

Proposed Rule for FDICIA Disclosures, Matter No. R411014

To Whom It May Concern:

The market deficiency due to a lack of consumer information this regulation seeks to remedy is laudable. With few consumers being aware of the difficult national crisis that led to the creation of federal deposit insurance, requiring financial institutions to disclose their lack of deposit insurance represents an important consumer protection measure. Banks no longer fail the way they used to, and thus it is necessary to have government mandated disclosures to supplement public information in light of the absence of information in the public domain.

The rule to address this problem is thorough and fair. More specifically, the proposed advertising requirements appear sufficient to ensure consumers have information regarding the risks associated with conducting business in a non federally insured institution. The regulation touches on all the major ways that consumers interact with depository institution, including websites. Furthermore, I believe that ATMs should be considered places where deposits are normally received. ATMs should be covered by this regulation, as that often the sole place where some individuals conduct their banking business.

Notwithstanding these laudable policy goals, I am concerned about the regulations clarity regarding the authority of the FTC to promulgate regulations enforcing unfair consumer practices against credit unions. The FTC Act expressly prohibits the FTC from enforcing unfair consumer practices against credit unions. *See* 15 U.S.C. § 45(a)(2) (2000). The GAO report on enforcement of this statute acknowledges that “Congress should clarify that FTC’s authority to implement and enforce section 43 is not subject to any limitations on its jurisdiction contained in the FTC Act.” *Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions*, GAO–03–971 (Aug. 2003), p. 46. However, this clarification has not occurred and the FTC Act continues to bar the enforcement of unfair consumer practices against credit unions.

As a rule of statutory construction, a specific statute will trump a general statute. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153, 96 S.Ct. 1989, 1992 (1976). The specific instructions that the FTC carry out regulations to mandate disclosure suggests that Congress expressed its intent to have the FTC promulgate this rule. *See* 12 U.S.C. § 1831t(g). Nevertheless, this stands in direct contradiction to the statute prohibiting the FTC from enforcing consumer practices against credit unions. A discussion of these conflicting statutes does not appear on the record in the proposed regulation, despite an extensive discussion by the GAO on this topic. This may cause concern among credit unions that believe they are not subject to actions by the FTC to enforce consumer protection laws.

Thank you for your consideration of my comments on this propose rule.

Erik Van Hagen