



OHIO CREDIT
UNION LEAGUE

October 21, 2013

VIA E-mail: regcomments@ncua.org

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

RE: Charitable Donation Accounts
12 CFR Parts 703 and 721
RIN 3133-AE2517

Dear Mr. Poliquin:

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) Proposed Regulation on Charitable Donation Accounts.

OCUL is the trade association for credit unions in Ohio and advocates on behalf of Ohio's 349 federal- and state-chartered credit unions, serving 2.7 million members. The comments reflected in this letter represent the recommendations and suggestions that OCUL believes would be in the best interest of Ohio credit unions.

Background

NCUA proposes to amend its regulations to clarify that a federal credit union (FCU) is authorized to fund a Charitable Donation Account (CDA), a hybrid charitable and investment vehicle described below, as an activity incidental to the business for which an FCU is chartered, provided the account is primarily charitable in nature and meets other regulatory conditions. This would facilitate a federal credit union's charitable activities by allowing investments that could have a higher return.

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 3 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.



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- 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.

Limitations on an FCU's Aggregate Contributions to CDAs

The proposed 3 percent net worth limitation would apply against the total value of the account(s) for the duration of the account. OCUL believes this limitation is too restrictive and will reduce the benefit to both the charity and to the credit unions.

As the regulation contemplates a total return concept and as it also provides for up to a five (5) year period for distribution, the CDA may actually grow above the 3% cap over time. That would certainly be the desired goal of all involved. 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 growth is anticipated, and a potential time frame of five (5) years is present between distributions, the 3% limitation is not an effective tool and actually will have unintended negative outcomes for a successful investor.

OCUL therefore suggests 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 rather than remain a constant cap to be adjusted throughout the life of the CDA.

In addition, OCUL recommends raising the cap to a slightly higher percentage, from 3% to 5% of net worth, to allow more flexibility for federal credit unions without raising material safety and soundness concerns for the credit union involved or the credit union system.

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

OCUL 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).

However, Congress has exempted some entities such as national banks, federal savings banks or federal thrifts engaged in trust and investment activities from SEC registration requirements because the entities are supervised by the Officer of the Comptroller of the Currency. The SEC oversight is redundant and would have the potential negative consequence of increasing costs of administration of CDAs and of reducing the number of trust companies willing to undertake them on behalf of federal credit unions. It is not likely that an institution already regulated by the OCC will undertake

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the actions and expenses necessary to receive SEC registration in order to be eligible to manage CDAs for credit unions.

Because this requirement for SEC registration will likely limit credit union options and likely minimize the utility of CDAs, OCUL urges NCUA to eliminate the requirement.

Recoupment of Costs & Definition of "Total Return"

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 rule does not address the recoupment of certain costs by the credit union in creating or maintaining the CDA.

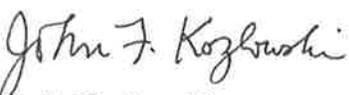
The definition of Total Return should be modified to specifically permit credit unions to recoup administrative costs associated with the creation and management/maintenance of CDAs.

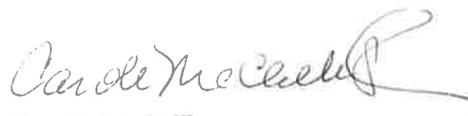
Conclusion

OCUL commends NCUA's willingness to develop a regulatory framework that would allow federal credit unions to increase charitable donations by expanding the types of investments allowed so long as a CDA is primarily for the purpose of benefiting a charitable organization. However, OCUL urges NCUA to modify its proposal to increase the utility of the CDA to both the federal credit union and the charitable organization as outlined above.

The Ohio Credit Union League appreciates the opportunity to provide comments on the NCUA's proposed rule on Charitable Donation Accounts, and is available to provide additional comments or information on this proposal if so requested. If you have any questions, please do not hesitate to contact me at (800) 486-2917 or jkozlowski@ohiocul.org.

Respectfully submitted,


John F. Kozlowski
General Counsel


Carole McCallister
Manager, Regulation & Information

cc: Mary Dunn, Credit Union National Association General Counsel
Barry Shaner, OCUL Chair
OCUL Board of Directors
OCUL Government Affairs Committee
Paul Mercer, OCUL President

Takisha L. Martin

From: Chris M. Predieri
Sent: Thursday, October 17, 2013 3:18 PM
To: Peggy Campbell; Lori George; Takisha L. Martin; Wade E. Goheen
Cc: Carole D. McCallister
Subject: Our Iceberg is Melting

Happy Thursday, well Friday to some of us ☺ . I hope you guys have been able to jump in and begin reading the book and think about it as a relation to our office environment and what we are trying to do with our upcoming trainings for the Creating Member Loyalty program. I'm interested to hear from you four what character you find yourself identifying with the most and why that is. Email me your response and who knows, there may be something in it for you to entice a response ;)

Be thinking about how the book relates to us all, even who some of the people in the office relate to the characters, and how you think you would deal with each type of character yourself.

Have a good weekend!

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