FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 6, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2003-39

Jan Witold Baran, Esq.
D. Mark Renaud, Esq.
Wiley Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Dear Mr. Baran and Mr. Renaud:

This refers to your letter of December 17, 2003 and your e-mail of December 23, 2003, which request an advisory opinion on behalf of Credit Union National Association ("CUNA"), the Credit Union Legislative Action Council of CUNA ("CULAC"), and the North Carolina Local Government Employees' Federal Credit Union ("Local Government FCU"). Your advisory opinion request concerns the application of the Federal Election Campaign Act of 1971 ("the Act"), and Commission regulations, to a proposed plan whereby Local Government FCU would match voluntary contributions to CULAC from its executive and administrative personnel, individual account holders, and their families with donations to section 501(c)(3) charities of the contributors' choice.

You state that CUNA is a trade association incorporated under the laws of Wisconsin as a non-stock, non-profit corporation with members. You further state that CUNA's members consist of state- and federally- chartered credit unions as well as 51 credit union leagues representing the 50 states and the District of Columbia. In your letter, you explain that Local Government FCU has given prior written approval to CULAC, CUNA's separate segregated fund ("SSF"), to solicit voluntary contributions to CULAC from Local Government FCU's restricted class. Under the proposed charitable matching plan, for each contribution made to CULAC, Local Government FCU will make a matching contribution to any section 501(c)(3) charity of the contributor's choice, dollar-for-dollar, up to the maximum amount that an individual may contribute to CULAC during the given calendar year. The individual contributors will not receive any tax benefits from the matching donations made by Local Government FCU on their behalf and will not receive bonuses, expense accounts, or other forms of direct or indirect compensation as a result of their participation in the plan.[1]

[1] You state that Local Government FCU will provide each contributor to CULAC with written notice that he or she may not receive any tangible benefit from the charity in exchange for the matching contribution and that Local Government FCU will also advise the charity at the time the matching contribution is made that the contributor may not receive any tangible benefit in exchange for the matching contribution.

The Act prohibits a corporation, including a federally-chartered credit union, from making contributions or expenditures in connection with any Federal election.[2] 2 U.S.C. 441b(a). However, the Act excludes from the definition of "contribution or expenditure," those costs that are paid by the corporation for "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes" by the corporation. 2 U.S.C. 441b(b)(2)(C). Although Commission regulations provide that a corporation may use its general treasury monies to pay the expenses of establishing and administering such a SSF and of soliciting contributions to the SSF, the regulations also state that a corporation may not use this process "as a means of exchanging treasury monies for voluntary contributions." 11 CFR 114.5(b). In this respect, the regulations specify that a contributor may not be paid for his or her contributions through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1). The Act and Commission regulations allow a corporation, or an SSF established by a corporation, to solicit voluntary contributions to the SSF from the corporation's stockholders, its executive and administrative personnel, and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation of these persons for contributions to the SSF must meet certain requirements. *See* 11 CFR 114.5(a), and, in particular, 11 CFR 114.5(a)(5).

As indicated in your letter, in 1998 the Commission determined that the credit union members of the state leagues of CUNA "may be considered as a 'branch, division . . . or local unit' of CUNA under 11 CFR 102.6(b)(1)(iii) and may, therefore, act as collecting agents in receiving and transmitting contributions for CULAC." Advisory Opinion 1998-19. Since, as you state in your letter, Local Government FCU is a member of the North Carolina Credit Union League and a member of CUNA, Local Government FCU may act as a collecting agent in receiving and transmitting contributions for CULAC. Moreover, as a collecting agent, Local Government FCU may "pay any or all of the costs incurred in soliciting and transmitting contributions to the separate segregated fund." 11 CFR 102.6(c)(2)(i).

The Commission has on several occasions allowed an SSF's connected organization, under certain conditions, to match contributions made to its connected SSF with donations to charities.[3] The Commission has viewed a connected organization's matching of voluntary political contributions to its SSF with charitable donations as solicitation expenses related to

[2] A federally-chartered credit union is a corporation for purposes of the Act. *See* Advisory Opinion 1990-18.

[3] A "connected organization" is defined in the Act and the Commission's regulations as "any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee." 2 U.S.C. 431(7); 11 CFR 100.6(a). The Commission's regulations provide that "organizations which are members of the entity (such as corporate members of a trade association) which establishes, administers, or financially supports a political committee are not organizations which directly or indirectly establish, administer or financially support that political committee." 11 CFR 100.6(b). Consequently, Local Government FCU, though a member of CUNA, is not a connected organization with respect to CULAC.

fundraising for its SSF under 2 U.S.C. 441b(b)(2)(C) and 11 CFR 114.5(b).[4] *See* Advisory Opinions 2003-4, 1990-6, 1989-9, 1989-7, 1988-48, 1987-18, and 1986-44.[5] Thus, although the Commission has determined that charitable matching payments, when made by the SSF's connected organization, constitute solicitation expenses under 2 U.S.C. 441b(b)(2)(C) and 11 CFR 114.5(b), the Commission has not addressed the precise issue presented by your request: whether such charitable matching payments, when made by a collecting agent rather than the connected organization, constitute "costs incurred in soliciting and transmitting contributions to the separate segregated fund" under 11 CFR 102.6(c)(2)(i).

As stated above, the Commission has considered charitable matching payments, when paid by the SSF's connected organization, to be solicitation costs. The Commission sees no reason to treat these payments differently when they are paid by a collecting agent rather than by the SSF's connected organization. The Commission specifically notes the similarity between the language in 11 CFR 114.5(b), which permits a connected organization to use its general treasury funds to pay "for the establishment, administration, and solicitation of contributions" to its SSF, and the language of 11 CFR 102.6(c)(2)(i), which allows collecting agents to pay for "costs incurred in soliciting and transmitting contributions" to the SSF. Consequently, the Commission believes that charitable matching donations, when made by a collecting agent, constitute "costs incurred in soliciting and transmitting contributions to the separate segregated fund" under 11 CFR 102.6(c)(2)(i). Thus, the payment of such charitable matching donations by Local Government FCU is permissible under the Act.

The Commission expresses no opinion regarding any implications of the proposed matching charitable contribution plan under the Internal Revenue Code because those issues are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in

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[4] The Commission's conclusion regarding matching charitable contributions by separate segregated funds is consistent with the Internal Revenue Code's treatment of the tax consequences of such programs. The Internal Revenue Service has concluded that a matching charitable contribution plan grant to a section 501(c)(3) organization should not be recharacterized as payment of compensation to the employee and a subsequent payment by the employee to the section 501(c)(3) organization. G.C.M. 39,877 (August 27, 1992); Rev. Rul. 67-137, 1967-1 C.B. 63. The Internal Revenue Service has also concluded that the corporation may not receive a tax deduction for matching charitable donations it makes. G.C.M. 39,877.

[5] *See also* Advisory Opinions 1994-7, 1994-6 and 1994-3, where the Commission considered and approved the use of matching charitable contribution plans for employees who are only solicitable under the twice yearly procedures, provided that all other Commission regulations applicable to the solicitation of these personnel are followed (that is, employees outside the restricted class).

this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

David M. Mason
Commissioner

Enclosures: (AOs 2003-4, 1994-7, 1994-6, 1994-3, 1990-18, 1990-6, 1989-9, 1989-7, 1988-48, 1987-18, 1986-44)