

May 3, 2004

Guy A. Messick, Esquire
Lastowska & Messick P.C.
The Madison Building
108 Chesley Drive
Media, PA 19063-1712

Re: Formation of a Charitable Foundation.

Dear Mr. Messick:

You have asked if a federal credit union (FCU) may form a non-stock, non-profit charitable foundation to support charitable causes within the community in which the FCU operates. Yes, an FCU's authority to make charitable contributions under its incidental powers includes its ability to establish a charitable foundation to facilitate charitable giving.

Your client, an FCU, would like to set up a charitable foundation to provide an institutional structure for its charitable giving and to facilitate long term charitable objectives in the community. The FCU would provide initial funding for the foundation and future allocations as authorized by the FCU's board of directors. The charitable foundation would be organized to qualify as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code. Members of the FCU's management team and board would fill the seats of the foundation's initial board of directors. The foundation's board then would appoint successor directors in accordance with the foundation bylaws.

NCUA has long recognized FCUs' authority to make charitable contributions and donations under conditions set forth in our charitable donations rule, 12 C.F.R. §701.25. See 64 Fed. Reg. 19441 (April 21, 1999). An FCU may make donations to nonprofit recipients that are located in or conduct activities in communities in which the FCU has a place of business or that promote and develop credit unions. 12 C.F.R. §701.25(a). An FCU's board may only approve donations that are in the best interests of the FCU and are reasonable given the size and financial condition of the FCU. 12 C.F.R. §701.25(b).

Charitable contributions made by FCUs are clearly within their incidental powers because these contributions promote name recognition and goodwill within the FCU's. In NCUA's Interpretive Ruling and Policy Statement 79-6, Donations/Contributions (now withdrawn and replaced by §701.25), the NCUA Board stated:

The Administration, in accord with an increasing number of jurisdictions, realizes that a cooperative (e.g., a FCU), like a corporation for profit, has an obligation to contribute its fair share toward community funds that are used for diverse charitable, recreational, and educational needs of the public. The Administration views donations meeting this obligation as an activity incidental to a FCU's business within the scope of powers set forth in Section 107(15) of the Federal Credit Union Act.

We believe an FCU may establish a nonprofit charitable foundation as a vehicle for its charitable giving under the same incidental powers authority under which an FCU makes charitable donations. 12 U.S.C. §1757(17); 12 C.F.R. Part 721. An FCU also may donate its employees' time to the foundation just as it may make reasonable donations of money or other credit union resources. Both the Office of the Comptroller of the Currency and the Office of Thrift Supervision have long permitted banks and thrifts to establish charitable foundations under their express or incidental powers. 12 C.F.R. §7.7445 (1985); 1992

OTS Lexis 76 (Nov. 12, 1992). By creating a nonprofit charitable foundation, an FCU can charter a foundation focusing specifically on the FCU's charitable goals, while promoting the FCU's name in the community and generating goodwill.

Like other charitable donations, an FCU's contributions to a charitable foundation are subject to supervisory review during the examination process. Such contributions must be reasonable given the size and financial condition of the FCU and in the best interests of the FCU.

We note that the FCU may subject itself to operational and reputation risks that are involved in establishing and maintaining a charitable foundation, including conflicts of interests and self-dealing concerns. NCUA expects an FCU to provide information about and access to records of the foundation as necessary to ensure that the operations of the foundation comply with applicable law and do not impair the integrity of the FCU's operations. As such, NCUA may ask to review the foundation's policies, assess the adequacy of controls, and verify its financial statements or annual reports to determine the degree of risk the foundation may pose to the FCU. The foundation will be expected to maintain its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and a separate corporate existence from the FCU. The FCU's board must ensure that less than a majority of the FCU's directors serve as directors on the foundation's board so that a majority of the FCU's disinterested directors can approve any contributions to the foundation, including the sharing of FCU employees. Otherwise, conflicts of interest issues arise if FCU directors vote to authorize donations to a foundation for which they serve. See FCU Bylaws, Art. XVI, Section 4.

Sincerely,

Sheila A. Albin
Associate General Counsel

OGC/CJL:bhs
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