CREDIT UNION ASSOCIATION OF THE DAKOTAS

October 21, 2013

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

RE: Comments on Notice of Proposed Rulemaking for Parts 703 and 721 – Charitable Donation Accounts

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) with regard to the notice of proposed rulemaking for Parts 703 and 721 relating to charitable donation accounts. To provide a brief background, the Credit Union Association of the Dakotas represents seventy state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total $5.1 billion and who have more than 450,000 members.

As the NCUA is well aware of, credit unions have a long history of helping the communities they serve beyond just providing affordable financial services and products to their members, but also by making charitable donations to help the greater good of the community. CUAD applauds the NCUA's recent changes to reduce regulatory burden on charitable giving by removing the restrictions previously placed on a Federal Credit Union's ability to make donations formerly found under 12 CFR 701.25. As was revised last July 2012, NCUA rules and regulations now specify that charitable contributions and donations is a category of activity that is an incidental power necessary or requisite to the carrying on of credit union business, specifically 12 CFR 721.3(b) "*Charitable contributions and donations.* Charitable contributions and donations are gifts you provide to assist others through contributions of staff, equipment, money, or other resources. Examples of charitable contributions include donations to community groups, nonprofit organizations, other credit unions or credit union affiliated causes, political donations, as well as donations to create charitable foundations."

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CUAD applauds the NCUA's continued efforts in finding ways that credit unions can continue to give back to their communities through charitable giving and we support the NCUA's proposed creation of charitable donation accounts (CDA). However, CUAD believes that this hybrid charitable and investment vehicle could be improved on in certain areas.

As explained in the notice of proposed rulemaking, a federal credit union would be limited to only 3 percent of its net worth that it can invest in all CDAs for the duration of the accounts; this would be an aggregated amount. CUAD believes that this 3 percent net worth limitation is too restrictive. Federal credit unions should be allowed to invest a greater amount in CDAs, such as 5 percent of the federal credit union's net worth. This higher level will not raise material safety and soundness concerns but will benefit both charities and credit unions by providing more flexibility.

CUAD is concerned that the net worth cap, whether at 3 percent or at a higher level, could cause a credit union to reduce its CDA(s) prematurely if the net worth cap is exceeded in years that the investment generates sizeable gains. The final rule should provide flexibility to avoid this by applying the net worth cap at the time of purchase or placement of the investment in the CDA and at the time of any subsequent additional investment.

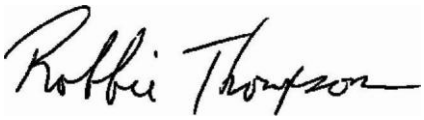
The NCUA proposes to require that if a federal credit union establishes a CDA using a trust, then the trustee must be an entity regulated by the Office of the Comptroller of the Currency, the U.S. Securities and Exchange Commission or another federal regulatory agency. Furthermore, the proposed rule would require that a regulated trustee or other person who makes investment decisions for a CDA, other than the FCU itself, must be registered with the SEC as an investment advisor. The Office of Comptroller of Currency supervises national banks, federal savings banks or federal thrifts engaged in trust and investment activities and these institutions have been exempted by Congress from registration as a registered investment advisor with the SEC, with certain exceptions. It is the position of CUAD that the requirement that entities, such as banks and thrifts, that manage CDAs for federal credit unions be registered with the SEC is eliminated. If this requirement for SEC registration were to be adopted it will only serve to limit credit unions' options and reduce the function of CDAs.

The proposal provides that at a minimum the credit union would be required to distribute to one or more qualified charities 51 percent of the account's total return on assets over the period of up to five years. These distributions, at a minimum, must occur every 5 years, or upon termination of a CDA in less than 5 years. As proposed, "total return" would mean "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." Due to the cost associated with creating and

managing a trust, the definition of "total return" should be modified to allow a credit union to recoup administrative costs associated with the creation and management and/or maintenance of CDAs.

Thank you for this opportunity to share our comments.

Respectfully,



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