



November 15, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

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

Dear Commission Secretary:

The National Association of State Credit Union Supervisors (NASCUS)¹ appreciates the opportunity to provide comments to the Federal Trade Commission (FTC) regarding proposed rulemaking R011013, Mortgage Acts and Practices – Advertising Rule. As a professional association of state credit union regulators, NASCUS supports consumer protection as an essential element of the regulatory framework that guides the provision of consumer financial products and services by depository institutions and other entities. Specifically with respect to mortgage products, it is essential that consumers are not misled or intentionally confused by deceptive advertising. NASCUS supports efforts to ensure all participants in the mortgage marketplace adhere to standards of clear and accurate advertising.

However, NASCUS does not support the extension of additional advertising rules and record retention requirements exclusively to a single depository charter, particularly when the proposed rules are duplicative of existing rules. FTC should exclude state-chartered credit unions from the proposed rulemaking unless, or until, Section 18 of the FTC Act is invoked to apply substantially similar regulations for all other depository institutions.² The absence of application of an additional advertising rule to depository institutions in general is acknowledgement of the thorough regulatory scheme already in place for banks and credit unions. FTC should focus the proposed rule on filling the regulatory gaps and clarifying the expected conduct of entities lacking the robust regulatory framework of state-chartered credit unions.

FTC solicited comments directly on the point of whether state-chartered credit unions should be exempted from the proposed rule. Proposed Rulemaking No. R011013, p. 48. It is difficult to reconcile the application of the proposed rule to state-chartered credit unions alone among depository institutions.

- Application of the Proposed Rule to State-Chartered Credit Unions is Redundant

A broad and comprehensive regulatory framework prohibiting deceptive advertising practices already applies to state-chartered credit unions in the same manner as it does for exempted state

¹ NASCUS is the professional association of the 46 state credit union regulatory agencies that charter and supervise the nation's 3,000 state-chartered credit unions.

² 15 U.S.C. 57a.

banks, national banks and federal credit unions. Among the existing regulations are the Real Estate Settlement Procedures Act (RESPA); the Home Mortgage Disclosure Act (HMDA); the Homeowners Protection Act; the Federal Reserve Board's Regulation Z; and Truth in Lending. FTC notes that the proposed rule would not conflict with these existing federal regulations. Proposed Rulemaking No. R011013, p. 31. However, taken together, the existing laws applicable to state-chartered credit unions, while not in conflict with the proposed rule, proscribe the very acts and practices covered by the proposal. Therefore, with respect to state-chartered credit unions, many of which are small to modestly sized institutions, the proposal increases the cost of compliance without a corresponding increase in protection to the consumers.

In addition to the laws cited above, federally insured, state-chartered credit unions also have specific prohibitions against misleading advertising in the National Credit Union Administration's (NCUA) share insurance rules.³ Specifically, all federally insured state-chartered credit unions are prohibited from using "any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition..." 12 C.F.R. §740.2.

State-chartered credit unions also must comply with numerous state consumer protection laws. In fact, FTC acknowledges the effectiveness of state oversight of advertising practices, citing enforcement actions brought by state regulators under state law. Proposed Rulemaking No. R011013, p. 24.

- Consumers Using Credit Unions are Uniquely Situated to Vindicate Their Rights

In addition to the existing overlapping regulatory scheme for state-chartered credit unions governing many of these issues, credit union members are uniquely situated to vindicate their rights. Unlike most consumers, whose sole relationship with their mortgage provider may be limited to the marketplace, credit union consumers are members of their institutions with voting rights allowing them to influence governing control. In fact, the board of directors of a state-chartered credit union is elected from among the membership: the very consumers accessing the credit union's mortgage products and other services.

Finally, NASCUS points out that state-chartered credit unions, like their exempt bank and federal credit union counterparts, are highly regulated in these areas, and also comprehensively examined, including examination for consumer compliance. In every state, state regulators utilize the same examination platform for their institutions as their federal counterparts.⁴ Not only are state-chartered credit unions regulated to the same extent as their depository counterparts, they are examined the same as well. Furthermore, many state-chartered credit unions are examined by both state and federal examiners.

³ See 12 C.F.R. §741.

⁴ All states use the NCUA Automated Integrated Regulatory Examination Software (AIRES) except Utah which uses the FDIC exam platform. AIRES was jointly developed by the states and NCUA and includes examination procedures for safety and soundness as well as consumer compliance.

In promulgating final rules regarding mortgage advertising, FTC should exempt state-chartered credit unions. As FTC noted in the 2009 Advance Notice of Proposed Rulemaking, and as NASCUS pointed out in earlier comments, FTC's own proposal purported to apply to only "non-bank" financial companies.⁵ In the context of this rulemaking, "bank" was intended to include credit unions. Until there is a compelling reason to urge federal bank regulators to issue similar rules, there is no compelling reason to include state-chartered credit unions within the scope of a rule originally intended for non "bank" entities.

NASCUS appreciates the opportunity to submit comments on this proposed rule. We look forward to working with FTC to ensure effective regulations are promulgated that provide meaningful rules where uncertainty exists. However, we believe no such uncertainty exists with respect to state-chartered credit unions.

Sincerely,

[signature redacted for electronic publication]

Mary Martha Fortney
President and CEO

⁵ See footnote 3, 74 Federal Register 103 (June 1, 2009) p. 26118.