June 15, 2005

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

Re: Proposed Rule for FDICIA Disclosures, Matter No. R411014
70 FR 12823 (March 16, 2005)

Dear Madam or Sir:

America's Community Bankers[1] is pleased to comment on the Federal Trade Commission's (FTC) proposed disclosure rule for non-federally insured depository institutions.[2] The proposed requirements generally track Section 43(d) of the Federal Deposit Insurance Act (FDIA), which requires non-federally insured depository institutions to affirmatively disclose their lack of federal deposit insurance to depositors. As of December 2002, 212 credit unions representing 1.1 million members and $10.8 billion in deposits chose to purchase private primary deposit insurance. We believe that disclosure of private insured status is an important consumer protection matter that the FTC should enforce.

Background

The FDIA was amended in 1991 to require non-federally insured depository institutions to provide certain deposit insurance disclosures to depositors. The statute tasks the FTC with enforcing compliance with section 43 of the FDIA. However, the FTC has never taken action to enforce the statutory requirements. Rather, the FTC has requested that it not enforce these requirements by seeking and obtaining a prohibition against spending appropriated funds to carry out these provisions.

In 2003, Congress lifted the longstanding FTC appropriations ban for certain provisions of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), including the

[1] America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com.*
[2] 70 Fed. Reg 12823 (March 15, 2005).

disclosure provisions of section 43. This action occurred shortly after the General Accounting Office (GAO) released a study finding that many privately insured credit unions are not in compliance with section 43.[3]

In conducting unannounced site visits to 57 privately insured credit union offices in five states, the GAO discovered that 37 percent of the credit union offices did not conspicuously post signage in their lobbies informing consumers that their deposits were not federally insured. The GAO also found that 59 percent of other credit union materials such as brochures, membership agreements, signature cards, deposit slips, and newsletters did not include language notifying consumers that the credit union was not federally insured. Additionally, 39 of the 78 Web sites examined by the GAO were not fully compliant with section 43.

The FTC's proposed rule would:

- Require periodic statements and account records to indicate that an institution is not federally insured and that if the institution fails, the federal government does not guarantee that depositors will get their money back.
- Require disclosure of non-federally insured status at each location where the depository institution's account funds or deposits are normally received and in all advertising materials.
- Require credit unions to obtain from new and existing depositors a signed acknowledgment of the fact that the institution is not federally insured.
- Exempt from the disclosure requirements institutions that do not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the U.S. (other than money received in connection with any draft or similar instrument issued to transmit money).

ACB Position

ACB strongly supports the FTC's proposed disclosure rules for non-federally insured depository institutions. We emphatically believe that privately insured credit unions should abide by the law and that consumers and credit union members should be fully informed that deposits in privately insured credit unions are not backed by the full faith and credit of the United States government. Our country's previous experience with private deposit insurance confirms the importance of consumer disclosures.

Consumer Protection

We believe that full disclosure of private primary deposit insurance is a fundamental consumer protection issue. Credit union members need to know that the federal government does not guarantee that they will get their money back in the event that a

[3] "Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection provisions," GAO-03-971 (Aug. 2003), p.7.

private insurer is unable to pay claims following a credit union failure. News that a private insurance company could not cover the deposits of a failed credit union would be devastating news to credit union members that have worked for years to save funds for a child's college education, for retirement, or for a special vacation. Even loss of one paycheck deposited in a checking account would bring financial ruin to many credit union members. As a result, consumers must be fully informed about private deposit insurance when selecting a depository institution.

We believe that privately insured credit unions must disclose their insured status and adhere to the law. We also believe that the FTC should oversee and enforce compliance with these requirements.

In 1985, the collapse of the state insurance funds in Ohio and Maryland affected thousands of depositors. At that time, many of the depositors assumed they were federally insured due to the lack of disclosure. Section 43 was added to the FDIA by FDICIA in response to these failures. Now, 20 years later we are still faced with non-federally insured institutions that are providing inadequate disclosures to their customers. This in not acceptable.

Industry Trends

Recent developments in the credit union industry further underscore the importance of full disclosure and compliance with the FDIA. The entrance of credit unions into riskier lines of business, coupled with efforts to reduce minimum capital requirements make it even more important that depositors understand what it means for their credit union to be privately insured.

Commercial loans originated by credit unions grew 23 percent in 2004 and now comprise a record percentage of the industry's balance sheet. Commercial lending is inherently riskier than traditional credit union products and services and questions have been raised whether credit unions and their regulators have the requisite knowledge and experience to properly manage those risks.[4] Despite these concerns, legislation backed by the credit union lobby would increase the commercial lending authority of credit unions from 12.25 percent to 20 percent of assets and exclude all commercial loans of less than $100,000 from the 20 percent cap. Furthermore, the credit union industry seeks to reduce minimum capital requirements. We are concerned that increased risk exposure associated with commercial loans paired with inadequate capital reserves may make certain segments of the credit union industry more susceptible to insolvency.

If multiple privately insured credit unions were to fail, it would be increasingly likely that credit union depositors would not recover all of their funds. Therefore, we believe it is

[4] For example, in a June 2003 letter to the National Credit Union Administration, the Department of the Treasury questioned whether it was appropriate for the NCUA to remove its collateral and personal guarantee requirements for commercial loans without outlining what steps credit unions should take to mitigate or reduce future credit loss.

more important than ever that consumers should be fully informed about private deposit insurance when selecting a depository institution.

Shared Branching

Credit unions commonly share branch locations to provide convenient locations for their customers while taking advantage of cost efficiencies. While this practice is beneficial to the credit unions involved, there is a substantial risk that customers using the shared branch network will not understand whether their credit union is federally or privately insured.

Existing NCUA regulations address this scenario by requiring a sign to be posted that states "Only the following credit unions serviced by this facility are federally insured by the NCUA."[5] In the interest of consumer protection, we urge the FTC to require similar signage that affirmatively discloses the names of all non-federally insured credit unions operating on the premises.

Conclusion

ACB reiterates its strong support of the FTC's proposed disclosure rule for non-federally insured credit unions. This matter is of particular concern as credit unions enter riskier lines of business while seeking to lower their minimum capital requirements.
Only one company in the U.S., American Share Insurance (ASI) provides private deposit insurance to credit unions. Based on the 2003 GAO study, the majority of credit union members with deposits at non-federally insured credit unions are unaware that they would be unable to recover funds should ASI become insolvent or face a wave of credit union failures.

Thank you for the opportunity to comment on this important matter. Please contact the undersigned at 202-857-3121 or cbahin@acbankers.org or Krista Shonk at 202-857-3187 or kshonk@acbankers.org.

Sincerely,

Charlotte M. Bahin
Senior Vice President
Regulatory Affairs

[5] The Credit Union Regulatory Improvements Act of 2005, H.R. 2317, 109th Cong.