



Credit Union National Association

cuna.org

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734

October 21, 2013

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comments on Proposed Charitable Donation Accounts Rule

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments on the National Credit Union Administration Board's proposed rule allowing the creation of charitable donation accounts (CDAs). By way of background, CUNA is the nation's largest credit union trade organization, representing our nation's state and federal credit unions, which serve nearly 97 million members.

CUNA strongly supports the creation of hybrid charitable and investment vehicles, and commends NCUA's willingness to create this novel structure. Charitable donation accounts will allow federal credit unions to make investments that are otherwise prohibited, provided that the proceeds are primarily for charitable purposes. This would facilitate a federal credit union's charitable activities by allowing investments that could generate a higher return. These investment vehicles will allow federal credit unions to do well by doing good.

Nevertheless, as described below, CUNA does believe that the proposal can be improved to facilitate credit union participation without raising safety and soundness concerns.

Net Worth Limitation

The proposed three percent net worth limitation would apply against the total value of the account(s), not the credit union's capital initially committed toward the account(s). In times in which the investments generate large gains, this could cause a credit union to reduce its holdings prematurely in its CDA(s), minimizing the benefit to both the charity and the credit union.

CUNA recognizes that there are safety and soundness concerns that may arise in connection with these accounts. However, we feel those concerns are more



OFFICES: | WASHINGTON, D.C. | MADISON, WISCONSIN

appropriately directed to the amount of capital a credit union commits to these accounts up front, not in how the capital may grow over time. 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.

We also believe that five percent of net worth is a more appropriate level of capital that a credit union should be able to commit. This higher level will allow more latitude for federal credit unions but will not raise material safety and soundness concerns for the credit union involved or the credit union system.

Distribution Timing

Given the need of charities to budget and plan, and their very real need for income on an annual basis, we think it is important that distributions be taken on a more frequent basis than five years. However, we also recognize the five-year horizon will help smooth out the volatility that may occur from time to time in markets. This helps ensure the safety and soundness of this program, and makes it more attractive to credit unions. We thus would encourage NCUA to require annual distributions to the charity in years in which the investments generate gains, and to allow those distributions to be deducted from the Total Return the investments generate over the five-year horizon. The level for the annual distribution should be determined by the credit union. In any event, we recognize the competing tensions in this area, and encourage the agency to consider this issue when formulating its final regulation. CUNA would like to work with the agency to balance any concerns in this regard.

704 Limitations for Corporate Credit Unions; State Parity Provisions

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 credit union participation in CDAs. To the extent that states have parity provisions that would allow state chartered credit unions to establish similar accounts, we encourage NCUA to work with state regulations to facilitate the establishment of these accounts by state credit unions.

Account Supervision

CUNA agrees that it is appropriate that assets of these accounts 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, it provides that if another entity is doing so, that entity must be a Registered Investment Advisor with the Securities and Exchange Commission (SEC). CUNA is concerned that for trust companies that are also federal savings banks or federal thrifts, this oversight may be redundant.

Because the Office of Comptroller of Currency (“OCC”) supervises national banks and thrifts independently, Congress has generally exempted these

financial institutions engaged in trust and investment activities from registration as a registered investment advisor with the SEC. See Financial Services Regulatory Relief Act of 2006, P.L. 109-351 (2006) at § 401. Congress felt that additional federal regulatory oversight of these entities, which still must comply with the same regulations and laws that govern firms that register with the SEC, is not warranted given the level of oversight they are subjected to from their prudential regulator.

We urge NCUA to follow Congress's intent and not require this unnecessary regulatory oversight. As the Board is well aware, regulatory compliance and oversight is a tremendous expense for financial institutions. Subjecting an already regulated entity to additional regulation will ultimately increase the costs of managing CDAs, to the detriment of both credit unions and the charities they benefit. We also question whether institutions subject to OCC regulation will undertake the expense and burdens of registering with the SEC and subjecting themselves to SEC oversight in order to manage credit union CDAs.

Recoupment of Costs

Especially for those who elect to use trust vehicles, there may be substantial up-front costs to draft legal documents and agreements and hire managers. This negatively affects the Total Return available for the credit union. We suggest modifying the definition of "Total Return" to permit credit unions to recoup administrative costs associated with the creation and management/maintenance of CDAs.

Conclusion

CUNA strongly supports this proposal overall, and commends NCUA for developing the proposal. Nonetheless, we urge the agency to adopt the changes we recommend to improve the program's feasibility and attractiveness to credit unions so that they and eligible charities can benefit, as we believe the Board intends. If you have any questions about this letter, please do not hesitate to give me a call at (202) 508-6736.

Sincerely,



Mary Mitchell Dunn
Deputy General Counsel and Senior Vice President