

Rules and Regulations

Federal Register

Vol. 73, No. 191

Wednesday, October 1, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133-AD45

The Official Advertising Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising the requirements for use of the official insurance sign and official advertising statement to permit insured credit unions to use the basic form of the official advertising statement, a shortened form, or the official sign in advertisements. The rule will give credit unions added flexibility in advertisements by allowing them to use the shortened form or the official insurance sign in advertisements as alternatives to the basic official advertising statement.

DATES: This rule is effective October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Moissette I. Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION: In April 2008, NCUA proposed an amendment revising the requirements for use of the official insurance sign and official advertising statement to permit insured credit unions to use the basic form of the official advertising statement, a shortened form, or the official sign in advertisements. 73 FR 22839 (April 28, 2008). Additionally, the proposed amendment clarified the font of the text in the official sign may be altered to ensure it is legible when it is used as the official advertising statement. The proposal resulted from NCUA's 2007 regulatory review, and was identified to

provide insured credit unions greater flexibility in how they meet the requirement of giving notice of their insured status.

The Federal Credit Union Act (Act) requires insured credit unions to display signs at their places of business indicating accounts are insured and also to include in all advertisements a statement to the effect that accounts are insured. 12 U.S.C. 1785(a). The Act authorizes the NCUA Board to promulgate regulations governing the substance of the official insurance sign and the manner it is displayed or used and, also, to address the practicality of including the official statement on insured status in advertisements. *Id.* NCUA implements this authority in part 740 of its regulations and, in § 740.5, NCUA requires insured credit unions to include the official advertising statement in all advertisements, including on their main internet pages, with certain exceptions.

NCUA received a total of eight comments on the proposed rule from credit unions and trade associations. All the commenters supported the rule. On September 10, 2008, NCUA received notice that one comment letter submitted via the Federal eRulemaking Portal regarding this rulemaking had not been forwarded to NCUA. This was due to a minor software problem that has been corrected.¹ The comment period for this rule closed on June 27, 2008. As noted above, all eight comment letters NCUA received fully supported the amendments and the Board believes, given the identity of these commenters, which includes major credit union trade associations and individual credit unions, that these comment letters broadly and fairly represent the views of interested parties.

The Board believes it is appropriate and fair in these circumstances to proceed with the final rule rather than delay implementation. This rule creates no burden for FCUs, but merely

¹ The interagency "eRulemaking Program" launched the Web site <http://www.regulations.gov> in January 2003 to provide access and an opportunity to comment on all proposed federal regulations at one online portal. NCUA's understanding is that the software problem has been corrected and safeguards are now in place to ensure this error will not occur for future proposed rules. Questions about this matter may be directed to John Moses, Chief, eRulemaking Program Branch, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202/566-1352, Moses.John@epamail.epa.gov.

provides an alternative for insured credit unions to meet the advertising requirement regarding the existence of federal account insurance. For these reasons, the Board concludes there is no need to reopen the comment period and the interest of the public and FCUs is served by proceeding with the final rule.

One commenter suggested NCUA further condense the advertising statement and permit credit unions to use a brief statement such as, "NCUA Insured" or "Insured by NCUA." Credit unions may use the shortened version of the official advertising statement, which is "Federally insured by NCUA." Keeping the word "federally" in the shortened version ensures those who may not be familiar with credit unions, NCUA, or the National Credit Union Share Insurance Fund receive notice that member shares are backed by the full faith and credit of the United States government, especially when the shortened statement is used alone.

Accordingly, NCUA adopts the proposed rule, published at 73 FR 22839 (April 28, 2008), as a final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (those under \$10 million in assets). The final amendment merely expands the options credit unions have to comply with the requirement to notify members and the public of their insured status in advertisements. 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.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 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 OMB, has determined that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

The final 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 final 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 final 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 final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on September 25, 2008.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

■ 1. The authority citation for part 740 is revised to read as follows:

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

■ 2. Amend § 740.5 by revising paragraph (b) to read as follows:

§ 740.5 Requirements for the official advertising statement.

* * * * *

(b) 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 the official sign, as described in § 740.4(b), as the official advertising statement. The official advertising statement must be in a size and print that is clearly legible. 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).

* * * * *

[FR Doc. E8-23071 Filed 9-30-08; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

RIN 3133-AD44

Revisions for the Freedom of Information Act and Privacy Act Regulations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its Freedom of Information Act (FOIA) and Privacy Act regulations. The final rule reflects recent amendments to the FOIA addressing fee practices, time limits for complying with requests, and new reporting requirements. The changes to the Privacy Act provisions reflect the agency's efforts to clarify the procedures whereby individuals may obtain notification of whether an NCUA system of records contains information about the individual and how to access or amend a record.

DATES: This rule is effective October 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Linda K. Dent, Staff Attorney, Office of General Counsel, at (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2008, the NCUA Board requested comment on a proposed rule to update and clarify the procedures for requesting access to agency records and other rights and requirements under the FOIA and Privacy Act provisions of part 792. 73 FR 22,289 (April 25, 2008). In addition to incorporating the 2007 FOIA

amendments into the rule, the proposed rule added definitions, revised terminology and otherwise clarified provisions implementing the Privacy Act. Technical corrections also were made to both sections.

Discussion

NCUA's policy is to review a third of its regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. The proposed changes were the result of such a review. The changes also coincided with recent statutory amendments to FOIA and NCUA's updating of its Systems of Records Notice under the Privacy Act, periodically published in the **Federal Register**.

Summary of Comments

The NCUA Board received two comments in general support of the proposed rule. In response to proposed language clarifying when a FOIA request is considered received, one commenter urged the agency to make reasonable efforts to promptly notify a requester when a request is incorrectly addressed or otherwise deficient; forward incorrectly addressed requests to the proper Information Center; or if possible, disregard deficiencies having no impact on the ability to process the response. The amended language simply explains what conditions must be met to start the clock for the statutory processing period. As a general practice, Information Center staff communicates with requesters to obtain missing information and to clarify requests to enable their timely processing. Similarly, FOIA requests sent to the wrong Information Center are forwarded to the correct Information Center.

The commenter also suggested a deceased individual's records should receive protection consistent with that of a living individual and suggested the agency require a requester to obtain approval from the decedent's estate before releasing any records. As explained in the Department of Justice's 2007 FOIA Guide, there is a "longstanding FOIA rule that death extinguishes one's privacy rights." USDOJ: OIP: *Freedom of Information Act Guide*, March 2007, page 566. Whether records pertaining to a deceased individual are actually released requires an evaluation of the privacy interests at issue in such a release, which may include surviving family members' right to personal privacy.