

February 28, 2011

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke St
Alexandria, VA 22314-3428

Re: Accuracy of Advertising and Notice of Insured Status; RIN 3133-AD83

Dear Ms. Rupp,

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the National Credit Union Administration (NCUA) Board's request for comment regarding its proposal that would amend the official advertising statement rule, Part 740, as it applies to radio and television advertisements and certain credit union reports. By way of background, CUNA is the largest credit union trade organization in the country, representing approximately 90 percent of our nation's nearly 7,600 state and federal credit unions, which serve approximately 93 million members.

Summary of CUNA's Comments

- While we fully support appropriate, effective disclosure aimed at informing and protecting consumers, we strongly oppose many of the Board's proposed changes and believe they will have negative unintended consequences if adopted as proposed.
- We strongly disagree with the Board's proposal to require the official advertising statement for radio and television advertisements of 30 seconds or less, as we believe doing so would have the opposite effect of increasing consumer confidence. We disagree with the Board's position that the addition of the official advertising statement to all radio and television advertisements "enhance[s] consumer confidence and NCUA name recognition." We believe the Board's statement would be accurate only if consumers already had a general understanding of what NCUA is and why consumers should care.

- Specifically regarding radio advertisements, we believe the proposed change to require advertisements of 30 seconds or less to include the advertising statement is impractical and would require credit unions to shift additional funds from other services to their advertising budgets to increase the length of radio advertisements to compensate for the airtime consumed by the statement.
- In regard to the Board's proposal to rescind the exemption for television advertisements of 30 seconds or less, we similarly believe doing so will not achieve the Board's intended benefit of increasing consumer confidence. While we do not think displaying the sign is impractical from an operational standpoint, we believe the sign or statement will not have the same positive effect of increasing consumer confidence on current and prospective credit union members, as with banks including the FDIC symbol or statement since much of the public is unfamiliar with NCUA.
- We do not oppose the proposed requirement to include the advertising statement in certain reports and financial statements, as we believe there is some value in doing so. However, we urge the Board to provide additional guidance on how and where the advertising statement should be included and displayed in such documentation.
- In regard to print advertisements, we strongly oppose the proposed provision intended to clarify the requirement that the statement be in a size and print that is clearly legible, by adding that, the size and print "be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer."
- We appreciate the Board addressing the current lack of a definition of "advertisement," as this has been a source of confusion in determining which advertisements are required to include the statement. However, in conjunction with the proposed rescinding of the exemptions mentioned above and the proposed "no-smaller-than" requirement, we oppose the definition as proposed by the Board.
- Based on input from various credit unions around the country, we believe implementation and compliance associated with the proposed changes would be quite costly.

Discussion of CUNA's Views

We fully support appropriate, effective disclosure aimed at informing and protecting consumers. Current § 740.5 of NCUA's regulations provides insured credit unions with several options to comply with the official advertising statement requirement. Credit unions can satisfy the requirement by using one of the following in their advertisements:

- The official advertising statement: "This credit union is federally insured by the National Credit Union Administration."
- The short title: "Federally insured by NCUA."
- A reproduction of NCUA's official sign as described in § 740.4(b).

These options are similar to those available to banks insured by the Federal Deposit Insurance Corporation (FDIC). For the sake of comparison, insured banks may use one of the following:

- The official advertising statement: “Member of the Federal Deposit Insurance Corporation.”
- The short title: “Member of FDIC” or “Member FDIC.”
- A reproduction of FDIC’s symbol.

12 C.F.R. § 328.3(b).

Part 740 of NCUA’s regulations generally requires insured credit unions to include the official advertising statement in all advertisements. However, § 740.5(c) currently exempts a number of advertisements from the advertising statement requirement, including: (1) statements of condition and reports required to be published by state or federal law or regulation; (2) advertisements by radio that are no more than 30 seconds long; and (3) advertisements by television that are no more than 30 seconds long.

The Board’s proposed rule would rescind the three above-mentioned exemptions from the advertising statement requirement, establish a definition of “advertisement,” and provide clarifying language regarding the minimum allowable font size of the statement. As described below in detail, CUNA strongly opposes many of the Board’s proposed changes and believes they will have negative unintended consequences if adopted as proposed.

Radio and Television Advertisements

Under the proposed rule, the Board would rescind the exemptions included in § 740.5(c) from the advertising statement requirement for radio and television advertisements that are no more than 30 seconds long, thereby requiring all radio and television advertisements to include the advertising statement. While we agree with the current requirement that such advertisements longer than 30 seconds include the advertising statement, we strongly disagree with the agency’s plan to require the statement for shorter advertisements, as we believe doing so would have the opposite effect of increasing consumer confidence. We also note that the Board’s proposal diverges from the well-established practices of the FDIC, which maintains an exemption for radio and television advertisements that do not exceed 30 seconds.

12 C.F.R. § 328.3(d)(8).

In regard to radio advertisements, we believe the proposed change to require advertisements of 30 seconds or less to include the advertising statement is impractical and would require credit unions to shift additional funds from other services to their advertising budgets to increase the length of radio advertisements to compensate for the airtime consumed by the statement. Credit unions often rely on radio as a more economical alternative to television when advertising their products and services. However, due to the cost of

airtime, many credit unions are likely to reduce or eliminate radio advertisements if the proposal is adopted as-is.

Further, a 30 second advertisement is a very short period of time to get a consumer's attention, describe the product or service in a compelling manner, convey to the consumer who you are, ask the consumer to take a specific action, and finally describe how the consumer should respond (call a number, visit a location, etc.). To include additional, required information in each advertisement detracts from each of the other elements that the advertisement must include to have a chance of success.

One credit union described how it currently has "sponsor ads" that are very short advertisements sponsoring a public service, traffic, or another type announcement. The credit union indicated that due to the very short nature of these advertisements it would be virtually impossible to add the official advertising statement, which would likely result in it abandoning such advertisements. Another credit union mentioned that it frequently runs a 10-second radio announcement, and that including the advertising statement would consume approximately 30% of the entire announcement.

We similarly oppose the Board's proposal to rescind the exemption for television advertisements of 30 seconds or less, as we believe doing so will not achieve the Board's intended objective of increasing consumer confidence. While we do not think displaying the sign is impractical from an operational standpoint—and it is our understanding that many credit union television advertisements already include the sign—we believe the sign or statement will not have the same positive effect of increasing consumer confidence on current and prospective credit union members, as with banks including the FDIC symbol or statement since much of the public is unfamiliar with NCUA. Thus, we believe including the statement or sign will make the television advertisement less likely to be effective and more likely to create confusion.

Regarding both radio and television advertisements, we disagree with the Board's position that the addition of the official advertising statement "enhance[s] consumer confidence and NCUA name recognition." We believe the Board's statement would be accurate only if consumers already had a general understanding of what NCUA is and why consumers should care. While we understand that NCUA is currently undertaking efforts to increase consumer awareness of NCUA, we believe that until there is vast improvement in this area, requiring brief radio and television advertisements to include the official advertising statement will not only be ineffective but could cause confusion and lead to a decrease in consumer confidence. We believe the burden of educating the public on what NCUA is and what it does is properly placed on NCUA and not individual credit unions.

Credit Union Reports and Statements of Condition

The proposal would also rescind the exemption from the advertising statement requirement for annual reports and other statements of condition that the credit union is legally required to publish. According to NCUA, these documents are a form of advertisement and should therefore include the official advertising statement. Similar to NCUA's current regulation, FDIC's regulations explicitly exempt such reports and statements of condition from the agency's advertising statement requirement for insured depository institutions. 12 C.F.R. § 328.3(d)(1).

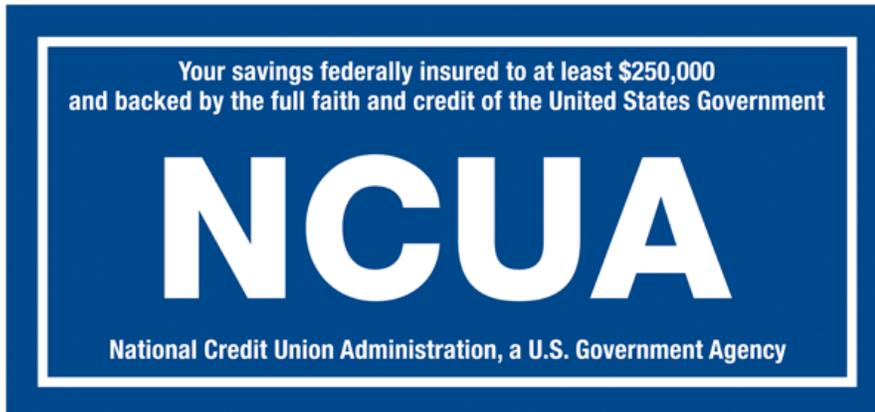
We do not oppose the proposed requirement to include the advertising statement in certain reports and financial statements, as we believe there is value in doing so. However, we urge the Board to provide additional guidance on how and where the advertising statement should be included and displayed in such documentation. For example, must the statement be included on each page of the annual report, or simply on the cover or first page.

"No-Smaller-Than" Font Size Requirement

As the official advertisement statement applies to print advertisements, the proposal attempts to clarify the requirement in § 740.5(b) that the statement be in a size and print that is clearly legible, by adding that the size and print must "be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer." We strongly oppose this proposed provision, as we believe the proposed "clarification" is unnecessary and ambiguous. We note that FDIC does not include similar language in its regulations, which simply require the statement to be "of such size and print to be clearly legible." 12 C.F.R. § 328.3(b)(2).

We believe the proposed "clarification" is ambiguously worded and raises a number of questions, such as:

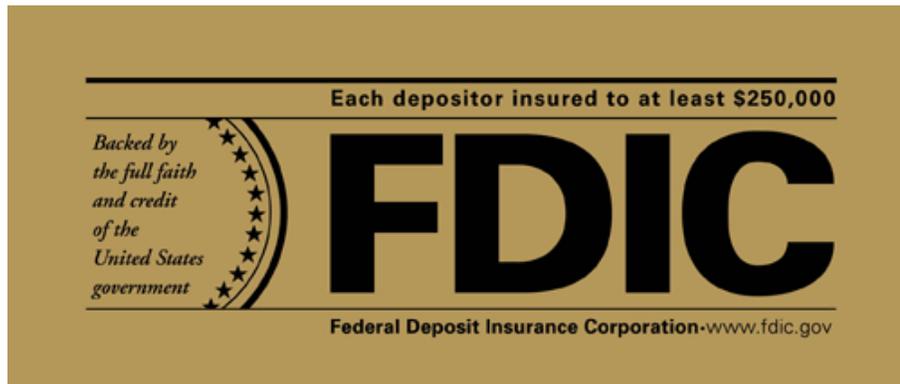
- What does "intended to convey information to the consumer," mean? What is an example of something included in an advertisement that is not "intended to convey information to the consumer?"
- Is "intended to convey information to the consumer" limited to words, or would it include, for example, a special rate the credit union is offering?
- Would this invite advertisers to circumvent the requirement by simply including "information to be conveyed" in a very small font size?
- Would this apply to large print advertisements such as billboards, where the words are very large and the consumer has only a few seconds to read the entire message?
- Would this apply to teller and ATM receipts?
- Where a credit union is using the NCUA sign as the official advertising statement, would this apply to the sign? If so, would the "no-smaller-than" requirement apply to "NCUA" or "Your savings federally insured...?" *See image below.*



12 C.F.R. § 740.4(b).

If the Board believes it must adopt the “no-smaller-than” requirement and that it must apply the requirement to the NCUA sign, we strongly urge the Board to provide flexibility in the manner in which a credit union may display the sign. For example, FDIC permits insured banks to crop the FDIC symbol if it is “reduced to such proportions that the two lines of smaller type above and below ‘FDIC’ are indistinct and illegible.” 12 C.F.R. § 328.1(b).

FDIC official sign:



12 C.F.R. § 328.1(a).

Cropped version of FDIC sign showing only FDIC symbol:



12 C.F.R. § 328.1(b).

Definition of “Advertisement”

The proposal would define “advertisement” in § 740.1 as, “a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.” This is the same definition used by FDIC in its official advertising statement rule. 12 C.F.R. § 328.3(a).

We appreciate the Board addressing the current lack of a definition of “advertisement,” as this has been a source of confusion in determining which advertisements are required to include the statement. However, in conjunction with the proposed rescinding of the exemptions discussed above and the proposed “no-smaller-than” requirement, we do not support the definition as proposed.

We believe the proposed definition is too broad and should be refined to include only those commercial messages that are distributed to the public or displayed in such a manner and in such a location that they will be easily seen by the public. In addition, we believe the definition should be limited to commercial messages that reference share accounts. We offer the following revised definition of “advertisement”: “a commercial message, in any medium, that is designed and distributed or located in such a way to attract public attention or patronage to a product or business related to a share account.”

One credit union explained to us that it currently participates in small space advertisements in school sports programs, playbills, community event programs, etc. that would qualify as advertisements under the proposed definition. The credit union indicated that the likely difficulty in trying to fit the advertising statement into these types of advertisements would result in the credit union ceasing to partake in them. While this is an example from one credit union, we believe it is indicative of the challenges most credit unions will encounter and, therefore, we urge the Board to narrow the scope of “advertisement.”

Financial Impact of Proposed Changes

Based on input from various credit unions around the country, we believe implementation and compliance with the proposed changes would be quite costly. For example, if all printed material must be revised and then reprinted prior to when replacement materials would normally be revised and reprinted, the costs will be significant. This would especially affect credit unions that have multiple branches and invest in the production of professionally produced materials. If television and radio commercials would need to be revised and reproduced to add additional statements, the costs would increase further.

However, we believe the greater cost would be in the form of the reduction of more important information about a credit union’s services and products in radio, television, and print advertisements as a result of the time and space necessary for the official advertising statement.

According to one credit union:

Based on radio advertising alone, it takes two seconds of a 30-second spot to say "Federally insured by NCUA" or 1/15 of the entire ad. Last year I spent \$47,161 on 30-second radio spots, so \$3,144.06 would have been spent on the official advertising statement. All of my existing radio spots would have to be revised and re-recorded which would require production costs of approximately \$1,000.

We strongly urge the Board to reconsider its proposed changes to the accuracy of advertising and notice of insured status rule. Specifically, we ask the Board to scrutinize whether the proposed changes would likely produce the expected benefits and the likelihood that these proposed changes would have negative unintended consequences.

Thank you for the opportunity to express our views on the Board's proposed amendment to Part 740. If you have any questions about our comments, please do not hesitate to give CUNA Vice President and Deputy General Counsel Mary Dunn or me a call at (202) 508-6743.

Sincerely,

A handwritten signature in cursive script that reads "Luke Martone". The signature is written in black ink and is positioned above the typed name and title.

Luke Martone
Assistant General Counsel