October 21, 2013

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

RE: Comments on Proposed Rulemaking for Parts 703 and 721; RIN 3133-AE17

Dear Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), the largest state trade association for credit unions in the United States, representing the interests of more than 400 credit unions and their 10 million member-consumers. The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on its notice of proposed rulemaking for Parts 703 and 721, Charitable Donation Accounts (CDAs).

The Leagues strongly support NCUA's proposal to allow FCUs to fund CDAs, hybrid charitable and investment vehicles, as an activity incidental to the business for which an FCU is chartered provided the account is primarily charitable in nature. The Leagues generally agree with the proposed regulatory conditions, but have a few concerns and recommendations that we believe will benefit credit unions interested in supporting charitable activities while still considering NCUA's safety and soundness interests.

Charitable Donation Account Definition (721.3(b)(2))

The proposal defines a CDA as a hybrid charitable and investment vehicle satisfying certain conditions, and when those conditions are met, an FCU may fund a CDA free from the investment limitations of the Federal Credit Union Act and Part 703. The proposed rule does not differentiate between permissible investments used for charitable purposes and CDAs. Currently, an FCU may purchase a Part 703 qualifying investment and establish formal instructions with the safekeeping agent to direct that the interest payments be split based on their instructions and settled by the agent to both the credit union and to the charitable organization.

The Leagues recommend the rule clarify and clearly distinguish between those charitable programs utilizing Part 703 qualifying investments from the definition of a CDA. That is, the CDA requirements, such as maximum aggregate funding and minimum distribution requirements, do not apply to charitable programs utilizing Part 703 qualifying investments.

Maximum Aggregate Funding(721.3(b)(2)(i))

As proposed, an FCU's investment in all CDAs, in the aggregate, must be limited to 3 percent of its net worth for the duration of the accounts. This means that regardless of how many CDAs an FCU invests in, at all times, the aggregate book value of all such investments must not exceed 3 percent of net worth. FCU's must monitor CDA exposure relative to net worth no less frequently than every quarterly call report cycle and will be expected to comply within 30 days of any breach of the maximum aggregate funding limit.

The Leagues oppose the notion that the aggregate funding be limited to 3 percent of net worth at all times. 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 3% net worth cap has been exceeded. As investments are expected to grow, the 3% limitation is not reasonable and will have unintended negative outcomes for the credit union and the beneficiary charitable organization. The Leagues recommend the 3% 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.

Further, the Leagues question NCUA's determination that the limit be set at 3% of net worth. While we understand a limit may be needed in order to address NCUA's safety and soundness concerns, the proposed rule provides no analysis or justification for this arbitrary limit.

Segregated Account (721.3(b)(2)(ii))

The Leagues agree with the proposal that the assets of a CDA be held in a segregated custodial account or special purpose entity and be specifically identified as a CDA.

Regulatory Oversight (721.3(b)(2)(iii))

The proposal provides that when an FCU chooses to establish a CDA using a trust vehicle the trustee must be an entity regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (''SEC'') or another federal regulatory agency. Further, a regulated trustee or other person who is authorized to make investment decisions for a CDA (''manager''), other than the FCU itself, must be registered with the SEC as an investment advisor.

Because the 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.

For financial institutions already regulated by the OCC or other federal regulatory agency, the Leagues believe the proposed SEC registration is redundant. Further, it is also highly unlikely that an already regulated institution will undertake the actions and expenses necessary to receive SEC registration in order to be eligible to manage CDAs for credit unions. This proposed SEC registration requirement will likely limit credit union options and minimize the use of CDAs. The Leagues strongly urge NCUA to eliminate the unnecessary requirement that a regulated trustee be registered with the SEC.

Account Documentation (721.3(b)(2)(vi))

The Leagues agree with the proposal that the parties to the CDA must document the terms and conditions controlling the account in a written operating agreement, trust agreement or similar instrument. In addition, we agree with the proposed policies requirements.

Minimum Distribution to Charities (721.3(b)(2)(v))

The proposal requires FCUs to distribute to one or more qualified charities "no less frequently than every 5 years, or upon termination of a CDA in less than 5 years, a minimum of 51 percent of the account's total return on assets over the period of up to 5 years. You may choose how frequently distributions will be made during each period of up to 5 years."

The Leagues agree with a minimum distribution requirement of 51 percent of the account's return on assets (as that term is defined and modified below) and that distribution to the charities should be made at least every 5 years. The Leagues also fully support the option for FCUs to choose a more frequent distribution schedule.

Definition of "Total Return" (721.3(b)(2)(vii)(d))

As mentioned above, the proposal requires distribution to one or more qualified charities of a "minimum of 51 percent of the account's total return on assets over the period of up to 5 years." The proposed rule defines Total Return as "the actual rate of return on all investments in a CDA over a given period of up to 5 years, including realized interest, capital gains, dividends, and distributions." This proposed definition does not take into consideration any costs associated with the creation, maintenance, or management of a trust.

A trust requires legal documents and agreements be developed and may be professionally managed. These costs impact the total return. Without the ability to recoup these costs, FCUs may choose other investment vehicles not designated for charitable purposes. The Leagues strongly urge the NCUA to modify the definition of "total return" to permit FCUs to recoup, if desired, any administrative costs associated with the creation, maintenance, or management of a trust.

Limitations for Corporate Credit Unions (Part 704)

The incidental powers rules in Part 721 do not apply to the activities of corporate credit unions. In addition, the proposed rule does not address Part 704 – Corporate Credit Unions; remaining silent as to the ability for a corporate credit union to create a CDA. The Leagues believe corporate credit unions should have the same ability as natural person credit unions to support charitable activities. The Leagues recommend the rule include Part 704.5 – Corporate Credit Union Investments and allow CDAs as authorized activities.

In conclusion, the Leagues strongly support NCUA's proposal to allow FCUs to fund CDAs and we commend NCUA for putting forth the proposal. We feel the above comments and recommendations will improve the proposal, make funding CDAs more attractive and manageable for FCUs, and further facilitate FCUs' charitable activities.

Thank for the opportunity to comment on the proposed rule and considering our views.

Sincerely,

Diana R. Dykstra
CEO/President
California and Nevada Credit Union Leagues

cc: CCUL