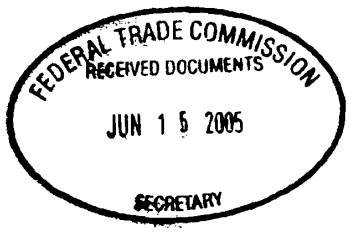
OHIO CREDIT
UNION LEAGUE



June 14, 2005

VIA OVERNIGHT DELIVERY

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 Sir or Madam:

The Ohio Credit Union League ("League"), the trade association for Ohio's credit unions, advocating on behalf of over 500 credit unions, both federal and state chartered and their 2.8 million members, including 80 non-federally insured credit unions with approximately 500,000 members and almost $2 billion in total assets, appreciates the opportunity to comment on the Federal Trade Commission's ("FTC") proposed regulations regarding Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"), 16 CFR Part 320.

These proposed regulations are a result of a directive in the Federal Deposit Insurance Corporation Improvement Act of 1991 to prescribe the manner and content of certain disclosures that must be used by depository institutions that do not have federal deposit insurance.

Specifically, the proposed regulations require the disclosures of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. It also requires the depository institutions that do not have federal deposit insurance to obtain a written acknowledgement from their depositors regarding the institution's lack of federal deposit insurance.

Furthermore, the purpose of these regulations is to provide the consumer with adequate information and disclosures in order to assist him/her in making an informed decision. However, as with all consumer regulations, the information provided to the consumer as well as the burden, cost, and feasibility of compliance, are factors in determining whether a regulation should be adopted.

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an affiliate of the Ohio Credit Union System

5815 Wall Street, Dublin, Ohio 43017
614-336-2894 ■ 800-486-2917 ■ fax 614-336-2895 ■ www.OhioCreditUnions.org

The League has concerns with these proposed regulations and respectfully requests that the FTC consider the impact and feasibility to comply with these regulations as proposed. The League submits its concerns and respectfully requests the FTC to consider its suggestions and comments as recommended changes to these proposed regulations.

Specifically, the proposed regulations:

1. **Far-exceed what are reasonable consumer disclosures;**
2. **Present an undue burden on the credit unions to comply;**
3. **Establish requirements that are neither feasible nor attainable; and**
4. **Fail to consider current state disclosures and advertising requirements.**

In commenting on the proposal, each of the above concerns will be addressed below.

1. **The proposed regulations far-exceed what are reasonable consumer disclosures.**

The proposed regulations §320.3 of the FTC state in part:

> *§320.03 Disclosures in periodic statements and account records – Depository institutions lacking federal deposit insurance must include 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 disclosing conspicuously that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that depositors will get back their money.*

The proposed regulations specifically names periodic statements of account, signature cards, passbooks, certificates of deposit, and a "similar instrument evidencing a deposit.", each of which must include a conspicuous notice that the institution in not federally insured. While it is true that periodic statements and other forms of accounts have and should include a notice that the institution is not federally insured, to mandate that any similar instrument, including a deposit slip also include this language, exceeds what are reasonable disclosures.

It is the League's position that the disclosures required by FDICIA and the proposed regulations are to inform the consumer that the institution is not federally insured and that if it fails, the federal government does not guarantee that the consumer will get his/her money back.

Those consumers who use the institution for financial services will receive statements, sign account or signature cards, and enter into other contractual agreements with the institution that will contain the appropriate disclosure language. Those consumers will also be aware of the insured status of the institutions through any additional signage or advertising provided by the credit union (as also addressed through these regulations).

The intent that these proposed regulations and FDICIA are for the benefit of consumer protection is further evidenced in that a notice to the consumer must be disclosed conspicuously.

For these disclosures to be disclosed conspicuously they must meet the well-established case law as followed by the FTC. These disclosures will be evaluated on four areas:

Provision: Whether the qualifying information is prominent enough for consumers to notice it or read (or hear) it;

Presentation: Whether the qualifying information is presented in an easy-to-understand language that does not contradict other things said in the advertisement or materials, and is presented at a time when a consumer's attention is not distracted elsewhere;

Placement: Whether the qualifying information is located in a place and arranged in a format that consumer will read (or hear); and

Proximity: Whether the qualifying information is located in close proximity to the claim being qualified.

The League supports this well-established interpretation and recommends that it continue to be used in all disclosures.

However, as stated above, consumer laws, regulations, and disclosures are intended to keep the consumer well-informed in order to make choices.

It is difficult to believe that including the appropriate disclosures that meet this disclosure requirement, is not sufficient if placed on periodic statements of accounts, or each signature card, or on a certificate of deposit as well as other contractual agreements.

The League does not believe that if disclosures in this matter are to be included on a "similar instrument creating a deposit" it would serve any additional benefit to the consumer. In fact, it may very well create confusion in that based on the numerous deposit slips or other deposit receipts used on an every day basis by the credit unions as well as the various size and format of these documents, any additional disclosures could very well be confusing to the consumer; may be lacking or non-existent because the vendors used by the credit unions to provide these forms do not provide or include disclosures of this type; or may be impractical because of the manner in which the transaction is made, e.g., ATM, e-mail, etc.

In fact, requiring these disclosures on every form creating a deposit slip is not consistent with similar disclosures of this type that are statutorily exempt from this requirement for federally insured credit unions. These disclosure regulations as they relate to materials, forms, and advertisements should be consistent with what is required of other similar depository institutions that are federally insured. Therefore disclosures on these types of material, forms, etc. should also be excluded for privately insured credit unions.

Finally, if the credit unions are required to include disclosures of these types on forms used by but not required by federally insured institutions, the credit unions would be forced to create or purchase special customized forms, thus, the burden, in both cost and liability could be quite high.

2. **The proposed regulations present an undue burden on the credit unions to comply.**

The proposed regulation, 16 CFR Part 320, contains a number of requirements that if adopted would be substantially burdensome to those credit unions that are privately insured. Some examples in which the proposed regulations create an undue burden on credit unions are requiring disclosures on all instruments evidencing a deposit, at all locations, where funds are deposited and on all advertising and signage. In addition, the proposed regulations require that all members must sign a form evidencing that the credit union is not federally insured as well as providing proof that each member has signed an acknowledgement of this type.

As stated above, consumer regulations are to provide consumers with information in which to use in making decisions. While it may appear that disclosures on every instrument of deposit will help meet the needs of the consumer, the League believes that disclosing this information on deposit slips, account and periodic statements, and signature cards, as well as any required signage in the credit union, will be more than sufficient to adequately disclose this information to the consumer. These additional disclosures on any instrument of deposit will not only be burdensome on the credit union in time and resources, but will not sufficiently enhance any consumer awareness.

Additionally, the proposed regulations also require that depository institutions lacking federal deposit insurance must include the appropriate disclosures at all locations where deposits are received. This not only includes the credit union facilities, but all ATM(s) owned by the credit union, shared branches, and shared facilities to name a few.

The League is concerned because of the overreaching and burdensome application of this notice requirement. ATM(s), shared branches and shared facilities continue to expand. Credit unions participate in a variety of these arrangements by contract and network arrangements. Requiring the non-federally insured credit unions to include notices at each of the potentially hundreds of locations not only would be extremely burdensome to the credit unions in providing notices in all shared branches and other financial institutions, but also may be contrary to network policies, bylaws, or contractual arrangements.

The League suggests that the FTC look at the National Credit Union Administration's regulation for shared facilities that require a branching service center where privately and federally insured credit unions share that facility to list all the federally insured credit unions participating in the network. More importantly, in that those credit union members that use that facility have already received the notices that their credit union is not federally insured, they will not be negatively harmed. If however, an individual can open an account at that shared facility or branch, he/she would receive the necessary disclosure forms and information.

Finally, requiring non-federally insured credit unions to secure signed acknowledgements from every member that the credit union is not federally insured, as well as requiring credit unions to not allow deposits from those account holders that have not signed the acknowledgement form, would be extremely burdensome for four reasons.

The League also suggests ATM(s) solely owned by the credit union that accept deposits on the credit union premises should contain the required disclosure language.

First, for those credit unions required to provide notices and mailings of acknowledgement to credit union members prior to June 19, 1994, there was never a request that these acknowledgements, if received, were to be maintained indefinitely. In fact, most credit unions follow record retention policies that require them to destroy records after a certain period of time. In that there was no specification by the FTC that these records are kept indefinitely they very well may have been destroyed. To require these credit unions to again ask for a signed acknowledgement form would be very difficult.

Second, for those credit unions sending the mailings prior to June 19, 1994, there never was a requirement that they receive an acknowledgment from the member. The only requirement that the credit union had to comply with was that three (3) mailings of the disclosures had to be sent to the membership along with an acknowledgment form to be returned. However, there was no requirement that the credit union had to receive an acknowledgement from each member. Compliance was based only on the three (3) mailings of the disclosure notice.

Therefore, requiring credit unions to limit deposits to those members who have signed an acknowledgement form would require the credit union to again contact all its members disclosing that information. This process would not only be very costly but also unnecessary in that these members have been provided ample disclosures and notices that the credit union is not federally insured in addition to the fact that the credit union has already complied with the initial requirement of disclosing the information to the member..

Third, is the requirement that all new members, including those gained through mergers or conversions, also sign an acknowledgement that the credit union is not federally insured. It is the League's position that new members should receive adequate notices of the merger or the credit union's conversion to non-federally insured status. Not only would any attempt to obtain 100% signed acknowledgements be a burden on the credit unions, it is also an impossibility. In fact, even the National Credit Union Administration recognizes that 100% signed acknowledgements are not feasible and only require that adequate notices be sent to the members.

Therefore, the League suggests that the FTC continue to follow the intent of Congress and not require 100% signed acknowledgements but allow adequate disclosures to be sent to the members and potential members.

Fourth, the proposed regulations require that each new account-holder have a signed acknowledgement form on file at the credit union before making a deposit. It is the League's position that the members and other account holders be given a disclosure and an acknowledgement form and requested to return a signed acknowledgement form whenever possible. However, there may be times when members establish an account by means other than in person. In those cases, an acknowledgement form and disclosure should be sent to the account-holder to sign and return. However, if that acknowledgement is not returned, the mailing of the notice and the disclosures to this individual should be considered sufficient and the credit union should maintain the necessary documentation as to those procedures followed for compliance with this requirement.

Finally, it is important that these proposed regulations be for the benefit of the consumers to enable them to make decisions on matters that involve depository institutions, and that sound and adequate disclosures are sufficient for them to be made aware of the insured status of their deposit accounts. It should not be intended for the credit union to guarantee that the consumer understands the disclosure or is of sound mind to sign any acknowledgement that relates to the insured status of the credit union.

3. The proposed regulations establish requirements that are neither feasible nor attainable.

The proposed regulation 16 CFR 320.4(b) requires that non-federally insured credit unions must include a notice that the institution is not federally insured:

> *"(b) In all advertisements, including, but not limited to, advertising in print, electronic, webpage, or broadcast media."*

It is the League's understanding that non-federally insured credit unions have followed a policy of including a statement that the institution is not federally insured in a manner that has been reasonable and informative. There are many sources that the institutions can look to for guidance such as the National Credit Union Administration, the Federal Depository Insurance Corporation, and campaign finance laws as to what type of advertising should include disclosures.

However, the proposed regulation that requires "all advertising" is not only overly broad but also not always feasible with which to comply. For example, credit unions use pens, pencils, magnets, bookmarkers, and pins to name a few items that are used to market, advertise and promote the credit union. If disclosures were required to be placed on these items there would be a question as to where and how they would fit on these smaller items. The same is true of every sign, banner, or other promotional materials.

More importantly, as a consumer-friendly disclosure requirement, each periodic statement, account statement, and signature card requires that this information appear on those materials. Credit unions are owned by their members who are their owners and users, and as members, they will continue to receive this information. In addition, new and potential members will receive disclosures at the time of inquiry and membership application.

The second issue is the proposed regulation 16 CFR 320.5 that requires that the non-federally insured institution can receive deposits:

> *"...for the account of a new or existing depositor unless the depositor has signed a written acknowledgment ..."*

The history of the FDICIA and the legislative intent has recognized that it is neither realistic nor feasible that a non-federally insured credit union will be able to get every account holder to sign an acknowledgment of the insured status and return it to the credit union. Since that requirement was set forth prior to June 19, 1994, nothing has changed that would indicate a non-federally insured credit union would be able to get from all its account holders an acknowledgement.

Therefore, the League continues to support the process and policy whereby a notice and acknowledgement mailed to the members is sufficient without making the signed acknowledgement a requirement for compliance to assure disclosure that the credit union is not federally insured.

An additional issue to address is the requirement that all individuals must have an acknowledgement on file with the credit union before a deposit can be made. As stated above, non-federally insured credit unions in providing notices and acknowledgement pre-June 19, 1994 or post-June 19, 1994, may not have those acknowledgements because there was neither a statutory or regulatory requirement that these records be kept nor was there a requirement that an acknowledgement be returned or filed whether initially, during conversion to non-federal insured status, or opening accounts in a manner other than in person.

Therefore, the League suggests that all depositors or account holders be grandfathered under this proposed requirement for all depositories that have a signed acknowledgement form or file at the credit union that indicates that they have provided reasonable disclosures to their members, and that a standard be adopted that the credit union use its best efforts to obtain a signature on the acknowledgement, but in the alternative, provide a disclosure that the credit union is not federally insured by mail or other means in order to comply with the intent of the notice and disclosure requirement of these proposed regulations.

4. The proposed regulations fail to consider current state disclosures and advertising requirements.

The proposed regulations address the impact that they may have on current state laws and regulations and set forth the need to preempt state law if state law frustrates the federal statutory scheme or if compliance with both the state and federal law is physically impossible. While this is an issue that must be addressed going forward, it is important that the FTC defer to the state laws and regulations addressing the notice requirements that non-federally insured credit unions must follow in making their members/account holders aware that the credit union is not federally insured provided they are adequate and achieve the purpose of informing the consumer. This is of importance as it relates

to the issue of FTC notice and acknowledgement requirements as well as the advertising requirement.

The issue that must be addressed is whether or not the consumer is or has been adequately informed that the credit union is not federally insured. If state laws and/or regulations have addressed this issue, and credit unions follow those requirements, then the FTC should defer to state laws and regulations in determining that the credit unions have met their burden to inform the members of its insured status.

Furthermore, the FTC may also want to consider deferring to state law if it substantively meets the same standards as does its proposed regulations pertaining to the issue of notice and acknowledgement. Acknowledgement should not have to be by signature in all communications, but could be inferred by notice and receipt whether by mail, signature cards, periodic statements, or whatever other forms and methods are used that the consumer has access. This will not only make compliance easier, but will meet the requirement of keeping the consumer/depositor well informed which is the intent of the FDICIA and these proposed regulations.

Conclusion

The Ohio Credit Union League respectfully submits the above comments to the Federal Trade Commission and would be willing to assist the FTC in clarifying disclosures, procedures, and acknowledgements that are fair, adequate, balanced, and reasonable in order to assist credit union members and consumers to make an informed decision in the deposit insurance issues. The League respectfully requests that in reviewing the comments it has submitted regarding the proposed regulations, that the FTC considers the following suggestions:

- Grandfather those credit unions and their members/depositors as being informed of the status that the credit union is not federally insured if the credit union can state that they have followed the necessary notice requirements and procedures pursuant to either state or federal laws and regulations, that the credit union is not federally insured.

- Consider the disclosure requirement including notice, acknowledgement, and disclosure areas for the benefit of allowing consumers to make an informed decision to the extent that they are not so overly restrictive or cumbersome so that it creates an undue burden on the credit union with little or no additional benefit to the consumer.

- Provides guidance and criteria such as notification procedures and criteria and not 100% signed acknowledgments that credit unions should follow to comply with the purpose and intent of these regulations.

The Ohio Credit Union League appreciates the opportunity to comment on the Federal Trade Commission's proposed Disclosures for Non-Federally Insured Depository Institutions Under the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"), and is willing to offer additional suggestions and provide additional comments if requested.

If you have any questions, comments, or if I can be of further assistance please do not hesitate to contact me.

Sincerely,

John F. Kozlowski, General Counsel

cc: Doug Fecher
Paul L. Mercer
Duane Welsh
Advocacy Staff
Mary Dunn