Federal Agencies Issue Guidance on Youth Savings Programs

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Federal banking agencies have issued guidance encouraging financial institutions to develop and implement programs to expand the financial capability of youth and build opportunities for financial inclusion for more families. The guidance also provides answers to frequently asked questions ("FAQs") that typically arise with regard to the establishment of these programs, such as whether there are restrictions on opening accounts for minors, and whether branch applications are needed when partnering with schools to offer student accounts.

A summary of several of the key FAQs is set forth below.

Accounts for Minors

An issue that financial institutions face when deciding whether to offer youth accounts is whether the institution is legally permitted to offer such accounts. The guidance confirms that there is no federal law that prohibits minors from opening savings accounts, and the issue of having a deposit account relationship with a minor is governed by state contract law.

The guidance states that in general, minors are not considered to have the mental capacity to enter into a contract, including opening a deposit account. As a result, a contract with a minor is potentially "voidable" by the minor. This is generally the law in New York State, where a minor is considered a person who has not yet attained the age of 18. Some states specifically allow a minor to open an enforceable contract for a deposit account, but New York is not one of those states as of yet.

Community Reinvestment Act Consideration

The guidance states that banks and savings associations may receive Community Reinvestment Act ("CRA") consideration if they provide youth savings and financial education programs targeted primarily to low- and moderate-income students. The guidance directs financial institutions to consult the interagency CRA guidance (available at http://www.ffiec.gov/cra/pdf/2010-4903.pdf) for examples of how financial institutions can determine whether community services are provided to low- and moderate-income individuals.

Branch Applications

The guidance describes the agency-specific conditions for when a financial institution's youth savings program would not require a branch application.

FDIC-Supervised Institutions

FDIC regulations permit a state nonmember bank to provide banking services in schools without filing a branch application or obtaining prior approval from the FDIC if:

- Such service or services are provided on school premises, or a facility used by the school;
- Such service or services are provided at the discretion of the school;
- The principal purpose of the program is financial education; and
- The program is conducted in a manner that is consistent with safe and sound banking practices and complies with applicable law.

The guidance cautions that for state savings associations, the applicable state law and appropriate state supervisory authority determine if a branch application will be necessary.

FRB-Supervised Institutions

The Federal Reserve Board has not yet issued policies or regulations regarding branch applications and youth savings programs.

NCUA-Supervised Institutions

While the Federal Credit Union Act and the NCUA regulations do not provide for any branch application requirements for federal credit unions, the Federal Credit Union Act does provide that federal credit unions were organized for, among other things, promoting thrift among members. This provision is the basis for youth savings programs administered by federal credit unions. State-chartered credit unions should look to applicable state law and the appropriate state supervisory authority to determine branch application requirements.

OCC-Supervised Institutions

The OCC permits national banks to set up school-based youth savings programs, on the premises of, or at a facility used by, a school without submitting a branch application prior to setting up such program if the following conditions are met:

- The bank does not establish and operate the school premises or facility on which the youth savings program is conducted;
- Bank employees work at the site only to participate in the program;
- No services are provided to the general public; and
- The principal purpose of the youth savings program is educational.

If these conditions are not met, the bank must submit a branch application to the OCC.

Federal savings associations are permitted to set up a school-based financial education program without submitting a branch application as long as the program meets the following criteria:

- The program is conducted on school premises and is not open to the general public;
- Association employees would not be on the school's premises once the program is commenced;
- The association does not establish an office that is owned, leased, or operated by the association in connection with the program;
- The services provided on the school's premises are limited;
- Student accounts would not be established until applications and funds are received and accepted at a home or branch office of the association; and
- The association would not be liable for any theft, loss, or embezzlement until funds are deposited and accepted at a home or branch office of the association.

If these criteria are not met, the federal savings association must submit a branch application to the OCC.

Customer Identification Program Issues

With regard to Customer Identification Program ("CIP") issues that arise when minors or their representatives open accounts, the guidance provides the following:

- When a minor opens a savings account without the involvement of a parent or guardian (i.e., students opening accounts with a financial institution employee who has traveled to a school for such reason), the minor is the financial institution's customer. However, when a parent, guardian, or third party opens an account on behalf of a minor, that person who opens the account is the financial institution's customer.
- A financial institution must establish, maintain, and implement a written CIP that is appropriate for its size and business. This CIP must include risk-based procedures for (1) verifying the identity of any customer seeking to open an account, (2) maintaining records of the information used to verify the customer's identity, (3) determining whether the customer appears on any lists of known or suspected terrorists or terrorist organizations issued by a government agency, and (4) providing customers with adequate notice that the financial institution is requesting information to verify their identities.
- Under the CIP rule, a financial institution must obtain the customer's name, date of birth, address, and identification number prior to opening an account. The identification number for a U.S. person is that person's taxpayer identification number. For a non-U.S. person, the identification number shall be one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other unexpired government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
- Financial institutions may use reasonable documentary or non-documentary methods to verify a minor's identity. The financial institution must ensure that its written procedures designate when documents, non-documentary methods, or both will be used. Furthermore, the financial institution must include procedures that set forth the actual documentation that the financial institution will use to verify a minor's identity, as well as the non-documentary methods that will be used. An example of documentation to be used is a student identification card. Non-documentary methods may include contacting a customer or independently verifying the minor's identity through the comparison of information provided by the minor with information obtained from a consumer reporting agency, public database or other source (i.e., verifying the minor's identity in an in-school program by having a teacher confirm the identity).

Additional Information

The complete guidance can be found online at https://www.fdic.gov/news/news/financial/2015/fil15011a.pdf. The guidance provides a list of comprehensive resources from various agencies that are relevant to the establishment of youth savings programs.

If you have any questions regarding this guidance or youth savings programs in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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