New Jersey
Credit Union League

October 21, 2013

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

RE: NCUA 12 CFR Parts 703 and 721, Charitable Donation Accounts

Dear Mr. Poliquin:

The New Jersey Credit Union League (NJCUL) appreciates the opportunity to submit comments on the National Credit Union Administration's (NCUA) notice of proposed rulemaking for Parts 703 and 721, Charitable Donation Accounts.

NJCUL represents the interests of nearly 75% of credit unions in the State of New Jersey and appreciates this opportunity to offer the following comments on this proposal on behalf of the New Jersey Credit Union Foundation (NJCUF). By way of background, NJCUF is a 501(c)(3) tax-exempt charitable organization governed by a volunteer Board of Directors comprised of executives from New Jersey credit unions, the New Jersey Credit Union League President/CEO, along with representatives from Alloya and Mid-Atlantic corporate federal credit unions.

NJCUF provides financial literacy, technical assistance to small credit unions, professional development opportunities and support for philanthropic activities in connection with New Jersey and the New Jersey credit union movement.

NJCUL and NJCUF strongly support the creation of hybrid charitable and investment vehicles, and commend NCUA's willingness to develop a regulatory framework to support this structure. In this low interest rate environment, all charitable organizations are seeking steady streams of funding for their impactful activities. NJCUF is no different in that regard.

NJCUL/NJCUF offers the following recommendations on specific portions of the proposed rule in the interest of the NJCUF and credit unions intent to support charitable contributions and activities while at the same time addressing NCUA's safety and soundness concerns

<u>Section 721 – INCIDENTAL POWERS</u>

Section 721.3(b)(2)(i) – *Maximum aggregate funding* (3% net worth limitation)

The NCUA proposal calls for a maximum aggregate funding of 3% of net worth at all times; "the aggregate book value of all such investments must not exceed 3 percent of net worth". As the

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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% over time. NJCUL/NJCUF's 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 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.

Recommendation: NJCUL/NJCUF suggests specifying 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.

Also, rather than a limit of 3% of net worth, federal credit unions should be allowed to invest up to 5% 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 federal credit union involved or the credit union system.

Section 721.3(b)(2()iii) – ***Regulatory oversight***

The proposed rule allows credit unions to make their own investment decisions; however, the proposal 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. Congress has exempted these institutions from registration as a registered investment advisor with the SEC, with certain exceptions. The proposed SEC oversight is redundant. Additionally, SEC application and registration requirements as well as examination responsibilities will be costly.

NJCUL/NJCUF believes it is unlikely 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 likely minimize the utility of CDAs, thereby defeating the intent of providing another mechanism for credit unions to make charitable donations.

Recommendation: NJCUL/NJCUF strongly urges NCUA to eliminate the unnecessary requirement that outside entities that manage CDAs for federal credit unions be registered with the SEC.

Section 721.3(b)(2)(v) – ***Minimum distribution to charities***

NCUA'S proposal currently requires credit unions 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."

Charitable organizations such as NJCUF are keenly aware that certainty of cash flow and the ability to appropriately account for expected income are key considerations. The proposed rule language makes it difficult for a beneficiary organization like NJCUF to plan on receipt of funds

particularly with a fluctuating market. For example, if a CDA earns a reasonable rate of return for the first four years of its existence, but there is a market disruption during the fifth year in which the entire previous earnings are lost, no money would be paid to the charitable organization if the credit union chose to distribute once every five years. In this scenario, a charitable organization may have accounted for the earnings as a revenue source (as permitted under nonprofit accounting rules) but would have to reverse the earnings upon the loss.

Recommendation: NJCUL/NJCUF urges the language cited under 721.3(b)(2)(v) be amended to require a credit union to distribute no less frequently than once every year to avoid this misalignment between the intent of a CDA and the charitable organization's ability to plan for and utilize the donation.

Section 721.3(b)(2)(vii)(d) – *Definition of "total return"*

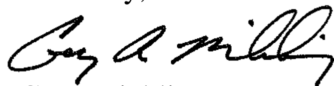
Creating and managing a trust can be expensive. The trust may be professionally managed and require legal documents or agreements to be developed, which impacts the total return for the credit union. We do not see where the rule has addressed the recoupment of certain costs by the credit union in creating or maintaining the CDA.

NJCUL/NJCUF does not believe it is fair to credit unions to assume that these costs will be donated on top of the credit union's investment commitment. In addition, NJCUF must strike a balance between attracting investors to this new product and the cost efficiency for investors to invest in a CDA versus another investment not designated for charitable purpose.

Recommendation: The "total return" definition should be modified to permit a credit union to recoup, if so desired, certain administrative costs associated with the creation, maintenance of, and any professional management fees incurred as a reduction of the total return.

In closing, we would like to thank the NCUA Board for the opportunity to express the views of NJCUL, on behalf of the NJCUF, regarding NCUA's notice of proposed rulemaking for Parts 703 and 721, Charitable Donation Accounts. If you should have any questions regarding this letter, please contact me at 1-800-792-8861, ext. 106.

Sincerely,



Greg Michlig
President/CEO

cc: NJCUF Chairman: Ann South – Novartis Federal Credit Union