IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

June 16, 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

Dear Secretary:

The Idaho Department of Finance ("Department") is responsible for regulation of state-chartered banks and credit unions in Idaho. Under Idaho law, state-chartered credit unions are allowed the option of being federally insured or privately insured. Currently 19 of our 44 state-chartered credit unions have elected to be privately insured. These 19 credit unions are generally small institutions with an average asset size of about $8.2 million.

The Department offers the following comments regarding your proposed rule (16 CFR Part 320) governing consumer disclosures required by privately insured credit unions under the FDIC Improvement Act of 1991 ("FDICIA"), as amended. The Department's comments are based upon our responsibility for the safety and soundness of these institutions, our duty to protect their members, and our desire to reduce unnecessary regulatory burden on Idaho's financial institutions.

Acknowledgment of Disclosure (16 CFR Part 320.5)

The proposed rule requires that, in order for a privately insured credit union to accept a member's deposit, a written notice must be signed by the member acknowledging the credit union is not federally insured, and should it fail that the federal government does not guarantee that depositors will get their money back. When FDICIA was enacted in 1991, it contained a similar requirement. Congress amended the law in 1994 to provide the alternative for then-privately insured credit unions to send three sequential notices seeking such signed acknowledgments. This alternative was intended to provide a means for a good faith effort to be made to notify existing members of the absence of federal insurance.

At that time, 15 Idaho credit unions were privately insured, and we believe they complied with this alternative measure, as provided at 12 U.S.C. §1831t(b)(3)(C). Unfortunately it is possible that these credit unions have subsequently destroyed their records supporting the three mailers. To prevent an unreasonable burden on these credit unions to provide proof of compliance, and on the regulators who will examine for compliance, the rule should exempt credit unions that were privately insured on June 19, 1994.

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The requirement that all members sign an acknowledgment before their deposits can be received will also seriously impede future mergers between federally insured and privately insured credit unions. Regulators often resolve severe financial or operational problems experienced by a credit union by merging it with another credit union; this often needs to occur quickly. Even if the troubled credit union is federally insured, the best potential merger partner may be a privately insured credit union if, for example, they operate with similar philosophies, are located in the same city, or serve the same community. Our ability to use these mergers in the best interest of the credit union and its members will be severely hampered if the members' deposits may have to be refused by the privately insured credit union following the merger.

As background, a credit union that elects to merge or convert to private share insurance as permitted under Idaho law, must follow comprehensive and strict rules in order to be released from federal share insurance by the National Credit Union Administration (NCUA Rule §708b). These rules require clear and repeated notice to members about their loss of federal insurance. In fact, the NCUA has amended its conversion rules twice since 1994 to include the disclosure language required under FDICIA, even though this agency was never designated by Congress to enforce this specific statute.

Since FDICIA previously failed to address members gained as a result of a merger between a federally insured credit union and a privately insured credit union, we request that the FTC recognize the potential public policy issues involved in mergers, and exclude this class of new members from having to sign an acknowledgment of disclosure with the surviving privately insured credit union.

Regarding conversions to private insurance that may occur in the future, it seems unrealistic that any credit union will successfully obtain signed acknowledgements from all members. We urge the FTC to consider the three mailer alternative previously recognized by Congress as providing adequate assurance that members are informed of the absence of federal insurance.

Four Idaho credit unions have converted from federal to private share insurance since the 1994 amendment. We are concerned that the proposed rule would require them to secure signed acknowledgments from all of their existing members, or be forced to refuse member deposits, and that this is an excessive and impossible regulatory burden. The Department believes that the proposed rule will now provide the clarity previously lacking for credit unions that convert to private insurance. We recommend that the rule, if adopted, should not be made retroactive.

As a state regulator, one of our primary missions is to monitor the safety and soundness of all of our financial institutions. If the FTC adopts the strict requirement of signed acknowledgements, as proposed, we believe it could create the unsafe and unsound condition we diligently regulate

against occurring. We believe refusal of a member's deposit by a privately insured credit union due to the absence of a signed acknowledgment will lead to member confusion, the incurrence of unnecessary fees and charges by the affected consumer, financial instability in the credit union, a loss of member confidence, and a truly unsafe and unsound condition creating a regulatory burden not otherwise justified.

Signage Disclosures on ATMs and in Shared Branch Facilities (16 CFR Part 320.4)

We strongly support the concept of clear and conspicuous disclosure of an institution's lack of federal share insurance in any main and branch facilities owned or leased by privately insured credit unions, since this is generally where members conduct their business with the credit union. To the best of our knowledge, privately insured credit unions have posted signage as required by FDICIA in the lobbies of their main and branch offices. We do not assume that Congress meant for such signs to be posted on ATMs. When the law was passed, and later amended, ATMs were operational and prevalent throughout the financial services industry, yet they were not delineated as places where deposits were normally received when drafting FDICIA. In addition, more and more ATMs are not deposit-taking units, and for good reasons, principally because servicing deposit-taking machines is generally more expensive and more frequent than withdrawal-only machines. Also, many of the ATMs are not owned by the privately insured credit unions, but by an organization, or network of credit unions. Network ATMs provide services to members and customers of many different credit unions and banks, most of which are federally insured. To place such a privately insured disclosure on an ATM with a broad base of users could prove confusing to the general consumer and serve little in the furtherance of disclosure as envisioned by FDICIA.

Role of State Supervisor in Assessing Compliance

Given the unique nature of credit unions, and the FTC's stated lack of experience in working with financial institutions, it may prove advantageous and efficient to assign the responsibility for measuring compliance with the subject rule to state credit union supervisors. Currently, the National Association of State Credit Union Supervisors (NASCUS) is party to an agreement with the NCUA wherein the state supervisors collectively agree to review compliance with specific federal laws in state-chartered, federally-insured credit unions. This agreement assures adequate assessments are made and at a reduced regulatory cost than if the NCUA were to do the same. The Department strongly encourages the FTC to give consideration to the enforcement role state credit union supervisors could play once the rule becomes final.

Thank you for considering our observations and comments regarding this proposed rule.

Sincerely,

Gavin M. Gee
Director of Finance

cc: Honorable Dirk Kempthorne, Governor
Honorable Larry Craig, U.S. Senate
Honorable Mike Crapo, U. S. Senate
Honorable C.L. "Butch" Otter, U.S. House of Representatives
Honorable Mike Simpson, U.S. House of Representatives
Mary Martha Fortney, President/CEO, NASCUS
Alan Cameron, President/CEO, Idaho Credit Union League