Missouri Credit Union Association

October 21, 2013

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street, Alexandria, Virginia 22314-3428
regcomments@ncua.gov

RE: Don Cohenour - Comments on Notice of Proposed Rulemaking for Parts 703 and 721 Charitable Contribution

Dear Mr. Poliquin:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) would like to take this opportunity to express our views on a proposal that would authorize a Charitable Donation Account (CDA) for federal credit unions.

CDAs are hybrid charitable and investment vehicles. They must primarily benefit a charity, such as the National Credit Union Foundation. However, the accounts would also allow federal credit unions to make investments that are otherwise prohibited and could have a higher return as long as the majority of the returns are provided to charities. The proposed rule contains several requirements for federal credit unions that invest in these accounts, including:

- The primary purpose of the accounts must be to generate funds for tax-exempt charities chosen by federal credit unions.
- The total investment in all such accounts must be limited to three percent of the federal credit union's net worth for the duration of the accounts. This means that at all times, the aggregate book value of all such investments must not exceed three percent of net worth, regardless of the level of the initial investment.
- A minimum of 51 percent of the total return from such an account must be distributed to one or more qualified charities.
- Distributions must be made to qualified charities no less frequently than every five years.
- Assets of these accounts must be held in segregated custodial accounts or special purpose entities regulated by the Office of the Comptroller of the Currency, the U.S. Securities and Exchange Commission, or other federal regulatory agency. Credit unions could make their own investment decisions, but if another entity is managing the account, that entity would have to be a Registered Investment Advisor.

MCUA strongly supports the creation of hybrid charitable and investment vehicles, and commends NCUA's willingness to develop a regulatory framework to support this structure.

Nevertheless, MCUA urges the Board to improve the proposal in a few key areas.

1. Limitations on an FCU's Aggregate Contributions to CDAs

The proposed three percent net worth limitation would apply against the total value of the account(s) for the duration of the account. This limitation is too restrictive and will reduce the benefit to both the charity and to the credit unions.

An important concern is that in years in which the investments generate sizeable gains, a credit union may be forced to reduce its holdings in its CDA(s) prematurely if the three percent net worth cap has been exceeded and the final rule should provide flexibility to avoid this result. We would suggest specifying the net worth limitation be measured at the time of purchase or placement of the investment in the CDA and at the time of any subsequent additional investment.

Also rather than a limit of three percent of net worth, federal credit unions should be allowed to invest a greater amount, perhaps up to five percent of their net worth, in CDA investments. This higher level will allow more flexibility for federal credit unions but will not raise material safety and soundness concerns for the credit union involved or the credit union system.

2. 704 Limitations for Corporate Credit Unions

As written, the rule does not address part 704 or contemplate investment from corporate credit unions. The rule should include 704 exclusions to allow corporate participation in CDAs.

3. SEC Registration Requirements for OCC-Supervised Entities that Manage CDAs for FCUs

MCUA agrees that it is appropriate for the assets of these accounts to be held in segregated custodial accounts or special purpose entities regulated by a federal regulatory agency. However, while the rule allows credit unions to make their own investment decisions, the rule provides that if another entity is managing the account, that entity must be a Registered Investment Advisor with the Securities and Exchange Commission (SEC).

Because the Office of Comptroller of Currency (OCC) supervises national banks, federal savings banks or federal thrifts engaged in trust and investment activities, these institutions have been exempted by Congress from registration as a registered investment advisor with the SEC, with certain exceptions.

Congress felt that additional federal regulatory oversight of these entities, which must comply with similar regulations and laws that govern firms that register with the SEC, would be unnecessary.

MCUA is concerned that for trust companies that are also banks, federal savings banks or federal thrifts, the proposed SEC oversight is redundant. Moreover, meeting SEC application and registration requirements as well as examination responsibilities will be costly, particularly for such institutions that are not already registered.

It is not likely that an institution already regulated by the OCC will undertake the actions and expenses necessary to receive SEC registration in order to be eligible to manage CDAs for credit unions.

This requirement for SEC registration will likely limit credit union options and minimize the utility of CDAs.

MCUA urges NCUA to eliminate the unnecessary requirement that outside entities that manage CDAs for federal credit unions be registered with the SEC.

4. Recoupment of Costs

Creating and managing a trust can be expensive. The trust may be professionally managed and require legal documents or agreements to be developed, which impacts the Total Return for the credit union.

The definition of Total Return should be modified to specifically permit credit unions to recoup administrative costs associated with the creation and management/maintenance of CDAs.

As always, we appreciate the opportunity to respond to this proposal. We will be happy to respond to any questions regarding these comments.

Sincerely,

Don Cohenour
President