expenses -- Credit Dependent	Maine Revenue	Non-Maine Revenue	In-State Spending	TOTAL INVESTMENTS (MSCTCP)	TOTAL CREDITS (MSCTCP)	YEAR OF LAST INVESTMENT	ANNUAL REPORTS REQUIRED	APPROVAL DATE	RE-APPROVAL Date	NOTES

2020 Report Rec'd
COMPANY
Still in Operation? (if not, why?)
Seed Eligible Private Investments
Other Investments (Private)
Other Investments (Public) (Sources?)
% Of Seed Investment Not Dependent on Credit
Original # Employees (Application)
Total Employees
Employees Dependent on Credit
Independent Contractors
Contractors Dependent on Credit
Maine Employees
Maine Employee Locations
Maine Contractors
Maine Contractor Locations
Total Maine Payroll
Maine Payroll Dependent on Credit
Total Maine Contractor Expenses
Maine Contractor Expenses --Credit Dependent
Maine Revenue
Non-Maine Revenue
In-State Spending
TOTAL INVESTMENTS (MSCTCP)
TOTAL CREDITS (MSCTCP)
YEAR OF LAST INVESTMENT
ANNUAL REPORTS REQUIRED
APPROVAL DATE
RE-APPROVAL Date
NOTES