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Federal Trade Commission
Office of the Secretary
Room H-159 (Annex A)
600 Pennsylvania Avenue, NW.
Washington, DC 20580.

Re: Proposed Rule for FDICIA Disclosures
Matter No. R411014

Dear Madam Chairman:

We are pleased to respond on behalf of our privately insured member credit unions to the Federal Trade Commission's ("FTC") proposed regulations on disclosures for non-federally insured depository institutions pursuant to section 43 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. 1831t, added by the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"). The Illinois Credit Union League represents over 40 privately insured credit unions in Illinois.

Our privately insured credit unions believe their members should be provided with clear and conspicuous disclosures that the credit union is not federally insured. FTC's regulations will assist credit unions in complying with the provisions of FDICIA. We believe adoption of the revisions and additional guidance discussed below will enhance credit union compliance.

1. Disclosures in Periodic Statements and Account Records.

Section 320.3 of the proposed rule, "Disclosures in periodic statements and account records," requires a privately insured depository institution to include a disclosure that the institution is not federally insured "in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit." The list of account records in proposed §320.3 is identical with the listing in §43(b)(1) of the FDIA.

It has been suggested that the term "or similar instrument evidencing a deposit" could be construed to include deposit slips. We believe such construction is erroneous.

In the past, most depository institutions did not issue periodic statements for time accounts evidenced by a certificate of deposit or accounts recorded in a passbook. The evidence of ownership and account balance (principal balance in the case of a certificate account) was a periodic statement, passbook, or certificate of deposit.

The description of the subject documents as "account records" in the heading of FDIA §43(b)(1) is evidence of the intent of Congress to require disclosure on documents evidencing ownership and account balances, not documents submitted with single deposits.

We believe the inclusion of the term, "or similar instrument evidencing a deposit," was intended to address the possible introduction of new forms of account records after the 1991 enactment of FDICIA. Congress was certainly aware of the almost universal use of deposit slips at depository institutions at the time FDICIA was enacted. Deposit slips would have been included in the list of documents subject to §43(b)(1) if Congress had intended the disclosure requirements to apply to them.

2. Disclosures on ATMs.

FDIA §48(b)(2) requires that a privately insured depository institution must include a conspicuous notice that the institution is not federally insured at each place where deposits are normally received. Section 320.4(a) of the proposed rule specifies locations FTC feels meet the criteria. The list includes ATM's owned by the depository institution and locations "servicing more than one credit union or institution."

We believe that proposed §320.4(a) should be revised to delete credit union owned ATMs from the list of locations requiring disclosure.

Credit unions participate in networks that provide ATM availability to depositors of many financial institutions. Disclosure at an ATM that the credit union is not federally insured will confuse the consumers using the credit union's ATM to access accounts at other depository institutions.

In order to access an account at an ATM, members of privately insured credit unions must apply for membership in the credit union and request an ATM card or debit card. Such members would receive disclosures that the credit union is not federally insured on the account card and on each periodic statement (which must be issued monthly if there are deposits or withdrawals via an ATM). There is no need for additional disclosure when the member uses an ATM.

We note that federally insured depository institutions are not required to include the official sign that the institution is federally insured on their ATMs. Section 205(a) of the

Federal Credit Union Act requires every federally insured credit union to display a sign indicating that its members' accounts are federally insured at "each place of business maintained by it." 12 U.S.C. 1785(a). NCUA regulations implementing this requirement specifically exclude ATMs and point of sale terminals from the definition of places required to display NCUA's official insurance sign. 12 CFR 740.4(e).

3. Disclosures at Shared Facilities.

The rules promulgated by the National Credit Union Administration ("NCUA") provide adequate disclosure with respect to locations shared by both federally insured and non-federally insured credit unions. NCUA requires the following disclosures in shared locations serving both federally insured credit unions and privately insured credit unions,

> In such instances, immediately above or beside the official sign ["*Your savings federally insured to $100,000* ***NCUA*** *National Credit Union Administration, a U.S. Government Agency*"] there must be another sign stating "Only the following credit unions serviced by this facility are insured by the NCUA--" (the full name of each credit union [federally] insured will follow the word NCUA).

12 CFR 740.4(c).

Additional disclosure by privately insured credit unions would be redundant.

4. Disclosures in Advertising.

Section 43(b)(2) of FDIA requires a privately insured depository institution to disclose conspicuously in all advertising that it is not federally insured. In the supplementary information accompanying the proposed rule, FTC mentions that NCUA and FDIC exempt many types of advertising from the federal insurance disclosures. FTC indicates that NCUA and FDIC have statutory authority to provide such exemption that is lacking in FDICIA.

While FTC may lack specific statutory authority to exempt any advertisements from the disclosure requirements, it certainly has the authority to define what constitutes "advertising." For example the federal Truth in Lending Act ("TILA") imposes advertising disclosures. While, TILA does not explicitly authorize the Federal Reserve Board ("FRB") to define advertising (or to exempt certain forms of advertising from the disclosure requirements), FRB has defined "advertisement" in Regulation Z as "a commercial message in any medium that promotes, directly or indirectly, a credit transaction." 12 CFR 226.2(a)(2).

NCUA and FDIC characterize a number of items as "advertisements" that would not commonly considered as such, e.g., statements of condition, reports of condition,

stationary, envelopes, deposit tickets, checks, signature cards, account passbooks, and signs on the credit union building. NCUA then exempts these so called "advertisements" from the disclosure requirements.

FTC should add a definition of "advertising" to proposed §320.2 specifically excluding items that cannot reasonably be considered advertisements. The definition should not include clothing imprinted with the credit union's name or logo, or other items, listings, or signs if the reference to the credit union is limited to the credit union's name, address and phone number.

5. Conspicuous Disclosures.

The provisions of FDICIA and FTC's proposed rules require the disclosures discussed above to be conspicuous. In the supplementary information accompanying the proposed rule, FTC states that it will evaluate whether disclosures are conspicuous "according to well-established FTC law." We understand that FTC evaluates disclosures based on prominence, presentation, placement, and proximity.

We support FTC's evaluation criteria. The determination of whether disclosures are conspicuous depends on their relationship to the accompanying material. If FTC determines that a more specific definition of "conspicuous" should be added, we suggest the criteria used by NCUA for its insurance disclosure. NCUA states that the disclosure must be in a size and print that is clearly legible. 12 CFR 740.5.

6. Acknowledgement by Members that the Credit Union is not Federally Insured—Conversions and Mergers since June 1994.

Prior to amendment in 1994, FDICIA required privately insured credit unions to obtain a signed acknowledgment that the credit union is not federally insured from every member.

Acknowledging that it was impossible from an operational standpoint to obtain a signed acknowledgement from all persons who were members when FDICIA took effect, Congress amended FDIA §43(b)(3) to allow depository institutions to continue to accept deposits from persons who did not sign and return the acknowledgment, if they were members prior to June 19, 1994, provided the credit union made three sequential mailings to pre-June 19, 1994 members of a card containing the acknowledgment along with a request that the member sign and return the acknowledgment to the credit union. FDIA §43(b)(3)(C), 12 U.S.C. 1831t(b)(3)(C).

Section 320.5 of the proposed rule contains the requirement that members must sign the acknowledgment of risk. Footnote 1 to §320.5 of the proposed rule states that credit unions need not obtain the written acknowledgement from persons who were members

prior to June 19, 1994, if the credit union complied with sequential mailing requirements contained in FDIA §43(b)(3)(C).

Credit unions converting to private share insurance after June 1994 have been unable, in spite of substantial good faith efforts, to obtain the signed acknowledgement from all of their depositors who were members when the credit union converted to private share insurance.

In addition, privately insured credit unions acquiring members as a result of the merger of federally insured credit unions after June 1994 have been unable, in spite of substantial good faith efforts, to obtain the signed acknowledgement from all of the members of the merging credit union.

All the members of a converting or merging credit union have received notice of the change from federal to private insurance prior to the conversion or merger. NCUA requires the approval by a credit union's members of a conversion from federal share insurance to private share insurance. NCUA also requires approval by the members of a merging federally insured credit union of a merger into a privately insured credit union. All members of a converting credit union and all the members of a merging credit union must be notified of the date, place and time of the membership meeting held to act on the proposed conversion or merger. The notice must be accompanied by a mail ballot. Both the notice of the meeting and the ballot must contain the following disclosure:

> If this conversion is approved and the credit union fails, the federal government does not guarantee that you will get your money back.

In addition, all other communications by the credit union regarding the conversion must include the same disclosure.

It is appropriate to require credit unions to make a good faith effort to notify members of the change in insurance. However, the credit unions cannot compel all of their current members or the members of a merging credit union to return the acknowledgement.

In determining what constitutes a good faith effort, FTC should consider the disclosures made to members with the notice of the membership meeting considering the conversion or merger, and on the mail ballot accompanying the notice.

7. Sequential Mailing of Acknowledgement to Depositors who were Members prior to June 19, 1994.

Some credit unions have expressed concern that FTC may require proof of their compliance in 1994 with the sequential mailings to depositors who were members prior

to June 19, 1994 required by FDIA §43(b)(3)(C). The record retention policies of most credit unions would not provide for retention of evidence of disclosures mailed 11 years ago.

We are aware that neither footnote 1 to proposed §320.5 or FTC's supplementary information requires proof of credit union compliance with FDIA §43(b)(3)(C). We suggest FTC indicate in the final rule or in the supplementary information accompanying the final rule that proof will not be required.

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We appreciate the opportunity to provide our comments on FTC's proposed disclosures for non-federally insured depository institutions. We will be happy to respond to any questions regarding these comments or otherwise discuss our concerns with agency staff.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

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