

PART ONE



Two Basic NCUA Advertisement Regulations



If you were to hand a rational person the table of contents of the National Credit Union Administration's (NCUA) Rules and Regulations, and ask where he or she would go to review the requirements for advertisements under those rules, after a quick review the most likely answer would be: "Why, Part 740—Accuracy of Advertising and Notice of Insured Status—of course." Indeed, that is the logical answer. To learn about the requirements for advertising, we should consult the section generally referred to as the "Advertising" Regulation.



But as students of regulatory compliance will confirm, when we're talking federal regulations, relying on logic can sometimes get us into trouble. In fact, the rational person just mentioned would be correct, but only partially.

As we will discuss, NCUA's Rules and Regulations, Part 740 does address advertising, but it only includes one of several pieces to the advertising compliance puzzle. NCUA also addresses advertising separately in Section 701.31, Nondiscrimination Requirements, and in Section 707, Truth-in-Savings.

Your Ad Must Be Accurate!

NCUA's Rules and Regulations, Part 740

Part 740 of NCUA's Rules and Regulations is required reading for any marketing professional when preparing an advertising campaign for a credit union. The rules in Part 740 apply to all federally insured credit unions and include:

- the general requirement that all advertisements made by a credit union must be accurate;
- specific requirements regarding advertisements of excess share insurance;
- specific requirements regarding use of the NCUA official sign and the NCUA official advertising statement in certain advertisements.

We begin with the definition of advertisement in Part 740 of the NCUA rules, which is, "a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business."

Accuracy in advertising is fundamental and is required not just in Part 740 but, as we shall see, in many other statutes and regulations. Part 740 describes “accuracy” as advertisements that are not in any way deceptive or do not misrepresent the credit union’s products or services.

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As for the rules addressing advertising of excess share insurance, the regulation is fairly straightforward: 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 that insurance and the identity of the carrier, and it must avoid any statement of implication that the carrier is affiliated with the NCUA or the federal government.

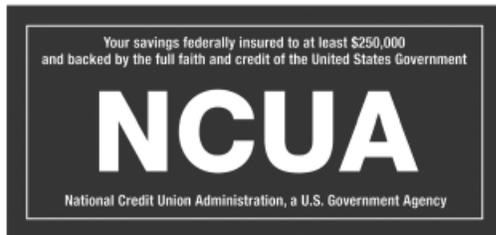
As for the use of the NCUA official sign and the advertising statement, more discussion is in order.

What Sign?

The NCUA official sign, in color, can be found on NCUA’s website at www.ncua.gov. Click on the drop-down menu for “About NCUA,” then “Downloadable Graphics” for a variety of sample official signs. Although it may not be considered an advertising requirement, Section 740.4(a) requires that every credit union display the official sign at each teller station or window at which insured account funds or deposits are taken. This includes drive-through-windows. The NCUA automatically supplies all insured credit unions with an initial supply of official signs with a blue background and white lettering. The rules now allow for variations in color, materials, and size, as long as the credit union’s signs are legible and otherwise comply with Part 740.

If you haven’t updated your credit union’s official signs lately, you might want to take a close look at them. The words above the NCUA initials should say “Your savings federally insured to at least \$250,000 and backed by the full faith and credit of the United States Government.” This amount was permanently increased to \$250,000 per individual depositor (from \$100,000) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010.

FIGURE 1.1 THE NCUA SIGN



Must You Use an Official Statement?

So far we've established that the NCUA official sign must be posted at each teller station. Part 740 goes on to require either the "official sign" (with some additional verbiage, as we'll discuss) or the NCUA "official advertising statement."

The NCUA **official advertising statement** may be displayed as one of three options:

1. **"This credit union is federally insured by the National Credit Union Administration."**
2. **"Federally insured by NCUA."**
3. **The official sign.**

Any Exceptions?

In general, section 740.5 requires that the official advertising statement be used in every credit union advertisement, unless the advertisement falls into one of 11 exceptions:

1. Credit union supplies such as stationery, envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates;
2. Signs or plates in the credit union office or attached to the building where the offices are located;
3. Listings in directories;
4. Advertisements that do not include the name of the credit union;
5. Display advertisements in credit union directories, provided the name of the credit union is listed on a page somewhere in the directory along with a symbol or other descriptive information indicating it is insured;
6. 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 that advertisement;
7. Radio advertisements that do not exceed 15 seconds in length;

8. Television advertisements, other than display advertisements, that do not exceed 15 seconds in length;
9. Advertisements of the type or character making it impractical to include the official advertising statement—including promotional items, such as calendars, matchbooks, pens, pencils, key chains, and golf balls;
10. 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 \$250,000 for each member or shareholder;
11. Advertisements that do not relate to insured member deposit or share accounts, including but not limited to ads relating specifically and only to the making of loans by the credit union or loan services, safe-deposit boxes, traveler's checks on which the credit union issuing the advertisement is not primarily liable, and credit life insurance.

Keep in mind; even if a planned advertisement clearly fits within one of these categories, you are free to add the NCUA official advertising statement or its official sign, aesthetics and space constraints permitting. The official advertising statement should be placed in a prominent position on the cover page or the first page the reader sees. The official advertising statement should be no smaller than the smallest font used in other portions of the advertisement. The official advertising sign and the official advertising statement must be in a size and print that is clearly legible.

When Is a Web Page an Ad?

One aspect of advertising that is occasionally overlooked involves a credit union's website. Websites are now standard fare for most credit unions. Part 740 provides that every insured credit union must "display the official sign on its main Internet page (see 740.4(a)), although it does allow the credit union to vary the font sizes to ensure the legibility of the sign.

NCUA's *Rules and Regulations*, Part 740 can be summarized as follows: Any advertisement that directly or indirectly advertises insured share products must be accurate and must include either the NCUA official advertising sign or the NCUA official advertising statement (the short or long version)

NOTES:

Sample Ad #1 — Disclosing the Official Sign

Our first ad—a share draft advertisement, used with the permission of OSU Federal Credit Union in Corvallis, Oregon—is an example of an advertisement that displays the NCUA official sign. Let’s review the compliance checklist on page 8 to see if the ad complies with NCUA’s Rules and Regulations, Part 740. (If you’re really into regulatory citations, refer to the checklist that includes the specific citations in appendix A.)

SAMPLE AD #1 • DISCLOSING THE OFFICIAL SIGN

Free Checking

Gas prices are soaring.
Food prices are climbing.
Some things remain constant.

Free Checking today, Free Checking tomorrow.
Save money. Gain convenience.

- Free online account access and bill pay
- Free debit card, instantly
- Free Phone Access Teller—24/7 service
- Free OSU Federal ATM use
- No minimum balance
- No monthly service fee

What more do you need? It's free. Join today. If you live, work or go to school in Benton, Lincoln, Linn, Marion or Polk County, you can join OSU Federal.

CHECKLIST QUESTION 1

NCUA
Federally insured by NCUA

OSU Federal
Your Community Credit Union

CHECKLIST
QUESTION 2 & 3

DISCLOSING THE OFFICIAL SIGN • COMPLIANCE CHECKLIST

Yes **No**

- | | | |
|-------|-------|--|
| _____ | _____ | 1. Does the advertisement accurately reflect the account terms and conditions offered by the credit union? Yes. |
| _____ | _____ | 2. Does the advertisement directly or indirectly advertise insured shares? Yes. |
| _____ | _____ | 3. Does the advertisement include either the short or long version of the NCUA official advertising statement or the NCUA sign? Yes. |
| _____ | _____ | 4. Is the official advertising statement or sign legible? No. |

Keep in mind, if the answer to question 3 above is no, we'll need to check to see that the advertisement fits into one of the 12 exceptions in NCUA's *Rules and Regulations*, Section 740.5(c).

Your Ad May Not Discriminate!

NCUA's Rules and Regulations, Section 701.31

Federal credit unions that make real estate-related loans must be aware of NCUA's *Rules and Regulations*, Section 701.31. A real estate-related loan is defined there as "any loan made to finance or refinance the purchase, construction, improvement, repair, or maintenance of a dwelling."

Section 701.31 contains regulatory requirements addressing nondiscrimination in lending, appraisals, and most important for our purposes, advertising. Speaking of advertising, Section 701.31 makes it clear that no federal credit union may directly or indirectly engage in any form of advertising of real estate-related loans that implies or suggests that the credit union discriminates in violation of the Fair Housing Act.

Which Rules Apply If You're a Federal Credit Union?

In addition, that subsection requires that each advertisement for a real estate-related loan include the **Equal Housing Lender logo**, as shown in figure 1.2. Advertisements for real estate-related loans that are broadcast on the radio must include the following statement:

The Example Federal Credit Union is an equal housing lender.

(Note: Although it is beyond the scope of this guide, Section 701.31(d) also includes a requirement regulation of a special notice that must be posted in the lobby of every federal credit union that makes real estate-related loans. See NCUA's Rules and Regulations, Section 701.31(d)(3) for the specific logotype and text requirements for this lobby notice.)

Section 701.31 is a regulation adopted by NCUA to implement the requirements of the Fair Housing Act. This is a federal statute that generally prohibits discrimination with regard to the sale or financing of real estate on the basis of race, color, religion, sex, familial status, national origin, or handicap.

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The scope of the Fair Housing Act is quite broad. It addresses the practices of real estate brokers, landlords, advertisers, and financial institutions. Among its specific prohibitions, this law makes it unlawful for any entity whose business includes

the making or purchasing of loans secured by residential real estate to discriminate against any person in the terms and conditions of those loans on any of the bases just listed.

What If You're a State-Chartered Credit Union?

A number of federal regulators have adopted regulations to implement the provisions of the Fair Housing Act, including, as we've discussed, NCUA in Section 701.31. But the rules in that section apply only to *federal* credit unions. State-chartered credit unions must abide by the rules adopted by the federal Department of Housing and Urban Development (HUD) for compliance with the Fair Housing Act.

The Department of Housing and Urban Development has regulations similar to the NCUA's that are applicable to state chartered credit unions. However, HUD's regulations have always required the use of the Equal Housing Opportunity notice, rather than the Equal Housing Lender notice. The poster requirement for state chartered credit unions is located in HUD's FHA regulations at 24 CFR Part 110.25. State-chartered credit unions should also provide the spoken statement and/or the equal housing logo with television and radio advertisements, as applicable.

How Do You Show “Affirmative Intention”?

One very important aspect of compliance with fair lending laws is worth pointing out here. NCUA published an examiner’s guide specifically for use in reviewing credit unions’ compliance with various fair lending laws and regulations. The appendix to that guide, which addresses Fair Housing Act compliance, states that during a fair lending examination an examiner should “Determine that the marketing practices ensure the availability of the credit union’s services without discrimination.”

Fair enough. But what exactly does that mean? As mentioned earlier, the Fair Housing Act requires that lenders’ marketing materials reflect an affirmative intention to comply with the antidiscriminatory intent of that act. How does one show that *affirmative intention*? One way is to make sure that when a brochure or other type of print-based (or Internet-based) advertisement depicts people, the people selected for that brochure or ad represent as diverse a racial makeup as possible, and that both genders get as near equal time as possible. This may strike some as patronizing, or smacking of political correctness, but it does help to establish the credit union’s affirmative intention to comply with fair lending laws.

701.31 in Cyberspace!

Do the requirements of NCUA’s *Rules and Regulations*, Section 701.31 apply in cyberspace? Absolutely. Therefore, any advertisement of your credit union’s real estate-related loan products that appears on the credit union’s website should include the Equal Housing Lender logo. **Compliance tip:** *If the credit union offers real estate-related loans, liberal use of the Equal Housing Lender logo is recommended. Typically, this logo can be added to every page of the credit union’s website, without sacrificing aesthetics.*

Sample Ad #2—Disclosing the Equal Housing Lender Logo

The next ad—a general home loan advertisement used with the permission of BECU in Seattle, Washington—is an example of an advertisement that displays the Equal Housing Lender logo. We’ve reprinted it here, along with a compliance checklist (again, immediately following the ad) to use to review this ad for compliance with NCUA’s Rules and Regulations, Section 701.31. (Here, too, if you would like to review a checklist with regulatory cites, refer to the checklist that includes those specific citations in appendix A.)

SAMPLE AD #2 • DISCLOSING THE EQUAL HOUSING LENDER LOGO

**A HOME LOAN
THAT'S RIGHT
FOR YOU**
SENSIBLE & STRAIGHTFORWARD



Brooke R., Seattle

BENEFITS THAT MATTER

- >> *We only do responsible lending—no hidden fees or surprises*
- >> *We are local, member-owned & not-for-profit*
- >> *We return earnings back to you in the form of better home loan rates and low closing costs*

206-439-5700 | WWW.BECU.ORG | 800-233-2328

All Washington State Residents Can Join BECU.



CHECKLIST
QUESTION 1

CHECKLIST
QUESTION 2

DISCLOSING THE EQUAL HOUSING LENDER LOGO •
COMPLIANCE CHECKLIST

Yes **No**

- ___ ___ **1. Does the ad promote real estate-related loans? **Yes.****
- ___ ___ **2. Does the ad include the equal Housing Lender Logo? **Yes.****
- ___ ___ **3. Is the Equal Housing Lender logo legible? **No. The Equal Housing logo must be legible in all advertisements.****

Keep in mind, if an ad promotes real estate-related loans and is broadcast on the radio, it must include the following statement:

The WXYZ Federal Credit Union is an equal housing lender.