NASCUS

June 15, 2005

Federal Trade Commission/Office of the Secretary
Room H-159 (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Proposed Rule for FDICIA Disclosures, Matter No. R411014

Dear Sir or Madam:

NASCUS[1] appreciates the opportunity to submit comments on the Federal Trade Commission's ("FTC") request for comments on the proposed rule for FDICIA disclosures. FTC is to be commended for working with NASCUS and state regulators to further FTC's understanding of the examination and regulation of privately insured credit unions.

All privately insured credit unions in the United States are state-chartered.[2] The ability of a credit union to choose a private share insurance provider is a consequence of state statutory and regulatory authority. NASCUS rigorously defends states' rights to make public policy decisions regarding their credit unions, including the decision to allow credit unions to opt out of the federal share insurance system. It is not enough to concede state authority to make those public policy decisions. Overlapping federal regulations, such as FTC's proposed rule, must not impose an undue regulatory burden that would effectively preempt state authority by rendering the choice of private insurance impractical and the states' ability to grant that choice meaningless.

NASCUS and its state regulator members agree that disclosure of insured status is important for consumers to make informed decisions in choosing their financial services provider. Effective disclosures can, and have been, achieved without undue regulatory burden. In its comments below, NASCUS suggests ways in which FTC can diligently meets its Congressional mandated obligations under FDICIA without imposing undo regulatory burden. NASCUS' comments make the following points:

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[1] The National Association of State Credit Union Supervisors (NASCUS) is a professional association representing the forty-eight (48) state and territorial regulatory agencies that supervise the nation's 4,090 state-chartered credit unions. NASCUS has been committed to enhancing state credit union supervision and advocating for a safe and sound state credit union system since its inception in 1965.

[2] There are approximately 212 privately insured credit unions in California, Alabama, Ohio, Indiana, Idaho, Maryland, Nevada and Illinois. In addition, there are approximately 138 privately insured credit unions in the territory of Puerto Rico.

1) Examination for Compliance with FDICIA is a Matter for the State Regulator
2) Requiring Proof of Compliance with the Three-Mailer Notice Requirement for Credit Unions Privately Insured on June 19, 1994 Creates Unreasonable Burden
3) FTC Should Avoid “Chilling Effect” on Mergers between Federally and Privately Insured Credit Unions
4) FTC Should Clarify requirements for Leased ATMs

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”). Among other things, section 43(b) mandates that depository institutions lacking federal deposit insurance disclose that fact to members/depositors.

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; 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) further provides that non-federally insured institutions may receive deposits only from persons who have signed acknowledgments that the institution is not federally insured and that if the institution fails, the federal government does not guarantee that they will get their money back. 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.

Examination for Compliance with FDICIA is a Matter for the State Regulator

In its final rule, FTC should make clear that it will rely on state credit union regulators for examination for compliance with FDICIA and that that examination can take place as part of the state’s existing exam cycle.

Every privately insured credit union is examined thoroughly by their state regulator in the same manner as federally insured credits. In the case of federally insured state-chartered credit unions, the administrator of the federal share insurance fund relies solely on the state examination in 85-90% of state-chartered institutions. To the extent state agencies opt to examine for compliance with FDICIA, FTC should rely solely on those state examinations.

Requiring Credit Unions to Prove Compliance with the 1994 Three-Mailer Notice Creates Unreasonable Burden on Institutions as well as on Regulatory Agencies Examining for Compliance

By footnote, the proposed rule states that credit unions that were privately insured on June 19, 1994 and complied with the FDICIA requirements to mail three sequential notices to their then-existing members would not be required to obtain signatures from those same members.

Given common credit union record retention policy and the lack of guidance on this matter since 1994, it would be an unreasonable burden on both state regulators examining for compliance as well as credit unions for FTC to require proof of compliance for these exempted credit unions. FTC should grant a blanket exemption for credit unions that were privately insured on June 19, 1994.

FTC Should Avoid "Chilling Effect" on Mergers between Privately and Federally Insured Credit Unions

The ability to merge credit unions is a valuable tool for credit union regulators. Requiring a surviving privately insured credit union to obtain signed acknowledgments from a merged federally insured credit union's members before the surviving credit union could accept those members' deposits creates a formidable obstacle for merger that would have a chilling effect on regulators' ability to use this effective tool.

Given NCUA's recent rule on termination of federal insurance, the necessity of the FTC rule in this regard is questionable. NCUA has already promulgated extensive and detailed regulations on informing the membership of a federally insured credit of the institution's intention of terminating its federal insurance. FTC's rule would add an unnecessary regulatory obstacle to mergers without any provable regulatory benefit.

FTC Should Clarify Requirements for Leased ATMs

FTC must clarify, for both credit unions and regulators, the requirements for notice on ATM machines. Often, credit unions lease ATMs or participate in ATM networks. To require notice on all ATMs, even those not owned by the credit union, could in some cases restrict credit union access to ATMs. Furthermore, ATM notice may be confusing to individual consumers seeking to use an ATM for withdrawal without the consumer having any connection to the privately insured credit union.

Given that ATM machines are predominantly devices to withdraw funds rather then make deposits, FTC should reconsider its ATM proposal in light of the confusion likely to be caused by such notice to the general public.

Thank you for the opportunity to comment on Federal Trade Commission's ("FTC") request for comments on the proposed rule for FDICIA disclosures. Should you wish to discuss NASCUS’ comments in detail, or seek clarification, please do not hesitate to contact NASCUS.

Sincerely,

Brian Knight
Vice President, Regulatory Affairs