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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: Final rule.

SUMMARY: The NCUA Board is amending certain provisions of NCUA's official advertising statement rule. Specifically, insured credit unions will be required to include the statement in a greater number of radio and television advertisements, annual reports, and statements of condition required to be published by law. The NCUA Board also is defining the term "advertisement" and clarifying size requirements for the official advertising statement in print materials.

DATES: The rule is effective [Insert date 30 days from publication in the FEDERAL REGISTER]. To minimize the costs to credit unions and provide ample opportunity to prepare for the revisions, the mandatory compliance date is January 1, 2012.

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

SUPPLEMENTARY INFORMATION:

A. Background

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).

As noted in the current rule, however, a number of advertisements 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. In December 2010, the NCUA Board proposed to rescind these exemptions. 75 Fed. Reg. 82323 (December 30, 2010). In that proposal, NCUA stated that it believes it is important for consumers of those kinds of advertisements to know that the share accounts in the advertising credit union are federally insured by NCUA. The NCUA Board also stated in the proposal that it believes the benefits to consumers and credit unions of rescinding these exemptions, namely, enhanced consumer confidence and

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).

NCUA name recognition, far outweigh the minor inconvenience associated with requiring the inclusion of the official advertising statement.

With respect to print advertisements, the NCUA Board proposed 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 stated it continues to believe this makes sense considering advertisements can range from small magazine advertisements to very large billboard advertisements. The NCUA Board proposed to require, 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. 75 Fed. Reg. 82323 (December 30, 2010).

Also, the NCUA Board stated in the proposal that it believes 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 proposed to amend §740.5 in this regard. Id.

In summary, the proposal rescinded three exemptions from the general rule requiring the use of the official advertising statement. Those three included 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 NCUA Board sought to clarify the advertising statement rule by proposing a definition of the term “advertisement” which had previously never been defined. Id. The proposed definition is consistent with that used by the Federal Deposit Insurance Corporation in its official advertising statement rule. 12 CFR Part 328.

B. Summary of Comments and Discussion

NCUA received only fourteen comments on the proposal. One commenter fully supported the proposal in its entirety. Thirteen commenters opposed some portion of it. The aspect of the proposal commenters expressed the most concern about is rescinding the exemption from using the official advertising statement for radio and television advertisements that do not exceed 30 seconds. Many commenters noted that radio advertisements are their most cost effective form of advertising and are often 10 seconds or less in duration. Commenters stated that requiring the use of the official advertising statement in such short advertisements would detract from their effectiveness or increase their cost. One commenter added this would also apply to short television advertisements. A number of commenters noted the added expense could cause some credit unions to reduce the number of advertisements they place.

NCUA is sensitive to the needs of credit unions to have access to affordable advertising outlets that effectively broadcast their messages. Accordingly, based on the comments,

NCUA is amending the proposed requirement for using the official advertising statement with respect to radio and television advertisements. Specifically, NCUA will require the use of the official advertising statement for all radio and television advertisements 15 seconds in length or longer. In other words, all radio and television advertisements less than 15 seconds in duration are exempt from the requirement to use the official advertising statement. This adjustment, adopted in the final rule, exempts those advertisements commenters consider their most cost effective while still enhancing consumer confidence and NCUA name recognition.

Some commenters stated that if the radio and television advertisement aspect of the proposal is adopted, then NCUA should grandfather advertisements already made. Other commenters more generally asked for an extended compliance date if any aspect of the proposal is adopted. To accommodate these requests, although the effective date of the rule will be 30 days after publication in the Federal Register, the mandatory compliance date for this final rule is January 1, 2012. This should suffice to minimize any expense or operational disruptions related to the final rule.

A few commenters opposed having to include the official advertising statement on annual reports and statements of condition as they do not believe these documents are advertisements. Some of these commenters also asked for guidance from NCUA as to where they should place the official advertising statement on these documents. NCUA believes it is appropriate and minimally intrusive to include the statement in these

documents. The statement must be legible and placed in a prominent position on the front cover of the document or on the first page readers see if there is no cover page.

With respect to the size requirement proposal for print advertisements, one commenter supported it, and six commenters opposed it stating it would complicate the current standard, reduce the effectiveness of print advertisements, or result in some credit unions placing fewer print ads. NCUA believes the proposed standard is fair, reasonable, and minimally intrusive so as not to confuse consumers or detract from the effectiveness of print ads. NCUA adopts it in the final rule.

Some commenters expressed concern about the proposed definition of the term “advertisement” as too broad. The proposed definition is the same as the current definition of “advertisement” used by the Federal Deposit Insurance Corporation in its official advertising statement rule. 12 CFR Part 328. NCUA believes the proposed definition is reasonable and not too broad, and NCUA adopts it in this final rule.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (those under \$ 10 million in assets). The amendments enhance consumer confidence and do not impose a burden on credit unions. Accordingly, the NCUA has

determined and certifies that this rule 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](#).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Pub. L. 104-121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. [5 U.S.C. 551](#). The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has reviewed this rule and determined that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

This 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. This 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 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 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).

List of Subjects

12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on May 19, 2011.

Mary F. Rupp,

Secretary of the Board

For the reasons discussed above, the NCUA Board amends 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 redesignating current paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) 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 and statements of condition required to be published by law, and on its main Internet page, except as provided in paragraph (c) of this section. For annual reports and statements of condition required to be published by law, an insured credit union must place the official advertising statement in a prominent position on the cover page of such documents or on the first page a reader sees if there is no cover page.

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 paragraph (1) and redesignating all subsequent numbered paragraphs accordingly.

6. Revise Section 740.5(c) by amending newly redesignated paragraphs (7) and (8) to read as follows:

§ 740.5 Requirements for the official advertising statement.

(c) * * *

(7) Advertisements by radio that are less than fifteen (15) seconds in time;

(8) Advertisements by television, other than display advertisements, that are less than fifteen (15) seconds in time;

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