7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133-AD52

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Section 740.4 of NCUA's rules requires that a federally insured credit union continuously display the official NCUA sign at every teller station or window where insured funds or deposits are normally received. Section 740.4(c) requires that tellers accepting share deposits for both federally insured credit unions and nonfederally insured credit unions also post a second sign adjacent to the official NCUA sign. Currently, the rules require this second sign to list each federally insured credit union served by the teller along with a statement that only these credit unions are federally insured. Due to the evolution of shared branch networks it is now difficult for some tellers to comply with this second signage requirement and, accordingly, NCUA is proposing to revise the rule to

replace the required listing of credit unions with a statement that not all of the credit unions served by the teller are federally insured and that members should contact their credit union if they need more information.

DATES: Comments must be received by November 21, 2008.

ADDRESSES: You may submit comments by any of the following methods. (**Please send comments by one method only**):

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include "[Your name] Comments on FCU Bylaws" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency's website at http://www.ncua.gov/RegulationsOpinionsLaws/comments as submitted, except as may not be possible for technical reasons. Public comments will not

be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGC Mail @ncua.gov.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION

A. Background

Part 740 of NCUA's regulations addresses the notice and advertising requirements applicable to credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) administered by NCUA. 12 CFR part 740. Section 740.4(a) requires these federally insured credit unions post a sign at all teller stations that normally receive deposits. This official NCUA sign reads: "Your savings federally insured to at least $100,000 and backed by the full faith and credit of the United States Government" accompanied by the acronym "NCUA" and the words "National Credit Union Administration, a U.S. Government Agency." 12 CFR 740.4(a). The official NCUA sign informs and reassures

members that their share deposits are guaranteed, to certain limits, by the U.S. Government in the event the credit union fails.

Section 740.4(c) imposes additional requirements on federally insured credit unions participating in shared branch networks. Generally, federally insured credit unions are prohibited from accepting funds at teller stations or windows where nonfederally insured credit unions also receive deposits. 12 CFR 740.4(c). Tellers in shared branch networks (e.g., "Credit union centers, service centers, or branches servicing more than one credit union") are currently exempted from this prohibition, but only if they display a specific sign at each station or window above or beside the official NCUA sign. Id. This second sign must state that "[o]nly the following credit unions serviced by this facility are federally insured by the NCUA," followed by the full name of each federally insured credit union displayed in lettering "of such size and print to be clearly legible to all members conducting share or share deposit transactions." Id.

NCUA first adopted this requirement for a second sign in shared branches back in 1971. 36 FR 902, 903 (Jan. 25, 1971). The requirement ensures members of nonfederally insured credit unions are not confused regarding the insurance status of their accounts when those members make deposits through tellers shared with federally insured credit unions and that display the mandatory official NCUA sign. 63 FR 10743, 10755 (March 5, 1998).

During the past 37 years, however, the nature of shared branching has changed considerably. The first shared branches were local operations involving just a few credit unions. Now, some shared branch networks are national in scope and service hundreds, if not thousands, of individual credit unions.[1] Under these circumstances, NCUA believes the requirement for by-name listing of each participating federally insured credit union is problematic. Since the vast majority of credit unions participating in the larger shared branch networks are federally insured, members must now sift through a lengthy list of credit unions to ascertain the insurance status of their particular credit union. The length of the list would also require a large, obtrusive sign, and it is difficult to keep the sign up-to-date as federally insured credit unions frequently join or leave these networks.

Share branch networks are not only increasing in size but are also changing in the nature of the facilities they employ. The earliest shared branches consisted of shared service facilities run by non-credit union entities such as credit union service organizations. Now, some shared branch networks are structured to allow credit unions to use their own branches, rather than separate facilities, to service members of other credit unions. Given this trend, NCUA understands that some nonfederally insured credit unions participating in shared branch

[1] Two of the largest shared branch networks are Credit Union Service Centers (CUSC) and the Financial Service Centers Cooperative (FSCC). Currently, CUSC appears to have about 1200 participating federally insured credit unions and 22 participating nonfederally insured credit unions. FSCC appears to have about 270 participating federally insured credit unions and 12 participating nonfederally insured credit unions. Further, these organizations interlink, allowing deposits to be made through participants in one organization for the accounts at participants in the other.

networks may accept deposits for federally insured credit unions at the nonfederally insured credit union's locations, and vice versa. The current rule does not adequately address the signage requirements in these situations, such as whether the official NCUA sign should be placed in nonfederally insured credit unions accepting federally insured share deposits.

B. Proposed Amendments to Part 740

The proposed revision to §740.4(c) retains the general prohibition on federally insured credit unions receiving funds at any teller station or window where any nonfederally insured credit union also receives account funds. The proposal contains three exceptions to this prohibition.

The first two exceptions permit tellers at federally insured credit unions and shared branches operated by non-credit union entities to receive deposits for nonfederally insured credit unions if these tellers post a second sign adjacent to the official NCUA sign. In lieu of a listing of all federally-insured credit unions, the revised second sign will state that the credit union or facility participates in a shared branch network and accepts deposits for members of other credit unions, not all of which are federally insured. The revised second sign will advise members to contact their credit union for information about its insurance status.

The proposal requires the second sign to be conspicuous and to be similar to the official NCUA sign in terms of design, color, and font. NCUA will produce signs that meet this requirement and make the signs available for purchase at a reasonable cost. Credit unions may either use the NCUA-produced sign or produce their own sign, as long as the sign meets the requirements of the rule.

The third exception to the general prohibition addresses signage requirements at nonfederally insured credit unions. The proposal clarifies that tellers in nonfederally insured credit unions may accept deposits for federally insured credit unions as part of a shared branch network. The proposal, however, forbids a nonfederally insured credit union from displaying the official NCUA sign, as this could be very confusing to the members of the nonfederally insured credit union. Also, since the credit union will not display the official sign, there is no need for it to display the second sign.

The current prohibition applies to tellers that accept deposits from nonfederally insured credit unions and “other institutions.” As far as the Board is aware, banks and thrifts are the only types of non-credit union institutions that take deposits, and, currently, they are all federally insured. Accordingly, there is no need for the rule to address “other institutions” and the proposed rule deletes that phrase. Also, although the rule only addresses deposit-taking, federally insured credit unions must ensure that if they participate in a shared branching network that includes a nondeposit investment sales function that function is physically

separated from the deposit-taking function. See NCUA Letter to Credit Unions No. 150, Sales of Mutual Funds, Annuities, and Other Non-Deposit Investments, December 1993.

The proposed revisions also include additions to the definitions in §740.1. 12 CFR 740.1. The phrase “nonfederally insured credit union” is defined as a credit union with either no account insurance or with primary account insurance from an entity other than NCUA. The phrases “insured credit union” and “federally insured credit union,” as used in the rule, both refer to a credit union with NCUA account insurance.

C. 30-Day Comment Period

NCUA seeks public comment on the proposals discussed above. NCUA is particularly interested in commenters’ views about whether the proposals are adequate to ensure that credit union members understand the insurance status of their credit union accounts.

As a matter of agency policy, the NCUA Board generally provides a 60-day comment period for proposed regulations. NCUA's Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231 (Sept. 18, 1987), as amended by IRPS 03-02, 68 FR 31949 (May 29, 2003). In this case, the NCUA Board believes a 30-

day comment period will suffice because the proposal simplifies an existing rule and eases compliance burdens for federally insured credit unions.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule will not impose any regulatory burden and in fact will ease existing compliance burdens on federally insured credit unions participating in shared branch networks and accepting deposits for both federally insured and nonfederally insured credit unions. The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 et seq.; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the proposed rule would not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on October 16, 2008.

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Mary F. Rupp

Secretary of the Board

For the reasons set forth above, NCUA proposes to amend 12 CFR part 740 as follows.

PART 740 — ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

2. Amend §740.1 by revising paragraph (b), and adding paragraph (c), to read as follows:

§740.1 Definitions.

* * * * *

(b) *Insured credit union and federally insured credit union* as used in this part mean a credit union with National Credit Union Administration share insurance.

(c) *Nonfederally insured credit union* as used in this part means a credit union with either no account insurance or with primary account insurance provided by some entity other than the National Credit Union Administration.

3. Amend §740.4 by revising paragraph (c) to read as follows:

§740.4 Requirements for the official sign.

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(c) To avoid any member confusion from the use of the official NCUA sign, federally insured credit unions are prohibited from receiving account funds at any teller station or window where any nonfederally insured credit union also receives account funds. As exceptions to this prohibition:

(1) A teller in a branch of a federally insured credit union may accept account funds for nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states "This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. Not all of these other credit unions are federally insured. If you need information on the insurance

status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color, and font.

(2) A teller in a facility operated by a non-credit union entity may accept account funds for both federally insured credit unions and nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating "This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color, and font.

(3) A teller in a branch of a nonfederally insured credit union may accept account funds for federally insured credit unions. No teller in a nonfederally insured credit union may display the official NCUA sign.

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