

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133-AD52

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Section 740.4 of NCUA's rules requires that a federally insured credit union continuously display the official NCUA sign at every teller station or window where insured funds or deposits are normally received. Section 740.4(c) requires that tellers accepting share deposits for both federally insured credit unions and nonfederally insured credit unions also post a second sign adjacent to the official NCUA sign. The current rule requires this second sign to list each federally insured credit union served by the teller along with a statement that only these credit unions are federally insured. Due to the evolution of shared branch networks it is now difficult for some tellers to comply with this second signage requirement and, accordingly, NCUA is revising the rule to replace the required listing of credit unions with a statement that not all of the credit unions served by the teller are federally insured and that members should contact their credit union if they need more information.

DATES: This rule is effective April 3, 2009.

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

SUPPLEMENTARY INFORMATION:

A. Background

NCUA proposed revisions to part 740 of its regulations, addressing the notice and advertising requirements applicable to credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) administered by NCUA, in October 2008. 73 FR 2935 (Oct. 22, 2008). Section 740.4(a) requires federally insured credit unions to post a sign at all teller stations that normally receive deposits. This official NCUA sign reads: "Your savings federally insured to at least \$100,000 and backed by the full faith and credit of the United States Government" accompanied by the acronym "NCUA" and the words "National Credit Union Administration, a U.S. Government Agency." 12 CFR

740.4(a). The official NCUA sign informs and reassures members that their share deposits are guaranteed, to certain limits, by the U.S. Government in the event the credit union fails.

Section 740.4(c) imposes additional requirements on federally insured credit unions participating in shared branch networks. Generally, federally insured credit unions are prohibited from accepting funds at teller stations or windows where nonfederally insured credit unions also receive deposits. 12 CFR 740.4(c). Tellers in "credit union centers, service centers, or branches servicing more than one credit union" (i.e., shared branching networks) are currently exempted from this prohibition, but only if they display a specific sign at each station or window above or beside the official NCUA sign. *Id.* This second sign must state that "[o]nly the following credit unions serviced by this facility are federally insured by the NCUA," followed by the full name of each federally insured credit union displayed in lettering "of such size and print to be clearly legible to all members conducting share or share deposit transactions." *Id.*

As discussed in the proposal, the present rule has several shortcomings. For example, the current size of shared branching networks makes compliance with this section nearly impossible as an extremely large sign would be required to list the hundreds of federally insured credit unions participating in the largest shared branching networks, and it is difficult to keep the sign up-to-date as federally insured credit unions frequently join or leave these networks. 73 FR 62935, 62936 (Oct. 22, 2008). Additionally, shared branching activities increasingly take place in the branches of particular credit unions rather than at stand-alone sites operated by third parties such as credit union service organizations. *Id.* The current rule prescribes the same sign for shared branch locations that are credit union facilities as for locations operated by third parties. Finally, the current rule does not address signage requirements for branches of nonfederally insured credit unions participating in shared branching networks and accepting deposits for federally insured credit unions. *Id.*

The proposed revisions to § 740.4(c) retained the general prohibition on federally insured credit unions receiving funds at any teller station or window where any nonfederally insured credit union also receives account funds, but set forth three exceptions to this prohibition. The first two exceptions permit tellers at federally insured credit unions and

shared branches operated by non-credit union entities to receive deposits for nonfederally insured credit unions if these tellers post a second sign adjacent to the official NCUA sign. Under the proposal, the language for the second sign for tellers at federally insured credit unions reads as follows:

This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. Not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

The second sign for tellers at shared branches operated by non-credit union entities is as follows:

This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

The third exception to the general prohibition addresses signage requirements at nonfederally insured credit unions. The proposal clarified that tellers in nonfederally insured credit unions may accept deposits for federally insured credit unions as part of a shared branch network. The proposal, however, prohibited a nonfederally insured credit union from displaying the official NCUA sign, as this could be very confusing to the members of the nonfederally insured credit union. Also, since the credit union will not display the official sign, there is no need for it to display the second sign.

As discussed below, NCUA is adopting the rule as proposed with a slight revision to the second sign for shared branch locations at federally insured credit unions.

B. Comments and Final Rule

NCUA received sixteen comments on the proposal. All commenters generally agreed the current rule is difficult to comply with and not particularly useful to credit union members. Most commenters supported the revisions as proposed by NCUA or with minor changes. A few commenters opposed any requirement for a second sign and recommended NCUA repeal the requirement.

Three commenters who generally supported the proposal suggested the second sign should only be required at one, central location instead of next to every official insurance sign. NCUA has not adopted this suggestion in the final rule because members could be misled about the insurance status of their credit union if the second sign required by

§ 740.4(c) is not adjacent to every official insurance sign. Similarly, NCUA did not adopt the suggestion of another commenter who requested that federally insured credit unions have the option to distribute a paper notice to “guest” members using the federally insured credit union as a shared branch instead of posting the second signs. One problem with this suggestion is that members are more likely to miss this notice if it is presented on a separate flyer at the entrance or accompanies the member’s transaction information distributed by a teller. Another problem with this suggestion is that tellers may fail to distribute the notice to all guests, and it would be difficult for NCUA to assess compliance with this requirement. In contrast, the short, clear second sign gives members the information they need in a format they are most likely to notice and absorb. The straightforward requirement for a second sign also makes compliance with the regulation and assessing compliance with the regulation easier than would allowing a separate disclosure to guest members.

Another commenter suggested that it would be more useful for the second sign to list the nonfederally insured credit unions participating in the shared branching network. This commenter stated that since the vast majority of credit unions are federally insured, a second sign listing the names of the nonfederally insured credit unions would be much shorter and give members exactly the information they need without the extra step of contacting their credit union. NCUA agrees this option would reduce the regulatory burden on credit unions and in theory could provide more complete information for credit union members. NCUA has not adopted this suggestion, however, because of concern that members of nonfederally insured credit unions would see the name of their nonfederally insured credit union on a sign immediately adjacent to the official NCUA insurance sign and could, if they did not read the sign very carefully, erroneously conclude their credit union was federally insured.

Two commenters requested NCUA add a phrase to the second sign required by § 740.4(c) for tellers at federally insured credit unions reiterating the credit union is federally insured, and NCUA has adopted this change in the final rule. The second sign for tellers in federally insured credit unions is amended to read as follows:

This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union

is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

Like the commenters requesting this change, NCUA has observed an increasing focus on deposit insurance coverage among credit union members as turbulence in the financial marketplace continues. Although NCUA believes very few members would be confused by the second sign as proposed since it would be posted adjacent to the official insurance sign, NCUA agrees the suggested clarification is useful and adopts it in the final rule.

Finally, one commenter opined that the proposal would permit federally insured credit unions flexibility to draft slightly differing language for the second sign required by § 740.4(c). This is not true. While the design, color, and font of the second sign may depart from NCUA’s template, the language must conform to the regulation exactly.

As discussed in the proposal, the second sign required by § 740.4(c) must be conspicuous and be similar to the official NCUA sign in terms of design, color, and font. NCUA will produce signs that meet this requirement and make the signs available for purchase at a reasonable cost. Credit unions may either use the NCUA-produced sign or produce their own sign, as long as the sign meets the requirements of the rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule will not impose any regulatory burden and in fact will ease existing compliance burdens on federally insured credit unions participating in shared branch networks and accepting deposits for both federally insured and nonfederally insured credit unions. The Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement 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. NCUA does not believe this rule is a major rule for purposes of SBREFA.

Paperwork Reduction Act

NCUA has determined that the rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget, 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

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 rule will not have substantial direct effects 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

The NCUA has determined that this rule will not affect family well-being within the meaning of § 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 February 26, 2009.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth 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 continues to read as follows:

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

■ 2. Amend § 740.1 by revising paragraph (b), and adding paragraph (c), to read as follows:

§ 740.1 Definitions.

* * * * *

(b) *Insured credit union and federally insured credit union* as used in this part mean a credit union with National Credit Union Administration share insurance.

(c) *Nonfederally insured credit union* as used in this part means a credit union with either no account insurance or with primary account insurance provided by some entity other than the National Credit Union Administration.

■ 3. Amend § 740.4 by revising paragraph (c) to read as follows:

§ 740.4 Requirements for the official sign.

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(c) To avoid any member confusion from the use of the official NCUA sign, federally insured credit unions are prohibited from receiving account funds at any teller station or window where any nonfederally insured credit union also receives account funds. As exceptions to this prohibition:

(1) A teller in a branch of a federally insured credit union may accept account funds for nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states “This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.” This sign must be similar to the official sign in terms of design, color, and font.

(2) A teller in a facility operated by a non-credit union entity may accept account funds for both federally insured credit unions and nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating “This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.” This sign must be similar to the official sign in terms of design, color, and font.

(3) A teller in a branch of a nonfederally insured credit union may accept account funds for federally insured credit unions. No teller in a

nonfederally insured credit union may display the official NCUA sign.

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NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 747****Civil Monetary Penalty Inflation Adjustment**

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* March 4, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:**A. Background**

The Debt Collection Improvement Act of 1996¹ (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990² (FCPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalty (CMP) provided by law under its jurisdiction by the rate of inflation at least once every 4 years. These periodic adjustments are to be calculated pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act. Section 6 of the FCPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after the effective date of the adjustment.

The inflation adjustment is based on the percentage increase in the Consumer

Price Index for all urban consumers (CPI-U) published by the Department of Labor.³ Specifically, section 5(b) of the FCPIA Act defines the term “cost-of-living adjustment” as “the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.” The amount of each inflation adjustment must then be rounded to a number prescribed by section 5(a) of the FCPIA Act.

B. Mathematical Calculations of the Adjustments

NCUA last adjusted the CMPs it is authorized to impose in 2004. 69 FR 60080. Accordingly, the current adjustment of these CMPs will be the percentage by which the CPI-U for the month of June 2007 exceeds the CPI-U for the month of June 2004. According to the Bureau of Labor Statistics, the CPI-U for the month of June 2004 was 189.7 and the CPI-U for the month of June 2007 was 208.352. The percentage by which the 2007 figure exceeds the 2004 figure is 9.8 percent. Thus, the CMPs should be multiplied by 9.8 percent, the resulting dollar amount rounded up or down according to the rounding requirements of the FCPIA Act, and then that amount added to the current penalty. In some cases, the rounding rules resulted in no adjustment to the amount of the CMP.

In previous years, the Board has explained in detail the adjustment procedure for each of the CMPs under its jurisdiction. Detailed explanations were provided because some CMPs were adjusted for the first time, requiring the use of different formulas. In view of the fact that all of the CMPs were last adjusted in 2004, such detailed explanations are no longer necessary. For that reason, and to be consistent with the other banking agencies, the Board will show the adjustments in table format. The following table shows both the present CMPs, the adjustment methodology, and the CMPs after being adjusted for inflation. The table published in 12 CFR 747.1001 shows only the adjusted CMPs, not the calculations.

³ The CPI-U is published by the Department of Labor, Bureau of Labor Statistics, and is available at its Web site: <http://www.bls.gov/cpi/>.

¹ Public Law 104-134, 31001(s), 110 Stat. 1321-373, (Apr. 26, 1996). The provision is codified at 28 U.S.C. 2461 note.

² Public Law 101-410, 104 Stat. 890, (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.