

November 8, 2022

The Honorable Todd M. Harper, Chairman
The Honorable Kyle S. Hauptman, Vice Chairman
The Honorable Rodney E. Hood, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Expansion of “Qualified Charity” to Veterans Organizations

Dear Chairman Harper, Vice Chairman Hauptman, and Board Member Hood:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the Defense Credit Union Council (DCUC), the Veterans of Foreign Wars (VFW), and CUNA Mutual Group, we are writing to urge the National Credit Union Administration (NCUA) to allow credit unions to better serve America’s veterans by expanding the definition of “qualified charity” in NCUA Regulations Part 721.3 to include 501(c)(19) veterans’ organizations. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 133 million consumers with personal and small business financial service products. We appreciate the work that the NCUA has done to provide credit unions with flexibility in their charitable contributions and the tools to more easily accumulate charitable funds. To increase the number of credit unions that participate in charitable giving and better serve our nation’s veterans, we request that the NCUA amend the definition of “qualified charity” as it relates to Charitable Donation Accounts (CDAs) in Part 721.3 of NCUA regulations to include 501(c)(19) veterans’ organizations. Many credit unions include members of the armed services within their Field of Membership (FOM) and include giving back to the community within their mission. With credit unions willing to support service members, and an unmet need among our nation’s veterans, providing credit unions with the tools to help should be a priority for the NCUA.

Background

Between 1999 and 2012, federal credit union (FCU) donations were limited to two categories of charities: (1) non-profit organizations located or active in the community where the donor FCU had a place of business; and (2) tax-exempt organizations that “operated primarily to promote and develop credit unions.”¹ An FCU’s donation to a charity in these categories was conditioned on a determination by its board of directors that the donation was in the best interests of the

¹ 12 CFR 701.25(a) (2011).

FCU and reasonable given its size and financial condition.² In 2012, the Board repealed the restrictions on permissible charities and the conditions for making a donation.³ The Board then added charitable contributions and donations as a category of activities preapproved by regulation in Part 721.3 as “incidental powers necessary and requisite to carry on a credit union’s business.”⁴ Activities in this preapproved category include donations to nonprofit organizations and credit union-affiliated causes, and the creation of charitable foundations.

In December 2013, the NCUA issued a final rule amending Parts 703 and 721 of the NCUA’s regulations clarifying that, under certain circumstances, FCUs are authorized to fund a CDA, which may hold investments that are otherwise impermissible, as a charitable contribution or donation to “qualified charities” under its incidental powers authority. The 2013 final rule that adds CDAs as a preapproved activity under Part 721.3 requires a minimum distribution of 51 percent of the total return from a CDA to one or more “qualified charities” at least once every five years. 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 Internal Revenue Code.”⁵ It is this limitation that precludes FCUs from donating to 501(c)(19) veterans’ organizations.

Although the narrow definition of “qualified charity” within Part 721.3 does not prohibit credit unions from donating to 501(c)(19) veterans’ organizations through means other than a CDA, the limitation of CDA donations to 501(c)(3) organizations naturally disadvantages veterans’ organizations. CDAs provide an excellent tool for FCUs to engage in limited investments that would otherwise be prohibited by the FCU Act. Because these investments are for the express and primary purpose of funding charitable donations, distributions from the CDA are inherently low-risk and financially prudent. There is no comparable investment authority intended to benefit 501(c)(19) veterans’ organizations and an FCU seeking to donate to a veterans’ organization would be limited in its ability to identify surplus funds that are suitable for donation. When faced with the choice between donating to a 501(c)(3) through a safe, preapproved tool like a CDA and making the potentially subjective determination on the reasonableness of a donation to a 501(c)(19), most FCU boards of directors will choose the safe, reliable choice every time, to the detriment of our nation’s veterans.

Authority to Amend

As a preliminary matter, the NCUA has the authority to expand the definition of “qualified charity” in Part 721.3. The Federal Credit Union Act (FCU Act) provides that an FCU may “exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the

² Id. 12 CFR 701.25(b).

³ 77 FR 31981 (May 31, 2012).

⁴ 12 CFR 721.3(b); see also 12 CFR 721.2.

⁵ Id.

business for which it is incorporated.”⁶ Under this authority, the Board has long recognized that making charitable contributions and donations is among an FCU’s incidental powers.⁷ Furthermore, the United States Supreme Court has held that an “agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.”⁸ This ability to periodically reevaluate regulations is important to the functioning of federal agencies and is a flexibility that the NCUA Board should exercise now.

The Internal Revenue Code contains 29 distinct categories of 501(c) nonprofit, tax-exempt organizations. The undersigned do not ask for the definition of “qualified charity” to be expanded to include all 501(c) organizations, simply that it include 501(c)(19) organizations. Nor do we agree with the proposition that the expansion of the “qualified charity” definition to include 501(c)(19) organizations would be a “slippery slope,” as 501(c)(3) and 501(c)(19) organizations are more similar to one another than they are to any of the other 501(c) categories. Broadly speaking, 501(c)(3) organizations include entities organized for religious, charitable, scientific, literary or educational purposes, among other things.⁹ 501(c)(19) organizations are those organized to promote the social welfare of the community, to assist disabled and needy war veterans, servicemembers, and their dependents, or “to conduct programs for religious, charitable, scientific, literary or educational purposes.”¹⁰ As can be discerned from their descriptions, 501(c)(3) and 501(c)(19) organizations share a common purpose and have more in common than, for example, a 501(c)(21) Black Lung Benefit Trust or a 501(c)(13) Cemetery Company.

The Credit Union - Military Bond

Credit unions are member driven organizations that are passionate about helping their members and their communities. The primary purpose and goal of a credit union is to help its members and community through the offering of financial products and services, but the credit union community and the NCUA have long recognized charitable giving as an incidental purpose of credit unions. The formal addition of charitable contributions and donations as an incidental power of credit unions in 2012 recognized this truth. The creation of CDAs in 2013 further embraced the charitable tradition of credit unions and provided them with a tool to improve their ability to help their communities beyond the provision of financial services. Unfortunately, however, as it currently stands, credit unions are limited in their ability to serve a portion of their communities who have already chosen to serve.

⁶ 12 U.S.C. 1757(2017).

⁷ 44 FR 56691 (Oct. 2, 1979); 64 FR 19441 (Apr. 21, 1999); 12 CFR 721.3.

⁸ Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

⁹ See IRS, “Exemption Requirements - 501(c)(3) Organizations” (February 17, 2022) available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>

¹⁰ See IRS, “Veterans’ Organizations” (August 2, 2022) available at <https://www.irs.gov/charities-non-profits/other-non-profits/veterans-organizations>

Prior to 2012, one of the only two categories of acceptable FCU donations were “non-profit organizations located or active in the community where the donor FCU had a place of business.” The logic behind allowing donations to this type of organization is straightforward; credit unions are financial institutions that rely on, and excel at, relationship banking. To build relationships within a community requires supporting the community, including the charitable organizations within the community. Recent PYMNTS data finds that an FI’s lack of support for local charities can persuade one-third of customers to move their accounts elsewhere, and the age groups most impacted by charity participation are bridge millennials and millennials.¹¹ In an industry as negatively impacted by an aging membership as the credit union industry, data such as this should incentivize as much charitable giving as possible from FCUs. Yet, NCUA Call Report Data from June 30th of this year shows that there were only 261 FCUs that reported CDAs with positive amounts, totaling \$1.3 billion. The fact that only around 5 percent of the 4,853 FCUs in existence currently maintain CDAs should put in stark relief the need for the NCUA Board to expand the definition of “qualified charity” to include 501(c)(19) veterans’ organizations and thereby strengthen relationships between FCUs and their communities.¹² The U.S. military and veteran community is one that spans the globe and has long been intertwined with the credit union community. It is only logical, therefore, that credit unions should be given every tool available to donate to and support this community.

The relationship between military members and credit unions begins early and often lasts a lifetime. The Department of Defense (DoD) is generally prohibited from providing financial services to its servicemembers. To fill that need, credit unions have been providing financial services on U.S. military bases since 1928 and on overseas DoD installations since 1967. To further help meet the financial needs of servicemembers, through a years-long series of discussions with the DoD and through the enactment of an amendment to the FCU Act in 2006, the DoD has the discretionary authority to afford space on military bases at a nominal rate to credit unions, provided that they meet certain statutory and regulatory requirements regarding the provision of financial services in the on-base facility.¹³ This means that for the many members of the military who enlist at 18, a credit union on-base may be their first financial institution, and it often remains their financial institution for the rest of their lives, through overseas deployments, reassignments, or retirement.

This bond between credit unions and service members is so significant that a substantial segment of the credit union industry consists of defense credit unions (DCUs). These 181 DCUs have been serving military members for over 100 years and currently serve 32 million members, or over a quarter of all credit union members in the country. DCUs specialize in offering financial services to members of the military and are equipped with the training and experience to address the

¹¹ See PYMNTS; Elan, “Financial Institutions And Customer Loyalty: The Value Of Investing In Your Community” (July, 2022).

¹² See NCUA, “Quarterly Credit Union Data Summary 2022 Q2” (June 30, 2022) *available at* <https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2022-Q2.pdf>

¹³ Pub. L. 109–351, title V, §501, (Oct. 13, 2006), 120 Stat. 1974.

unique financial challenges that face our men and women in uniform every day. For credit unions such as DCUs, that are so dedicated to serving members of the military, to be prohibited by regulation from contributing to veterans' organizations in the same manner as other charitable organizations runs counter to their very nature.

Even for credit unions that are not DCUs, the narrow definition of "qualified charity" in Part 721.3 hinders their ability to help their members. There are around 19 million veterans living in the U.S., as well as around 1.2 million active duty servicemembers and around 800,000 reservists, all numbers exclusive of family members of active or retired servicemembers.¹⁴ In all probability, every credit union in the country has at least one member who is connected to the military in some way. These credit unions too are prevented from helping veterans' organizations due to an unnecessarily narrow definition within a regulation.

An Unmet Need

In the United States in 2021, there were 4.9 million veterans with a service-connected disability or a debilitating injury they incurred during active-duty service, according to the Bureau of Labor Statistics (BLS).¹⁵ Yet that same year, only 3.9 million veterans received disability compensation payments from the Department of Veterans Affairs (VA), according to the United States Census Bureau.¹⁶ A 2021 survey found that, of injured post-9/11 veterans, 94 percent experienced physical injuries that are considered severe, 91 percent live with severe mental health conditions, and nearly a third need aid and attendance with everyday activities because of their injuries.¹⁷ While many are aware in general terms of the ongoing suicide crisis among veterans, the fact that in 2020, veterans had a suicide rate of 31.7 for every 100,000, nearly double the 16.1 per 100,000 suicide rate of non-veteran adults, is an incredible tragedy.¹⁸

These numbers paint a picture of a veteran population with serious unmet needs and of a society and care framework incapable of meeting them. As of 2018, there were 8,034 veterans' organizations registered as 501(c)(19)s that were reporting assets or income.¹⁹ These include large organizations such as the Veterans of Foreign Wars (VFW) that engage in activities such as educating separating service members about their VA benefits through private benefits counseling, providing training to VFW Service Officers on signs of emotional suffering so they can

¹⁴ See Pew Research, Katherine Schaeffer, "The changing face of America's veteran population" (April, 5, 2021).

¹⁵ See Bureau of Labor Statistics, "Employment Situation of Veterans – 2021" (April 21, 2022) *available at* <https://www.bls.gov/news.release/pdf/vet.pdf>

¹⁶ See Census Bureau, "Benefits Received by Veterans and Their Survivors" (November 10, 2021) *available at* <https://www.census.gov/newsroom/press-releases/2021/veterans-report.html>

¹⁷ See Wounded Warrior Project, "2021 Annual Warrior Survey, Longitudinal: Wave 1" (2022)

¹⁸ See U.S. Department of Veterans Affairs, Office of Mental Health and Suicide Prevention. 2022 National Veteran Suicide Prevention Annual Report. 2022. Retrieved October 5, 2022 from https://www.mentalhealth.va.gov/suicide_prevention/data.asp

¹⁹ See Urban Institute, "Overview of 501(c)(19)s" (November 14, 2018) *available at* <https://nccs.urban.org/publication/overview-501c19s>

better direct veterans to programs and services, or helping to cover rent, utilities, or groceries for military families struggling with the hardships of war.²⁰ 501(c)(19) organizations also include much smaller organizations dedicated to more specific purposes, such as the Marion County Veterans Honor Guard. The Marion County Veterans Honor Guard is a 501(c)(19) organization that provides full military burial honors to all veterans who have honorably served in any branch of the US Armed Forces. Each year, the Guard provides more than 175 funerals for military veterans in Kentucky.²¹

These organizations work to meet an unmet need for men and women who served our country, but there is always more that they can be doing. Every dollar counts in the fight to properly support our servicemembers and bake sales and charity raffles will not suffice. By expanding the definition of “qualified charity” the NCUA can open these veterans’ organizations to donations from CDAs and can make a meaningful difference in their mission.

Conclusion

The undersigned urge the NCUA to amend the definition of “qualified charity” as it relates to Charitable Donation Accounts (CDAs) in Part 721.3 of NCUA regulations to include 501(c)(19) veterans’ organizations. Thank you for your consideration and we look forward to working with you to help the credit union industry help our veterans. If we can answer any questions or provide you with additional information, please do not hesitate to contact Regulatory Affairs Counsel James Akin at 703-615-5109 or jakin@nafcu.org.

Sincerely,



B. Dan Berger
President & CEO
NAFCU



Anthony Hernandez
President & CEO
DCUC

²⁰ See Veterans of Foreign Wars, “Fact Sheet” (Retrieved October 5, 2022) <https://vfworg-cdn.azureedge.net/-/media/VFWSite/Files/Media-and-Events/Press-Room/VFWFactSheet.pdf?la=en&v=1&d=20221002T193823Z>

²¹ See Kentucky Living, “Marion County veterans provide honor and dignity” (October 29, 2018) *available at* <https://www.kentuckyliving.com/news/marion-county-veterans-provide-honor-and-dignity>

A handwritten signature in blue ink that reads "Dan West". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Dan West
Adjutant General
Veterans of Foreign Wars of the United States

A handwritten signature in black ink that reads "Christopher P. Roe". The signature is cursive and somewhat stylized, with a large initial "C" and a long horizontal stroke at the end.

Christopher P. Roe
SVP-Corporate & Legislative Affairs
CUNA Mutual Group