



Credit Union National Association

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November 15, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Mortgage Acts and Practices - Advertising Rulemaking, Rule No. R011013

To Whom it May Concern:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Federal Trade Commission's (FTC's) proposed rule addressing unfair and deceptive acts or practices that may occur with regard to mortgage advertising. The proposal would include prohibiting misrepresentations in commercial communications and advertisements regarding any term of any mortgage credit product and would also impose corresponding recordkeeping requirements. CUNA represents approximately 90 percent of our nation's 7,700 state and federal credit unions, which serve 93 million members.

Summary of CUNA's Position

- State-chartered credit unions are already heavily-regulated financial institutions subject to staggering burdens in complying with other current and future rules with regard to mortgage lending, many of which are similar to the requirements outlined in this proposal. In addition, credit unions have not engaged in any of the practices addressed in this proposal.
- As a result, state-chartered credit unions should not be covered by this rule.
- As an alternative, the FTC should consider state-chartered credit unions to be "deemed" in compliance with this proposal if they are in compliance with comparable current and future mortgage lending rules that also apply to financial institutions that are not subject to this rule.

Discussion

As the only consumer owned cooperatives in the financial marketplace, credit unions have a tradition of protecting consumer interests, and CUNA has consistently been a strong proponent of fair lending practices and proper



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consumer disclosures. Although we support the goal of this proposed rule, we do not believe the rule needs to apply to state-chartered credit unions that are subject to FTC jurisdiction in this area.

Credit unions and other heavily regulated financial institutions are subject to significant legislative and regulatory burdens, which have been compounded in recent years. Just since the beginning of 2008, credit unions and other financial institutions have been subject to new, and very significant, requirements with regard to mortgage lending, credit cards and other types of open-end lending, internet gambling, the Bank Secrecy Act, the Fair and Accurate Credit Transactions (FACT) Act, gift cards, overdraft protection plans, student loans, and accounting.

In addition, the new Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) will impose even more burdens on credit unions, which were in no way responsible for the financial crisis that this Act is intended to address. These include new limitations on interchange fees, additional collection requirements on consumer loans, new disclosure requirements under the Truth in Lending Act and the Real Estate Settlement Procedures Act, additional disclosure requirements for remittances, and new Home Mortgage Disclosure Act reporting requirements.

In efforts to comply with these significant, new burdens, credit unions have incurred staggering costs as a result of new software and system changes, the updating of policies and procedures, as well as the additional staff training that has and will be required in order to comply with these new and future regulatory burdens, which has been exacerbated as credit unions have been struggling to recover from the current economic crisis. Again, unlike other types of financial institutions, credit unions are facing these overwhelming costs and burdens even though they were in no way responsible for the financial crisis that precipitated this onslaught of new regulatory burdens. On the contrary, credit unions are not-for-profit financial institutions, governed by boards of directors elected by credit union members to represent the members' interests.

Although the requirements of the proposed rule itself may not be overly burdensome, they would add to the cumulative regulatory burdens that would affect state-chartered credit unions. Other types of financial institutions, some of whom have been responsible for precipitating the current crisis that lead to the issuance of this rule are not covered by these additional requirements. Since state-chartered credit unions have not been involved in the problems being addressed by the proposed rule, applying this rule to those credit unions would only serve to add, and in many ways duplicate, the mortgage lending requirements that already apply to credit unions.

These requirements include the mortgage lending provisions of Regulation Z, the Truth in Lending Act; the Secure and Fair Enforcement for Mortgage Licensing

Act; as well as the National Credit Union Administration's rules that prohibit federally-insured credit unions from using advertising or promotional materials containing accurate, misleading, or deceptive claims with regard to financial products or services. The Federal Reserve Board has also recently issued numerous proposed changes to the Regulation Z mortgage lending rules that will impose additional requirements, some of which are similar to those addressed in this proposed rule.

Because state-chartered credit unions would be the only type of heavily-regulated financial institution that would be subject to this rule and because these credit unions were in no way responsible for the problems this rule would address, we believe the optimal approach would be for the FTC to consider a state-chartered credit union to be in compliance with this proposed rule if it is in compliance with the mortgage lending rules that currently apply to credit unions. To consider these credit unions to be "deemed" in compliance with this proposed rule under these circumstances will achieve the FTC's goal of ensuring that state-chartered credit unions are not engaging in mortgage loan misrepresentations, while not adding to the considerable burdens that state-chartered credit union would face, separate and apart from other types of financial institutions. Of course, we recognize that the FTC should have discretion to remove this regulatory flexibility in the future if it believes state-chartered credit unions are not meeting the objectives of this rule.

Although we understand this rule is required under the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (CARD Act), the Dodd-Frank Act was enacted subsequent to the CARD Act and provides additional Congressional intent with regard to consumer protection rules. Specifically, Section 1021(b) of the Dodd Frank Act lists the objectives of the new Consumer Financial Protection Bureau (CFPB), which will be responsible for issuing most of the consumer protection rules that will be published in the future.

Under one of these objectives, the CFPB is to ensure that "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens." We recognize the FTC is not directly covered under this provision. However, we believe the FTC should be mindful of this objective, both because it applies to consumer protection rules similar to those in this proposed rule and because it represents the current intent of Congress that regulatory burdens in the area of consumer protection should be reduced to the extent feasible. Adopting the approach outlined above that would consider state-chartered credit unions to be "deemed" in compliance with this proposed rule if they are in compliance with the other applicable mortgage lending requirements will help meet this objective, as outlined in the Dodd-Frank Act.

Thank you for the opportunity to comment on the proposed rule that would prohibit misrepresentations in commercial communications and advertisements

regarding mortgage credit terms. If you have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Jeffrey P. Bloch
Senior Assistant General Counsel