

SUBJECT: Special Accounts for Hardships

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INTRODUCTION

This release applies to all credit unions, state and federal. It suggests guidelines for accommodating certain requests for special accounts, based upon an opinion by the LaFollette & Sinykin law firm.

EXECUTIVE SUMMARY

Credit unions are sometimes asked to open a special account for the benefit of a member who has suffered a serious hardship. One approach is to title the account in the name of one or more individuals who volunteer to take responsibility for the account. Another approach is to open the account in the name of an unincorporated association that qualifies for membership in the credit union.

The release provides details such as membership eligibility requirements, TIN reporting, and the documentation requirements for both titling options. It is not the role of the credit union to provide legal advice to the member as to these or other alternatives. Also, the credit union must not permit the credit union, an officer, director, or employee to control the special account.

GENERAL GUIDELINES

For the purpose of this release, a “special account” is an account that is to be left open for a short period of time (generally less than six months) and is established for the benefit of an individual that has suffered a tragedy such as a death, a serious illness, or loss of his/her home or business.

The credit union should make it clear to the individual establishing the special account (the “contributor”) that it will not be responsible for any actions the credit union takes in accordance with the terms of the account agreement. Nor will it be responsible for how the individual who receives the benefits of the account (the “recipient”) uses the funds. Moreover, the credit union should make sure that all checks deposited to the special account are made payable to the name as it appears on the account or to the account number.

The biggest issue the credit union faces with these special accounts is how to title the account. For most special accounts there are two alternatives that should be considered.

TITLE IN NAME OF VOLUNTEER

A special account could be titled in the name of an individual who volunteers to be responsible for the account including the tax reporting. The volunteer could be a contributor, recipient or some other third party providing the volunteer is eligible for membership in the credit union. There could be more than one volunteer and a joint account could be established using either the “and” or “or” form depending on the volunteers’ wishes.

Where minors are involved the contributor(s) may be comfortable naming the minor’s parent as the volunteer (or if no parent exists, the guardian of the estate of the minor). It is not recommended that a special account be titled directly in the name of the minor. Ultimately, the decision as to the appropriate volunteer should not be made by the credit union—and the volunteer should not be an officer, director or employee of the credit union.

Under this alternative, the volunteer’s social security number should be used for tax reporting purposes. If the volunteer is unwilling to be responsible for the tax consequences of the account, a non-dividend bearing account could be established.

TITLE IN NAME OF UNINCORPORATED ASSOCIATION

If certain membership hurdles can be overcome, a special account could be titled in the name of an unincorporated association. An unincorporated association is an organization of individuals who have joined together to pursue a common objective. Often special accounts opened in this manner have names like the “John Smith Memorial Fund” or the “Smith Family Fund.”

Before the account can be opened, however, the credit union, if state-chartered, must determine that a majority of the members of the unincorporated association are eligible for membership in the credit union, Wis. Stats. § 186.02(2)(d), and if federally chartered, must determine that all of the members of the association are eligible for membership in the credit union. The Wisconsin Attorney General has opined that such organizations must have sufficient legal structure to qualify for membership in a credit union, such as articles of incorporation and bylaws. 65 Op. Att’y Gen. 77 (1976). Furthermore, the credit union should have the unincorporated association provide a resolution that names the credit union as its depository and that names the representatives authorized to transact business for the association.

Under this second alternative, the unincorporated association’s federal employer identification number should be used for tax reporting purposes.

OTHER APPROACHES REQUIRE LEGAL ADVICE

Remember that the above alternatives assume that the special account will be small in size or will be open for no more than six months. In those instances where significant funds will be raised or such an account will be open for a longer period of time, the credit union should encourage the contributor to seek legal advice on other available options. For example, the account could be held by a trust that is created to meet the contributor’s needs. Or a Uniform Transfers to Minors Account could be opened if the recipient is a minor. Under no circumstances, however, should the representatives of the credit union provide the contributor with advice if the contributor does not accept either of the two standard options. Such advice could be considered legal advice and Wisconsin law prohibits an individual from practicing law without a license. Wis. Stats. § 757.30.

Originally, legal counsel for The League considered developing a simple trust agreement to be made available to credit unions for special accounts. After lengthy consideration, counsel decided this is not a very good alternative for a number of reasons:

1. It would be difficult to develop a trust agreement that would be appropriate in most situations. In fact, most special accounts are too small to merit a trust agreement.
2. A credit union takes on too much responsibility (and liability) if it provides its members with a trust agreement.

Finally, the options outlined in this release are more practical and appropriate for the vast majority of situations.



League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union’s attorney.

Legal Affairs Department

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