

SPECIAL ADOPTION

BANKING

(a)

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Governmental Unit Deposit Protection

Special Adopted Amendment and Concurrent

Proposed Readoption of Special Adopted

Amendment: N.J.A.C. 3:34-1.2

Special Adopted Amendment and Concurrent Proposed Readoption of Special Adopted Amendment Authorized March 13, 2019 by Marlene Caride, Commissioner, Department of Banking and Insurance.

Filed: March 14, 2019, as R.2019 d.031.

Authority: N.J.S.A. 17:1-8.1, 17:1-15, 17:9-41 et seq., and 54:4-66.12 (P.L. 2018, c. 11, § 7).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2019-043.

Effective Date: March 14, 2019.

Expiration Date: December 25, 2019.

Submit comments by June 14, 2019, to:

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In accordance with N.J.S.A. 54:4-66.12, the Department of Banking and Insurance has adopted the following amendment regarding governmental unit deposit protection. This amendment became effective on March 14, 2019, upon acceptance for filing by the Office of Administrative Law. The specially adopted amendment shall be effective for a period not to exceed 360 days from the effective date of P.L. 2018, c. 11 (July 3, 2018), that is, June 28, 2019.

Concurrently, the provisions of this amendment is being proposed for readoption in accordance with normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The filing of the concurrent notice of readoption extends the expiration date of the specially adopted amendment an additional 180 days, that is, until December 25, 2019. The adoption of the concurrent proposed readoption of the specially adopted amendment will become effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)), if filed on or before December 25, 2019.

The agency special adoption and concurrent proposal follows:

Summary

On May 4, 2018, Governor Murphy signed P.L. 2018, c. 11 (the Act), which authorizes a local governmental unit (defined as a municipality, county, or school district) to establish charitable funds and related spillover funds, governed by the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq. (GUDPA). GUDPA establishes the collateral requirements for depositories that accept deposits of New Jersey governmental units. The charitable funds established under the Act are to be used for specified public purposes. Ninety percent of a charitable donation is creditable toward a donor's property tax obligation. An annual property tax credit cap and individual credit-eligible donation cap shall be established each year for each local unit charitable fund.

If all, or a portion, of a creditable contribution to a charitable fund cannot be credited towards a donor's property tax obligation because the annual property tax credit cap or individual credit-eligible donation cap

have been reached and the local unit does not have another available charitable fund, the local unit has the option of creating a spillover fund into which the balance of the creditable donation would be deposited. The spillover fund proceeds would then be credited toward consecutive annual property tax bills in future years until exhausted; except that donations in a spillover fund shall not be credited against more than five consecutive annual property tax bills issued for a specific parcel.

Among other things, the Act amended the definitions at N.J.S.A. 17:9-41 of "governmental unit" and "public funds." The Department of Banking and Insurance (Department) is now proposing the following amendment to the rules at N.J.A.C. 3:34, which implement GUDPA, to conform to the amended definitions of GUDPA.

Specifically, at N.J.A.C. 3:34-1.2, the Department proposes to amend the definition of "governmental unit" to include charitable funds and spillover funds established pursuant to the Act. Additionally, the Department proposes to amend the definition of "public funds" to include moneys held by charitable funds, spillover funds, or local charitable donations established pursuant to the Act. The proposed amendment conforms the definitions at N.J.A.C. 3:34-1.2 to those set forth at N.J.S.A. 17:9-41, as amended by the Act.

A 60-day comment period is provided for this notice of proposal pursuant to N.J.A.C. 1:30-3.3(a)5. Accordingly, this notice of concurrent proposed readoption of a specially adopted amendment is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments conform the definitions of "governmental unit" and "public funds" to the definitions as set forth in N.J.S.A. 17:9-41, as amended by the Act. This will have a positive social impact by ensuring consistency of the Department rules with the Act and, thus, advancing its stated goals and avoiding any confusion among regulated entities and the public.

Economic Impact

The Department does not expect that the proposed amendments to the definitions will have a significant economic impact on most regulated entities. The proposed amendments will impose no new recordkeeping, reporting, or other compliance requirements, but will expand the scope of application of existing requirements.

Depositories that choose to accept charitable funds and spillover funds of a governmental unit will have to comply with the existing reporting requirements, undertake the posting of any required collateral and monitor the funds they have on deposit to ensure that the proper type and amount of collateral is maintained. The expenses incurred will be in staff time to the depository; however, depositories are generally required to maintain records and interact with their government regulators and have existing trained staff for compliance purposes. Consequently, the cost of the additional recordkeeping and reporting requirements imposed by the proposed amendments will be minimal. The amendments are beneficial to New Jersey governmental units and their taxpayers because the system established by GUDPA and the rules reduce the risk of loss of charitable funds and spillover funds in the event of the failure of a public depository.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are consistent with, but do not exceed, Federal standards on deposit risks and the insurability of deposits. Federal standards applicable to, but not exceeded, by the proposed amendments are subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub. L. 81-797 (12 U.S.C. § 1831o(b)) and subsections (q) and (r) of section 3 of the "Federal Deposit Insurance Act," Pub. L. 81-797 (12 U.S.C. § 1813(q) and (r)).

Jobs Impact

The Department does not anticipate that any jobs will be lost or generated as a result of the proposed amendments. The Department invites commenters to submit any data or studies concerning the jobs impact of

the proposed amendments together with their written comments on other aspects of this rulemaking.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendments.

Regulatory Flexibility Statement

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 employees full-time, is independently owned and operated, and is not dominant in its field. Some of the depositories affected by the concurrent proposed readoption of a specially adopted new rule are small businesses.

It is not expected that professional services will be needed to comply with the proposed amendments. The proposed amendments will impose no new recordkeeping, reporting, or other compliance requirements on these entities. Further, no new costs will be generated by the amendments. As noted above, the proposed amendments conform definitions in the rules to the definitions in GUDPA, as amended by the Act. Because the Act did not differentiate businesses based on size, no differing requirements based on business size have been made in this rulemaking.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing in New Jersey or on the average cost of housing in this State because the proposed amendments concern definitions related to governmental unit deposit protection.

Smart Growth Development Impact Analysis

The proposed amendments will have no impact on smart growth and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern definitions related to governmental unit deposit protection.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments concern definitions related to GUDPA.

Full text of the specially adopted and concurrently proposed readoption of specially adopted amendments follows (additions indicated in boldface **thus**):

SUBCHAPTER 1. GOVERNMENTAL UNIT DEPOSIT PROTECTION

3:34-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...
“Governmental unit” means any county, municipality, school district, or any public body corporate and politic created or established under any law of this State by or on behalf of any one or more counties or municipalities, or any board, commission, department, or agency of any of the foregoing having custody of funds, **or any charitable funds established pursuant to N.J.S.A. 54:4-66.7 or spillover funds established pursuant to N.J.S.A. 54:4-66.7.e.**

...
“Public funds” means the funds of any governmental unit, **including, but not limited to, moneys possessed or held by charitable funds established pursuant to N.J.S.A. 54:4-66.7, spillover funds established pursuant to N.J.S.A. 54:4-66.7.e, or local charitable donations as defined in N.J.S.A. 54:4-66.6 or in escrow related thereto,** but does not include deposits held by the State of New Jersey Cash Management Fund.
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