



**7535-01-U**

**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:** Proposed rule with request for comments.

**SUMMARY:** The NCUA Board (Board) proposes to revise certain provisions of NCUA's advertising rule to provide regulatory relief to federally insured credit unions (FICUs). The advertising rule requires FICUs to use NCUA's "official advertisement statement" when advertising. In addition to being permitted to use any of the three current versions of the official advertising statement, the Board proposes to allow FICUs the option of using a fourth version, namely by stating "Insured by NCUA." To provide additional regulatory relief, the Board proposes to expand a current exemption from the advertising statement requirement regarding radio and television advertisements, and eliminate the requirement to include the official advertising statement on statements of condition required to be published by law.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web Site:

[http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html).

Follow the instructions for submitting comments.

- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]

Comments on Notice of Proposed Rulemaking Regarding Accuracy of Advertising” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**Public inspection:** You may view all public comments on NCUA’s website at

<http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**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.<sup>1</sup> Regulations implementing this statutory requirement are at 12 CFR part 740. Part 740 of NCUA’s regulations also includes requirements relating to NCUA’s official advertising statement as discussed in more detail below.

**A. Part 740 Requirements**

Part 740 applies to all FICUs. It prescribes requirements for both the NCUA’s official sign that FICUs must display and the NCUA’s official advertisement statement that FICUs must make when advertising. In relevant part, part 740 prohibits any FICU from using advertising<sup>2</sup> or making any representation which is inaccurate or deceptive or which misrepresents its services, contracts, financial condition, or the Truth in Savings requirements.

NCUA’s official advertising statement is “This credit union is federally insured by the National Credit Union Administration” or the shorter version “Federally insured by the NCUA.” As a third option, the official sign may be displayed in advertisements in lieu of the advertising statement.

Section 740.5(c) of 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. With respect to these exempted advertisements, the Board is focusing on the exemptions relating to radio advertisements that are less than 15 seconds in duration<sup>3</sup> and television advertisements that are less than 15 seconds in duration.<sup>4</sup>

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<sup>1</sup> 12 U.S.C 1785.

<sup>2</sup> This includes print, electronic and broadcast media, displays, signs, and stationary and other promotional material.

<sup>3</sup> 12 C.F.R. 740.5(c)(7).

<sup>4</sup> 12 C.F.R. 740.5(c)(8).

## **B. Regulatory History**

For many years, NCUA's advertising and official sign regulations were essentially the same as those of the Federal Deposit Insurance Corporation (FDIC).<sup>5</sup> In 2011, however, the Board amended part 740 by making NCUA's advertising rules more stringent than FDIC's rules. Specifically, in 2011, while banks needed only to include the FDIC advertising statement in radio and television ads that exceeded 30 seconds, the 2011 NCUA rule change required FICUs to include NCUA's official advertising statement in radio and television ads that exceeded 15 seconds.<sup>6</sup> This additional requirement, which the Board now believes is unnecessary, affected more FICU ads and disrupted the balance between bank and FICU regulatory burden in this context. According to some FICUs, it also made it more difficult for FICUs to produce effective ads.

The 2011 NCUA rule change also required FICUs to include the advertising statement on statements of condition required to be published by law, whereas banks are exempt from this. The Board also proposes to relieve FICUs from this additional burden, which the Board believes is unnecessary.

Additionally, as a result of information we have received from the public, the Board proposes to amend part 740 to permit a fourth iteration of the official advertising statement, namely by stating "Insured by NCUA." This change would provide FICUs with more flexibility without diminishing the purpose of the rule.

The current part 740 addresses conventional forms of advertising such as print, radio, and television. The Board requests comment about whether the regulation should be modified to facilitate the trend in advertising via new types of social media, mobile banking, text messaging

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<sup>5</sup> 12 C.F.R. 328.

<sup>6</sup> 76 FR 30521 (May 26, 2011).

and other digital communication platforms, including Twitter and Instagram. The comments should focus on specific recommendations that balance the regulation's goal to inform the public with space and other constraints inherent in new forms of advertising.

## **II. 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 entities.<sup>7</sup> For purposes of this analysis, NCUA considers small credit unions to be those having under \$100 million in assets. The proposed amendments provide regulatory relief and thus do not impose a significant burden on small credit unions. Accordingly, NCUA has determined and certifies that the proposed rule, if adopted, 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.<sup>8</sup> 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. The proposed 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.

### Executive Order 13132

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<sup>7</sup> 5 U.S.C. 603(a).

<sup>8</sup> 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, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed 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 proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act of 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.<sup>9</sup>

**List of Subjects in 12 CFR Part 740**

**Advertisements, Credit unions, Share insurance, Signs and symbols**

By the National Credit Union Administration Board on September 28, 2017.

Gerard S. Poliquin

Secretary of the Board

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<sup>9</sup> Public Law 105-277, 112 Stat. 2681 (1998).

For the reasons discussed above, the NCUA Board proposes to amend 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 §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) The official advertising statement is in substance one of the following:

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

(2) Federally insured by NCUA;

(3) Insured by NCUA; or

(4) 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).

(5) 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 that are less than thirty (30) seconds in time;

(8) Advertisements by television, other than display advertisements, that are less than thirty (30) seconds in time;

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