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July 25, 2023

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Charitable Donation Accounts; RIN-3133-AF56

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, we are writing to the National Credit Union Administration (NCUA) regarding the charitable donation accounts (CDA) proposed rule. The Credit Union National Association (CUNA) represents America's credit unions and their more than 135 million members.

The NCUA has issued a proposed rule¹ to amend the CDA section of the NCUA's incidental powers regulation.² Specifically, the proposal would add "war veterans' organizations" (also referred to as "veterans' organizations") under section 501(c)(19) of the Internal Revenue Code (IRC)³ to the definition of a "qualified charity" that a FCU may contribute to using a CDA.

We appreciate the NCUA pursuing this important rulemaking. In a June 2022 letter and subsequent meetings, CUNA urged the NCUA to expand the definition of "qualified charity" to also include veterans' organizations under section 501(c)(19).⁴ Collaboration on issues such as this, where the agency is responsive to suggested improvements by the industry, is an efficient and effective vehicle for achieving positive improvements to the NCUA's rules and regulations.

Proposed Changes to CDA Rule

The current CDA rule permits FCUs to fund a CDA, which may hold investments that are otherwise impermissible for FCUs, for use as a charitable contribution or donation under

¹ 88 Fed. Reg. 34,792 (May 31, 2023).

² 12 C.F.R. § 721.3.

³ 26 U.S.C. § 501(c)(19).

⁴ CUNA Letter to NCUA re "Veterans' Organizations" (June 10, 2022), *available at* https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2022/061022_CUNA%20Letter%20to%20NCUA%20re%20501c19%20CDAs.pdf.

their incidental powers authority. The rule defines a CDA as a hybrid charitable and investment vehicle that a FCU may fund to provide charitable contributions and donations to a “qualified charity.” The rule further defines “qualified charity” as a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the IRC.⁵

Addition of “Veterans’ Organizations”

For purposes of this proposal, the NCUA is focusing on “veterans’ organizations” as defined by section 501(c)(19). Under section 501(c)(19), a “veterans’ organization” must meet certain requirements, such as having at least 75 percent of its members being past or present members of the U.S. Armed Forces and having no part of net earnings inure to the benefit of any private shareholder or individual.⁶ The proposed rule generally includes the same requirements as the IRC but separates them into several different subsections. We believe the “veterans’ organizations” criteria in the proposal is appropriate, particularly since it is derived from the IRC. Further, separating out the IRC definition (*e.g.*, “auxiliary unit” and “trust or foundation”) for ease of use and clarity is a sensible approach.

We believe the attributes of “veterans’ organizations” as included in section 501(c)(19) are aligned with the purposes of the current CDA rule. Thus, we support adding “veterans’ organizations” to the definition of “qualified charity.”

Additional 501(c) or Other Entities

While section 501(c)(3) entities are, by title and definition, charitable organizations, we agree with the NCUA that there may be other entities—including those that are non-profit and charitable—outside of section 501(c)(3) that could be included as a “qualified charity.” According to the NCUA, because the current CDA rule permits FCUs to purchase investments that would otherwise be impermissible, “it is necessary to limit the use of CDA funds to making charitable contributions or donations to organizations that are both non-profit and charitable in nature.”⁷ While it is of course necessary for FCU investments to be permissible under the FCU Act, we note that the “qualified charity” definition in section 721.3 of the NCUA’s regulations implements the broad incidental powers language of the FCU Act.⁸ We do not disagree with the notion that CDA funds should be used to make charitable contributions or donations to non-profit, charitable organizations. However, we ask the NCUA to be cautious as to not needlessly exclude certain entities from the “qualified charity” definition.

Similar to IRC section 501(c)(19), there are several other subsections that also include a prohibition from earnings going to any private shareholder or individual. Other 501(c) organizations that may qualify under the NCUA’s “qualified charity” criteria that it might consider include:

⁵ 12 C.F.R. § 721.3(b)(2)(vii)(B); 26 U.S.C. 503(c)(3).

⁶ 26 U.S.C. § 501(c)(19)(B), (C).

⁷ 88 Fed. Reg. 34,792.

⁸ 12 U.S.C. § 1757(17).

- 501(c)(4): Civic Leagues, Social Welfare Organizations, and Local Associations of Employees.
- 501(c)(6): Business Leagues, Chambers of Commerce, and Real Estate Boards.
- 501(c)(7): Social and Recreational Clubs.
- 501(c)(29): Qualified Nonprofit Health Insurance Issuers.

As noted above, we reached out to the NCUA last year to advocate for inclusion of “veterans’ organizations” in the definition of “qualified charity” for purposes of the CDA rule. Aside from our belief that veterans’ organizations are of such importance as to be worthy of inclusion in the “qualified charity” definition, the impetus for our advocacy was direct feedback from our member credit unions. Admittedly, with regard to the 501(c) groups listed above, we have not received the same level of interest from our members. As such, we note these groups in this letter simply as examples of organizations for the NCUA to consider. We ask NCUA to take a broad view of organizations, whether under 501(c) of the IRC or otherwise, that could meet qualify as a “qualified charity.”

Conclusion

On behalf of America’s credit unions and their more than 135 million members, thank you for considering our comments in support of the charitable donation accounts proposed rule. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,

A handwritten signature in blue ink that reads "Luke Martone". The signature is written in a cursive, flowing style.

Luke Martone
Senior Director of Advocacy & Counsel