

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133-AD83

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: The NCUA Board proposes to revise certain provisions of NCUA's official advertising statement rule. Specifically, insured credit unions will be required to include the statement in all radio and television advertisements, annual reports, and statements of condition required to be published by law. The NCUA Board also proposes to define the term "advertisement" and clarify size requirements for the official advertising statement in print materials.

DATES: Comments must be received on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

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 Proposed Rule 740, Accuracy of Advertising and Notice of Insured Status” 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 OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Section 740.5 of NCUA's regulations requires each insured credit union to include NCUA's official advertising statement in all of its advertisements, including on its main internet page. 12 CFR §740.5(a). The official advertising statement is in substance as follows: "This credit union is federally insured by the National Credit Union Administration." Insured credit unions, at their option, may use the short title "Federally insured by NCUA" or a reproduction of NCUA's official sign, as depicted in §740.4(b), as the official advertising statement. 12 CFR §740.4(b); 12 CFR §740.5(b).

The official advertising statement must be in a size and print that is clearly legible. 12 CFR §740.5(b). If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility as provided in §740.4(b)(2). 12 CFR §740.4(b)(2); 12 CFR §740.5(b).

A number of advertisements in the current rule, however, need not include the official advertising statement.¹ Among those currently exempted advertisements are radio and television advertisements that do not exceed 30 seconds in time. The NCUA Board proposes to rescind these exemptions. NCUA believes that it is important for consumers of these kinds of advertisements to know that the share accounts in the advertising credit union are federally insured by NCUA. The NCUA Board believes that the benefits of this action to consumers and credit unions, namely, enhanced consumer confidence and NCUA name recognition, will far outweigh the minor inconvenience associated with requiring the inclusion of the official advertising statement in this

¹ Exempted advertisements in the current rule include: (1) Statements of condition and reports of condition of an insured credit union which are required to be published by state or federal law or regulation; (2) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates; (3) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located; (4) Listings in directories; (5) Advertisements not setting forth the name of the insured credit union; (6) Display advertisements in credit union directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured; (7) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisement; (8) Advertisements by radio that do not exceed thirty (30) seconds in time; (9) Advertisements by television, other than display advertisements, that do not exceed thirty (30) seconds in time; (10) Advertisements that because of their type or character would be impractical to include the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; (11) Advertisements that contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its accounts and shares or members are insured by the Administration to the maximum insurance amount for each member or shareholder; (12) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance. 12 CFR §740.5(c).

context. The NCUA Board intends for this proposal also to apply to television display advertisements.

With respect to print advertisements, the NCUA Board proposes to clarify the requirement that the official advertising statement must be in a size and print that is clearly legible. 12 CFR §740.5(b). NCUA's regulations do not dictate a specific font size be used for the official advertising statement, and NCUA continues to believe this makes sense considering advertisements can range from small magazine advertisements to very large billboard advertisements. The NCUA Board requires, however, that in any particular advertisement, in addition to legibility, the font size for the official advertising statement may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer.

Also, the NCUA Board believes that an insured credit union's annual report and other statements of condition required to be published by law are significant and a form of advertisement and must include the official advertising statement in a prominent position. Accordingly, the NCUA Board proposes to amend §740.5 in this regard.

In summary, the proposal rescinds three exemptions from the general rule requiring the use of the official advertising statement. Those three include radio and television advertisements that do not exceed 30 seconds in time and annual reports and other statements of condition required to be published by law. All other exemptions in §740.5(c) remain in place.

Finally, the current rule does not define the term “advertisement.” The NCUA Board proposes to clarify the rule by proposing such a definition. The proposed definition is consistent with that used by the Federal Deposit Insurance Corporation in its official advertising statement rule. 12 CFR Part 328.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (those under \$ 10 million in assets). The proposed amendments enhance consumer confidence and do not impose a significant burden on credit unions. Accordingly, the NCUA has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions within the meaning of the Regulatory Flexibility Act, [5 U.S.C. 601-612](#).

Paperwork Reduction Act

The proposed rule does not contain a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 ([44 U.S.C. 3502\(3\)](#)) and would not increase paperwork requirements under the Paperwork Reduction Act of 1995 or regulations of the Office of Management and Budget.

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 effect 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

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendments

are understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on December 16, 2010.

Mary F. Rupp,

Secretary of the Board

For the reasons discussed above, the NCUA Board 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. Revise Section 740.1 by inserting a new paragraph (b) and redesignating current paragraphs (b) and (c) as paragraphs (c) and (d), respectively, to read as follows:

§ 740.1 Definitions.

(a) * * *

(b) *Advertisement* as used in this part means a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

(c) * * *

(d) * * *

3. Revise Section 740.5(a) to read as follows:

§ 740.5 Requirements for the official advertising statement.

(a) Each insured credit union must include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements including, but not limited to, annual reports, statements of condition required to be published by law, radio and television advertisements, and on its main Internet page, except as provided in paragraph (c) of this section.

4. Revise the third sentence of Section 740.5(b) to read as follows:

(b) * * * The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer. * * *

5. Revise Section 740.5(c) by deleting current paragraphs (1), (8), and (9) and redesignating all remaining paragraphs.