

Federal Law Changed to Allow Financial Institutions to Offer Savings Promotion Giveaways

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Recent federal legislation paves the way for financial institutions in New York State to start offering promotions on savings accounts beginning September 23, 2015.

In September of last year, Governor Cuomo signed legislation allowing banks and credit unions in New York State to offer savings promotion giveaways whereby depositors can be eligible to win prizes based on deposits made into a qualifying savings account. However, federal banking laws in effect at the time of the legislation generally prohibited banks from engaging in certain lottery-related activities, thus preventing banks from taking advantage of the authority granted under the new state law. That issue has now been resolved with the federal enactment of the American Savings Promotion Act, which amends federal banking laws to allow banks to offer “savings promotion raffles,” including savings promotion giveaways authorized under New York State law beginning on September 23, 2015.

Generally under New York law, a prize giveaway or sweepstakes where an entrant must buy something or provide some form of consideration in order to be eligible to win is deemed illegal. This has prevented financial institutions from engaging in promotions where winning a prize is based solely on making deposits in a savings account. The change in New York law enacted last year created an exception for promotions that encourage depositors to build and maintain savings deposits.

There are several requirements in order for a prize giveaway to be eligible for this exception:

1. The interest rate associated with the savings account having the promotion is not reduced when compared with other comparable savings accounts offered by the financial institution;
2. The financial institution cannot charge a fee for entering the promotion;
3. All service fees charged on the savings account having the promotion must be comparable with all service fees charged in connection with other comparable savings accounts offered by the institution;
4. Each entry in the savings promotion must have an equal chance of being drawn as a winner;
5. Participants in the savings promotion cannot be required to be present to win; and
6. The promotion may not otherwise be prohibited by federal law or regulation (which up until passage of the recent federal legislation had made this exception unavailable for banks).

A savings promotion that meets these requirements will not be deemed an illegal lottery under New York law. Please note, however, that if the total announced value of the prizes exceeds \$5,000, certain requirements will apply to the promotion under New York General Business Law Section 369-e. That section requires, among other things, advance registration of the giveaway with the New York Secretary of State.

Also, please note that any prize giveaways may be subject to IRS information reporting requirements depending on the amount involved. Prizes with a value of \$600 or more are generally reported on IRS Form 1099-MISC.

The exception created by the change in New York law applies to financial institutions chartered under New York law, as well as national banks, federal savings banks, federal savings and loan associations, and federal credit unions. The change in federal law removes the federal roadblock for all these types of institutions to start offering savings promotion giveaways when the New York law takes effect on September 23, 2015.

Please note that this advisory is a general overview of the new legislation and is not intended as a comprehensive explanation of all aspects of the legislation or as formal legal advice. If you have any questions regarding the legislation, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com.

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