June 1, 2005

Proposed Rule for FDICIA Disclosures, Matter No. R411014
Federal Trade Commission/ Office of the Secretary
Room H-159 (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Secretary:

Our credit union has 29.5 million in total assets and principally represents the community of Anne Arundel County and South Baltimore, Maryland. Also, the credit union has been privately insured since before June 19, 1994. In 1994, under the oversight of the Maryland State Bank Commissioner, the credit union complied with the requirements of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), by mailing three sequential notices to our then-current members, seeking their signed acknowledgments recognizing the credit union's lack of federal share insurance.

During the second half of 1994, the credit union mailed approximately 18,000 notices at a substantial cost to the credit union. Since that time, we have made every effort to comply with the acknowledgment of disclosure requirement of FDICIA with respect to new members joining the credit union.

Unfortunately, the records supporting our compliance with FDICIA in 1994 have been destroyed as required under the credit union's records retention policy. We believe that your agency's proposed requirement to obtain such notices over again, due to the lack of proof of our earlier compliance, would impose an excessive regulatory burden and cost on the credit union. Given the lack of regulatory guidance by the FTC over the last 14 years, we feel the time period for all forms of compliance with the acknowledgment provisions should commence with the future effective date of any rule promulgated by the FTC.

I am also writing regarding your agency's proposed rule governing consumer disclosure requirements for privately insured credit unions (Section 320.3) and the consumer disclosure requirements for privately insured credit unions; specifically, as they affect signage on ATMs (Section 320.4).

With respect to the agency's proposed rule regarding conspicuous notice (Section 320.3). We endorse the FTC's well-established and tested view of what constitutes conspicuous disclosure as set forth in the preamble to your proposed rule. We encourage the agency to avoid any specific declarations regarding the font size, location, format, or color of any consumer disclosures required of privately insured credit unions under FDICIA when preparing its final rule. The determination of whether a disclosure is conspicuous should be left to the best judgment of the privately insured credit union, as long as it gives due consideration to the proximity, presentation, placement and presence of the disclosure.

We are, however, truly concerned over the lack of definition for "all advertising" under the rule.

Since the passage of the FDIC Improvement Act in 1991, we have attempted to comply with all aspects of the law. Unfortunately, we have been unsure as to what was the law's intent with the requirement that our credit union provide a notice that it is not federally insured on "all advertising." Lacking regulatory guidance since 1991, we turned to the general requirements that federally insured credit unions, banks and thrifts follow when they disclose the presence of federal insurance.

Clearly, it is impractical to post such notices where it is not physically conducive; such as pens, golf caps, golf shirts, etc. For example, it makes no sense to print a tee-shirt or golf shirt that displays "ABC Credit Union" on the front and a statement that "This institution is not federally insured." on the back. Also, a small pen barely provides enough space for the name of the credit union, yet alone, a statement regarding the form of share insurance. Also, to have a credit union post this disclosure on an outside building sign is anti-competitive and ineffective. To resolve this obvious dilemma, both the NCUA and the FDIC have established somewhat similar lists of deposit insurance disclosure

statement exemptions. We would request that the FTC give due consideration to these regulatory exemptions/exclusions in finalizing its rule affecting privately insured credit unions (NCUA Rule §740 and FDIC Rule §328).

Regarding printed materials, we do see the logic in posting such disclosure in member newsletters and other printed materials that promote savings account investments or display current or promotional interest rates on savings. However, we see no reason to include such disclosures on loan promotional materials, such as VISA card or mortgage loan advertisements. These materials have no consequence on a member's depository relationship with the credit union. To clarify this issue, we would propose that the final rule contain language requiring such disclosure only on printed or electronic materials (websites or broadcast media) that mention share or deposit accounts or deposit account rates.

Lastly, with respect to agency's rule on ATM signage, we opposed your agency's rule (Section 320.04). We are a full-service financial institution offering a wide variety of services; one of which is providing members access to their deposit accounts through ATMs.

We are fully aware of the statutory disclosure language contained in the FDIC Improvement Act of 1991, and the fact that we are required to post signage in our lobbies and places where deposits are normally received stating that our credit union is not federally insured. We believe we are in compliance with such statutory requirements. However, we must take exception to your proposed rule Section 320.4(a) requiring this disclosure signage be posted on our ATMs.

The credit union currently owns 2 ATMs which, for consumer convenience, are accessible by our members and the public. We are also a member of several ATM networks. As a member/owner in these networks, we are required by contract to allow customers of all participating financial institutions access to their funds through ATMs owned by us. Most member organizations are federally insured. To post a sign on our ATMs indicating that our credit union is not federally insured would clearly confuse the customers of these other participating institutions when using our machines. This provision of the proposed rule is anti-consumer in nature and defeats the true intent of the law to broaden consumer awareness.

More important, since our members have already received a wide variety of disclosures and signed an acknowledgement regarding the lack of federal insurance, to require postings on our ATMs creates an unnecessary regulatory burden which could cause us to be expelled from the networks. If this were to occur as a result of the posting of a required disclosure, we would be forced to eliminate a service otherwise available to members of federally insured credit unions and it would impede consumer access to their funds. This is counterproductive and anti-competitive.

Thank you for your consideration.

Respectfully submitted,

Perry McAtee, President / CEO