

Rules and Regulations

Federal Register

Vol. 66, No. 182

Wednesday, September 19, 2001

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule that relaxes certain provisions in NCUA's regulations for advertising and posting notice of nondiscrimination in real estate-related lending. The rule provides a federal credit union (FCU) with flexibility in how it gives notice when advertising and allows an FCU to display either the NCUA lobby poster or a similar poster prepared by the United States Department of Housing and Urban Development. The rule also prohibits advertising with words, symbols, models, or other forms of communication that suggest a discriminatory preference or policy of exclusion in violation of the Fair Housing Act or the Equal Credit Opportunity Act.

DATES: This rule is effective October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6555.

SUPPLEMENTARY INFORMATION:

A. Background

In April 2001, the NCUA Board published a proposed rule to relax certain provisions in NCUA's regulations for advertising and posting notice of nondiscrimination in real estate-related lending. 66 FR 20945, April 26, 2001. The Board issued the proposed rule out of concern that the existing requirements were less flexible

than the Fair Housing Act and associated United States Department of Housing and Urban Development (HUD) guidance require. 42 U.S.C. 3604(c); 24 CFR 109.30(a) (1995) (removed from CFR by 61 FR 14378, April 1, 1996). This final rule adopts the language of the proposed rule without changes.

The existing rule mandates FCUs give notice of nondiscrimination when advertising real estate-related lending through use of a particular logotype and specific language. The final rule replaces the existing rule's specific requirement with a general requirement that FCUs indicate that they do not discriminate on any prohibited basis. The final rule also provides FCUs with various "safe harbor" methods to satisfy this notice requirement. These safe harbor methods are not mandatory. FCUs are free to use any reasonable method to satisfy the requirement.

HUD requires that every entity subject to the Fair Housing Act display on its premises a poster containing specific nondiscrimination language. 24 CFR 110.15. Federal financial regulatory agencies may substitute a different poster, and NCUA has done so. 24 CFR 110.25(b); 12 CFR 701.31(d)(2), (3); 54 FR 21963, May 22, 1989. The final rule permits FCUs to display either the NCUA version or the HUD version of the poster.

The final rule is similar to the Federal Deposit Insurance Corporation's (FDIC) nondiscrimination in advertising rule. 12 CFR 338.3. Both this final rule and the FDIC's rule prohibit advertising with words, symbols, models, or other forms of communication that suggest a discriminatory preference or policy of exclusion in violation of the Fair Housing Act or the Equal Credit Opportunity Act. 12 CFR 338.3(b), 12 U.S.C. 1691-1691f.

B. Comments

NCUA received twelve comments on the proposed rule. The commenters generally supported the proposed rule. Most of the commenters thought the rule would be very beneficial to FCUs and several commended NCUA generally for efforts to reduce regulatory burden on credit unions.

None of the commenters recommended changes to the wording of the proposed rule. One commenter did express concern that the proposed rule might encourage some credit unions to design their own disclosure and

logotype formats and that this might create confusion and misunderstanding among some FCU members. The Board notes that, although the final rule provides flexibility in exactly how an FCU gives notice of nondiscrimination, it does require that the notice "prominently indicate * * * that the credit union makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status." The Board believes an FCU should have the flexibility to design its own notice of nondiscrimination, if it wishes, within the bounds of this requirement.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under one million dollars in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

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. This proposed rule, if adopted, will apply only to federally-chartered credit unions. It will not have substantial direct effects on the 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 this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

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.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The 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).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this final rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We requested comments on whether the proposed rules were understandable and minimally intrusive if implemented as proposed. We received no comments specifically directed to whether the rule was understandable. Almost all the commenters agreed that the rule reduced the current regulatory burden on FCUs and so was not intrusive.

List of Subjects in 12 CFR Part 701

Credit unions, Fair housing, Signs and symbols.

By the National Credit Union Administration Board, on September 13, 2001.

Becky Baker,
Secretary of the Board.

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 701 as set forth below:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601-3619. Section

701.35 is also authorized by 42 U.S.C. 4311-4312.

2. In § 701.31, revise paragraph (d) introductory text and paragraphs (d)(1) and (d)(2) to read as follows:

§ 701.31 Nondiscrimination requirements.

* * * * *

(d) *Nondiscrimination in advertising.* No federal credit union may engage in any form of advertising of real estate-related loans that indicates the credit union discriminates on the basis of race, color, religion, national origin, sex, handicap, or familial status in violation of the Fair Housing Act. Advertisements must not contain any words, symbols, models or other forms of communication that suggest a discriminatory preference or policy of exclusion in violation of the Fair Housing Act or the Equal Credit Opportunity Act.

(1) *Advertising notice of nondiscrimination compliance.* Any federal credit union that advertises real estate-related loans must prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format used, that the credit union makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

(i) With respect to written and visual advertisements, a credit union may satisfy the notice requirement by including in the advertisement a copy of the logotype, with the legend "Equal Housing Lender," from the poster described in paragraph (d)(3) of this section or a copy of the logotype, with the legend "Equal Housing Opportunity," from the poster described in § 110.25(a) of the United States Department of Housing and Urban Development's (HUD) regulations (24 CFR 110.25(a)).

(ii) With respect to oral advertisements, a credit union may satisfy the notice requirement by a spoken statement that the credit union is an "Equal Housing Lender" or an "Equal Opportunity Lender."

(iii) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in paragraphs (d)(1)(i) or (ii) of this section will satisfy the notice requirement.

(iv) A credit union may use any other method reasonably calculated to satisfy the notice requirement.

(2) *Lobby notice of nondiscrimination.* Every federal credit union that engages in real estate-related lending must display a notice of nondiscrimination. The notice must be placed in the public lobby of the credit union and in the public area of each office where such

loans are made and must be clearly visible to the general public. The notice must incorporate either a facsimile of the logotype and language appearing in paragraph (d)(3) of this section or the logotype and language appearing at 24 CFR 110.25(a). Posters containing the logotype and language appearing in paragraph (d)(3) of this section may be obtained from the regional offices of the National Credit Union Administration.

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[FR Doc. 01-23289 Filed 9-18-01; 8:45 am]
BILLING CODE 7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule; lifting mandatory compliance date.

SUMMARY: On June 21, 2001, NCUA published an interim final rule with request for comments amending its regulation that implements the Truth in Savings Act (TISA). The rule established uniform standards for the electronic delivery of disclosures required by TISA. NCUA established October 1, 2001 as the mandatory compliance date for the rule. As a result of concerns raised by commenters, NCUA is considering revising the rule to provide additional flexibility. Accordingly, NCUA is lifting the mandatory compliance date. Once a permanent final rule is issued, NCUA will afford credit unions a reasonable period of time to comply with the rule.

DATE: The mandatory compliance date of October 1, 2001 for the interim final rule published at 66 FR 33159 (June 21, 2001) is lifted.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

Part 707 of NCUA's regulations implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among accounts offered by credit unions and other financial institutions. Part 707 and TISA require, among other things, disclosure of yields, fees and other terms concerning share accounts to members at account opening, upon request, when changes in terms occur and in periodic statements.