



**AUTHORIZATION PURSUANT TO
THE IDAHO TRUST INSTITUTIONS ACT**

TO: Idaho State-Chartered Banks and Credit Unions

FROM: Mary Hughes, Acting Director
Idaho Department of Finance

DATE: May 30, 2019

SUBJECT: Authorization Regarding Tax-Advantaged Savings Plans
Idaho State-Chartered Banks and Credit Unions

Some Idaho state-chartered banks and credit unions engage in the business of serving as custodian or trustee of certain tax-advantaged savings plans offered to their customers and members. These tax-advantaged savings plans qualify for specific tax treatment under the Internal Revenue Code and Idaho Income Tax Act, and include accounts established pursuant to qualified pension, profit-sharing, and stock bonus plans, IRA accounts, Roth IRA accounts, health savings accounts, and education savings accounts.

Although depository institutions may be denominated as “trustees” under many of the laws creating tax-advantaged savings plans, their functions do not differ significantly from those involved in deposit account relationships that do not have tax-advantaged status. In the case of tax-advantaged deposit accounts, generally, “trustees” have little discretion with respect to the funds on deposit.

The Director believes that the intent of the Idaho Trust Institutions Act was not to subject tax-advantaged deposit accounts held by Idaho state-chartered banks and credit unions to coverage under the Act. Public policy does not weigh in favor of requiring Idaho state-chartered depository institutions to obtain a charter pursuant to the Act in order to offer these plans.

The Idaho Income Tax Act, at Idaho Code § 63-3022K(d), requires that banks and credit unions be authorized to act as a fiduciary in order to establish medical savings accounts.

The Idaho Trust Institutions Act, at Idaho Code § 26-3204(1)(i), grants the Director the discretion to authorize persons other than those specifically listed in Idaho Code § 26-3204(1), to act as a fiduciary, upon such conditions as the Director may require.

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Based on the foregoing, the Director hereby exercises the discretion given to her under Idaho Code § 26-3204(1)(i) and authorizes Idaho state-chartered banks and credit unions to act as a fiduciary for the purpose of administering tax-advantaged deposit and share accounts, including Idaho Medical Savings Accounts. This authorization is conditioned upon: (1) the funds of the trust being invested only in savings and share accounts or deposits in such bank or credit union, or in obligations or securities issued by such bank, (2) all funds being held in such custodial capacity may be commingled for appropriate purposes of investment, but individual records shall be kept by the bank or credit union for each participant and shall show in proper detail all transactions engaged in under this authority, and (3) compliance by the bank or credit union with all other requirements under Federal and state law pertaining to holding and administering tax-advantaged deposit and share accounts.



Mary E. Hughes
Acting Director