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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN: 3133-AE78

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is revising provisions of the NCUA’s advertising rule to provide regulatory relief to federally insured credit unions (FICUs). The advertising rule requires FICUs to use the NCUA’s official advertisement statement when advertising, and it currently permits three versions of that statement. Under this final rule, the Board is allowing FICUs the option of using a fourth version: “Insured by NCUA.” To provide additional regulatory relief, the Board is: (1) expanding a current exemption from the advertising statement requirement regarding radio and television advertisements; and (2) eliminating the requirement to include the official advertising statement on statements of condition required to be published by law.

DATES: This final rule becomes effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6553.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Credit Union Act (Act) requires each FICU to display NCUA's "official sign" regarding National Credit Union Share Insurance Fund insurance of the FICU's share accounts. The sign includes language that the coverage is backed by the full faith and credit of the United States Government.¹ Part 740 of the NCUA's regulations implements this statutory requirement and includes requirements relating to the NCUA's official advertising statement, each as discussed in more detail below.²

A. Part 740 Requirements

Part 740 prohibits any FICU from using advertising³ or making any representation which is inaccurate or deceptive or which misrepresents its services, contracts, financial condition, or the Truth in Savings requirements. It also prescribes requirements for both the NCUA's official

¹ 12 U.S.C 1785.

² 12 CFR 740.

³ This includes print, electronic and broadcast media, displays, signs, and stationary and other promotional material.

advertisement statement that FICUs must make when advertising and the NCUA's official sign that FICUs must display.

Currently, there are two versions of the NCUA's official advertising statement: (1) the longer version, which reads "This credit union is federally insured by the National Credit Union Administration"; and (2) the shorter version, which reads "Federally insured by NCUA." In accordance with part 740, a FICU may, as a third option, display the official sign in advertisements in lieu of making the official advertising statement. With certain exemptions discussed below, a FICU must use the official advertising statement in all of its advertisements, although it is at the FICU's discretion to choose among the three options noted.

Section 740.5(c) of the NCUA's regulations enumerates several kinds of advertisements that, for practical reasons, are exempted from the general rule requiring the use of the official advertising statement.⁴ With respect to these exempted advertisements, the Board is focusing on the exemptions relating to radio and television advertisements of a certain duration.⁵

⁴ The following advertisements need not include the official advertising statement under the current rule: (1) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates; (2) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located; (3) Listings in directories; (4) Advertisements not setting forth the name of the insured credit union; (5) 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; (6) 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; (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; (9) 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; (10) 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; (11) 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.

⁵ 12 C.F.R. 740.5(c)(7) and (8).

B. Regulatory History

For many years, the NCUA's advertising and official sign regulations were essentially the same as those of the Federal Deposit Insurance Corporation (FDIC).⁶ In 2011, however, the Board amended part 740 by making the NCUA's advertising rules more stringent than FDIC's rules. Specifically, in 2011, while banks needed only to include the FDIC's official advertising statement in radio and television advertisements that exceeded 30 seconds, the NCUA's regulatory amendments required FICUs to include the NCUA's official advertising statement in all radio and television advertisements except those that were less than 15 seconds.⁷ This additional requirement, which the Board now believes is unnecessary, affected more FICU advertisements and disrupted the parity between bank and FICU regulatory burden. According to some FICUs, the 2011 amendments made it more difficult for FICUs to produce effective advertisements.

The NCUA's 2011 amendments also required FICUs to include the advertising statement on statements of condition required to be published by law, a requirement not imposed on banks.

C. October 2017 Proposal

⁶ 12 C.F.R. 328.

⁷ 76 FR 30521 (May 26, 2011). Prior to the 2011 amendments, the FDIC and the NCUA expressed the 30 second time frame in the same manner. Specifically, both agencies applied the exemption to radio and television advertisements that do not "exceed" thirty seconds. With the 2011 amendments, the NCUA lowered the exemption duration from 30 seconds to 15 seconds and changed the do not "exceed" language to advertisements that are "less than" the stated duration, both of which the Board now believes disadvantage FICUs compared to banks. For technical clarification, the purpose of this final rule and the 2017 proposal is to eliminate the unnecessary disadvantages imposed by the 2011 amendments.

On October 4, 2017 (2017 NPRM),⁸ the Board published a proposal to: (1) expand the radio and television advertisements exemption from 15 seconds to 30 seconds; and (2) eliminate the requirement to include the official advertising statement on statements of condition required to be published by law. This proposal effectively reversed the 2011 amendments and returned parity between banks and FICUs in this context. To provide additional regulatory relief, the Board also proposed to permit FICUs to use a fourth version of the official advertising statement, namely “Insured by NCUA.” The Board believes that these changes will provide FICUs with more flexibility without diminishing the purpose of part 740. In the 2017 NPRM, the Board sought comment on the proposed amendments and specifically requested comment about whether part 740 should be modified to address advertising on social media and mobile banking.

II. Summary of Comments on 2017 NPRM

The NCUA received 36 comments from federal and state credit unions, trade associations, credit union leagues, credit union employees, and an individual. These commenters generally supported the proposed rule, although a few commenters opposed discreet aspects of the proposal.

In supporting the proposal, several commenters called the changes modest yet important. A few commenters emphasized that part 740’s primary goal is to inform the public about share insurance.

⁸ 82 FR 46173 (Oct. 4, 2017).

Commenters stated that the proposed rule would: (1) provide regulatory relief and flexibility, particularly allowing more efficient communications to members and potential members; (2) provide parity with banks regulated and insured by the FDIC; (3) allow credit unions to highlight more of their products and services; (4) decrease costs and obstacles; and (5) reduce burden and streamline advertising disclosures. Several commenters noted that the cumulative effect of the “myriad federal and state regulations” require credit unions to allocate significant resources to legal and compliance departments. They favored the proposal, even though they stated that the existing requirements are not overly burdensome.

Each proposed amendment and the corresponding public comments recommending alternatives or modifications are discussed in more detail below.

III. Final Rule

A. Adding a Fourth Alternative Version of the Official Advertising Statement

As noted, part 740 currently provides three options for the NCUA’s official advertising statement: (1) “This credit union is federally insured by the National Credit Union Administration”; (2) “Federally insured by NCUA”; and (3) the official sign may be displayed in advertisements in lieu of the advertising statement.

Virtually all commenters supported the proposal to add an additional version of the official advertising statement. Commenters expressed appreciation for this proposed alternative, stating that it provides regulatory relief. One commenter noted that the proposed version consists of 13 characters as opposed to 22 or 71 characters. Commenters stated that the change is especially meaningful for new social media platforms because it enhances flexibility while still conveying the important message regarding federal share insurance. They further posited that providing a shorter alternative makes advertising more cost effective because print and electronic advertising prices are often based on length and duration.

One commenter recommended allowing an even shorter ten character message – “NCUA Insured” or twelve character message “Member NCUSIF.” This commenter stated that this would provide parity with the FDIC advertising statement – “Member FDIC,” thus enhancing flexibility.

The Board agrees the proposed alternative will add flexibility without any adverse effect on potential members. However, it does not believe it necessary to adopt the suggested “NCUA Insured” or “Member NCUSIF.” Therefore, the Board adopts this aspect of the proposal as proposed.

B. Expand Exemption for Radio and Television Advertisements

As noted above, the current advertising rule exempts from the requirements of part 740 radio and television advertisements that are less than 15 seconds in duration. In the 2017 NPRM, the Board proposed to expand the radio and television advertisements exemption from 15 seconds to

30 seconds. Virtually all commenters supported this aspect of the proposal. The commenters supported the Board's goal of restoring parity between FICUs and banks and noted this change would enhance a FICU's ability to communicate to members. The commenters stated that the previous reduction of the exemption in 2011 from 30 seconds to 15 seconds was unnecessary and increased regulatory burden.

The Board agrees and adopts this aspect of the proposal as proposed.

C. Eliminate Requirement Regarding Statements of Condition

The 2011 amendments, for the first time, required FICUs to include the advertising statement on statements of condition required to be published by law. In the 2017 NPRM, the Board proposed to relieve FICUs of this burden. Of the commenters who addressed this aspect of the proposal, all agreed with it. They stated that the requirement is unnecessary and that relief from it restores parity with banks.

The Board agrees with the commenters and adopts this aspect of the proposal as proposed.

D. Social Media, Mobile Banking, and Other Digital Communication

Current part 740 focuses primarily on traditional forms of advertising such as print, radio, and television. In the 2017 NPRM, the Board requested comment on whether to modify the regulations to more precisely address advertising on social media, mobile banking, text messaging, and other digital communication platforms, such as Twitter and Instagram. The

Board requested specific recommendations that would balance the goal of informing the public regarding federal share insurance coverage with the practical constraints inherent in social media advertising.

Twelve commenters addressed this topic, noting that digital media typically are designed as extremely short forms of communication. Several commenters favored making no changes to part 740, stating that the proposal to permit the fourth version of the official advertising statement was sufficient to accommodate new forms of advertising. Other commenters recommended adding new exemptions to part 740 for various forms of digital advertisements provided the official advertising statement appears elsewhere in the FICU's advertisement. Others recommended modifying certain provisions of part 740 short of adding new exemptions. For example, one commenter recommended that, for text-based messaging, the regulations should allow the official advertising statement to be expressed by a hashtag for Twitter, e.g., "#NCUAIinsured" or "InsNCUA." Another commenter suggested allowing the use of an emoji that would indicate insured status that could be included in tweets or text messages.

The Board has determined that, given the rapidly changing technological landscape, it is appropriate to delay taking action to amend part 740 regarding social media at this time. The Board believes that part 740 provides a sufficient framework to inform potential and current credit union members regarding federal share insurance coverage for advertisements made in traditional ways and on social media. Additionally, the NCUA's Office of General Counsel is authorized to provide guidance to any FICU with questions regarding part 740 in the context of advertising on social media.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.⁹ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets. The amendments provide regulatory relief without any costs to FICUs. Accordingly, the NCUA has determined and certifies that the final 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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.¹⁰ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This rule does not constitute a “collection of information” within the meaning of section 3502(3) and would not increase paperwork requirements under the PRA or regulations of the Office of Management and Budget (OMB).

Executive Order 13132

⁹ 5 U.S.C. 603(a).

¹⁰ 44 U.S.C. 3507(d); 5 CFR part 1320.

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, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule will 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. The NCUA has determined that this rule does not constitute a policy with federalism implications for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in Section 551 of the Administrative Procedure Act. The NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has filed the appropriate documentation with OMB for review.

The Treasury and General Government Appropriations Act of 1999 -

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.¹¹

List of Subjects in 12 CFR Part 740

¹¹ Public Law 105-277, 112 Stat. 2681 (1998).

Advertisements, Credit unions, Share insurance, Signs and symbols

By the National Credit Union Administration Board on April 19, 2018.

Gerard S. Poliquin

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 for part 740 continues to read as follows:

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

2. Amend section 740.5 by revising paragraphs (a), (b), (c)(7) and (c)(8) 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 on its main Internet page, except as provided in paragraph (c) of this section.

(b)(1) The official advertising statement is in substance one of the following:

(i) This credit union is federally insured by the National Credit Union Administration;

(ii) Federally insured by NCUA;

(iii) Insured by NCUA; or

(iv) A reproduction of the official sign as described in § 740.4(b) may be used in lieu of the other statements included in this section. 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).

(2) 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.

(c) * * *

(7) Advertisements by radio which do not exceed thirty (30) seconds in time;

(8) Advertisements by television, other than display advertisements, which do not exceed thirty (30) seconds in time;

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