GEORGIA CREDIT UNION
Affiliates

6705 Sugarloaf Parkway, Suite 200
Duluth, GA 30097
(770) 476-9625 • (800) 768-4282

AMERICA'S
CREDIT UNIONS

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on the proposed rule for FDICIA Disclosures Matter No. R411014 request for comment from the Federal Trade Commission. GCUL is the state trade association and one of the network of state leagues that make up the Credit Union National Association (CUNA). The Georgia League serves approximately 200 credit unions that have over 1.7 million members.

The Federal Deposit Insurance Corporation Improvements Act of 1991 (FDICIA, 12 USC 1831t) requires the Federal Trade Commission to implement and enforce a number of provisions that apply to any financial institution that does not have federal deposit or share insurance. The Act requires privately insured credit unions and other covered institutions to provide disclosures in periodic statements and advertising that they do not have federal deposit insurance and that if the institution fails, the federal government does not guarantee that depositors will get their money back.

The Act also addresses other issues, including notices for each place of business where the covered institution normally receives deposits and the requirements that deposits may be received only when consumer acknowledgement requirements have been met. The Act prohibits the use of the mails or other interstate commerce unless the appropriate state regulator determines that the institution meets eligibility requirements for state insurance and requires such institutions to obtain annual independent audits, which would be available to depositors. While Congress provided funding for the FTC to enforce the FDICIA provisions, the FTC is not implementing the audit provisions at this time.

The Georgia League comments on the proposal reflect the association's policy and commitment to full and fair disclosure for consumers. While all Georgia credit unions are federally insured as required by law, the association believes that credit unions should be able to choose between viable federal and private insurance options.

Disclosures and Disclosure Acknowledgments

Under 16 CFR 320.3, the proposal would require covered institutions to include a disclosure regarding the lack of federal deposit insurance as well as a provision that the federal government does not guarantee funds in their accounts in all periodic statements, on each signature card and other account documents. Under 16 CFR 320.5, institutions without federal deposit insurance would not be able to accept any shares or deposits in connection with a new or existing account unless the member or depositor has signed a written acknowledgement as prescribed by the FTC.

The Georgia League supports the objective of FDICIA and the FTC's rules to help ensure consumers are fully aware of the nature of the insurance that guarantees their shares or deposits. However, we recognize concerns that have been raised regarding several compliance issues that will result should the proposal be adopted as issued for comment.

The areas that we believe are the most problematic relate to obtaining the signed acknowledgment from existing members. We do not foresee compliance problems for new members or account holders with the notice or acknowledgement requirements.

Existing members or account holders present a different situation, however. We believe, particularly since the 2003 General Accounting Office report entitled “Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions” (GAO-03-971), privately insured credit unions have undertaken efforts to distinguish the type of insurance coverage their institutions have from federal deposit insurance. Even if that were not the case, however, we believe there are less burdensome approaches to disclosures for existing members that will accomplish the FTC's objective of informing consumers with less burdensome results for the complying institutions.

While we think covered institutions should be required to provide account disclosures to existing members and endeavor to obtain an acknowledgement from them, we believe there should be some flexibility in how those requirements are met, similar to the approach taken for accounts prior to 1994.

First, we believe accounts established prior to 1994 should be deemed to be in compliance with the new rule. For later accounts of existing members, we believe institutions should be permitted to satisfy the rule's requirements through a mailing that would provide account disclosures and a signature card with the acknowledgement for them to sign and return to the institution. The use of email should be permitted to accomplish disclosure and acknowledgement requirements.

Many credit unions provide monthly newsletters to their members. We believe newsletters could be an important vehicle for providing information to members because credit union newsletters may be more likely to be read than other forms of disclosures.

In that connection, newsletters could be used to help alert existing members to an upcoming mailing regarding account documents and the signed acknowledgement. We recommend the FTC consider permitting credit unions, as part of their requirements for existing members, to include in two monthly newsletters immediately proceeding the mailing, a special insert or other prominently located notice, notifying the members that the mailing will be sent to them and instructing them to send back the acknowledgement as expeditiously as possible. If a credit union provides the information in two such newsletters and then within a 30-day period sends the mailing with the appropriate disclosures along with a new signature card containing the acknowledgement to be signed and returned, we believe it should be deemed to be in compliance with the rule regarding

existing members. (Every newsletter providing account information would include the notice that the institution is not insured.)

We believe this approach will actually result in better-informed consumers than would be the case under the proposal. We believe FDICIA gives the FTC the authority to determine the "manner and content" of disclosure requirements and would be authorized to permit such an approach as we suggest above.

The issue of disclosures at ATMs and other facilities, we believe, could also be problematic. One of the reasons for this is that many credit unions share branch facilities and participate in ATM networks with other institutions that may have federal deposit insurance. We recommend that the FTC consider allowing notices at such shared locations to be placed on deposit slips, envelopes or receipts.

While we agree that periodic statements for new and existing account holders should include the required disclosures, we believe the FTC should provide more guidance as to what constitutes, "conspicuous," recognizing that the format of such statements is generally determined by the data processor or software utilized to generate the statement.

We appreciate the Commission's concern about the timing of compliance and believe institutions should be given ample time to comply. Given the extensive requirements under the rule, we believe compliance should occur no sooner than nine months after the final rule is adopted.

We disagree with the FTC that the rule will not have a significant impact on smaller institutions with private insurance, the vast majority of which have assets below $150 million. We believe a more thorough analysis of the impact of the rule on smaller institutions is required by the Regulatory Flexibility Act.

GCUL appreciates the opportunity to comment on the FTC's proposal.

Sincerely,

Michael D. Culbertson
Chief Advocacy Officer