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

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

Dear Secretary Clark:

The California and Nevada Credit Union Leagues are pleased to comment on the FTC's proposal seeking changes to rules governing various disclosure requirements for credit unions that carry private deposit insurance. The California and Nevada Credit Union Leagues operations are combined and represent the largest state trade association for credit unions in the United States, serving 500 member credit unions in California and Nevada nearly 10 million members. Combined, the Leagues represent nearly 600,000 members of privately insured credit unions with approximately $8.3 billion in assets.

The California and Nevada Credit Union Leagues have the following concerns and comments about the proposed rulemaking:

(1): Section 320.5 of the proposed rule unfairly prohibits depository institutions lacking federal deposit insurance from receiving any deposit for the account of a new or existing depositor unless the depositor has signed a written acknowledgement.

(2): The proposed rule may require production of records evidencing acknowledgements of disclosure for credit unions converting to private insurance on June 1994.

(3): The proposed rule would unfairly require privately insured credit unions that have merged with federally insured credit unions and retained private insurance to refuse deposits from members who lack a signed acknowledgment on record.

(4): The proposed rule would require disclosure signage to be posted inside shared branching and on shared ATMs.

(5): FTC advertising requirements regarding privately insured credit unions are ambiguous and unclear.

(6): The FTC's test for conspicuous disclosure should remain as is.

We will address each of these issues, in turn.

1) REQUIRING SIGNED ACKNOWLEDGEMENTS FROM ALL MEMBERS OF A CREDIT UNION CONVERTING AFTER JUNE 1994 IS IMPRACTICAL, REDUNDANT AND HURTS CONSUMERS

The California and Nevada Credit Union Leagues are extremely concerned with and alarmed by Section 320.5 of your agency's proposed rule governing acknowledgments of disclosure. The proposed rule would require credit unions converting to private share insurance after June 19, 1994 to secure signed acknowledgements from all of its members before accepting deposits. Under the language of the proposed rule, privately insured credit unions will be forced to refuse deposits from any new or existing depositor unless the depositor has signed a written acknowledgement indicating that the institution lacks federal insurance and the accompanying federal guarantee if the institution fails.

Requiring all existing members at conversion to sign written acknowledgments would be impossible, a fact acknowledged by the U.S. Congress as evidenced by their 1994 amendment to FDICIA. Wisely, Congress understood the futility privately insured credit unions faced in securing signed acknowledgments from all members and provided the three-mailer alternative under 12 U.S.C. 1831t (b)(3)(C).

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 conversion and their loss of federal share insurance (NCUA Rule 708b). NCUA compels 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 disclosures are included in both the notice and ballot, indicating that the conversion would result in the loss of federal deposit insurance. 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.

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.

Considering the considerable regulations already in place, the Leagues together vehemently oppose proposed rule Section 320.5. This proposal is redundant, impossible to achieve, would unfairly require affected credit unions to cease long-standing relationships with faithful members who may unintentionally fail to respond, would having a chilling effect on competition by unjustly discouraging any future conversions from federal to private insurance, and directly contravenes the congressional intent of 12 U.S.C. 1831t (b)(3)(C).

2) REQUIRING RECORDS EVIDENCING ACKNOWLEDGEMENTS OF DISCLOSURE FOR CREDIT UNIONS CONVERTING TO PRIVATE INSURANCE ON OR BEFORE JUNE 1994 IS EXCESSIVE, BURDENSOME AND COSTLY

As written, the proposed rule may require credit unions that converted to private insurance on or before June 19, 1994 to provide records to show proof that they complied with disclosure requirements in 1994.

In 1994, privately insured credit unions across the country began complying with disclosure requirements of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) by mailing three sequential notices to then-current members, for the purpose of seeking signed acknowledgments recognizing the credit union's lack of federal share insurance. Subsequently, every effort has been made by privately insured credit unions to comply with the acknowledgment of disclosure requirement of FDICIA with respect to new members that join.

Considering these notices are over a decade old, records supporting compliance with FDICIA in 1994 have likely been destroyed under reasonable records retention policies. The Leagues together believe any proposed requirement to obtain such notices after more than a decade would impose an excessive and nonsensical regulatory burden and cost on credit unions and would be impossible to achieve.

3) FORCING PRIVATELY INSURED CREDIT UNIONS THAT HAVE MERGED WITH FEDERALLY INSURED CREDIT UNIONS TO REFUSE DEPOSITS IS UNFAIR AND ANTI-CONSUMER

As written, the proposed rule would force privately insured credit unions that merged with federally insured credit unions and retained private insurance to refuse deposits from members that lack a signed acknowledgement on record.

In accordance with FDICIA, members of privately insured credit unions have consistently been informed of the fact that their share/deposit accounts are not federally insured. Refusing the deposit of a merged member due to a lack of a signed acknowledgement is an extreme measure that unfairly and harshly penalizes both credit union and consumer for woefully inadequate reasons and can have a devastating effect on the consumer's personal financial affairs. Members of privately-insured credit unions know their funds are not guaranteed by federal insurance because existing FDICIA and NCUA regulations require such disclosure.

NCUA's regulations (Rule 708b), governing mergers of federally insured credit unions into privately insured credit unions, already provide for full and multiple disclosures to the consumer regarding his/her loss of federal share insurance if the merger is approved by NCUA, the membership and the state credit union regulatory authority. In fact, NCUA requires every member be given the chance to vote by mail or in person on such merger proposition, and that a majority of at least 20% of the membership of the merging credit union vote to approve the proposition for the merger to be approved. Moreover, after the merger is approved by all parties, the members of the federally insured credit union are given time to withdraw their funds if they wish, without penalty. These regulations unquestionably satisfy concerns regarding adequate notice of the absence of federal share insurance in a merger situation.

Accordingly, the Leagues together oppose Section 320.5 of the proposed rule and request that it be amended to exclude the required signed acknowledgments from new members of a privately insured credit union gained through merging with a federally insured credit union.

4) REQUIRING DISCLOSURE SIGNAGE TO BE POSTED AT SHARED BRANCHING FACILITIES AND ON SHARED ATMS IS EXCESSIVE AND WILL CONFUSE AND IMPAIR CONSUMERS

As written, the proposed rule would require signage at shared branching facilities and on shared ATM's regarding the presence of a privately insured institution within the shared branching or ATM network.

Requiring disclosure signage to be posted at shared branching facilities is redundant as the NCUA has already promulgated specific requirements for posting the official federal insurance advertising sign in shared branch facilities (NCUA Rule §740.4(c)). This rule requires that, where a privately insured credit union shares a branching service center with federally insured credit unions, a listing of all federally insured credit unions must be posted near the federal insurance disclosure sign listing all credit unions participating in the shared branching network that are federally insured. As such, further rules regarding this issue are merely duplicative and would not provide any substantive benefit to the consumer.

Throughout the country, many privately insured credit unions belong to ATM networks with federally insured credit unions. Because credit unions are, by nature, restricted to a defined community, ATM networks give consumers increased access to their funds through ATM sharing with other credit unions and institutions within the network. Most credit unions are federally insured. To post signs on ATMs regarding privately insured credit unions would certainly confuse members who do not belong to privately insured credit unions and who simply want access to their accounts. This defeats the true intent of the proposed rule, which presumably is to *increase* consumer awareness. Further, research shows that deposits comprise a rapidly shrinking percentage of the transactions that occur at ATMs. Thus, the efficacy of such a measure is dubious at best.

Since members of privately insured credit unions already receive a wide variety of disclosures regarding the lack of federal insurance through other means, to require postings on ATMs creates significant confusion and could cause privately insured credit unions to be removed from the network. Ultimately, this rule would only hurt consumers, forcing privately insured credit unions to eliminate a service widely available to members of federally insured credit unions. This proposed rule is a step in the wrong direction. Consumers who choose credit unions that carry private insurance don't want government restrictions that give them *less* access to their hard-earned money or cause them to lose services enjoyed by others who belong to institutions virtually indistinguishable from their own.

Therefore, the Leagues together oppose the posting of signage regarding privately insured institutions at shared branching and shared ATMs.

5) FTC ADVERTISING DISCLOSURES SHOULD USE NCUA AND FDIC GUIDELINES IN ESTABLISHING REGULATORY EXEMPTIONS/EXCLUSIONS

Since the passage of the FDIC Improvement Act in 1991, privately insured credit unions in the Leagues have complied with all aspects of the law. However, there is considerable ambiguity regarding the law's intent concerning the phrase "all advertising" as it applies to credit unions that possess private insurance. The lack of adequate regulatory guidance since 1991 has caused many privately insured credit unions throughout the industry to look at the general requirements federally insured credit unions, banks and thrifts follow when they disclose the presence of federal insurance for context.

Clearly, it is unreasonable to post such disclosures where it is physically impractical or obviously awkward; such as pens, golf caps, golf shirts, etc. Moreover, to have a credit union post this disclosure on an outside building sign would be peculiar and unprecedented. However, because of the significant ambiguity surrounding the phrase "all advertising", an argument in favor of interpretations requiring such disclosures – regardless of how absurd they are – could be made. 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, the Leagues together support posting such disclosure in member newsletters and other printed materials that promote [illegible] bearing on a member's depository relationship with the credit union.

disclosure only on printed or electronic materials (websites or broadcast media) that mention share or deposit accounts or deposit account rates.

6) THE FTC'S WELL-ESTABLISHED TEST FOR CONSPICIOUS DISCLOSURE IS APPROPRIATE

The Leagues together believe strongly in the concept of clear, conspicuous and reasonable disclosure when it comes to all matters affecting credit union members and their respective institution. Accordingly, 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. Considering the rapid evolution and emergence of technology in the marketing and advertising fields such specificity will likely result in unintended, if not harmful, consequences.

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.

In closing, we believe regulations should be timely, clear and helpful. The Leagues together support law and regulation that increase consumer awareness regarding the financial services they receive at their chosen institution. However, when these regulations are redundant, restrictive, untimely, extremely costly, and have a high likelihood to cause consumer confusion, we believe it is in the interest of the entire credit union community and consumers to speak out against them. Some of the regulations proposed will absolutely cause these undesirable consequences, ultimately hurting the consumers they are supposed to protect.

The California and Nevada Credit Union Leagues appreciate the opportunity to comment on the proposed rules and thank you for considering the concerns of the millions of consumers that will be affected.

Sincerely,

David Chatfield
President/CEO
California and Nevada Credit Union Leagues