

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 721

NCUA-2023-0043

RIN 3133-AF56

Charitable Donation Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is proposing to amend the charitable donation accounts (CDA) section of the NCUA’s incidental powers regulation. Specifically, the Board is proposing to add “war veterans’ organizations” (“veterans’ organizations”), as defined under section 501(c)(19) of the Internal Revenue Code, to the definition of a “qualified charity” that a federal credit union may contribute to using a CDA. The Board is also asking if there are other groups, entities, or organizations the Board should consider adding to the definition of a “qualified charity” to inform potential future rulemaking in this area.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF56, by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket NCUA-2023-0043.
- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery or Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Policy:* Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance; Heather Murphy, Consumer

Compliance Policy and Outreach Officer, Office of Consumer Financial Protection. *Legal:* Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. Rick Mayfield can be reached at (703) 518-1179; Heather Murphy can be reached at (703) 664-3102; and Justin Anderson can be reached at (703) 518-6540.

Supplementary Information:

I. Background

A. History of the Current Rule

The Board approved the current CDA rule at its December 2013 meeting (current CDA rule or 2013 final rule).¹ This rule permitted federal credit unions to fund a CDA, which may hold investments that are otherwise impermissible for federal credit unions, for use as a charitable contribution or donation under their incidental powers authority. The rule defined a CDA as a hybrid charitable and investment vehicle that a federal credit union may fund to provide charitable contributions and donations to a qualified charity. The rule further defined “qualified charity”² as a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.³ As noted in the 2013 proposed version of the current CDA rule (2013 proposed rule), “[t]he exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to

¹ 78 FR 76728 (Dec. 19, 2013).

² 12 CFR 721.3(b)(2).

³ 26 U.S.C. 503(c)(19).

children or animals.” The 2013 proposed rule further explained that the Board used the word “charitable” in its generally accepted legal sense and enumerated what the term encompassed, which “includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.”⁴

B. Scope of “Qualified Charity”

As noted in the preceding section, the 2013 final rule permitted the use of CDAs as an incidental power for federal credit unions. As CDAs can be funded with investments that are impermissible for federal credit unions, the Board limited the scope of organizations that could be considered a “qualified charity” for purposes of the CDA rule. The 2013 final rule required that a “qualified charity” be a section 501(c)(3) entity as defined by the Internal Revenue Code. These organizations are non-profit and organized and operated exclusively for charitable purposes. Because CDAs can be funded with impermissible investments, the Board believes it is necessary to keep in place distinct limits on groups that are beneficiaries of a CDA. As such, any group the Board would consider adding as a “qualified charity” must be both a non-profit and be organized for a charitable purpose.

⁴ 78 FR 57539 (Sept. 19, 2013).

II. Proposed Changes

A. Veterans' Organizations as a Qualified Charity

While section 501(c)(3) entities are, by title and definition, charitable organizations, the Board recognizes that there may be other non-profit, charitable entities outside of section 501(c)(3) that could be included as a “qualified charity” as defined in the current CDA rule to fulfill the rule’s purpose. Still, because the current CDA rule permits federal credit unions to purchase investments that would otherwise be impermissible, it is necessary to limit the use of CDA funds to making charitable contributions or donations to organizations that are both non-profit and charitable in nature. For purposes of this proposal, the Board is focusing on “veterans’ organizations” as defined by section 501(c)(19) of the Internal Revenue Code. The Board has been made aware that some federal credit unions want to donate to veterans’ organizations through CDAs. Under section 501(c)(19), a “veterans’ organization” must meet the following requirements:

- It must be organized in the United States or any of its possessions;
- At least 75 percent of its members must be past or present members of the United States Armed Forces;
- At least 97.5 percent of its members must be:
 - present or former members of the United States Armed Forces,

- cadets (including only students in college or university ROTC programs or at Armed Services academies), or
- spouses, widows, widowers, ancestors, or lineal descendants of individuals referred to in the first or second bullet;
- It must be operated exclusively for one or more of the following purposes:
 - to promote the social welfare of the community (e.g., to promote the common good and general welfare of the people of the community);
 - to assist disabled and needy war veterans and members of the United States Armed Forces and their dependents — and the widows and orphans of deceased veterans;
 - to provide entertainment, care, and assistance to hospitalized veterans or members of the United States Armed Forces;
 - to carry on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces and comfort their survivors;
 - to conduct programs for religious, charitable, scientific, literary or educational purposes;

- to sponsor or participate in activities of a patriotic nature;
 - to provide insurance benefits for members or their dependents; or
 - to provide social and recreational activities for members.
- No part of its net earnings may inure to the benefit of any private shareholder or individual.

An organization may also be exempt under section 501(c)(19) as an auxiliary unit or society of a veterans' post or organization if it meets the following requirements:

- It is affiliated with, and organized in accordance with the bylaws and regulations of, a veterans' post or organization described above;
- At least 75 percent of its members are veterans, spouses of veterans, or related to a veteran within two degrees of consanguinity (i.e., grandparent, brother, sister, grandchild represent the most distant allowable relationships);
- All members are either members of a veterans' post or organizations described above, or spouses of a member of such post or organization, or are related to a member of such post or organization within two degrees of consanguinity;

- No part of its net earning inures to the benefit of any private shareholder or individual.

Finally, an organization may be exempt under section 501(c)(19) as a trust or foundation for a veterans' post or organization if it meets the following requirements:

- It is valid under local law and, if organized for charitable purposes, has a dissolution provision described in section 1.501(c)(3)–1(b)(4) of the Income Tax Regulations;
- The corpus or income cannot be diverted or used other than to fund a veterans' post or organization for charitable purposes or as an insurance set-aside;
- The trust income is not unreasonably accumulated, and a substantial portion of the income is distributed to such veteran post or organization, or for exclusively religious, charitable, scientific, literary, educational or prevention of cruelty to children or animal purposes;
- It is organized exclusively for one or more of those purposes enumerated above for which a veterans' post or organization itself may be organized.⁵

The Board believes that the attributes listed above of section 501(c)(19) organizations are aligned with the purposes of the current CDA rule. As such, the Board is proposing to add

⁵ 26 U.S.C. 503(c)(19); 26 CFR 1-501(c)(19)-1. See <https://www.irs.gov/charities-non-profits/other-non-profits/veterans-organizations>.

“veterans’ organizations” meeting the criteria of section 501(c)(19) to the definition of a “qualified charity.”

B. Questions on Other Organizations

The Board believes section 501(c) of the Internal Revenue Code is a good starting point for determining whether there may be other types of organizations that could be included in the definition of a “qualified charity” in the current CDA rule. While all section 501(c) organizations are non-profits, not all of them are charitable in nature. The Board has reviewed the list of organizations in section 501(c) and believes that several of them may be considered charitable in nature. The Board, however, is requesting feedback from stakeholders on whether any of these organizations should be considered as qualified charities in future rulemakings. In addition, the Board is requesting feedback on any other organizations the Board should consider for this purpose that are not enumerated in section 501(c). The Board, therefore, is posing the following questions and instructions to stakeholders and interested parties for use in any future amendments the Board may make to the current CDA rule.

1. Should the Board consider adding additional groups, organizations, or entities to the definition of a “qualified charity?”

2. If yes, which other groups, organizations, or entities should the Board consider?

Note, commenters are not limited only to those entities listed in section 501(c) of the Internal Revenue Code.

3. For any suggested group, organization, or entity, please describe how it is non-profit, organized for a charitable purpose, and how it otherwise meets the purposes of the current CDA rule.

III. Regulatory Procedures

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency creates a new or amends existing information collection requirements.⁶ For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection, unless it displays a valid Office of Management and Budget (OMB) control number. OMB has approved the current information collection requirements and assigned them control number 3133-0133. This rule proposes to add a new entity to the definition of a “qualified charity.” NCUA does not anticipate an increase in the recordkeeping requirement associated with CDAs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act⁷ requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (defined as credit unions with under \$100 million in assets).⁸ This proposed rule merely adds an

⁶ 44 U.S.C. 3507(d); 5 CFR part 1320.

⁷ 5 U.S.C. 601 *et seq.*

⁸ *Id.* at 603(a); NCUA Interpretive Ruling and Policy Statement 15-2.

additional category of permissible entities to which a federal credit union may donate through a CDA. Currently, there are 145 federal credit unions utilizing CDAs. The NCUA estimates that a small number of federal credit unions would utilize the authority granted in this rule. In addition, as the rule merely adds another category of permissible entities a federal credit union may donate to through a CDA, the NCUA does not find that this rule would impose a cost or burden on any federal credit unions. As such, this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order to adhere to fundamental federalism principles.

This proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule would affect only federal credit unions. Federally insured, state-chartered credit unions derive their investment and incidental powers authority from state law, and the NCUA's regulations do not determine the permissibility of such investments or activities. The NCUA has therefore determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998). The proposed rule could increase charitable donations by federal credit unions to organizations that provide benefits or services to veterans' households, but the Board believes that the connection would not be direct and is uncertain. However, the Board welcomes comments on this issue to further inform its analysis of this matter.

List of Subjects

12 CFR Part 721

Credit unions.

By the NCUA Board on May 25, 2023.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the NCUA Board proposes to amend 12 CFR part 721, as follows:

PART 721—INCIDENTAL POWERS

1. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

2. Revise § 721.3(b)(2)(vii)(B) to read as follows:

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(B) **Qualified charity** is a charitable organization or other non-profit entity recognized as exempt from taxation under sections 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

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