

November 28, 2006

Robert H. Dickman, Esquire  
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Re: Political Activities of Credit Unions.

Dear Mr. Dickman:

You requested guidance regarding the extent to which credit unions may engage in political activity, specifically whether they may host events in support of particular congressional candidates. Although federal credit unions (FCUs) qualifying under the Regulatory Flexibility Program (RegFlex) may make donations without regard to the limitations in NCUA's charitable donations rule, limits in the Federal Election Campaign Act (FECA), 2 U.S.C. §431 et seq., and regulations implemented by the Federal Elections Commission (FEC) prohibit credit unions from direct political contributions in connection with elections. Permissible political activity includes establishment and administration of separately segregated funds (SSFs) and limited sponsorship of fundraising events, subject to reimbursement by an SSF.

FCU political activities are specifically subject to NCUA regulations only to the extent they involve donations; however, FCU political activities are otherwise subject to FEC rules and regulations, as well as applicable state and local laws. The FEC administers, interprets, and enforces FECA.

We are providing this general overview of NCUA and FEC regulations on this issue but please note that NCUA does not have jurisdiction over FECA issues. You should consult the FEC Office of General Counsel for information concerning its guidelines.

### **NCUA**

NCUA rules state FCUs may make charitable contributions or donations to a nonprofit or tax-exempt organization operating primarily to promote and develop credit unions, if it is in the best interest of the FCU and the board of directors approves it. 12 C.F.R. § 701.25. This provision does not permit direct donations or endorsements for a particular candidate. An exception is made for FCUs that qualify for RegFlex. 12 U.S.C. §742.1. RegFlex designation exempts FCUs from several NCUA regulatory restrictions, including those governing charitable

donations. 12 U.S.C. §742.4(a)(1). Circumstances for automatic qualification can be found at 12 U.S.C. §742.2. For state-chartered credit unions, you should contact the appropriate state supervisory agency to determine the permissibility of donations.

### ***FEC Rules for Political Contributions***

Credit unions are regulated under FEC guidelines for corporations. FECA prohibits credit unions from making “a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for political office,” 2 U.S.C. §441b; see *also* 11 C.F.R. §114.2. Credit unions may instead establish an SSF, more commonly known as a political action committee (PAC). The two terms are interchangeable. Individual credit unions may form their own SSFs, but may also affiliate with other SSFs to form a larger aggregate. Please refer to the FEC Guide for Corporations for details regarding affiliation with other SSFs. See also FEC’s Advisory Opinions 2004-41, 2000-15, and 2000-4, available on the FEC website.

An SSF is a separate account, with its own taxpayer identification number, to which a credit union’s members may contribute funds so that the SSF may act politically on behalf of the members. Under FEC rules, a credit union may pay for the establishment and administrative costs associated with an SSF, however, it may not contribute money directly to the fund. Member contributions to an SSF must be voluntary and must not be derived from dues obtained as a condition for membership in the credit union or a commercial transaction. If an SSF or its sponsoring credit union wants to solicit contributions, it may only solicit credit union members, personnel, and the families of both groups, subject to FECA. The general public may not be solicited; however, a credit union or SSF may accept funds from the general public, subject to FECA.

An SSF must, at the minimum, have a treasurer to perform administrative duties. Additional staff members are permissible, but not necessary. Staff members are regarded as employees of the credit union. Their responsibilities may be limited to duties associated with the SSF, but this is not mandatory. The treasurer may be held personally liable for any violations of FECA or FEC regulations. Please review the FEC’s Brochure on Committee Treasurers, also available on the FEC website.

### ***Fundraising and Supporting Candidates***

SSFs may support and make contributions to individual candidates and their campaign committees, subject to FEC limits. Though political activities generally are reserved to the SSF, FEC regulations allow credit unions to pay certain costs associated with fundraising events. In the event a credit union is permitted to host a fundraising event and the cost of the event exceeds one-third of the

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amount raised in contributions, the SSF may have to reimburse the credit union for the difference. 11 C.F.R. 114.5(b)(2).

***Conclusion***

FEC regulations rarely allow credit unions to participate directly in partisan politics; political activity is generally performed by an SSF. It is important to note NCUA does not have jurisdiction over FECA issues. For further information, we suggest you contact: the Office of General Counsel, Federal Election Commission, 999 E Street, NW, Washington, DC 20463, telephone: (800) 424-9530, or online at [www.fec.gov](http://www.fec.gov). Please refer to the FEC "Campaign Guide for Corporations and Labor Organizations," available on FEC's website. You may also wish to consult the Pennsylvania Credit Union League regarding state election rules.

Sincerely,

Sheila A. Albin  
Associate General Counsel

OGC/AMT:bhs  
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