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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: 10-22-98

October 15, 1998

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Acting Staff Director 

FROM: Lawrence M. Noble  
General Counsel 

N. Bradley Litchfield  
Associate General Counsel 

Michael G. Marinelli  
Staff Attorney 

SUBJECT: Draft AO 1998-19

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 22, 1998.

Attachment

1 **ADVISORY OPINION 1998-19**

2  
3 **Jan Witold Baran**  
4 **Wiley, Rein & Fielding**  
5 **1776 K Street, N.W.**  
6 **Washington, D. C 20006**

7  
8 **Arthur L. Herold, et al.**  
9 **Webster, Chamberlain & Bean**  
10 **1747 Pennsylvania Avenue, N.W. #1000**  
11 **Washington, D.C. 20006**

**DRAFT**

12  
13 **Dear Mr. Baran and Mr. Herold:**

14  
15 **This refers to your letters dated September 4, and September 25, 1998, which**  
16 **request advice concerning the application of the Federal Election Campaign Act of 1971,**  
17 **as amended ("the Act"), and Commission regulations to various activities and**  
18 **circumstances presented by the Credit Union National Association, Inc. ("CUNA"), the**  
19 **Credit Union Legislative Action Committee ("CULAC"), the Texas Credit Union League**  
20 **("Texas League"), the Pennsylvania Credit Union League ("Pennsylvania League"), the**  
21 **San Antonio Telephone Federal Credit Union ("San Antonio Credit Union") and the**  
22 **Patriot Federal Credit Union ("Patriot Credit Union"). The context of the request is a**  
23 **fundraising proposal developed by CUNA for the solicitation and collection of**  
24 **contributions to CULAC. The proposal is described in your request as the "Deduct-A-**  
25 **Buck" program which would be available to the non-corporate credit union members of**  
26 **the credit unions that are members of CUNA.**

27 **FACTUAL BACKGROUND**

28 ***Structure of CUNA and State Leagues***

29 **CUNA is a trade association, incorporated in the State of Wisconsin as a non-**  
30 **profit, non-stock corporation with members. You state that it has been recognized as an**

1 organization exempt from Federal income tax under section 501(c)(6) of the Internal  
2 Revenue Code. CUNA was organized, among other things, to promote and improve  
3 business conditions relating to the operation of its State league members and direct credit  
4 union members. You state that 51 of the members are leagues representing the 50 States  
5 and the District of Columbia. All the members of the State leagues are State chartered or  
6 Federally chartered credit unions. Each State league is incorporated and has been  
7 recognized as exempt from Federal income tax under section 501(c)(6) of the Internal  
8 Revenue Code. Some of the State leagues, such as Pennsylvania, have Federal PACs and  
9 others, such as Texas, do not have Federal PACs. CULAC is the separate segregated  
10 fund established and administered by CUNA pursuant to 11 CFR 114.5(b).

11 You state that CUNA's bylaws have been recently amended to permit the  
12 individual credit unions to be members of CUNA. CUNA has approximately 10,251  
13 such credit union members. These credit unions have individual members that maintain  
14 share accounts in the credit union.<sup>1</sup>

15 Your request includes CUNA's articles of incorporation and bylaws, the Texas  
16 and Pennsylvania league bylaws and articles of incorporation which, you state, are similar  
17 to every other league's articles of incorporation and bylaws. Your request also includes  
18 copies of the articles of incorporation and bylaws for the San Antonio Credit Union and

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<sup>1</sup> You state that credit union members may include incorporated small businesses among their membership. However, the Deduct-A-Buck proposal in your request is not designed to solicit contributions from these corporate members. Thus, the Commission assumes that the program will not be made available to or used by them.

1 the Patriot Credit Union.<sup>2</sup> You state that these credit unions are representative of  
2 CUNA's credit union members.

3 *Membership rights within CUNA*

4 A review of the bylaws of CUNA indicates that membership in CUNA for State  
5 leagues is through an application process. Individual credit unions that are members of  
6 the State leagues obtain automatic membership in CUNA. In the limited circumstances  
7 where a credit union is not within the geographic area covered by a member State league,  
8 that credit union may apply separately for CUNA membership. CUNA Bylaws, Article  
9 II, section 2.2, 2.3. The credit union members of the State leagues pay dues to CUNA  
10 which are collected and transmitted through the State leagues. CUNA Bylaws, Article  
11 VI, section 6.3.

12 The powers granted to CUNA's board of directors indicate that it has general  
13 management of the organization. CUNA Bylaws, Article III, section 3.9.<sup>3</sup> This Board,  
14 with 24 voting members, is elected through a process ensuring that specific directors will  
15 represent the State leagues, or individual credit unions of a particular size class.  
16 However, all CUNA members, whether they are State leagues or individual credit unions,  
17 have the right to vote in the election to choose their particular directors. CUNA Bylaws,  
18 Article III, section 3.7.

19 The Board elects, from its membership, all of the officers of the organization

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<sup>2</sup> According to your request, the Patriot Credit Union was, until December 21, 1994, known by the name Letterkenny Federal Credit Union.

<sup>3</sup> Among the powers of the Board is the right to establish salary levels for CUNA personnel, ratify contracts, approve the budget, borrow funds, appoint certain officers, propose amendments to the bylaws and mortgage property. *Id.*

1 (chairperson, vice chairperson, secretary and treasurer) except for the president, which is  
2 an appointed, salaried position. These officers, along with an additional board member,  
3 form an Executive Committee which exercises all the Board's powers in the management  
4 of the property and business of the organization when the Board is not in session. CUNA  
5 Bylaws, Article III, section 3.12(g).

6 *Membership rights within Credit Unions*

7 Under the Federal Credit Union Act, the San Antonio Credit Union and the Patriot  
8 Credit Union as federal credit unions are Federally chartered corporations and  
9 cooperative associations. See 12 U.S.C. §§1754, 1752, 1757; see also Advisory Opinion  
10 1990-18. Membership in both credit unions is by an application process. San Antonio  
11 Credit Union Bylaws, Article II, section 2 and Patriot Credit Union Bylaws, Article II,  
12 section 2. As part of the application process, members pay for shares in the credit unions  
13 and receive certain benefits in return. These include the right to receive dividends, the  
14 right to vote for members of the Board of Directors and the right to be considered for  
15 loans and lines of credit. See San Antonio Credit Union Bylaws, Article XIV, section 1  
16 and Patriot Bylaws, Article XIV, section 1 (dividends); San Antonio Credit Union  
17 Bylaws, Article V, section 2 and Patriot Bylaws, Article VI, section 5 (voting); San  
18 Antonio Bylaws, Article XIII, section 2-8 and Patriot Credit Union Bylaws, Article XII,  
19 Section 1 (loans and lines of credit).

20 Both credit unions are structured with a board of directors that is charged with the  
21 general direction and control of the credit unions. San Antonio Bylaws, Article VII,  
22 section 5; Patriot Credit Union Bylaws, Article VII, section 4.

1 ***Deduct-A-Buck program***

2           Among the ways CULAC proposes to raise money is through the "Deduct -A-  
3 Buck" program. You state that, under this program, CULAC would solicit individual  
4 members (i.e., account holders) of the credit union members (of CUNA) to make  
5 contributions to CULAC, or to a State league PAC, via preauthorized automatic account  
6 transfers. Participating credit unions would execute written, prior approval agreements  
7 allowing the solicitation of their members pursuant to 2 U.S.C. §441b(b)(4)(D) and 11  
8 CFR 114.8(c) and (d). Thereafter, individual account holders who choose to participate  
9 would sign automatic account transfer forms that would instruct their respective credit  
10 unions to transfer funds either weekly, monthly, quarterly or annually from the members'  
11 individual accounts. The credit union would set up debits from the members' individual  
12 accounts and submit the funds directly to the State leagues via wire transfer, money order  
13 or share draft. You state that both the credit union and the State leagues would ensure  
14 that the contributions are received by CULAC within ten or thirty days, as required by 11  
15 CFR 102.8. The leagues would have the option to split the contributions between  
16 CULAC and their own PACs, if state law permits, as authorized by the contributor.  
17 Copies of a Deduct-A-Buck brochure, a prior approval agreement and an automatic  
18 account transfer form are included with this request.

19           Regarding the described proposal, you ask: (1) May CULAC solicit voluntary  
20 contributions from the individuals who are members of CUNA's member credit unions?  
21 (2) May the State leagues and member credit unions serve as "collecting agents" for  
22 CULAC and the State league PACs? (3) Is the automatic account deduction used in this

1 proposal a permissible method of soliciting contributions to CULAC and the State league  
2 PACs?

3 **ACT AND COMMISSION REGULATIONS**

4 Commission regulations define a federation of trade associations as "an  
5 organization representing trade associations involved in the same or allied line of  
6 commerce." 11 CFR 114.8(g)(1). Commission regulations explain the federation's role  
7 for purposes of the Act as follows:

8 (1) ... Such a federation may, subject to the following limitations, solicit  
9 the members of the federation's regional, State or local affiliates or  
10 members, provided that all of the political committees established,  
11 financed, maintained or controlled by the federation and its regional, State,  
12 or local affiliates or members are considered one political committee for  
13 the purposes of the [contribution] limitations. The factors set forth at  
14 section 100.5(g)(4) shall be used to determine whether an entity is a  
15 regional, State or local affiliate of a federation of trade associations.

16 (i) The federation and its member associations may engage in a joint  
17 solicitation; or

18 (ii) The member association may delegate its solicitation rights to the  
19 federation.

20 (2) A federation is subject to the provisions of this section when soliciting  
21 the stockholders and executive or administrative personnel of the  
22 corporate members of its member associations. 11 CFR 114.8(g)(1) and  
23 (2).

24  
25 Under Commission regulations, a trade association is generally a membership  
26 organization of persons engaged in certain activities, and a federation of trade  
27 associations would fall within this same framework. See 11 CFR 114.8(a) and 114.8(g).  
28 As one type of membership organization, the trade association must also possess certain  
29 attributes. It must (i) expressly provide for "members" in its articles and bylaws; (ii)  
30 expressly solicit members; and (iii) expressly acknowledge the acceptance of

1 membership, such as by sending a membership card or inclusion on a membership  
2 newsletter list. 11 CFR 100.8(b)(4)(iv)(A), 114.1(e)(1).

3 On the question of what constitutes membership for purposes of the Act, the  
4 Supreme Court has suggested that members of non-stock corporations are to be defined,  
5 at least in part, by analogy to stockholders of business corporations and members of labor  
6 unions. See *FEC v. National Right to Work Committee*, 459 U.S. 197, 202 (1982), see  
7 also *Chamber of Commerce v. FEC*, 69 F. 3d 600 (D.C. Cir. 1995); *petition for*  
8 *rehearing denied*, 76 F. 3d 1234 (1996).<sup>4</sup>

9 Under the Act and Commission regulations, a corporation, including an  
10 incorporated trade association, may use general treasury funds, including dues monies or  
11 membership fees, for the establishment, administration, and solicitation of contributions  
12 to its separate segregated fund, and such support would not result in a contribution to that  
13 fund. 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii) and 114.5(b). An organization  
14 such as an incorporated trade association, which is not itself a political committee, but  
15 which directly or indirectly establishes, administers, or financially supports a political

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<sup>4</sup> In 1993, the Commission revised its membership regulations to further define the term "members." However, the court in *Chamber* determined that portions of those regulations were invalid, concluding that they defined the term "member" in an unduly restrictive fashion. See *Chamber* at 604. (There were not four votes at the Commission to seek further judicial review of this decision.) The regulation at 11 CFR 114.1(e)(2), now invalid in the District of Columbia Circuit, had defined members to mean:

all persons who are currently satisfying the requirements for membership in a membership association, who affirmatively accept the membership association's invitation to become a member, and who:

- (i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);
- (ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or
- (iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.



1 committee, is a "connected organization" of that committee. 2 U.S.C. §431(7); 11 CFR  
2 100.6(a).

3 The connected organization and its SSF are subject to restrictions as to the  
4 category of persons who may be solicited for contributions to the committee. 2 U.S.C. §  
5 441b(b)(4)(A) and (D); 11 CFR 114.5(g)(1) and 114.8(c). Specifically, an incorporated  
6 trade association may solicit its executive and administrative personnel, the families of  
7 such personnel, and its unincorporated members. 11 CFR 114.7(a). In addition, it may  
8 solicit the stockholders and executive and administrative personnel, and the families of  
9 such stockholders and personnel, of the member corporations that separately and  
10 specifically approve the solicitations and that have not approved a solicitation by any  
11 other trade association for the same calendar year. 11 CFR 114.8(c).

12 A collecting agent is defined in 11 CFR 102.6(b) as an organization or committee  
13 that collects and transmits contributions to one or more separate segregated funds to  
14 which the collecting agent is related. A collecting agent may be either: (i) a committee,  
15 whether or not it is a political committee as defined in 11 CFR 100.5, affiliated with the  
16 separate segregated fund under 11 CFR 110.3; or (ii) the connected organization of the  
17 separate segregated fund as defined in 11 CFR 100.6; or (iii) a parent, subsidiary, branch,  
18 division, department, or local unit of the connected organization of the separate  
19 segregated fund; or (iv) a local, national or international union collecting contributions on  
20 behalf of the separate segregated fund of any federation with which the local, national, or  
21 international union is affiliated. See 11 CFR 102.6(b)(1)(i) to (iv).

22 A collecting agent, if it is an unregistered organization that follows the procedures  
23 set out in 11 CFR 102.6(c), is not required to register and report as a political committee

1 under 11 CFR Parts 102 and 104, provided that the organization does not engage in other  
2 activities such as making contributions or expenditures for the purpose of influencing  
3 Federal elections. 11 CFR 102.6(b)(2). The collecting agent may pay any or all of the  
4 costs incurred in soliciting and transmitting contributions to the separate segregated fund.  
5 11 CFR 102.6(c)(2)(i). The full amount of each contribution collected by the collecting  
6 agent on behalf of a separate segregated fund shall be transmitted to that fund within 10  
7 or 30 days as required by 11 CFR 102.8. 11 CFR 102.6(c)(4).

8 The Commission's regulations specifically provide that a member corporation of a  
9 trade association "may not use a payroll deduction or checkoff system for executive or  
10 administrative personnel contributing to the separate segregated fund of the trade  
11 association." 11 CFR 114.8(e)(3). The Commission has interpreted this regulation as  
12 applicable to the solicitation for contributions from employees of a member corporation  
13 of a trade association who are also stockholders of the corporation. See Advisory  
14 Opinion 1989-3.

#### 15 ***APPLICATION TO CUNA PROPOSAL***

#### 16 ***Solicitation of credit union account holders by CULAC***

#### 17 **Membership status of CUNA and individual credit unions.**

18 In Advisory Opinion 1991-24, the Commission concluded that CUNA was a  
19 membership organization with "members" who qualified as such under the Act.  
20 Although the 1991 opinion was issued prior to the 1993 revisions to the membership  
21 regulations, the facts in this request lead the Commission to re-affirm that conclusion.<sup>5</sup>

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<sup>5</sup> For example, Article II of CUNA's Bylaws meets the requirements of the regulations at 11 CFR 100.8(b)(4)(iv)(A)(i) and 114.1(e)(1) by expressly providing for membership. Your request includes

1 The Commission further concludes that CUNA's Board of Directors, rather than the  
2 Executive Committee, is the highest governing body of CUNA for purposes of the  
3 Commission regulations.<sup>6</sup> Lastly, the Commission concludes that the individual credit  
4 union members of CUNA would be considered "members" for purposes of the Act and  
5 Commission regulations.<sup>7</sup> The Commission notes that these members pay dues and all  
6 have the right to vote for the highest governing body, or for those who choose the  
7 members of that body. Thus, the membership criteria of CUNA would have satisfied  
8 even the more restrictive standard struck down in *Chamber*.<sup>8</sup> See footnote 4.

9 The Commission previously considered the status of credit unions under the Act  
10 in Advisory Opinion 1990-18. Noting the status of a Federal credit union under Federal  
11 law, as both a Federally chartered corporation and a cooperative association, the  
12 Commission applied the standard set in the *National Right to Work* opinion to determine  
13 if the share holders of the credit union possessed "some relatively enduring and  
14 independently significant financial or organizational attachment" to permit their

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materials which indicate that CUNA solicits members from within the eligible group of credit unions and related entities. See 11 CFR 100.8(b)(4)(iv)(A)(ii) and 114.1(e)(1). The request materials also indicate compliance with the requirement that membership be expressly acknowledged.

<sup>6</sup> This conclusion is based on the limitations on the power of the Executive Committee and the delegated nature of the powers from the Board.

<sup>7</sup> The Commission acknowledges that the portion of the regulations that were not affected by the *Chamber* decision require that the members of an organization "affirmatively accept" membership in the organization. In the case of CUNA, membership for individual credit unions is automatic with their membership in a State league. However, this requirement must be seen in terms of the federation structure of CUNA (see discussion below) and the exclusive potential membership pool (i.e., only credit unions and State credit union leagues) for CUNA. The Commission construes the affirmative acceptance on behalf of the credit unions as being given on their behalf by the State league members.

<sup>8</sup> Following the *Chamber* decision, the Commission published a notice of proposed rulemaking which may lead to regulation changes concerning the definition of membership. See FEC Notice of Proposed Rulemaking, published in the *Federal Register* on December 22, 1997, at pages 66832 through 66838. The conclusion of this opinion regarding membership could be modified or superseded by the adoption of any new regulations on membership criteria, but the opinion may be relied upon until any change is made. If a change is made, it will become effective on a specific date announced in the *Federal Register*. In

1 solicitation to a credit union's PAC for political donations. It concluded in the  
2 affirmative.

3 Similarly, the Commission concludes here that the shareholders of the San  
4 Antonio Credit Union and the Patriot Credit Union, because of their financial attachments  
5 and rights of governance within each corporation, would qualify as members of a  
6 membership association under the Act and Commission regulations and may be solicited  
7 for political contributions to CULAC by those entities qualified to conduct the  
8 solicitation.

9 Permissibility of solicitation

10 The Commission regulations expressly permit the solicitation of the shareholders  
11 of the member corporation of a trade association for contributions to the trade  
12 association's PAC, but are silent regarding the solicitation of "members" of non-stock  
13 corporations. In Advisory Opinion 1982-12, the Commission permitted a trade  
14 association to solicit the individual members of its corporate members that were  
15 corporations without stock. The Commission noted the equity interest held in the  
16 member corporation and its close analogy to shareholders' rights in a stock corporation.  
17 See Advisory Opinion 1982-12. In a related analysis in Advisory Opinion 1984-63, the  
18 Commission noted the close parallel between shareholders within a savings and loan  
19 association and stockholders within a corporate structure:

20 although the interest of a member of a mutual savings and loan association  
21 is not identical with interest held by a shareholder of a business  
22 corporation... The interests have several prominent features in common,  
23 including the right to vote for directors, the right to receive surplus profits

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addition, the Commission's written explanation and justification for any new rules will identify each past advisory opinion that is modified or superseded.

1 as declared by the board of directors, and the right to pro rata share of  
2 assets on dissolution.  
3

4 The Commission believes that the same rights are held by shareholders of a credit  
5 union. In this specific circumstance, as noted above, the ties between the individual  
6 members (or share account holders) of the San Antonio Credit Union and the Patriot  
7 Credit Union would permit the solicitations for contributions to the SSF's of those  
8 entities, if they existed. The Commission likewise concludes that the analogy to  
9 stockholder in a corporation (with stock) is close enough to permit the solicitation by a  
10 trade association SSF of the shareholders of member credit unions under 11 CFR  
11 114.8(c). Therefore, in response to your first question, CULAC may solicit contributions  
12 from individuals who are members of CUNA's member credit unions, provided that  
13 CUNA (and CULAC) comply with the procedures regarding contribution solicitations by  
14 trade associations in the Commission's regulations.<sup>9</sup>

15 *State leagues and member credit unions as collecting agents of CULAC*

16 CUNA as federation of trade associations

17 The materials provided with your request also confirm the previous comment  
18 noted in Advisory Opinion 1991-24 that CUNA appeared to be a federation of trade  
19 associations. The Bylaws of both the Texas and Pennsylvania Leagues explicitly identify  
20 their organizations as State affiliates of CUNA. Texas League Bylaws, Article I, section  
21 2 and Pennsylvania League Bylaws, Article III, section 2. Applying the factors found at

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<sup>9</sup> As you acknowledge in your request, CUNA must first obtain the prior approval of its credit union members before making solicitations on behalf of CULAC, and each credit union may grant permission to CUNA only if it has not already given similar permission to another trade association for the same calendar year. 11 CFR 114.8(d).

1 11 CFR 100.5(g), the Commission notes several links between CUNA, the State leagues  
2 and the member credit unions of those leagues, which affirm a federation structure. First,  
3 there is overlapping membership between CUNA and the State leagues. See 11 CFR  
4 100.5(g)(4)(ii)(D). As noted above, all the credit union members of the State leagues are  
5 automatically members of CUNA. CUNA Bylaws, Article II, section 2.2. A credit  
6 union, in most circumstances, cannot join CUNA unless it belongs to a State league.<sup>10</sup> If  
7 it were to withdraw from the league, membership in CUNA is forfeited. *Id* at 2.4.<sup>11</sup>  
8 Second, the State leagues and credit unions may participate in the governance of CUNA  
9 through their participation in CUNA's board of directors. See 11 CFR 100.5(g)(4)(ii)(B).  
10 A quarter of the seats on the CUNA Board are reserved for State league presidents. The  
11 rest are elected credit union representatives who must be members of the credit union.  
12 CUNA Bylaws, Article III, section 3.7.<sup>12</sup> Finally, there are significant financial  
13 interactions between CUNA, the State leagues and the State league credit unions given  
14 the financial support that passes from these credit unions through the State leagues and on  
15 to CUNA. See 11 CFR 100.5(g)(4)(ii)(G) and (H).

16 The Commission further notes, however, that those credit union members which  
17 are not part of a State league stand in a relationship to CUNA outside of a federative

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<sup>10</sup> The exception is for credit unions which operate outside the geographic area of the State leagues (i.e., in United States territories) or a credit union operating under the National Credit Union Administration and serving American civilian personnel in foreign nations.

<sup>11</sup> The Commission notes that this situation contrasts with that of the United States Savings Association in Advisory Opinion 1983-28. In that opinion, the Commission stated that, because it had a separate category for organization State leagues and individual savings institutions, the United States Savings Association was a trade association as to its individual savings institution members and a federation of trade associations as to the State leagues. However, the United States Savings Association did not have a provision in its bylaws automatically linking membership in the State league with membership in the national organization, as is the case here, thereby indicating a more federation-like structure.

1 environment. These credit unions lack the automatic membership in CUNA and deal  
2 with the organization directly. The ties these credit unions have to CUNA are more in the  
3 nature of membership in a trade association. See Advisory Opinion 1983-28 and footnote  
4 11.

5 State leagues and credit unions as collecting agents

6 The Commission in Advisory Opinion 1989-3 concluded that the corporate  
7 members of a trade association could not act as collecting agents for the trade  
8 association.<sup>13</sup> However, the Commission has not previously considered explicitly  
9 whether the members of a federation of trade associations could act as collecting agents  
10 for the PAC (or SSF) of the federation.<sup>14</sup> The Commission believes that the situation of a  
11 federation of trade associations is distinguishable from the customary trade association  
12 structure since, by definition, the federation presents a highly integrated structure with  
13 multiple tiers of organizational membership and related governance powers linking the  
14 tiers. The Commission therefore concludes that the State leagues of CUNA and the credit  
15 union members of the State leagues may be considered as a "branch, division ... or local

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<sup>12</sup> The Bylaws of both the Texas and Pennsylvania leagues refer to the process whereby delegates to the CUNA board of directors are chosen. See Texas League Bylaws Article XI and Pennsylvania League Bylaws Article VI, section 6.

<sup>13</sup> The Commission concluded that the individual corporate members of the Employment Stock Ownership Association "do not met any of the disjunctive criteria set out in 11 CFR 102.6(b)(1)(I)-(iv) to qualify as 'collecting agents' for the association." Advisory Opinion 1989-3. See also Advisory Opinion 1985-37, where the Commission concluded that membership in a organization, without more, was not a sufficient nexus to permit the member to qualify as a collecting agent.

<sup>14</sup> In Advisory Opinion 1985-12, the Commission permitted the State affiliates of a national trade association (which themselves were trade associations on the State level) with a structure very similar to CUNA to act as collecting agents for the national trade association. The Commission did not, however, expressly characterize the organization as a federation of trade associations.

1 unit” of CUNA under 11 CFR 102.6(b)(1)(iii) and may therefore act as collecting agents  
2 in receiving and transmitting contributions for CULAC.<sup>15</sup>

3 Credit Unions that are not members of State Leagues

4 By contrast, the credit union members of CUNA that are not also members of any  
5 State league would be outside the federation structure of CUNA and may not act as  
6 collecting agents for CULAC. They may, nonetheless, participate in CUNA’s “Deduct-  
7 A-Buck” program under certain conditions. CUNA may directly administer the program  
8 and consider the related costs as its own administration expenses for the support of  
9 CULAC under 2 U.S.C. §441b(b)(2)(C). To do this would require CUNA to pay the  
10 program costs of these credit union members on a reimbursement basis. See Advisory  
11 Opinion 1997-9.<sup>16</sup>

12 *Permissibility of CUNA’s “Deduct-A-Buck” program*

13 Your final question concerns whether the “Deduct-a-Buck” program is  
14 permissible given 11 CFR 114.8(e)(3) which prohibits a member corporation of a trade  
15 association from using a payroll deduction or checkoff system for executive or  
16 administrative personnel contributing to the separate segregated fund of the trade  
17 association. The Commission concludes that section 114.8(e)(3) is inapplicable to the  
18 Deduct-A-Buck program, since the funds involved would not be deducted by means of a

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<sup>15</sup> The Commission notes that as collecting agents for CUNA, the State leagues and the member credit unions of the State leagues must follow the requirements established by 11 CFR 102.8 and 102.6(c)(4) regarding the time limits for the transmittal of contributions to CULAC.

<sup>16</sup> The Commission notes that Advisory Opinion 1997-9 involved the collection of contributions for the SSF of an incorporated membership organization that was neither a trade association or a federation of trade associations. In that opinion the Commission permitted an entity (a member firm) that was not qualified to act as a collecting agent for the membership organization, to participate in its collection of SSF contributions through deductions from individual member’s accounts. This was permitted, however, only if the membership organization reimbursed the entity’s contribution collection costs, or if the costs came



1 payroll deduction system administered by the employer of the contributing member  
2 account holders.<sup>17</sup> As the request notes, where employee payroll deductions were not at  
3 issue, the Commission has permitted various forms of contribution made by pre-  
4 authorized account deductions. See Advisory Opinions 1997-9 (use of trader's margin  
5 account), 1989-26 (use of contributor's personal bank account) and 1986-7 (use of  
6 agricultural cooperative member's account).

7         The Commission, however, notes a deficiency in the brochure included in  
8 CUNA's request which would be sent to credit union members. Section 114.5(a)(4) of  
9 Commission regulations requires that a solicitation inform the employee or member being  
10 solicited "of his or her right to refuse to so contribute without any reprisal." While the  
11 brochure states that the contributions are "voluntary" it does not include a statement that  
12 there would be no reprisal should the member refuse to contribute. This deficiency  
13 would need to be corrected before the brochures could be used in the proposed  
14 solicitations.

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with the Act's separate exception for legal and accounting compliance expenses, which is not applicable to the circumstances presented here.

<sup>17</sup> The Commission notes its earlier analogy between stockholders in a corporation and shareholders in a credit union and Advisory Opinion 1989-3 which indicates the applicability of section 114.8 to certain shareholders. However, what was prohibited in Advisory Opinion 1989-3 was the use of a payroll deduction program to facilitate contributions to a trade association by employees of member corporations who were also shareholders. Payroll accounts are not at issue in this request. Should CUNA and CULAC solicit participation in the "Deduct-A-Buck" program of persons who are both employees and members of the same credit union, such participation would still be permissible as long as the deductions were made to the credit union accounts, rather than the employee payroll accounts of the credit union.

1           **This response constitutes an advisory opinion concerning the application of the**  
2 **Act, or regulations prescribed by the Commission, to the specific transaction or activity**  
3 **set forth in your request. See 2 U.S.C. §437f.**

4   **Sincerely,**

5  
6   **Scott E. Thomas**  
7   **Acting Chairman**

8  
9 **Enclosures (AOs 1997-9, 1991-24, 1990-18, 1989-26, 1989-3, 1986-7, 1985-12, 1985-37,**  
10 **1984-63, 1983-28 and 1982-12)**