



June 13, 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 converted from federal share insurance to private share insurance, provided by American Share Insurance, in April 2002. Since that time, we have made every effort to comply with the consumer disclosure requirements of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) as we understand them.

We are concerned over Section 320.5 of your agency's proposed rule governing acknowledgments of disclosure. For the FTC to require all existing members, at the time a credit union converts insurance, to sign written acknowledgments is impractical and impossible, a fact acknowledged by the U.S. Congress as evidenced by their 1994 amendment to FDICIA. Under the language of the proposed rule, our credit union would have been forced to refuse deposits from any member of record at the date of conversion who failed to sign such notices.

Upon becoming privately insured, we immediately moved to secure signed acknowledgments of disclosure from every member in accordance with the provisions afforded privately insured credit unions under 12 U.S.C. 1831t (b)(3)(C), which requires for the mailing of three sequential notices seeking signed acknowledgments in lieu of collecting signatures from 100% of our "current members." We felt this initiative complied with the "spirit of the law." In this process we mailed over 40,485 notices to our 13,495 members, and over the few months immediately following the conversion, received 3,913 returned signed acknowledgments. The approximate cost of these three mailers was \$29,504.

As previously mentioned, in its amendment to FDICIA in 1994, Congress corrected the impossible task embedded in the 1991 law -- requiring the collection of signed acknowledgments from every member of a privately insured credit union. Even though we were not privately insured until April 1, 2002, we believed we should have been afforded the same relief offered to privately insured credit unions operating in June 1994. In fact, FDICIA, as amended, makes no provisions whatsoever for credit unions converting to private insurance after the effective date of the law.

More importantly, the process mandated by NCUA for converting from federal to private share insurance is very thorough and requires no less than three separate and distinct written communications with members advising them of the consequences of the conversion proposition and their loss of federal share insurance (NCUA Rule 708b). NCUA's current conversion rule goes so far as to allow the members the right to close time accounts prematurely without penalty if the credit union converts to private share insurance.

NCUA requires a converting federally-insured credit union to provide every member a paper notice and ballot allowing for a mail vote; hold a special meeting of the membership to vote on the proposition; and that no less than 20% of the membership vote on the proposition for it be valid. The conversion regulations dictate that specific and conspicuous disclosure be included in both the notice and ballot, indicating that the conversion would result in the loss of federal deposit insurance.

Clearly, these extensive disclosures inform the member of the insurance conversion vote and meeting; the date of conversion; their rights to withdraw money penalty-free; the fact that private share insurance is not backed by the federal government and should the institution fail, the federal government will not guarantee the depositor will get their money back; and more. Therefore, to require 100% compliance on signed consumer acknowledgments would add nothing more to the disclosures, would be impossible to achieve, would require that we cease relationships with otherwise good members that do not respond, and would absolutely cease any future conversions from federal to private insurance from occurring. This requirement would effectively eliminate the private share insurance option available in many state statutes.

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.

Thank you for your consideration.

Respectfully submitted,

Michael Gómez
Chief Executive Officer



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Room II-159 (Annex A)
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Dear Secretary:

Fiscal Credit Union serves 16,121 members who work within the Los Angeles community. The credit union has been privately insured since April 2002, and is concerned over the agency's proposed rule governing consumer disclosures and what constitutes a "similar instrument evidencing a deposit." The agency has asked for public comment on this specific subject.


We understand that the FDIC Improvement Act of 1991 (FDICIA) requires we disclose the absence of federal insurance and the fact that the federal government does not guarantee that depositors will get their money back if we fail, on all periodic statements of account, signature cards, passbooks and certificates of deposit. Since the law's passage, we have attempted to comply with this provision, and we believe we have the ability to control such compliance. However, if the FTC's interpretation of FDICIA concludes we must also place this disclosure on all deposit slips, tickets or receipts, we are convinced that 100% compliance would be impossible and the cost of compliance to the consumer/member prohibitive.

Credit union members usually order deposit slips in conjunction with ordering checks. Numerous companies provide such printing services for a fee. While the credit union offers specific sources of supply for checks and deposit slips, many of our members buy these services on-line or from other unaffiliated vendors. Also, other than color choices in checks, most vendors don't offer options for deposit slips. To request custom-ordered deposit slips from any vendor – assuming such service is even available – would be more costly to the consumer. Furthermore, if the consumer fails to secure such deposit slips, it would create an undue regulatory burden on the credit union to police this disclosure. Non-compliance would be pervasive.

We suggest that such disclosures would be redundant, cost-prohibitive and unnecessary given the other forms of consumer disclosures required under the statute. Also, we cite the fact that the NCUA specifically exempts deposit slips, tickets or receipts from containing the required disclosure regarding the presence of federal share insurance.

Alternatively, we propose that privately insured credit unions be required to include such disclosure only on deposit slips available to members within the lobbies of main offices and branches of privately insured credit unions, and whose printing is controlled by the credit union. Shared branches and credit union centers should be exempt from this requirement so as to minimize confusion among credit union members of federally insured credit unions using such shared or common facilities owned and/or leased by privately insured credit unions.

Respectfully submitted,

Michael Gomez 
Chief Executive Officer



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Secretary:

I am writing in support of the FTC's proposed rule governing consumer disclosures requirements as they relate to privately insured credit unions; specifically, the agency's position as to what constitutes "conspicuous disclosure."

Fiscal Credit Union, a state-chartered credit union in the state of California, has been privately insured since 2002, and has been serving the Los Angeles community since 1935. Our credit union has 16,121 members comprising 139,467,457 in total share/deposit accounts, and we believe strongly in the concept of clear, conspicuous and reasonable disclosure when it comes to all matters affecting our members and their financial relationship with us. Also, we believe our credit union has complied with FDICIA in this regard since its enactment.

To this end, 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.

Thank you for considering our position on this subject within the proposed rule.

Respectfully submitted,

Michael Gomez 
Chief Executive Officer



Fiscal

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Secretary:

I am writing in opposition to your agency's proposed rule governing consumer disclosure requirements for privately insured credit unions. We are truly concerned over the lack of definition for "all advertising" under the rule.

Fiscal Credit Union, a state-chartered credit union in the state of California, has been privately insured since 2002, and has been serving the Los Angeles community since 1935.

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.

Thank you for considering our input on this important subject.

Respectfully submitted,

Michael Gomez
Chief Executive Officer

