

[Billing Code: 6750-01P]

**FEDERAL TRADE COMMISSION**

**16 CFR Part 320**

**RIN 3084-AA99**

**Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)**

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) directs the Commission to prescribe the manner and content of certain disclosures that must be used by depository institutions that do not have federal deposit insurance. The Commission seeks comment on these proposed disclosure rules for non-federally insured depository institutions.

**DATES:** Written comments must be received on or before June 15, 2005.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "Proposed Rule for FDICIA Disclosures, Matter No. R411014" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex A), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form and the first page of the document must be clearly labeled "Confidential." The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because

postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by clicking on the following: <https://secure.commentworks.com/ftc-fdicia> and following the instructions on the web-based form.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at <https://secure.commentworks.com/ftc-fdicia>. You also may visit <http://www.regulations.gov> to read this proposed Rule, and may file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

In 1991, Congress enacted the FDICIA which, among other things, added a new section 43 (12 U.S.C. 1831t) to the Federal Deposit Insurance Act (FDIA). This section, passed in response to incidents affecting the safety of deposits in certain financial institutions, imposes several requirements on non-federally insured institutions and private deposit insurers.<sup>1</sup> Among other things, section 43(b) mandates that depository institutions lacking federal deposit insurance provide certain disclosures to consumers, in periodic statements and advertising, that the institution does not have federal deposit insurance and that, if the institution fails, the federal government does not guarantee that depositors will get their money back.

Under existing law, all federally chartered and most state chartered depository institutions have federal deposit insurance. Federal deposit insurance funds provide a government guarantee of up to \$100,000 per depositor in most cases. Pursuant to Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA) requirements, federally insured banks and credit unions must display signs that depositors are federally “insured to \$100,000.”<sup>2</sup>

Although most depository institutions have federal deposit insurance, there are some exceptions. For instance, several hundred state-chartered credit unions in eight

---

<sup>1</sup>See Pub. L. No. 102-242, 105 Stat. 2236. Section 151 of FDICIA, Subtitle F of Title 1, S. 543. Section 43 was initially designated as Section 40 of the FDIA. See also S. Rep. No. 167, 102 Cong., 1<sup>st</sup> Sess., at 61.

<sup>2</sup>See 12 CFR Part 328 and 12 CFR Part 740.

states and Puerto Rico do not have federal deposit insurance.<sup>3</sup> These credit unions generally use a private deposit insurer to protect members' accounts in lieu of federal insurance. The Puerto Rican government provides deposit insurance for credit unions located there. In addition, the Commission understands that there are a small number of state banks and savings associations that do not have federal deposit insurance.

**A. Requirements of FDIA Section 43**

Section 43 requires that depository institutions lacking federal deposit insurance affirmatively disclose that fact to their depositors or members. 12 U.S.C. 1831t(b). Specifically, section 43(b) of the FDIA requires non-federally insured depository institutions to: (1) include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that depositors will get their money back (section 43(b)(1)), and (2) include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured (section 43(b)(2)).

Section 43(b) further provides that non-federally insured institutions may receive deposits only from persons who have signed acknowledgments that the institution is not

---

<sup>3</sup>According to the U.S. Government Accountability Office (GAO)(formerly, and then, the General Accounting Office), eight states have credit unions that purchase private deposit insurance in lieu of federal insurance. Other states either require federal insurance or allow private insurance but do not have any privately insured credit unions. "Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions," GAO-03-971 (Aug. 2003), p. 7.

federally insured and that if the institution fails, the federal government does not guarantee that they will get their money back (see section 43(b)(3)). Section 43 specifically directs the FTC to prescribe “the manner and content” of the required disclosures by regulation or order. It also gives the Commission discretion to exempt from the disclosure requirements depository institutions within the U.S. that do not receive initial deposits of less than \$100,000 from individuals who are U.S. citizens or residents.

Section 43 applies to “depository institutions” lacking federal insurance. Based on definitions incorporated into section 43, this includes credit unions, banks, and savings associations. Specifically, section 43(f)(2) incorporates the FDIA definition of “depository institution” in 12 U.S.C. 1813(c), which includes “banks” and “savings associations.” Section 43(f)(2) also expands the FDIA definition of “depository institution” to include any entity described in 12 U.S.C. 461(b)(1)(A)(iv). This includes any “insured credit union” as defined in the Federal Credit Union Act (FCUA) (12 U.S.C. 1752) or “any credit union which is eligible to make application to become an insured credit union” under 12 U.S.C. 1781.<sup>4</sup> The definition of “depository institution” in section 43(f)(2) also includes any entity that, as determined by the FTC, is engaged in

---

<sup>4</sup>The FCUA defines “insured credit union” to mean “any credit union the member accounts of which are insured by the National Credit Union Administration.” (12 U.S.C. 1752). Entities that are eligible to make an application to become an “insured credit union” consist of: (1) credit unions organized and operated according to the laws of any state, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of the FCUA (12 U.S.C. 1781).

the business of receiving deposits and could reasonably be mistaken for a depository institution by the entity's current or prospective customers (*i.e.*, "look-alike" institutions). Finally, section 43(f)(3) indicates that the term "lacking federal deposit insurance" means an institution is not either: (1) an insured depository institution<sup>5</sup>; or (2) an insured credit union, as defined in section 101 of the FCUA (12 U.S.C. 1752).

In addition to the disclosure requirements, section 43 prohibits depository institutions lacking federal deposit insurance from using the mails or other instrumentalities of interstate commerce to facilitate depository activities unless the appropriate state supervisor has determined that the institution meets eligibility requirements for such insurance (12 U.S.C. 1831t(e)(1) (commonly referred to as the "shut-down" provision)). Section 43 also requires private insurers of depository institutions lacking federal insurance to obtain annual independent audits, which the depository institution must make available to its depositors upon request and file with appropriate state agencies (12 U.S.C. 1831t(a) and 1831t(a)(2)(A)(ii)).<sup>6</sup> Section 43(g) directs the FTC to enforce the requirements of section 43, including the shut-down and audit provisions.

---

<sup>5</sup>The FDIA defines "insured depository institution" as any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter (12 U.S.C. 1813(c)).

<sup>6</sup>The law also contains a provision requiring private insurers to file business plans with appropriate state agencies (section 151(b)(2) of the FDICIA).

## **B. FTC Authority**

Until recently, the Commission's appropriations authority prohibited the use of FTC resources to enforce section 43. In connection with that prohibition, the Commission in 1992 notified every then-existing known credit union subject to the statute that, despite the enforcement ban, the requirements of the statute remained in effect.

In 2003, Congress lifted the longstanding FTC appropriations ban for certain provisions of the FDICIA, including the disclosure provisions of section 43.<sup>7</sup> This action occurred shortly after the GAO had released a study (GAO-03-971) that discussed, among other things, the potential impact on consumers from non-enforcement of section 43 as to credit unions. The GAO had concluded that credit union compliance "varied considerably" and that the "most apparent impact on consumers, from the lack of enforcement of these provisions, may result from credit unions not providing adequate disclosures that they are not federally insured." (GAO-03-971, p. 3.) The conference committee report accompanying the 2003 legislation noted the GAO report conclusions about the effect of non-enforcement of section 43. The committee report also directed the FTC to consult with the FDIC and the NCUA when determining the manner and content of disclosure requirements, and to coordinate with state supervisors of non-

---

<sup>7</sup>Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the Fiscal Year Ending September 30, 2004, and for Other Purposes, H.R. Conf. Rep. No. 108-401, Cong., 1st Sess., at 88 (2003).

federally insured depository institutions to assist the FTC in enforcing these requirements.<sup>8</sup>

Although Congress also lifted the funding prohibition for enforcement of the audit provision of the FDICIA (section 43(a)), the statute does not direct the Commission to issue rules related to that provision. Accordingly, the Commission does not plan to address the audit provision in this proceeding.<sup>9</sup>

## **II. Proposed Disclosure Requirements and Request for Comment**

### **A. Scope of the Proposed Rule**

The proposed rule would apply to depository institutions (*e.g.*, banks, savings association, and credit unions) that do not have federal deposit insurance. Consistent with section 43(f)(3)(B) of the FDIA, a depository institution lacks federal deposit insurance if it is not an insured depository institution as defined in the FDIA (12 U.S.C. 1813(c)(2)), or is not an insured credit union, as defined in section 101 of the FCUA, 12 U.S.C. 1752. Most banks and savings associations are required to have federal deposit insurance under state or federal laws.<sup>10</sup> Accordingly, we expect that the proposed rule

---

<sup>8</sup>*Id.* at 637-38. In preparing this notice, Commission staff has consulted with the FDIC, the NCUA, the National Association of State Credit Union Supervisors (NASCUS), and the Puerto Rican Corporacion de Seguro de Acciones y Depósitos de Cooperativas de Ahorro y Crédito (PROSAD).

<sup>9</sup>In addition, the Commission is not addressing the issue of “look-alike” institutions in this rulemaking proceeding. As the GAO report states, the GAO examined credit unions “as agreed with [Congressional] committee staff.” The GAO report did not examine look-alike institutions. The Commission has not identified any “look-alike” institutions at this time. If it does identify “look-alike” institutions, it may conduct a rulemaking proceeding concerning look-alike institutions at a future time.

<sup>10</sup>See, *e.g.*, 12 U.S.C. 222 (national banks); Cal. Fin. Code 5606(a) (California savings associations); and 12 U.S.C. 3104(c)(1) (state and federal branches of foreign



would apply to only a small number of state-chartered banks and savings associations. The Commission seeks comment on the number of banks and savings associations that lack federal deposit insurance and thus would be covered by the proposed rule's requirements.

Consistent with the statute, the proposed rule would apply to non-federally insured credit unions in any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico (see 12 U.S.C. 1781). The Commission understands that many credit unions in Puerto Rico do not have federal deposit insurance but, instead, operate under a Puerto Rican government-backed deposit insurance system. Section 43 imposes its disclosure requirements specifically on institutions that do not have *federal* insurance and does not exempt institutions operating under state-run insurance systems. Accordingly, Puerto Rico credit unions would be subject to the rule's requirements.

#### **B. Disclosures in Periodic Statements**

Consistent with section 43(b)(1) of the statute, section 320.3 of the proposed rule would require covered institutions to include conspicuously in all periodic statements and account records an indication that the institution is not federally insured, and that, if the institution fails, the federal government does not guarantee that depositors will get their money back. Section 320.3 offers model language that depository institutions may use to satisfy the requirement. The Rule also specifies that disclosures must be conspicuous.

---

banks receiving deposits of less than \$100,000).

The Commission will evaluate whether disclosures are conspicuous according to well-established FTC law.<sup>11</sup>

### **C. Disclosures in Advertising**

Under proposed rule section 320.4, covered depository institutions must place a notice that the institution is not federally insured at each location where the depository institution's account funds or deposits are normally received and in all advertising. For the purposes of the proposed rule, advertising includes, but is not limited to, advertising in print, electronic, webpage, or broadcast media. This requirement implements section 43(b)(2) of the statute, which states that any covered institution shall "include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured."

The proposed rule language does not enumerate any exceptions to section 43's broad mandate. Although NCUA and FDIC rules exempt many types of advertising from the mandatory deposit insurance disclosures (see 12 CFR Part 740 and 12 CFR Part 328), those rules and exemptions are based on other statutory authority. In addition, those rules apply to federally-insured institutions and are intended to inform depositors that a limited amount of insurance exists for their deposits. Here, by contrast, the proposed rule's purpose is to alert depositors that their deposits are not federally insured and will not be guaranteed by the federal government should the institution fail. The Commission seeks comment on the proposed advertising disclosure requirements.

---

<sup>11</sup>See, e.g., *Thompson Medical Co.*, 104 F.T.C. 648, 797-98 (1984); *The Kroger Co.*, 98 F.T.C. 639, 760 (1981).

#### **D. Disclosures at Deposit Locations**

In implementing section 43(b)(2) of the statute, section 320.4 of the proposed rule requires disclosures at each location “where the depository institution’s account funds or deposits are normally received including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution.” The Commission seeks comment on whether this list accurately describes the types of locations where deposits are normally received. For instance, commenters should consider whether automatic teller machines are locations where deposits are “normally received.”

#### **E. Disclosure Acknowledgment**

Sections 320.5 and 320.6 of the proposed rule indicate that non-federally insured depository institutions must obtain from new and existing depositors signed acknowledgments of the fact that the institution is not federally insured. The proposed rule language tracks the requirements set forth in section 43(b)(3) of the FDIA. For certain customers (those holding accounts before 1994), depository institutions may have already discharged their acknowledgment obligations by means of a series of notifications as specified in section 43(b)(3)(C).<sup>12</sup>

---

<sup>12</sup>Section 43(b)(3)(C) allowed affected institutions to transmit to each depositor who was a depositor before June 19, 1994 and had not signed a written acknowledgment, a signature card containing the necessary acknowledgment information and accompanying materials requesting the depositor to sign and return the card. By mailing such card three times, the institution discharged its duty under the statute even if the depositor did not return a signed card. If the institution followed such procedures, the statute does not require the institution to provide another separate written

## **F. Exception for Certain Depository Institutions**

Section 43(d) of the FDIA (“Exceptions for institutions not receiving retail deposits”) provides the Commission with the discretion to exempt certain institutions from the disclosure requirements. Consistent with that provision, section 320.6 of the proposed rule exempts from the disclosure requirements depository institutions that do not receive initial deposits of less than \$100,000 from individuals who are citizens or residents of the U.S., other than money received in connection with any draft or similar instrument issued to transmit money. Because it appears unlikely that such institutions are engaged in the business of retail deposits, insurance disclosures do not appear to be necessary for their customers. The Commission expects that customers of such institutions (*i.e.*, those dealing with initial deposits of \$100,000 or more) are sufficiently knowledgeable about these institutions and do not need the same disclosures required for other customers. Such an exception would be similar to exemptions from deposit insurance requirements for non-retail deposits accepted by federal and state branches of foreign banks (12 U.S.C. 3104(c)). Without the FTC exemption, such institutions would have to follow FTC disclosure requirements even though the FDIC specifically exempts them from the federal deposit insurance requirements designed to protect retail customers. The Commission seeks comment on whether such an exemption is appropriate.

## **G. Proposed Rule’s Impact on State Requirements**

---

acknowledgment to the depositor.

The Commission understands that some states have their own disclosure requirements for depository institutions and that new federal disclosures may affect those rules. The proposed disclosure requirements provide covered entities with the information that must be disclosed to the public, and offer model language that depository institutions may use to satisfy the requirement. The proposed rule, however, does not mandate precise wording for the disclosures. In the Commission's view, a state's required disclosure language would not have to be identical to that suggested by the FTC if state disclosures are consistent with the purpose and requirements of section 43 (that is, to alert depositors and potential depositors to the absence of federal deposit insurance and to the fact that the federal government does not guarantee they will get their money back should the institution fail).<sup>13</sup> Accordingly, in some cases, depository institutions may be able to comply with the FTC rule and a state disclosure requirement simultaneously. On the other hand, if it is impossible for a depository institution to comply with applicable state and FTC requirements simultaneously, or if a required state disclosure would frustrate the purpose of the federal requirement by contradicting the meaning or undermining the effectiveness of the FDICIA mandated disclosure, it is likely the state requirement would be preempted by the FTC's rule.<sup>14</sup> The Commission seeks

---

<sup>13</sup>Federal law will preempt state law if it frustrates the purpose of the federal statutory scheme or if compliance with both the state and federal laws is physically impossible. See *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73 (2000).

<sup>14</sup>It is also possible that a state's required language would not be sufficient to effectuate section 43's purpose but would not present a conflict with the FTC's required disclosure. In such a case, the depository institution would have to make both disclosures.

comment on the impact of the proposed rule on depository institutions' compliance with state disclosure requirements, including information about existing state disclosure requirements and how they relate to the FTC's proposed rule.

#### **H. Enforcement**

Section 43(g) authorizes the Commission to enforce compliance with the rule in accordance with the Federal Trade Commission Act.<sup>15</sup> Section 320.7 tracks this statutory directive.

#### **III. Communications by Outside Parties to Commissioners or Their Advisors**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(4).

#### **IV. Paperwork Reduction Act**

The proposed disclosure and written acknowledgment statements do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because they are a "public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public" as indicated in OMB regulations.<sup>16</sup>

#### **V. Regulatory Flexibility Act**

---

<sup>15</sup>See 12 U.S.C. 1831t(g) ("Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 *et seq.*] by the Federal Trade Commission.")

<sup>16</sup>5 CFR 1320.3(c)(2).

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603-605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many of the affected depository institutions may qualify as small businesses under the relevant thresholds (*i.e.*, assets that do not exceed \$150 million) and that the economic impact of the proposed rule on a particular small entity could be significant. Overall, however, the proposed rule likely will not have a significant economic impact on a substantial number of small entities. The Commission staff estimates that these requirements will apply to fewer than 400 credit unions, banks, and savings associations. These depository institutions have been required to make the applicable disclosures for more than ten years under section 43 of the FDIA. In addition, the Commission expects that most covered entities make disclosures about their deposit insurance as a matter of course. The Commission does not expect that the disclosures specified in the proposed rule will have a significant impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

**A. Description of the Reasons That Action by the Agency Is Being Taken**

The Federal Trade Commission is charged with enforcing the requirements of 12 U.S.C. 1831t(b).

**B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule**

The objective of the proposed rule is to require depository institutions lacking federal deposit insurance to: (1) include conspicuously in all periodic statements and account records a statement that the institution is not federally insured, and that if the institution fails, the government does not guarantee that depositors will get back their money; (2) include in all advertising and at each location where the depository institution's account funds or deposits are normally received a statement that the institution is not federally insured; and (3) obtain from their new and existing depositors



signed acknowledgments of the fact that the institution is not federally insured. The proposed rule is authorized by and based upon section 151 of FDICIA, Public Law 102-242, 105 Stat. 2236.

**C. Small Entities to Which the Proposed Rule Will Apply**

As described above, the proposed rule applies to depository institutions lacking federal deposit insurance, including state-chartered credit unions, banks, and savings associations that are small entities. According to the GAO, in 2003 there were 212 credit unions in the 50 states that choose to use private deposit insurance instead of federal insurance. The Commission estimates that, in addition to this number, there are approximately 150 credit unions in Puerto Rico that do not have federal deposit insurance. In addition, the Commission estimates that there are fewer than 20 banks and savings associations that would be covered by the proposed rule. The Commission assumes that few of these depository institutions have assets exceeding \$150 million. The Commission, therefore, invites comment and information on this issue.

**D. Projected Reporting, Recordkeeping and Other Compliance Requirements**

The Commission recognizes that the proposed disclosure rule will involve some increased costs for affected depository institutions. Most of these costs will be in the form of printing costs for account statements, signature cards, and other printed material requiring the disclosures. The Commission does not expect that there will be any significant costs associated with legal, other professional, or training costs to determine the nature of the disclosure because the Commission is providing in the proposed rule the information required to be disclosed to the public. The Commission does not expect that

the disclosure requirements will impose significant incremental costs for websites or other advertising. Adding the required disclosure to account statements, signature cards, passbooks, signed acknowledgment cards, and certificates of deposit imposes on the depository institutions some printing costs and perhaps minimal initial design or layout costs. A precise estimate of such costs is difficult to determine without data regarding the required volume of such materials. The Commission invites comment and information on this issue.

**E. Duplicative, Overlapping, or Conflicting Federal Rules**

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

**F. Significant Alternatives to the Proposed Rule**

The provisions of the rule directly reflect the requirements of the statute, and thus leave little room for significant alternatives to decrease burden. One possible measure to decrease the rule's burden would be to set an effective date for the rule's requirements beyond the typical 30-days to allow entities additional time to come into compliance. Because the requirements of section 43 have been in effect for more than ten years, however, the Commission does not expect that a different effective date would have a significant effect on the rule's impact on small entities. Nevertheless, the Commission seeks comment and information with regard to: (1) the existence of small business entities for which the proposed rule would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory

requirements, would reduce the economic impact of the rule on such small entities. If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

## **VI. Invitation to Comment and Questions for Comment**

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before June 15, 2005. Comments should refer to: “Proposed Rule for FDICIA Disclosures, Matter No. R411014” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex A), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”<sup>17</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

---

<sup>17</sup>Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at <https://secure.commentworks.com/ftc-fdicia>. You may also visit <http://www.regulations.gov> to read this proposed Rule, and may file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

The questions below are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

- A. What types of banks and savings associations do not have federal deposit insurance? How many of these institutions exist?
- B. What costs or burdens would the proposed requirements impose, and on whom?

C. What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements, while providing the same benefits?

D. Are the proposed advertising disclosure requirements appropriate and consistent with the purposes of section 43?

E. What impact would the proposed rule have on existing state requirements?

F. What effect would the proposed rule have on credit unions insured by the Commonwealth of Puerto Rico?

G. Is it appropriate for the Commission to exempt institutions that do not receive initial deposits of less than \$100,000, as proposed in section 320.6? Why or why not?

H. Does the list of locations in section 320.4(a) accurately describe the types of locations where deposits are normally received?

I. What should be the effective date period for the final requirements (*i.e.*, the number of days between publication and the effective date of the rule)?

## **VII. Proposed Rule Language**

### **List of Subjects in 16 CFR Part 320**

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, and Federal deposit insurance.

For the reasons stated in the preamble, the Federal Trade Commission proposes to add Part 320 to 16 CFR chapter I, subchapter C as set forth below:

**PART 320 – DISCLOSURE REQUIREMENTS FOR DEPOSITORY  
INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE**

**320.1 Scope**

**320.2 Definitions**

**320.3 Disclosures in Periodic Statements and Account Records**

**320.4 Disclosures in Advertising and on the Premises**

**320.5 Disclosure Acknowledgment**

**320.6 Exception For Certain Depository Institutions**

**320.7 Enforcement**

Authority: 12 U.S.C. 1831t(b); 15 U.S.C. 41 *et seq*

**§ 320.1 -- Scope.**

This part applies to all depository institutions lacking federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of federal deposit insurance.

**§ 320.2 -- Definitions.**

(a) *Lacking federal deposit insurance* means the depository institution is not an insured depository institution as defined in 12 U.S.C. 1813(c)(2), or is not an insured credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

(b) *Depository institution* means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any

State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to federal credit unions.

**§ 320.3 -- Disclosures in Periodic Statements and Account Records.**

Depository institutions lacking federal deposit insurance must include in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice disclosing conspicuously that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that depositors will get back their money. For example, a notice would comply with the requirement if it conspicuously stated the following: “[Institution’s name] is not federally insured. If it fails, the federal government does not guarantee that you will get your money back.”

**§ 320.4 -- Disclosures in Advertising and on the Premises.**

Depository institutions lacking federal deposit insurance must include conspicuously a notice disclosing that the institution is not federally insured:

- (a) at each location where the depository institution’s account funds or deposits are normally received, including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution; and
- (b) in all advertisements, including, but not limited to, advertising in print,

electronic, webpage, or broadcast media.



**§ 320.5 -- Disclosure Acknowledgment.**

Except as provided in section 320.6, depository institutions lacking federal deposit insurance are prohibited from receiving any deposit for the account of a new or existing depositor unless the depositor has signed a written acknowledgment indicating that the institution is not federally insured and, if the institution fails, the federal government does not guarantee that the depositor will get back the depositor's money.<sup>1</sup>

**§ 320.6 -- Exception For Certain Depository Institutions.**

The requirements of this Part do not apply to any depository institution lacking federal deposit insurance and located within the United States that does not receive initial deposits of less than \$100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

**§ 320.7 Enforcement.**

Compliance with the requirements of this part shall be enforced under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark  
Secretary

---

<sup>1</sup>Depository institutions lacking federal deposit insurance may receive deposits from members who were depositors before June 19, 1994 without obtaining a signed written acknowledgment, if the depository institution followed the procedures set forth in 12 U.S.C. 1831t(b)(3)(C). If the institution followed such procedures, the statute does not require the institution to provide another separate written acknowledgment to the depositor.