

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The NCUA Board proposes revising its rule governing advertising and the requirements for use of the official sign and official advertising statement regarding insured status. The purpose of the revision is to modernize the rule to address the growing use of the Internet for member transactions, the use of trade names, and clarify and streamline the existing rule for ease of reference.

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You may fax comments to (703) 518-6319. E-mail comments to regcomments@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

The NCUA Board (Board) is proposing to revise its regulation concerning an insured credit union's (CU's) advertising practices and use of the official sign and official advertising statement to notify members of the CU's insured status. The NCUA policy to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions" prompted this revision.

Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations.

Trade Names

NCUA's Office of General Counsel (OGC) has issued several opinions interpreting Part 740 to permit CUs to use trade names in advertising. Several CUs have written to the OGC concerning the use of trade names in advertising. Some CUs prefer to use a trade name or signage with a name other than the official charter name. In one case, an OGC opinion approved the use of a trade name that is an abbreviation of the official charter name. To foster member recognition, another OGC opinion approved the use of a second name, other than the official charter name, to reflect the trade name of a sponsor. In yet another case, an OGC opinion permitted the use of a trade name that did not include the words, "federal credit union." Since OGC has received multiple questions from CUs on this issue, the Board has determined that it could make the rule more informative by incorporating the OGC's interpretations into the regulatory text. Similarly, NCUA has issued guidance to CUs on the use of more than one name. NCUA Letter to Credit Unions No. 99-CU-17 (October 1999).

While the use of more than one name or a trade name in advertisements is acceptable, a CU must use its official charter name in all official or legal documents and in communications with NCUA. Of utmost concern to NCUA is that the use of a trade name does not confuse members about the level of share insurance applicable to their accounts. For that reason, a CU using a trade name or a second name must use its official charter name on consumer disclosures, contracts, titles, liens, stocks or other documents that set out legal responsibilities or obligations. It must also ensure that its staff advises new members that accounts opened or deposits made in branches or facilities with different names are not separately insured. A CU must also ensure that it does not violate the rights of another party in a trade name. For ease of reference, the proposal revises § 740.2 to clarify that it does not prohibit the use of trade or second names, but that CUs must use the official charter name in legal documents.

Internet

Currently, over 40 percent of all federally insured credit unions have a web site and almost half offer members the ability to perform transactions. Since increasing numbers of CUs are using the Internet to advertise their services and conduct transactions with members, the Board is concerned that members receive adequate notice about the availability of federal share insurance when they use the Internet to engage in transactions. Part 740 requires CUs to display the official sign at each station or window where insured account funds or deposits are usually received. 12 CFR 740.3. It also requires CUs to include the official advertising statement in advertisements. The proposal revises this provision to address the use of the official advertising sign and official advertising statement on the Internet more clearly.

NCUA is aware that CUs use the Internet to offer services to current members and to invite new members to join. This does not differ from advertising on television, radio or newspapers. To the extent Part 740 requires a CU to include the official advertising statement in advertisements in other media, the NCUA Board believes it should also require it for advertisements on the Internet. The proposal would require CUs to display the official advertising statement on their main or home page at minimum. Further, many CUs have links from their main or home page to subsidiary pages where a member may conduct transactions, such as deposits or fund transfers, and where nonmembers may apply for membership. These pages are analogous to a teller window or station at a CU office. The proposal would also require the CU to display the official sign on all subsidiary pages where a member may transfer or deposit funds or open an account.

The Board notes that most CUs operating Internet sites already display the official sign and advertising statement in this manner and is pleased that the proposal will not add a significant regulatory burden.

Since advertising on the Internet is so closely analogous to advertising in other media, the Board believes the requirement in § 740.2 for accuracy in advertising should also apply to electronic advertisements. The proposal,

therefore, amends § 740.2 to include electronic media.

Other proposed changes to the regulation are minor and editorial. For example, the proposal retitles the rule to reflect the content more clearly. It also reorganizes § 740.2 into two sections for clarity and ease of reference. In the proposal, § 740.2 covers accuracy in advertising and the new § 740.3 covers advertising of excess insurance. Finally, without changing the meaning, the proposal clarifies and simplifies the language of the rule and headings by reducing excess verbiage and rewording it in a plain English style.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under one million dollars in assets). This proposed rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

NCUA has determined that the proposed rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory 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 proposed rule, if adopted, will apply to both federal and state credit unions. It does not, however, significantly change the current regulatory framework. It will not have a substantial direct effect on states, on the relationship 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 the 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 will 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 rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions.

By the National Credit Union Administration Board on September 19, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to revise 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

Sec.

740.0 Scope.

740.1 Definitions.

740.2 Accuracy of advertising.

740.3 Advertising of excess insurance.

740.4 Requirements for the official sign.

740.5 Requirements for the official advertising statement.

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

§ 740.0 Scope.

This part applies to all federally insured credit unions. It prescribes the requirements for the official sign insured credit unions must display and the requirements with regard to the official advertising statement insured credit unions must include in their advertisements. It requires that all other kinds of advertisements be accurate. It also establishes requirements for advertisements of excess insurance.

§ 740.1 Definitions.

(a) *Account* or *accounts* as used in this part means share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member

(which includes other credit unions, public units, and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) *Insured credit union* as used in this part means a credit union insured by the National Credit Union Administration (NCUA).

§ 740.2 Accuracy of advertising.

No insured credit union may use any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition, or which violates the requirements of § 707.8 of this subchapter, if applicable. This provision does not prohibit an insured credit union from using a trade name or a name other than its official charter name in advertising or signage, so long as it uses its official charter name in communications with NCUA and for certificates of deposit, signature cards, loan agreements, account statements, checks, drafts and other legal documents.

§ 740.3 Advertising of excess insurance.

Any advertising that mentions share or savings account insurance provided by a party other than the NCUA must clearly explain the type and amount of such insurance and the identity of the carrier and must avoid any statement or implication that the carrier is affiliated with the NCUA or the federal government.

§ 740.4 Requirements for the official sign.

(a) Each insured credit union must continuously display the official sign described in paragraph (b) of this section at each station or window where insured account funds or deposits are normally received in its principal place of business and in all its branches, and on its Internet page, if any, where it accepts deposits or open accounts, 30 days after its first day of operation as an insured credit union.

(b) The official sign shall be as depicted below, having a blue background with white lettering:

BILLING CODE 4910-15-P

Your savings federally insured to \$100,000

NCUA

National Credit Union Administration, a U.S. Government Agency

BILLING CODE 4910-15-C

(1) NCUA will automatically supply all insured credit unions an initial supply of official signs at no cost for compliance with paragraph (a) of this section. If the initial supply is not adequate, the insured credit unions must immediately request additional signs from NCUA. Any credit union that does not have an adequate supply but requests additional signs from NCUA will not be considered to have violated paragraph (a) of this section unless the credit union fails to display the signs after receiving them.

(2) Insured credit unions may purchase additional signs from commercial suppliers in additional colors, materials and sizes, for uses other than those required by paragraph (a) of this section.

(c) An insured credit union must not receive account funds at any teller's station or window where any noninsured credit union or institution receives deposits. Excepted from this prohibition are credit union centers, service centers, or branches servicing more than one credit union where only some of the credit unions are insured by the NCUA. In such instances, immediately above or beside each official sign there must be another sign stating, "Only the following credit unions serviced by this facility are federally insured by the NCUA _____" (the full name of each credit union insured will follow the word NCUA). The lettering must be of such size and print to be clearly legible to all members conducting share or share deposit transactions.

(d) The Board may require any insured credit union, upon at least 30 days' written notice, to change the wording of its official signs in a manner

deemed necessary for the protection of shareholders or others.

(e) For purposes of this section, the terms "branch," "station," "teller station," and "window" do not include automated teller machines or point of sale terminals.

§ 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.

(1) An insured credit union must include the official advertising statement in its advertisements thirty (30) days after its first day of operations as an insured credit union unless the Regional Director grants it an extension.

(2) In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this section become operative, the insured credit union may use an overstamp or other means to include the official advertising statement until the supplies are exhausted.

(b) The official advertising statement is in substance as follows: This credit union is federally insured by the National Credit Union Administration. The short title "Federally insured by NCUA" and a reproduction of the official sign may be used by insured credit unions at their option as the official advertising statement. The official advertising statement must be in a size and print that is clearly legible.

(c) The following advertisements need not include the official advertising statement:

(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 of \$100,000 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.

(d) The non-English equivalent of the official advertising statement may be used in any advertisement provided that the Regional Director gives prior approval to the translation.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing a regulation on the requirements for federally-insured credit unions that wish to branch outside the United States. The proposed rule requires a credit union to develop a business plan and receive foreign government and NCUA approval before establishing a branch outside the United States.

DATES: The NCUA must receive comments on or before December 26, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or you may fax comments to (703) 518-6319 or e-mail comments to regcomments@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540 or Lynn Markgraf, Program Officer, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

SUPPLEMENTARY INFORMATION: On September 7, 2000, the Board issued an advance notice of proposed rulemaking (ANPR) on whether NCUA should insure state-chartered credit unions that branch outside the United States. 65 FR 55464 (September 14, 2000). The

comment period ended on November 14, 2000. The key issues raised in the ANPR included NCUA Board policy considerations, legal concerns, supervision and examination considerations, options for insuring foreign branches of state-chartered credit unions and options for restricting insurance coverage for state-chartered credit unions operating foreign branches.

The NCUA Board stated in the ANPR that it was considering numerous options to address the issues raised by state-chartered credit unions branching outside the United States. One option discussed was to permit federally-insured, state-chartered credit unions to serve foreign nationals in their fields of membership on the same terms currently permitted for federal credit unions. That is, foreign nationals in the field of membership could be served pursuant to an approved business plan, with branches being limited to U.S. embassies and U.S. military installations. A second option discussed insuring state-chartered credit unions that operate foreign branches, but with regulatory limitations designed to mitigate risk to the National Credit Union Share Insurance Fund (NCUSIF). The following were the limitations, among others, that the Board stated it might consider:

- Allow foreign branches for the purpose of serving employees of U.S. or international organizations in a credit union's field of membership, but prohibit select employee group expansions or other expansion based on the foreign branch;
- Provide that accounts at foreign branches are not insured or give credit unions the option to insure those accounts;
- Require a separate application for insurance for foreign branch operations with the factors to be considered enumerated in NCUA's regulations;
- Limit the amount of total loans, issued at a foreign branch, in relation to insured and uninsured shares at the foreign branch;
- Require specific, minimum capital amounts based on the size of the loan portfolio and require mandatory charge-offs of loans more than 120 days past due; and
- Limit the amount of loans to foreign nationals outside the United States to the uninsured deposits at the foreign branch. Uninsured shares would act as the primary offset for loan losses after capital reserved for the branch is depleted.

The NCUA Board has decided not to propose any of these regulatory limitations but rather to propose a more

streamlined and less intrusive approach that still maintains safety and soundness. As discussed below, the NCUA Board is proposing a simple approval process that requires a credit union to obtain host country approval and develop a comprehensive business plan in order to obtain NCUA approval to establish a branch in a foreign country.

Legal Background

The Federal Deposit Insurance Corporation (FDIC) reviews the insurance application for each branch located outside the United States. When reviewing an insurance application for foreign banks or foreign branches, FDIC must consider:

- (1) The financial history and condition of the bank,
 - (2) The adequacy of its capital structure,
 - (3) Its future earnings prospects,
 - (4) The general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,
 - (5) The risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund,
 - (6) The convenience and needs of the community to be served by the branch,
 - (7) Whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of [the FDIC] Act, and
 - (8) The probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under [the FDIC] Act.
- 12 U.S.C. 1815(b). This review is similar to NCUA's review of an insurance application under the Federal Credit Union Act (Act). 12 U.S.C. 1781(c)(1).

Bank and thrift deposits held outside the United States are not insured unless the financial institution has an express agreement with the depositor. The term "deposit" is defined to exclude:

[A]ny obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

- (i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and
- (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.

12 U.S.C. 1813(l)(5)(A). An account in a foreign branch of an FDIC-insured branch is a "deposit" and insured only if it meets the above exception to the