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American Share Insurance

June 1, 2009

HAND DELIVERY AND
ELECTRONIC DELIVERY (W/O ATTACHMENTS)

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Supplemental Proposed Rule for FDICIA Disclosures, Matter No. R411014

Dear Sir of Madam:

American Mutual Share Insurance Corporation (d/b/a American Share Insurance, hereafter "ASI" or the "Company") welcomes this opportunity to comment on the Federal Trade Commission's ("FTC" or the "Commission") supplemental proposed rule (the "Proposed Rule") concerning disclosures required of non-federally insured depository institutions under the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA" or the "Act"). The FDICIA requires that depository institutions lacking federal deposit insurance provide certain disclosures to consumers in periodic statements of account and advertising that, the institution is not federally insured and if the institution fails, the federal government does not guarantee that depositors will get their money back. [12 U.S.C. §1831t – Exhibit A]

ASI takes this opportunity to affirm its support of reasonable and responsible efforts to ensure that members of non-federally insured credit unions receive adequate notice regarding the insured status of their depository accounts. ASI played an active role during the development and subsequent amendments of the FDICIA in 1991, 1994 and 2006, and has invested significant resources to educate and advise its member credit unions about the requirements of the Act and their responsibilities thereunder. As an example, as part of ASI's risk management and examination functions we examine almost 60% of our privately insured credit unions annually representing over 75% of total insured deposits, and as part of each on-site examination our staff assesses the subject credit union's compliance with the FDICIA. In addition, we have noted that state credit union regulators also review all privately insured credit unions for compliance during their on-site examinations of the same institutions.

We believe it is important that the Commission promulgate reasonable and practical implementing regulations for the FDICIA and thereby provide needed guidance to privately insured credit unions. We further believe the overall goals of the Proposed Rule should be to implement regulations that will adequately inform consumers without unnecessarily burdening privately insured credit unions or conflicting with other existing statutes or regulations.

BACKGROUND

I. American Share Insurance

ASI provides primary (first-dollar) share (deposit) insurance exclusively to state-chartered credit unions in nine states (AL, CA, ID, IN, IL, MD, NV, OH and TX), and is the largest non-federal insurer of credit union member shares. The Company is a credit union-owned, share guaranty corporation licensed and dual-regulated by the Ohio Department of Insurance and the Ohio Department of Commerce under §1761 of the Ohio Revised Code. Since its chartering in 1974, ASI has never defaulted on a claim obligation to a holder of an insured share account, nor has any member of an ASI-insured credit union lost money in an ASI-insured account.

As of December 31, 2008, 162 of the 1,069 total state-chartered credit unions currently operating in the Company's nine approved states of operation, or 15.2%, of the institutions, had their members' depository accounts insured by ASI. These credit unions represented about $10.7 billion in total member shares or deposits as of December 31, 2008, resulting in an average share or deposit base of $66 million per credit union. Nationally, the average state-chartered credit union reported total shares of approximately $102 million for the same period-end. Based on this data, it is clear that ASI's credit unions are generally smaller than the average state-chartered credit union.

As of year-end 2008, 141 of our 162 ASI-insured credit unions reported less than $150 million in total assets, or 87%, which means that substantially all of ASI's insured credit unions would qualify as small businesses under the relevant thresholds.

II. Private Deposit Insurance for Credit Unions

In 1970, Congress added Title II to the Federal Credit Union Act establishing the National Credit Union Share Insurance Fund ("NCUSF") for the purpose of insuring member deposit accounts at federally chartered credit unions. [12 U.S.C. §1781] Shortly thereafter, states began to pass laws mandating insurance for state-chartered credit unions which led to concerns over dual regulation and federal encroachment of states' rights given that the NCUSIF was the sole choice of account insurance for such credit unions. In reaction to these concerns, the credit union movement began to develop and support state-level private alternatives to federal share insurance, and ASI was chartered in May 1974 to provide such an alternative to state-chartered credit unions to Ohio's credit unions. Over the years, ASI's reach has broadened as eight other states have taken the initiative to approve ASI as an acceptable form of deposit insurance.

Allowing credit unions a choice in chartering and insurance has proven healthy for the credit union movement since the early 1970s, and we believe it currently affords credit unions a choice between a federal program facing significant losses due to failures in large corporate credit unions,

with that of a private mutually owned share insurer such as ASI, that insures only retail or natural-person credit unions.

As noted above, state-chartered credit unions in select states have rights under their respective state laws to offer their members the benefits of non-federal share insurance. To secure a change in share insurance, a converting federally insured credit union must comply with rules promulgated by the National Credit Union Administration ("NCUA"), the statutory agency assigned to manage the NCUSIF. [NCUA Rule §708b] During a share insurance conversion, a federally insured credit union must, at a minimum: (1) secure membership approval through written ballot or in person at a requisite special membership meeting; wherein, at least 20% of the membership must vote on the proposition to convert insured status; (2) achieve a simple majority of the voting members to approve the conversion; (3) provide full and transparent disclosures to members regarding the change in insured status during the voting period, with a disclosure as to the absence of federal share insurance similar to that required under the FDICIA; (4) conduct such votes using an independent entity qualified in such matters; (5) receive NCUA's approval following the independent certification of the membership vote; and, (6) allow all members the right to withdraw their funds up to the federally insured limits during a 30-day grace period prior to the effective date of conversion without penalties should the members take exception to being privately insured.

COMMENTS

Having worked closely with Congress throughout 2005 and 2006 as the Financial Services Regulatory Relief Act of 2006 ("FSRRA") was being drafted and debated, ASI agrees that the language of all sections of the Proposed Rule track exactly with the FSRRA's Section 505 – *Amendments Relating to Nonfederally Insured Credit Unions.* [Pub. Law 109-351 – Oct. 13, 2006 – Exhibit B] Accordingly, our concerns are not with the actual language of the Proposed Rule, but with the FTC's supplemental discussion and explanations with respect to one specific section of the Proposed Rule, or §320.4 – *Disclosures in advertising and on the premises.*

In Part II – *Proposed Amendments and Comment Analysis* of the Proposed Rule commentary text, the FTC provides supplemental discussion and explanation with respect to three specific subjects; only one of which we wish to comment on, and that is: *(A) Depository Locations - ATMs, Service Centers, and Shared Facilities.* The March 13, 2009 Proposed Rule §320.4(a) states in part:

> **320.4 Disclosures in advertising and on the premises.**
> (a) *Required Disclosures.* Depository institutions lacking federal deposit insurance must include clearly and conspicuously a notice disclosing the institution is not federally insured:
> (1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page; and…"

Under *Discussion* at Part II (A), page 10846 of the Federal Register (dated March 13, 2009), the explanatory statement interprets §320.4(a) by stating that, "...the revised Proposed Rule would require disclosures at credit union centers and service centers to the extent they contain stations or windows 'where deposits are normally received.'" The statement continues by adding that:

> "We do not expect that such a disclosure at shared facilities would cause confusion or contradict existing disclosures required by the NCUA. To the contrary, it would appear the FDICIA disclosure, coupled with the NCUA disclosures, would help to clarify which participating institutions are federally insured and which are not. In addition, the fact that the shared facility itself may not be owned by the...privately insured institution or may not be subject to FTC jurisdiction does not control the ability of the institution itself to ensure that the disclosures are made. For example, the depository institutions could arrange for the posting of the required disclosure through their contract with the shared facility."

Contrary to this explanatory statement, we believe requiring a disclosure stating: "**This institution is not federally insured**" will create confusion at shared branching facilities and directly conflicts with NCUA Rule Part §740.4(c) governing disclosure of insurance of accounts of members conducting business in a shared branch facility within a federally inured credit union.

Overall, ASI has serious concerns with the FTC's explanatory statement of the requirements of §320.4 – *Disclosures in advertising and on premises* of the Proposed Rule as it relates to the posting of a notice of the lack of federal share insurance by privately insured credit unions at "...credit union centers and service centers to the extent they contain stations or windows 'where deposits are normally received.'" Our specific comments and observations follow.

I. The Current Shared Branching Network has Changed and it Will Pose Barriers to Unreasonable Requirements and Interpretations of the FDICIA.

Since the passage of the FDICIA in 1991, the role of shared branching has changed dramatically, and its reach has expanded nationally. Today approximately 1,600 credit unions, or 20% of all credit unions nationwide, participate in one of the three operating shared branching networks (CUSC, COOP and FSCC), providing consumers access to their respective credit unions at over 3,700 locations nationwide. This is much different from the credit union service center model that was prevalent just a few years ago, which has since been replaced with the shared branching network model. Systems are in now place that allow members of one network to interface with members of the other. Network credit unions can participate under contract: (1) as an "issuer," or a credit union whose members can perform transactions at other credit unions; or, (2) as an "acquirer," wherein other credit unions' members are allowed to conduct services at the participating credit union's facilities; or, (3) both. Most credit unions contract as both, so they can serve others and their members can be served by other credit unions. The shared branching network has truly facilitated better member service and a source of fee income for participating credit unions. Basic services afforded visiting members include deposit-taking, withdrawals and the processing of credit card and loan payments. However, based on our review, credit union members cannot open an account with their credit union at a shared branch facility.

The expansion of shared branching networks has allowed credit unions to offer limited services remotely through other network member credit unions at a small transactional cost as compared to building their own facilities or joining in the ownership of a common service facility. As we mentioned above, the earlier concept of credit unions banding together to share in the cost and ownership of a stand-alone "credit union center" or "service center" has gradually been replaced with branches owned by other individual shared branching network participating credit unions; the vast majority of which are federally insured credit unions. As of year-end 2008, of the 1,600 credit unions nationwide participating in one of the three shared branching networks, only 25 are privately insured. These shared branching networks pose issues that make the posting of the subject share insurance disclosures impracticable and compliance improbable.

II. Shared Branching Disclosures Should be Treated Like ATM Disclosures for the Purposes of Compliance.

In March 2005, the FTC issued its first proposed rule since the FDICIA was enacted in 1991. [March 2005 Proposed Rule - Exhibit C] In this proposal, the FTC presented the following language in part at §320.4:

> "Depository institutions lacking federal deposit insurance must include conspicuously a notice disclosing that the institution is not federally insured:
>
> (a) at each location where the depository institution's account funds or deposits are normally received, including, but limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution."

As a comparison, regarding advertising of insured status on credit union premises, Section 151(b)(2) of the FDICIA originally stated: [Exhibit D]:

> "ADVERTISING; PREMISES – Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured."

Following the receipt of over 150 comment letters on the FTC's March 2005 initial proposed rule, it was concluded that changes were needed in the original statute to facilitate more effective rulemaking. After a year of Congressional debate, the FSRRA was passed and signed into law by President Bush on October 13, 2006. In Section 505 of the FSRRA, the Congress clearly decided to statutorily exempt ATMs and POS terminals from the definition of "premises" and exclude any reference to the FTC's March 2005 expanded definition of "premises" or "...credit union centers, service centers, or branches servicing more than one credit union..." ASI contends that the 2006 FSRRA amendment to the FDICIA to specifically exempt privately insured credit unions from having to post a notice that: "This institution is not federally insured." on ATMs and POS terminals was in part due to three facts: (1) privately insured credit unions didn't own the ATMs or POS equipment; (2) consumers from federally insured banks and credit unions also used these common deposit-taking facilities; and, (3) posting the signage would confuse customers of other participating financial institutions. We believe the same defenses exist for not posting such signs in federally insured credit unions that are part of the same shared branching network as

privately insured credit unions. Since new accounts cannot be opened at a shared branch facility, the shared branching service takes on characteristics of nothing more than a manned ATM.

III. The FDICIA is Limited to Disclosures at Branches Owned or Controlled by Privately Insured Credit Unions.

In dialogue regarding the March 2005 FTC proposed rule and the following legislative changes to the FDICIA through the FSRRA, the issue of NCUA's share insurance disclosure requirements arose. In reviewing the NCUA's requirements, the concept of "teller stations" and "drive-up windows" first surfaced. NCUA §Rule 740.4(b) requires the official sign (federal share insurance disclosure) be posted "...at each station or window where insured account funds or deposits are normally received in its principal place of business and in all its branches..." [Emphasis added.] It is clear that the NCUA requires disclosure at teller stations and windows that exist within the physical facilities of the federally insured credit union only, not shared facilities, which it addresses elsewhere therein. The absence of the word "in" in the FTC's March 2005 initial proposed rule and the Proposed Rule is what is causing the greatest confusion. We contend that to read Proposed Rule §320.4(a)(1) as including shared branch facilities misinterprets the spirit of the law as amended by the FSRRA which was drafted to seek parity with the required federal share insurance disclosure requirements. Further, based on the result of our field examinations, we believe that the large majority of our privately insured credit union currently comply with the spirit of the FDICIA and the FSRRA by placing the required disclosures at windows and stations in their owned or leased main offices and branches.

IV. Privately Insured Credit Unions Cannot Control Shared Branching Contracts and Disclosures at Federally Insured Credit Unions.

Given that privately insured credit unions do not hold controlling interest in the nation's shared branching networks, and that they represent a minority in number of the participating credit unions nationwide, they cannot effectuate the type of contractual changes envisioned by the FTC's *Discussion* statement that "... the fact that the shared facility itself may not be owned by the uninsured or privately insured institution or may not be subject to FTC jurisdiction does not control the ability of the institution itself to ensure that the disclosures are made. For example, depository institutions could arrange for the posting of the required disclosure through their contract with the shared facility." Shared branching network contracts are individually entered into between credit unions and their shared branching network, and most are standardized. Some contracts actually state that the network is subject to NCUA regulations. Accordingly, a privately insured credit union only has the power to effectuate change in its specific agreement, and not that of others, such as federally insured credit unions. This is not a practical remedy and the matter cannot be solved by contract.

V. Requiring FDICIA Disclosures in Federally Insured Credit Unions Conflicts with NCUA Rules and Regulations.

NCUA is empowered under federal law with authority to regulate all federally insured credit unions, and it also recognizes that federally and privately insured credit unions participate in shared branching networks. In April 2009, the NCUA revised its Rule §740.4(c) governing the required insurance disclosures at federally insured credit union facilities, and facilities operated by a non-credit union entity (service center), where deposits are received from members of both privately insured and federally insured credit unions. The new signage effectively informs all consumers that not all credit unions participating in the shared branching network are federally insured. [NCUA

Rule §740.4(c) - Exhibit E] It is presumed that the privately insured member was advised of the shared branching network services through print or electronic advertising from their credit union that includes the requisite FDICIA advertising disclosure language, and given that they take note of the new NCUA notice, it would appear that adequate notice has been given and the spirit of the Act sufficiently addressed.

VI. Requiring the FDICIA Disclosures in Federally Insured Credit Union Branches Will Confuse Consumers.

The revised NCUA Rule §740.4(c) in part states that tellers in a branch of a federally insured credit union may accept deposits from members of a non-federally insured credit union if the teller displays a conspicuous sign next to the official (NCUA) sign regarding share insurance coverage that states:

> "This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly."

We believe that this is adequate notice under the FDICIA for consumers, particularly in a shared branch that is not owned by a privately insured institution; and, is in fact, a federally insured institution's branch. Any additional disclosure at branches of federally insured credit unions participating in a national shared branching network would confuse the consumer who would be exposed to multiple notices. The NCUA carefully considered other forms of notice, and concluded that the above format is one that is most likely to be "noticed and absorbed." We believe the FTC would agree that disclosure that is not readily ascertained by the consumer is of no value.

VII. Mandatory FDICIA Disclosures Adequately Assure Consumers Awareness of the Lack of Federal Insurance of Accounts.

Under the FDICIA, a member of a privately insured credit union already receives adequate disclosure as to the absence of federal share insurance. The disclosure regarding the lack of federal deposit insurance as required by the Act is currently included on all advertising (as redefined by FSRRA), and conspicuously displayed at the teller stations, windows and main and branch offices of privately insured credit unions where deposits are normally received, all periodic statements of account, account records, signature cards, certificates of deposit and acknowledgments of disclosure cards.

CONCLUSIONS

ASI supports and appreciates the Commission's efforts to promulgate practical and reasonable regulations for consumer disclosures under the FDICIA (as amended), and consider the Proposed Rule as drafted to sufficiently address the spirit and intent of the Act and the amendments resulting from the passage of the FSRRA in 2006. Based on our comments, and the information we have provided, we believe we are making a reasonable request that the Commission consider the following:

(1) Apply §320.4 of the Proposed Rule only to the branches owned or controlled by privately insured credit unions, thus, recognizing that shared facilities are functioning like a manned ATM; or,

(2) Make a determination in the explanatory statement for §320.4 of the final rule that NCUA's disclosure is adequate in shared branches that are branches of federally insured institutions and in credit union service centers that serve both federally insured and privately insured institutions.

Without this course of action, we believe privately insured credit unions would be unable to ensure compliance with the disclosure as envisioned by the Commission. This would eventually impede many of our insured credit unions from continuing participation in their respective shared branching networks, resulting in reduced member services for both privately insured and federally insured credit union members alike. In addition, the loss of access to shared branching networks would adversely impact the cost of operations, share and deposit growth and overall profitability of the affected credit unions.

We appreciate the opportunity to provide these comments and remain more than willing to respond further to any questions that the Commission or its staff may have for us with respect to any issues raised in connection with this rulemaking process.

Respectfully submitted,

DENNIS R. ADAMS
President/CEO
American Share Insurance

Attachments

Exhibit A

TITLE 12--BANKS AND BANKING

CHAPTER 16--FEDERAL DEPOSIT INSURANCE CORPORATION

Sec. 1831t. Depository institutions lacking Federal deposit insurance

(a) Annual independent audit of private deposit insurers

(1) Audit required

Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) Providing copies of audit report

(A) Private deposit insurer

The private deposit insurer shall provide a copy of the audit report--

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

(B) Depository institution

Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) Enforcement by appropriate State supervisor

Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) Disclosure required

Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) Periodic statements; account records

Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate.\1\ a notice 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.

\1\ So in original. The period probably should not appear.

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(2) Advertising; premises

(A) In general

Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) Exceptions

The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) Acknowledgment of disclosure

(A) New depositors obtained other than through a conversion or merger

With respect to any depositor who was not a depositor at the depository institution before October 13, 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that--

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) New depositors obtained through a conversion or merger

With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after October 13, 2006, receive any deposit for the account of such depositor only if--

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) Current depositors

Receive any deposit after October 13, 2006, for the account of any depositor who was a depositor on that date only if--

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) Alternative provision of notice to new depositors obtained through a conversion or merger

(i) \2\ In general

\2\ So in original. No cl. (ii) has been enacted.

Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)--

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) Alternative provision of notice to current depositors

(i) In general

Transmit to each depositor who was a depositor before October 13, 2006, and has not signed a written acknowledgement described in subparagraph (A)--

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) Manner and timing of notice

(I) First notice

Make the transmission described in clause (i) via mail not later than three months after October 13, 2006.

(II) Second notice

Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) Manner and content of disclosure

To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) Exceptions for institutions not receiving retail deposits

The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) of this section for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

(e) Definitions

For purposes of this section:

(1) Appropriate supervisor

The ``appropriate supervisor'' of a depository institution means the agency primarily responsible for supervising the institution.

(2) Depository institution

The term ``depository institution'' includes--

(A) any entity described in section 461(b)(1)(A)(iv) of this title; and

(B) any entity that, as determined by the Federal Trade Commission--

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

(3) Lacking Federal deposit insurance

A depository institution lacks Federal deposit insurance if the institution is not either--

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752].

(4) Private deposit insurer

The term ``private deposit insurer'' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(f) Enforcement

(1) Limited FTC enforcement authority

Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

(2) Broad State enforcement authority

(A) In general

Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) State powers

For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) Limitation on State action while Federal action pending

If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.

(Sept. 21, 1950, ch. 967, Sec. 2[43], formerly Sec. 2[40], as added Pub. L. 102-242, title I, Sec. 151(a)(1), Dec. 19, 1991, 105 Stat. 2282; renumbered Sec. 2[43], Pub. L. 102-550, title XVI Sec. 1602(b), Oct. 28, 1992, 106 Stat. 4078; amended Pub. L. 103-325, title III, Sec. 340(a), Sept. 23, 1994, 108 Stat. 2237; Pub. L. 109-173, Sec. 2(c)(3), Feb. 15, 2006, 119 Stat. 3602; Pub. L. 109-351, title V, Sec. 505, Oct. 13, 2006, 120 Stat. 1975.)

References in Text

The Federal Trade Commission Act, referred to in subsec. (f)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (Sec. 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Amendments

2006--Subsec. (a)(3). Pub. L. 109-351, Sec. 505(a), added par. (3).
Subsec. (b)(1). Pub. L. 109-351, Sec. 505(b), substituted ``or share certificate.'' for ``or similar instrument evidencing a deposit''.
Subsec. (b)(2). Pub. L. 109-351, Sec. 505(c), amended heading and text generally. Prior to amendment, text read as follows: ``Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.''
Subsec. (b)(3). Pub. L. 109-351, Sec. 505(d), amended par. (3)

generally. Prior to amendment, par. (3) related to acknowledgement of disclosure and consisted of subpars. (A) to (C).

Subsec. (c). Pub. L. 109-351, Sec. 505(e), amended heading and text generally. Prior to amendment, text read as follows: ``To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.''

Subsec. (d). Pub. L. 109-173 substituted ``an amount equal to the standard maximum deposit insurance amount'' for ``$100,000''.

Subsec. (e). Pub. L. 109-351, Sec. 505(f), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to eligibility for Federal deposit insurance.

Subsec. (f). Pub. L. 109-351, Sec. 505(g), amended heading and text generally. Prior to amendment, text read as follows: ``Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.''

Pub. L. 109-351, Sec. 505(f)(2), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 109-351, Sec. 505(f)(2), redesignated subsec. (g) as (f).

1994--Subsec. (b)(3). Pub. L. 103-325 amended heading and text of subsec. (b)(3) generally. Prior to amendment, text read as follows: ``Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.''

Effective Date of 2006 Amendment

Amendment by Pub. L. 109-173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109-173, set out as a note under section 1785 of this title.

Effective Date of 1994 Amendment

Section 340(b) of Pub. L. 103-325 provided that: ``Section 43(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(b)(3)], as amended by subsection (a), shall take effect in accordance with section 151(a)(2)(D) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [see Effective Date note below].''

Effective Date

Section 151(a)(2) of Pub. L. 102-242 provided that: ``Section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831t] (as added by paragraph (1)) shall become effective on the date of enactment of this Act [Dec. 19, 1991], except that--

``(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

``(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with `, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money' omitted;

``(C) subsection (e) shall become effective 2 years after that

date of enactment; and

``(D) subsection (b)(3) shall become effective 30 months after that date of enactment.''

Viability of Private Deposit Insurers

Section 151(b) of Pub. L. 102-242, as amended by Pub. L. 102-550, title XVI, Sec. 1603(f)(1), Oct. 28, 1992, 106 Stat. 4081, provided that:

``(1) Deadline for initial independent audit.--The initial annual audit under section 43(a)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(a)(1)] (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act [Dec. 19, 1991].

``(2) Business plan required.--Not later than 240 days after the date of enactment of this Act [Dec. 19, 1991], any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum--

``(A) describe the insurer's--

``(i) underwriting standards;

``(ii) resources, including trends in and forecasts of assets, income, and expenses;

``(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

``(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

``(3) Definitions.--For purposes of this subsection, the terms `appropriate supervisor', `depository institution', `lacking Federal deposit insurance', and `private deposit insurer' have the same meaning as in section 43(f) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(f)] (as added by subsection (a)).''

Exhibit B

SEC. 402. REPEAL OF OVERLAPPING RULES GOVERNING PURCHASED MORTGAGE SERVICING RIGHTS.

Section 5(t) of the Home Owners' Loan Act (12 U.S.C. 1464(t)) is amended—

(1) by striking paragraph (4) and inserting the following: "(4) [Repealed].";

(2) in paragraph (9)(A), by striking "intangible assets, plus" and all that follows through the period at the end and inserting "intangible assets.".

SEC. 403. CLARIFYING CITIZENSHIP OF FEDERAL SAVINGS ASSOCIATIONS FOR FEDERAL COURT JURISDICTION.

Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following:

"(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.".

SEC. 404. REPEAL OF LIMITATION ON LOANS TO ONE BORROWER.

Section 5(u)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(u)(2)(A)) is amended—

(1) in clause (i)—

(A) by striking "for any" and inserting "For any"; and

(B) by striking "; or" and inserting a period; and

(2) in clause (ii)—

(A) by striking "to develop domestic" and inserting "To develop domestic";

(B) by striking subclause (I); and

(C) by redesignating subclauses (II) through (V) as subclauses (I) through (IV), respectively.

TITLE V—CREDIT UNION PROVISIONS

SEC. 501. LEASES OF LAND ON FEDERAL FACILITIES FOR CREDIT UNIONS.

(a) IN GENERAL.—Section 124 of the Federal Credit Union Act (12 U.S.C. 1770) is amended—

(1) by striking "Upon application by any credit union" and inserting "Notwithstanding any other provision of law, upon application by any credit union";

(2) by inserting "on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or" after "officer or agency of the United States charged with the allotment of space";

(3) by inserting "lease land or" after "such officer or agency may in his or its discretion"; and

(4) by inserting "or the facility built on the lease land" after "credit union to be served by the allotment of space".

(b) CLERICAL AMENDMENT.—The section heading for section 124 of the Federal Credit Union Act (12 U.S.C. 1770) is amended by inserting "**OR FEDERAL LAND**" after "**BUILDINGS**".

SEC. 502. INCREASE IN GENERAL 12-YEAR LIMITATION OF TERM OF FEDERAL CREDIT UNION LOANS TO 15 YEARS.

Section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) is amended in the matter preceding subparagraph (A), by striking "to make loans, the maturities of which shall not exceed twelve years" and inserting "to make loans, the maturities of which shall not exceed 15 years,".

SEC. 503. CHECK CASHING AND MONEY TRANSFER SERVICES OFFERED WITHIN THE FIELD OF MEMBERSHIP.

Section 107(12) of the Federal Credit Union Act (12 U.S.C. 1757(12)) is amended to read as follows:

"(12) in accordance with regulations prescribed by the Regu Board—

"(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

"(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;".

SEC. 504. CLARIFICATION OF DEFINITION OF NET WORTH UNDER CERTAIN CIRCUMSTANCES FOR PURPOSES OF PROMPT CORRECTIVE ACTION.

Section 216(o)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1790d(o)(2)(A)) is amended—

(1) by inserting "the" before "retained earnings balance"; and

(2) by inserting ", together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined" before the semicolon at the end.

SEC. 505. AMENDMENTS RELATING TO NONFEDERALLY INSURED CREDIT UNIONS.

(a) IN GENERAL.—Subsection (a) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(a)) is amended by adding at the end the following new paragraph:

"(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.".

(b) AMENDMENT RELATING TO DISCLOSURES REQUIRED, PERIODIC STATEMENTS, AND ACCOUNT RECORDS.—Section 43(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(1)) is amended by striking "or similar instrument evidencing a deposit" and inserting "or share certificate.".

(c) AMENDMENTS RELATING TO DISCLOSURES REQUIRED, ADVERTISING, PREMISES.—Section 43(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(2)) is amended to read as follows:

"(2) ADVERTISING; PREMISES.—

"(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B);

and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

"(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

"(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

"(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.".

(d) AMENDMENTS RELATING TO ACKNOWLEDGMENT OF DISCLOSURE.—Section 43(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(3)) is amended to read as follows:

"(3) ACKNOWLEDGMENT OF DISCLOSURE.—

"(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

"(i) the institution is not federally insured; and

"(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

"(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2006, receive any deposit for the account of such depositor only if—

"(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

Deadline. "(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

"(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2006 for the account of any depositor who was a depositor on that date only if—

"(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

"(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

"(D) ALTERNATIVE PROVISION OF NOTICE TO NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

"(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

"(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

"(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

"(E) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

"(i) IN GENERAL.—Transmit to each depositor who was a depositor before the effective date of the Financial Services Regulatory Relief Act of 2006, and has not signed a written acknowledgement described in subparagraph (A)—

"(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

"(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

"(ii) MANNER AND TIMING OF NOTICE.— Dead

"(I) FIRST NOTICE.—Make the transmission described in clause (i) via mail not later than three months after the effective date of the Financial Services Regulatory Relief Act of 2006.

"(II) SECOND NOTICE.—Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.".

(e) AMENDMENTS RELATING TO MANNER AND CONTENT OF DISCLOSURE.—Section 43(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)) is amended to read as follows:

"(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that Regu current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.".

(f) REPEAL OF PROVISION PROHIBITING NONDEPOSITORY INSTITUTIONS FROM ACCEPTING DEPOSITS.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(g) REPEAL OF FTC AUTHORITY TO ENFORCE INDEPENDENT AUDIT REQUIREMENT; CONCURRENT STATE ENFORCEMENT.—Subsection (f) (as so redesignated by subsection (e) of this section) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended to read as follows:

"(f) ENFORCEMENT.—

"(1) LIMITED FTC ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.

"(2) BROAD STATE ENFORCEMENT AUTHORITY.—

"(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

"(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

"(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.".

TITLE VI—DEPOSITORY INSTITUTION PROVISIONS

SEC. 601. REPORTING REQUIREMENTS RELATING TO INSIDER LENDING.

(a) REPORTING REQUIREMENTS REGARDING LOANS TO EXECUTIVE OFFICERS OF MEMBER BANKS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is amended—

(1) by striking paragraphs (6) and (9); and

(2) by redesignating paragraphs (7), (8), and (10) as paragraphs (6), (7), and (8), respectively.

(b) REPORTING REQUIREMENTS REGARDING LOANS FROM CORRESPONDENT BANKS TO EXECUTIVE OFFICERS AND SHAREHOLDERS OF INSURED BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

SEC. 602. INVESTMENTS BY INSURED SAVINGS ASSOCIATIONS IN BANK SERVICE COMPANIES AUTHORIZED.

(a) IN GENERAL.—Sections 2 and 3 of the Bank Service Company Act (12 U.S.C. 1862, 1863) are each amended by striking "insured bank" each place that term appears and inserting "insured depository institution".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) BANK SERVICE COMPANY ACT DEFINITIONS.—Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(A) in paragraph (4)—

(i) by inserting ", except when such term appears in connection with the term 'insured depository institution'," after "means"; and

(ii) by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision";

(B) by striking paragraph (5) and inserting the following:

"(5) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act;";

(C) by striking "and" at the end of paragraph (7);

(D) by striking the period at the end of paragraph (8) and inserting "; and";

(E) by adding at the end the following:

"(9) the terms 'State depository institution', 'Federal depository institution', 'State savings association' and 'Federal savings association' have the same meanings as in section 3 of the Federal Deposit Insurance Act.";

(F) in paragraph (2), in subparagraphs (A)(ii) and (B)(ii), by striking "insured banks" each place that term appears and inserting "insured depository institutions"; and

(G) in paragraph (8)—

(i) by striking "insured bank" and inserting "insured depository institution";

(ii) by striking "insured banks" each place that term appears and inserting "insured depository institutions"; and

(iii) by striking "the bank's" and inserting "the depository institution's".

(2) AMOUNT OF INVESTMENT.—Section 2 of the Bank Service Company Act (12 U.S.C. 1862) is amended by inserting "or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 5(c)(4)(B) of the Home Owners' Loan Act" after "relating to banks".

(3) LOCATION OF SERVICES.—Section 4 of the Bank Service Company Act (12 U.S.C. 1864) is amended—

(A) in subsection (b), by inserting "as permissible under subsection (c), (d), or (e) or" after "Except";

(B) in subsection (c), by inserting "or State savings association" after "State bank" each place that term appears;

(C) in subsection (d), by inserting "or Federal savings association" after "national bank" each place that term appears;

(D) by striking subsection (e) and inserting the following:

Exhibit C

Issued in Kansas City, Missouri, on March 10, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5153 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 320

RIN 3084–AA99

Disclosures for Non-Federally Insured Depository Institutions Under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) directs the Commission to prescribe the manner and content of certain disclosures that must be used by depository institutions that do not have federal deposit insurance. The Commission seeks comment on these proposed disclosure rules for non-federally insured depository institutions.

DATES: Written comments must be received on or before June 15, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Proposed Rule for FDICIA Disclosures, Matter No. R411014" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form and the first page of the document must be clearly labeled "Confidential." The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by clicking on the following: *https://secure.commentworks.com/ftc-fdicia* and following the instructions on the web-based form.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at *https://secure.commentworks.com/ftc-fdicia*. You also may visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that website. The Commission will consider all comments that *regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, Congress enacted the FDICIA which, among other things, added a new section 43 (12 U.S.C. 1831t) to the Federal Deposit Insurance Act (FDIA). This section, passed in response to incidents affecting the safety of deposits in certain financial institutions, imposes several requirements on non-federally insured institutions and private deposit insurers.[1] Among other things, section 43(b) mandates that depository institutions lacking federal deposit insurance provide certain disclosures to consumers, in periodic statements and advertising, that the institution does not have federal deposit insurance and that, if the institution fails, the federal government does not guarantee that depositors will get their money back.

Under existing law, all federally chartered and most state chartered depository institutions have federal deposit insurance. Federal deposit insurance funds provide a government guarantee of up to $100,000 per depositor in most cases. Pursuant to Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA) requirements, federally insured banks and credit unions must display signs that depositors are federally "insured to $100,000."[2]

Although most depository institutions have federal deposit insurance, there are some exceptions. For instance, several hundred state-chartered credit unions in eight States and Puerto Rico do not have federal deposit insurance.[3] These credit unions generally use a private deposit insurer to protect members' accounts in lieu of federal insurance. The Puerto Rican government provides deposit insurance for credit unions located there. In addition, the Commission understands that there are a small number of state banks and savings associations that do not have federal deposit insurance.

A. Requirements of FDIA Section 43

Section 43 requires that depository institutions lacking federal deposit insurance affirmatively disclose that fact to their depositors or members. 12 U.S.C. 1831t(b). Specifically, section 43(b) of the FDIA requires non-federally insured depository institutions to: (1) Include conspicuously 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 that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that depositors will get their money back (section 43(b)(1)), and (2) include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured (section 43(b)(2)).

Section 43(b) further provides that non-federally insured institutions may receive deposits only from persons who have signed acknowledgments that the institution is not federally insured and that if the institution fails, the federal government does not guarantee that they will get their money back (see section 43(b)(3)). Section 43 specifically directs the FTC to prescribe "the manner and content" of the required disclosures by

[1] See Pub. L. 102–242, 105 Stat. 2236. Section 151 of FDICIA, subtitle F of title 1, S. 543. Section 43 was initially designated as section 40 of the FDIA. See also S. Rep. No. 167, 102 Cong., 1st Sess., at 61.

[2] See 12 CFR part 328 and 12 CFR part 740.

[3] According to the U.S. Government Accountability Office (GAO)(formerly, and then, the General Accounting Office), eight States have credit unions that purchase private deposit insurance in lieu of federal insurance. Other States either require federal insurance or allow private insurance but do not have any privately insured credit unions. "Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions," GAO–03–971 (Aug. 2003), p. 7.

regulation or order. It also gives the Commission discretion to exempt from the disclosure requirements depository institutions within the U.S. that do not receive initial deposits of less than $100,000 from individuals who are U.S. citizens or residents.

Section 43 applies to "depository institutions" lacking federal insurance. Based on definitions incorporated into section 43, this includes credit unions, banks, and savings associations. Specifically, section 43(f)(2) incorporates the FDIA definition of "depository institution" in 12 U.S.C. 1813(c), which includes "banks" and "savings associations." Section 43(f)(2) also expands the FDIA definition of "depository institution" to include any entity described in 12 U.S.C. 461(b)(1)(A)(iv). This includes any "insured credit union" as defined in the Federal Credit Union Act (FCUA) (12 U.S.C. 1752) or "any credit union which is eligible to make application to become an insured credit union" under 12 U.S.C. 1781.[4] The definition of "depository institution" in section 43(f)(2) also includes any entity that, as determined by the FTC, is engaged in the business of receiving deposits and could reasonably be mistaken for a depository institution by the entity's current or prospective customers (*i.e.*, "look-alike" institutions). Finally, section 43(f)(3) indicates that the term "lacking federal deposit insurance" means an institution is not either: (1) an insured depository institution[5]; or (2) an insured credit union, as defined in section 101 of the FCUA (12 U.S.C. 1752).

In addition to the disclosure requirements, section 43 prohibits depository institutions lacking federal deposit insurance from using the mails or other instrumentalities of interstate commerce to facilitate depository activities unless the appropriate state supervisor has determined that the institution meets eligibility requirements for such insurance (12 U.S.C. 1831t(e)(1) (commonly referred to as the "shut-down" provision)). Section 43 also requires private insurers of depository institutions lacking federal insurance to obtain annual independent audits, which the depository institution must make available to its depositors upon request and file with appropriate state agencies (12 U.S.C. 1831t(a) and 1831t(a)(2)(A)(ii)).[6] Section 43(g) directs the FTC to enforce the requirements of section 43, including the shut-down and audit provisions.

B. FTC Authority

Until recently, the Commission's appropriations authority prohibited the use of FTC resources to enforce section 43. In connection with that prohibition, the Commission in 1992 notified every then-existing known credit union subject to the statute that, despite the enforcement ban, the requirements of the statute remained in effect.

In 2003, Congress lifted the longstanding FTC appropriations ban for certain provisions of the FDICIA, including the disclosure provisions of section 43.[7] This action occurred shortly after the GAO had released a study (GAO–03–971) that discussed, among other things, the potential impact on consumers from non-enforcement of section 43 as to credit unions. The GAO had concluded that credit union compliance "varied considerably" and that the "most apparent impact on consumers, from the lack of enforcement of these provisions, may result from credit unions not providing adequate disclosures that they are not federally insured." (GAO–03–971, p. 3.) The conference committee report accompanying the 2003 legislation noted the GAO report conclusions about the effect of non-enforcement of section 43. The committee report also directed the FTC to consult with the FDIC and the NCUA when determining the manner and content of disclosure requirements, and to coordinate with state supervisors of non-federally insured depository institutions to assist the FTC in enforcing these requirements.[8]

Although Congress also lifted the funding prohibition for enforcement of the audit provision of the FDICIA (section 43(a)), the statute does not direct the Commission to issue rules related to that provision. Accordingly, the Commission does not plan to address the audit provision in this proceeding.[9]

II. Proposed Disclosure Requirements and Request for Comment

A. Scope of the Proposed Rule

The proposed rule would apply to depository institutions (*e.g.*, banks, savings association, and credit unions) that do not have federal deposit insurance. Consistent with section 43(f)(3)(B) of the FDIA, a depository institution lacks federal deposit insurance if it is not an insured depository institution as defined in the FDIA (12 U.S.C. 1813(c)(2)), or is not an insured credit union, as defined in section 101 of the FCUA, 12 U.S.C. 1752. Most banks and savings associations are required to have federal deposit insurance under state or federal laws.[10] Accordingly, we expect that the proposed rule would apply to only a small number of state-chartered banks and savings associations. The Commission seeks comment on the number of banks and savings associations that lack federal deposit insurance and thus would be covered by the proposed rule's requirements.

Consistent with the statute, the proposed rule would apply to non-federally insured credit unions in any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico (see 12 U.S.C. 1781). The Commission understands that many credit unions in Puerto Rico do not have federal deposit insurance but, instead, operate under a Puerto Rican government-backed deposit insurance system. Section 43 imposes its disclosure requirements specifically on institutions that do not have federal insurance and does not exempt institutions operating under

[4] The FCUA defines "insured credit union" to mean "any credit union the member accounts of which are insured by the National Credit Union Administration." (12 U.S.C. 1752). Entities that are eligible to make an application to become an "insured credit union" consist of: (1) Credit unions organized and operated according to the laws of any state, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of the FCUA (12 U.S.C. 1781).

[5] The FDIA defines "insured depository institution" as any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter (12 U.S.C. 1813(c)).

[6] The law also contains a provision requiring private insurers to file business plans with appropriate state agencies (section 151(b)(2) of the FDICIA).

[7] Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the Fiscal Year Ending September 30, 2004, and for Other Purposes, H.R. Conf. Rep. No. 108–401, Cong., 1st Sess., at 88 (2003).

[8] *Id.* at 637–38. In preparing this notice, Commission staff has consulted with the FDIC, the NCUA, the National Association of State Credit Union Supervisors (NASCUS), and the Puerto Rican Corporacion de Seguro de Acciones y Depósitos de Cooperativas de Ahorro y Crédito (PROSAD).

[9] In addition, the Commission is not addressing the issue of "look-alike" institutions in this rulemaking proceeding. As the GAO report states, the GAO examined credit unions "as agreed with [Congressional] committee staff." The GAO report did not examine look-alike institutions. The Commission has not identified any "look-alike" institutions at this time. If it does identify "look-alike" institutions, it may conduct a rulemaking proceeding concerning look-alike institutions at a future time.

[10] See, *e.g.*, 12 U.S.C. 222 (national banks); Cal. Fin. Code 5606(a) (California savings associations); and 12 U.S.C. 3104(c)(1) (state and federal branches of foreign banks receiving deposits of less than $100,000).

state-run insurance systems. Accordingly, Puerto Rico credit unions would be subject to the rule's requirements.

B. Disclosures in Periodic Statements

Consistent with section 43(b)(1) of the statute, section 320.3 of the proposed rule would require covered institutions to include conspicuously in all periodic statements and account records an indication that the institution is not federally insured, and that, if the institution fails, the federal government does not guarantee that depositors will get their money back. Section 320.3 offers model language that depository institutions may use to satisfy the requirement. The Rule also specifies that disclosures must be conspicuous. The Commission will evaluate whether disclosures are conspicuous according to well-established FTC law.[11]

C. Disclosures in Advertising

Under proposed rule section 320.4, covered depository institutions must place a notice that the institution is not federally insured at each location where the depository institution's account funds or deposits are normally received and in all advertising. For the purposes of the proposed rule, advertising includes, but is not limited to, advertising in print, electronic, webpage, or broadcast media. This requirement implements section 43(b)(2) of the statute, which states that any covered institution shall "include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured."

The proposed rule language does not enumerate any exceptions to section 43's broad mandate. Although NCUA and FDIC rules exempt many types of advertising from the mandatory deposit insurance disclosures (*see* 12 CFR Part 740 and 12 CFR Part 328), those rules and exemptions are based on other statutory authority. In addition, those rules apply to federally-insured institutions and are intended to inform depositors that a limited amount of insurance exists for their deposits. Here, by contrast, the proposed rule's purpose is to alert depositors that their deposits are not federally insured and will not be guaranteed by the federal government should the institution fail. The Commission seeks comment on the proposed advertising disclosure requirements.

[11] *See, e.g., Thompson Medical Co.*, 104 F.T.C. 648, 797–98 (1984); *The Kroger Co.*, 98 F.T.C. 639, 760 (1981).

D. Disclosures at Deposit Locations

In implementing section 43(b)(2) of the statute, section 320.4 of the proposed rule requires disclosures at each location "where the depository institution's account funds or deposits are normally received including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution." The Commission seeks comment on whether this list accurately describes the types of locations where deposits are normally received. For instance, commenters should consider whether automatic teller machines are locations where deposits are "normally received."

E. Disclosure Acknowledgment

Sections 320.5 and 320.6 of the proposed rule indicate that non-federally insured depository institutions must obtain from new and existing depositors signed acknowledgments of the fact that the institution is not federally insured. The proposed rule language tracks the requirements set forth in section 43(b)(3) of the FDIA. For certain customers (those holding accounts before 1994), depository institutions may have already discharged their acknowledgment obligations by means of a series of notifications as specified in section 43(b)(3)(C).[12]

F. Exception for Certain Depository Institutions

Section 43(d) of the FDIA ("Exceptions for institutions not receiving retail deposits") provides the Commission with the discretion to exempt certain institutions from the disclosure requirements. Consistent with that provision, section 320.6 of the proposed rule exempts from the disclosure requirements depository 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. Because it appears unlikely that such institutions are engaged in the business of retail deposits, insurance disclosures do not appear to be necessary for their customers. The Commission expects that customers of such institutions (*i.e.*, those dealing with initial deposits of $100,000 or more) are sufficiently knowledgeable about these institutions and do not need the same disclosures required for other customers. Such an exception would be similar to exemptions from deposit insurance requirements for non-retail deposits accepted by federal and state branches of foreign banks (12 U.S.C. 3104(c)). Without the FTC exemption, such institutions would have to follow FTC disclosure requirements even though the FDIC specifically exempts them from the federal deposit insurance requirements designed to protect retail customers. The Commission seeks comment on whether such an exemption is appropriate.

G. Proposed Rule's Impact on State Requirements

The Commission understands that some states have their own disclosure requirements for depository institutions and that new federal disclosures may affect those rules. The proposed disclosure requirements provide covered entities with the information that must be disclosed to the public, and offer model language that depository institutions may use to satisfy the requirement. The proposed rule, however, does not mandate precise wording for the disclosures. In the Commission's view, a state's required disclosure language would not have to be identical to that suggested by the FTC if state disclosures are consistent with the purpose and requirements of section 43 (that is, to alert depositors and potential depositors to the absence of federal deposit insurance and to the fact that the federal government does not guarantee they will get their money back should the institution fail).[13] Accordingly, in some cases, depository institutions may be able to comply with the FTC rule and a state disclosure requirement simultaneously. On the other hand, if it is impossible for a depository institution to comply with applicable state and FTC requirements simultaneously, or if a required state disclosure would frustrate the purpose of the federal requirement by contradicting the meaning or undermining the effectiveness of the

[12] Section 43(b)(3)(C) allowed affected institutions to transmit to each depositor who was a depositor before June 19, 1994 and had not signed a written acknowledgment, a signature card containing the necessary acknowledgment information and accompanying materials requesting the depositor to sign and return the card. By mailing such card three times, the institution discharged its duty under the statute even if the depositor did not return a signed card. If the institution followed such procedures, the statute does not require the institution to provide another separate written acknowledgment to the depositor.

[13] Federal law will preempt state law if it frustrates the purpose of the federal statutory scheme or if compliance with both the State and federal laws is physically impossible. *See Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372–73 (2000).

FDICIA mandated disclosure, it is likely the State requirement would be preempted by the FTC's rule.[14] The Commission seeks comment on the impact of the proposed rule on depository institutions' compliance with state disclosure requirements, including information about existing state disclosure requirements and how they relate to the FTC's proposed rule.

H. Enforcement

Section 43(g) authorizes the Commission to enforce compliance with the rule in accordance with the Federal Trade Commission Act.[15] Section 320.7 tracks this statutory directive.

III. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(4).

IV. Paperwork Reduction Act

The proposed disclosure and written acknowledgment statements do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) because they are a "public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public" as indicated in OMB regulations.[16]

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many of the affected depository institutions may qualify as small businesses under the relevant thresholds (*i.e.*, assets that do not exceed $150 million) and that the economic impact of the proposed rule on a particular small entity could be significant. Overall, however, the proposed rule likely will not have a significant economic impact on a substantial number of small entities. The Commission staff estimates that these requirements will apply to fewer than 400 credit unions, banks, and savings associations. These depository institutions have been required to make the applicable disclosures for more than ten years under section 43 of the FDIA. In addition, the Commission expects that most covered entities make disclosures about their deposit insurance as a matter of course. The Commission does not expect that the disclosures specified in the proposed rule will have a significant impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Federal Trade Commission is charged with enforcing the requirements of 12 U.S.C. 1831t(b).

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to require depository institutions lacking federal deposit insurance to: (1) Include conspicuously in all periodic statements and account records a statement that the institution is not federally insured, and that if the institution fails, the government does not guarantee that depositors will get back their money; (2) include in all advertising and at each location where the depository institution's account funds or deposits are normally received a statement that the institution is not federally insured; and (3) obtain from their new and existing depositors signed acknowledgments of the fact that the institution is not federally insured. The proposed rule is authorized by and based upon section 151 of FDICIA, Public Law 102–242, 105 Stat. 2236.

C. Small Entities to Which the Proposed Rule Will Apply

As described above, the proposed rule applies to depository institutions lacking federal deposit insurance, including State-chartered credit unions, banks, and savings associations that are small entities. According to the GAO, in 2003 there were 212 credit unions in the 50 states that choose to use private deposit insurance instead of federal insurance. The Commission estimates that, in addition to this number, there are approximately 150 credit unions in Puerto Rico that do not have federal deposit insurance. In addition, the Commission estimates that there are fewer than 20 banks and savings associations that would be covered by the proposed rule. The Commission assumes that few of these depository institutions have assets exceeding $150 million. The Commission, therefore, invites comment and information on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed disclosure rule will involve some increased costs for affected depository institutions. Most of these costs will be in the form of printing costs for account statements, signature cards, and other printed material requiring the disclosures. The Commission does not expect that there will be any significant costs associated with legal, other professional, or training costs to determine the nature of the disclosure because the Commission is providing in the proposed rule the information required to be disclosed to the public. The Commission does not expect that the disclosure requirements will impose significant incremental costs for websites or other advertising. Adding the required disclosure to account statements, signature cards, passbooks, signed acknowledgment cards, and certificates of deposit imposes on the depository institutions some printing costs and perhaps minimal initial design or layout costs. A precise estimate of such costs is difficult

[14] It is also possible that a state's required language would not be sufficient to effectuate section 43's purpose but would not present a conflict with the FTC's required disclosure. In such a case, the depository institution would have to make both disclosures.

[15] See 12 U.S.C. 1831t(g) ("Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 *et seq.*] by the Federal Trade Commission.")

[16] 5 CFR 1320.3(c)(2).

to determine without data regarding the required volume of such materials. The Commission invites comment and information on this issue.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The provisions of the rule directly reflect the requirements of the statute, and thus leave little room for significant alternatives to decrease burden. One possible measure to decrease the rule's burden would be to set an effective date for the rule's requirements beyond the typical 30 days to allow entities additional time to come into compliance. Because the requirements of section 43 have been in effect for more than ten years, however, the Commission does not expect that a different effective date would have a significant effect on the rule's impact on small entities. Nevertheless, the Commission seeks comment and information with regard to: (1) The existence of small business entities for which the proposed rule would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

VI. Invitation to Comment and Questions for Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before June 15, 2005. Comments should refer to: "Proposed Rule for FDICIA Disclosures, Matter No. R411014" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[17] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at *https://secure.commentworks.com/ftc-fdicia*. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

The questions below are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

A. What types of banks and savings associations do not have federal deposit insurance? How many of these institutions exist?

B. What costs or burdens would the proposed requirements impose, and on whom?

C. What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements, while providing the same benefits?

D. Are the proposed advertising disclosure requirements appropriate and consistent with the purposes of section 43?

E. What impact would the proposed rule have on existing state requirements?

F. What effect would the proposed rule have on credit unions insured by the Commonwealth of Puerto Rico?

G. Is it appropriate for the Commission to exempt institutions that do not receive initial deposits of less than $100,000, as proposed in section 320.6? Why or why not?

H. Does the list of locations in section 320.4(a) accurately describe the types of locations where deposits are normally received?

I. What should be the effective date period for the final requirements (*i.e.*, the number of days between publication and the effective date of the rule)?

VII. Proposed Rule Language

List of Subjects in 16 CFR Part 320

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, and Federal deposit insurance.

For the reasons stated in the preamble, the Federal Trade Commission proposes to add Part 320 to 16 CFR chapter I, subchapter C as set forth below:

PART 320—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE

Sec.

Authority: 12 U.S.C. 1831t(b); 15 U.S.C. 41 *et seq.*

§ 320.1 Scope.

This part applies to all depository institutions lacking federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of federal deposit insurance.

[17] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.

§ 320.2 Definitions.

(a) *Lacking federal deposit insurance* means the depository institution is not an insured depository institution as defined in 12 U.S.C. 1813(c)(2), or is not an insured credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

(b) *Depository institution* means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to federal credit unions.

§ 320.3 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. For example, a notice would comply with the requirement if it conspicuously stated the following: "[Institution's name] is not federally insured. If it fails, the federal government does not guarantee that you will get your money back."

§ 320.4 Disclosures in advertising and on the premises.

Depository institutions lacking federal deposit insurance must include conspicuously a notice disclosing that the institution is not federally insured:

(a) At each location where the depository institution's account funds or deposits are normally received, including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution; and

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

§ 320.5 Disclosure acknowledgment.

Except as provided in § 320.6, depository institutions lacking federal deposit insurance are prohibited from receiving any deposit for the account of a new or existing depositor unless the depositor has signed a written acknowledgment indicating that the institution is not federally insured and, if the institution fails, the federal government does not guarantee that the depositor will get back the depositor's money.[1]

§ 320.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking federal deposit insurance and located within the United States that does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 320.7 Enforcement.

Compliance with the requirements of this part shall be enforced under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–5218 Filed 3–15–05; 8:45 am]

BILLING CODE 6750–01–P

[1] Depository institutions lacking federal deposit insurance may receive deposits from members who were depositors before June 19, 1994 without obtaining a signed written acknowledgment, if the depository institution followed the procedures set forth in 12 U.S.C. 1831t(b)(3)(C). If the institution followed such procedures, the statute does not require the institution to provide another separate written acknowledgment to the depositor.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 05–68; FCC 05–41]

Regulation of Prepaid Calling Card Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) commences a proceeding to consider comprehensively the appropriate classification of and its jurisdiction over prepaid calling card services that provide users with the ability to do more than merely place a phone call. The Commission also seeks comment on ways in which it can ensure that prepaid calling cards continue to be available at reasonable rates to soldiers and their families.

DATES: Comments are due on or before April 15, 2005 and reply comments are due on or before May 16, 2005.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–68, by any of the following methods:

- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-Mail: To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message: "get form."
- U.S. Postal Service Mail: 445 12th Street, SW., Washington, DC 20554.
- Commercial Overnight Mail: 9300 East Hampton Drive, Capitol Heights, MD 20743.
- Hand-Delivery or Messenger-Delivery: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

For detailed instructions for submitting comments, other filing methods, and additional information on the rulemaking process, see the "Comment Filing Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Fred Campbell, Pricing Policy Division, Wireline Competition Bureau, via telephone: (202) 418–1553 or e-mail: *Fred.Campbell@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission released an Order and NPRM addressing prepaid calling card services on February 23, 2005. *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03–133 & 05–68, Order & Notice of Proposed Rulemaking, FCC 05–41 (rel. Feb. 23, 2005) (*Order & NPRM*). This is a summary of the NPRM portion of the *Order & NPRM*. Copies of the *Order & NPRM* and any subsequently filed documents in this matter are or will be available on the Commission's Internet site at *http://www.fcc.gov* and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. Copies of any such documents may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com*. Accessible formats (computer diskettes, large print, audio

Exhibit D

action (hereafter the "resulting institution") and any institution acquiring the troubled institution should meet all applicable minimum capital standards.

(3) SUBSTANTIAL PRIVATE INVESTMENT.—The transaction should involve substantial private investment.

(4) CONCESSIONS.—Preexisting owners and debtholders of any troubled institution or its holding company should make substantial concessions.

(5) QUALIFIED MANAGEMENT.—Directors and senior management of the resulting institution should be qualified to perform their duties, and should not include individuals substantially responsible for the troubled institution's problems.

(6) FDIC'S PARTICIPATION.—The transaction should give the Federal Deposit Insurance Corporation an opportunity to participate in the success of the resulting institution.

(7) STRUCTURE OF TRANSACTION.—The transaction should, insofar as practical, be structured so that—

(A) the Federal Deposit Insurance Corporation—

(i) does not acquire a significant proportion of the troubled institution's problem assets;

(ii) succeeds to the interests of the troubled institution's preexisting owners and debtholders in proportion to the assistance the Corporation provides; and

(iii) limits the Corporation's assistance in term and amount; and

(B) new investors share risk with the Corporation.

(c) REPORT.—Two years after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall submit a report to Congress analyzing the effect of early resolution on the deposit insurance funds.

Subtitle F—Federal Insurance for State Chartered Depository Institutions

SEC. 151. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURER; DISCLOSURE BY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new section:

12 USC 1831t.

"SEC. 40. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

"(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

"(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

"(2) PROVIDING COPIES OF AUDIT REPORT.—

"(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

"(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

"(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

"(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

"(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

"(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously 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 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.

"(2) ADVERTISING; PREMISES.—Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.

"(3) ACKNOWLEDGMENT OF RISK.—Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.

"(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.

"(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

"(e) ELIGIBILITY FOR FEDERAL DEPOSIT INSURANCE.—

"(1) IN GENERAL.—Except as permitted by the Federal Trade Commission, in consultation with the Federal Deposit Insurance Corporation, no depository institution (other than a bank, including an unincorporated bank) lacking Federal deposit insurance may use the mails or any instrumentality of interstate commerce to receive or facilitate receiving deposits, unless the appropriate supervisor of the State in which the institution is chartered has determined that the institution meets all eligibility requirements for Federal deposit insurance, including—

"(A) in the case of an institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act, all eligibility requirements set forth in the Federal Credit Union Act and

regulations of the National Credit Union Administration; and

"(B) in the case of any other institution, all eligibility requirements set forth in this Act and regulations of the Corporation.

"(2) AUTHORITY OF FDIC AND NCUA NOT AFFECTED.—No determination under paragraph (1) shall bind, or otherwise affect the authority of, the National Credit Union Administration or the Corporation.

"(f) DEFINITIONS.—For purposes of this section:

"(1) APPROPRIATE SUPERVISOR.—The 'appropriate supervisor' of a depository institution means the agency primarily responsible for supervising the institution.

"(2) DEPOSITORY INSTITUTION.—The term 'depository institution' includes—

"(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

"(B) any entity that, as determined by the Federal Trade Commission—

"(i) is engaged in the business of receiving deposits; and

"(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

"(3) LACKING FEDERAL DEPOSIT INSURANCE.—A depository institution lacks Federal deposit insurance if the institution is not either—

"(A) an insured depository institution; or

"(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

"(4) PRIVATE DEPOSIT INSURER.—The term 'private deposit insurer' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

"(g) ENFORCEMENT.—Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.".

12 USC 1831t note.

(2) EFFECTIVE DATES.—Section 40 of the Federal Deposit Insurance Act (as added by paragraph (1)) shall become effective on the date of enactment of this Act, except that—

(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with ", and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money" omitted;

(C) subsection (e) shall become effective 2 years after that date of enactment; and

(D) subsection (b)(3) shall become effective 30 months after that date of enactment.

12 USC 1831e note.

(3) CONFORMING AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Effective 1 year after the date of enactment of this Act, section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(A) by striking subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

12 USC 1831t note.

(b) VIABILITY OF PRIVATE DEPOSIT INSURERS.—

(1) DEADLINE FOR INITIAL INDEPENDENT AUDIT.—The initial annual audit under section 40(a)(1) of the Federal Deposit Insurance Act (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act.

(2) BUSINESS PLAN REQUIRED.—Not later than 240 days after the date of enactment of this Act, any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum—

(A) describe the insurer's—

(i) underwriting standards;

(ii) resources, including trends in and forecasts of assets, income, and expenses;

(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

(3) DEFINITIONS.—For purposes of this subsection, the terms "appropriate supervisor", "deposit", "depository institution", and "lacking Federal deposit insurance" have the same meaning as in section 40(f) of the Federal Deposit Insurance Act (as added by subsection (a)).

Subtitle G—Technical Corrections

SEC. 161. TECHNICAL CORRECTIONS AND CLARIFICATIONS.

(a) SECTION 11 OF THE FEDERAL DEPOSIT INSURANCE ACT.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (d)(3)(A), by striking "(4)(A)" and inserting "(4)";

(2) in subsection (d)(11)(B), by striking "(14)(C)" and inserting "(15)(B)";

(3) in subsection (e)(3)(C)(ii), by striking "subsection (k)" and inserting "subsection (i)";

(4) in subsection (e)(4)(B)(iii), by striking "subsection (k)" and inserting "subsection (i)";

(5) in subparagraphs (A) and (E) of subsection (e)(8), by striking "subsections (d)(9) and (i)(4)(I)" and inserting "subsection (d)(9)";

(6) in subsection (n)(9), by striking "(13)" and inserting "(12)"; and

(7) in subsection (n)(11)(D), by striking "(8)" and inserting "(9)".

(b) CLARIFICATION OF FDIC POWERS IN FSLIC RESOLUTION FUND CONSERVATORSHIPS AND RECEIVERSHIPS.—Section 11A(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821a(a)) is amended by adding at the end the following new paragraphs:

Exhibit E

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133-AD52

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Section 740.4 of NCUA's rules requires that a federally insured credit union continuously display the official NCUA sign at every teller station or window where insured funds or deposits are normally received. Section 740.4(c) requires that tellers accepting share deposits for both federally insured credit unions and nonfederally insured credit unions also post a second sign adjacent to the official NCUA sign. The current rule requires this second sign to list each federally insured credit union served by the teller along with a statement that only these credit unions are federally insured. Due to the evolution of shared branch networks it is now difficult for some tellers to comply with this second signage requirement and, accordingly, NCUA is revising the rule to replace the required

listing of credit unions with a statement that not all of the credit unions served by the teller are federally insured and that members should contact their credit union if they need more information.

DATES: This rule is effective April 3, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION

A. Background

NCUA proposed revisions to Part 740 of its regulations, addressing the notice and advertising requirements applicable to credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) administered by NCUA, in October 2008. 73 FR 2935 (Oct. 22, 2008). Section 740.4(a) requires federally insured credit unions to post a sign at all teller stations that normally receive deposits. This official NCUA sign reads: "Your savings federally insured to at least $100,000 and backed by the full faith and credit of the United States Government" accompanied by the acronym "NCUA" and the words "National Credit Union Administration, a U.S. Government Agency." 12 CFR 740.4(a).

The official NCUA sign informs and reassures members that their share deposits are guaranteed, to certain limits, by the U.S. Government in the event the credit union fails.

Section 740.4(c) imposes additional requirements on federally insured credit unions participating in shared branch networks. Generally, federally insured credit unions are prohibited from accepting funds at teller stations or windows where nonfederally insured credit unions also receive deposits. 12 CFR 740.4(c). Tellers in "credit union centers, service centers, or branches servicing more than one credit union" (i.e., shared branching networks) are currently exempted from this prohibition, but only if they display a specific sign at each station or window above or beside the official NCUA sign. Id. This second sign must state that "[o]nly the following credit unions serviced by this facility are federally insured by the NCUA," followed by the full name of each federally insured credit union displayed in lettering "of such size and print to be clearly legible to all members conducting share or share deposit transactions." Id.

As discussed in the proposal, the present rule has several shortcomings. For example, the current size of shared branching networks makes compliance with this section nearly impossible as an extremely large sign would be required to list the hundreds of federally insured credit unions participating in the largest shared branching networks, and it is difficult to keep the sign up-to-date as federally insured credit unions frequently join or leave these networks. 73 FR 62935,

62936 (Oct. 22, 2008). Additionally, shared branching activities increasingly take place in the branches of particular credit unions rather than at stand-alone sites operated by third parties such as credit union service organizations. Id. The current rule prescribes the same sign for shared branch locations that are credit union facilities as for locations operated by third parties. Finally, the current rule does not address signage requirements for branches of nonfederally insured credit unions participating in shared branching networks and accepting deposits for federally insured credit unions. Id.

The proposed revisions to §740.4(c) retained the general prohibition on federally insured credit unions receiving funds at any teller station or window where any nonfederally insured credit union also receives account funds, but set forth three exceptions to this prohibition. The first two exceptions permit tellers at federally insured credit unions and shared branches operated by non-credit union entities to receive deposits for nonfederally insured credit unions if these tellers post a second sign adjacent to the official NCUA sign. Under the proposal, the language for the second sign for tellers at federally insured credit unions reads as follows:

> This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. Not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

The second sign for tellers at shared branches operated by non-credit union entities is as follows:

> This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

The third exception to the general prohibition addresses signage requirements at nonfederally insured credit unions. The proposal clarified that tellers in nonfederally insured credit unions may accept deposits for federally insured credit unions as part of a shared branch network. The proposal, however, prohibited a nonfederally insured credit union from displaying the official NCUA sign, as this could be very confusing to the members of the nonfederally insured credit union. Also, since the credit union will not display the official sign, there is no need for it to display the second sign.

As discussed below, NCUA is adopting the rule as proposed with a slight revision to the second sign for shared branch locations at federally insured credit unions.

B. Comments and Final Rule

NCUA received sixteen comments on the proposal. All commenters generally agreed the current rule is difficult to comply with and not particularly useful to credit union members. Most commenters supported the revisions as proposed by NCUA or with minor changes. A few commenters opposed any requirement for a second sign and recommended NCUA repeal the requirement.

Three commenters who generally supported the proposal suggested the second sign should only be required at one, central location instead of next to every official insurance sign. NCUA has not adopted this suggestion in the final rule because members could be misled about the insurance status of their credit union if the second sign required by § 740.4(c) is not adjacent to every official insurance sign. Similarly, NCUA did not adopt the suggestion of another commenter who requested that federally insured credit unions have the option to distribute a paper notice to "guest" members using the federally insured credit union as a shared branch instead of posting the second signs. One problem with this suggestion is that members are more likely to miss this notice if it is presented on a separate flyer at the entrance or accompanies the member's transaction information distributed by a teller. Another problem with this suggestion is that tellers may fail to distribute the notice to all guests, and it would be difficult for NCUA to assess compliance with this requirement. In contrast, the short, clear second sign gives members the information they need in a format they are most likely to notice and absorb. The straightforward requirement for a second sign also makes compliance with the regulation and assessing compliance with the regulation easier than would allowing a separate disclosure to guest members.

Another commenter suggested that it would be more useful for the second sign to list the nonfederally insured credit unions participating in the shared branching network. This commenter stated that since the vast majority of credit unions are

federally insured, a second sign listing the names of the nonfederally insured credit unions would be much shorter and give members exactly the information they need without the extra step of contacting their credit union. NCUA agrees this option would reduce the regulatory burden on credit unions and in theory could provide more complete information for credit union members. NCUA has not adopted this suggestion, however, because of concern that members of nonfederally insured credit unions would see the name of their nonfederally insured credit union on a sign immediately adjacent to the official NCUA insurance sign and could, if they did not read the sign very carefully, erroneously conclude their credit union was federally insured.

Two commenters requested NCUA add a phrase to the second sign required by § 740.4(c) for tellers at federally insured credit unions reiterating the credit union is federally insured, and NCUA has adopted this change in the final rule. The second sign for tellers in federally insured credit unions is amended to read as follows:

> This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. **While this credit union is federally insured,** not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

Like the commenters requesting this change, NCUA has observed an increasing focus on deposit insurance coverage among credit union members as turbulence in the financial marketplace continues. Although NCUA believes very few

members would be confused by the second sign as proposed since it would be posted adjacent to the official insurance sign, NCUA agrees the suggested clarification is useful and adopts it in the final rule.

Finally, one commenter opined that the proposal would permit federally insured credit unions flexibility to draft slightly differing language for the second sign required by § 704.4(c). This is not true. While the design, color, and font of the second sign may depart from NCUA's template, the language must conform to the regulation exactly.

As discussed in the proposal, the second sign required by § 740.4(c) must be conspicuous and to be similar to the official NCUA sign in terms of design, color, and font. NCUA will produce signs that meet this requirement and make the signs available for purchase at a reasonable cost. Credit unions may either use the NCUA-produced sign or produce their own sign, as long as the sign meets the requirements of the rule.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule will not impose any regulatory burden and in fact will ease existing compliance burdens on federally insured credit unions participating in shared branch networks and accepting deposits for both federally insured and nonfederally insured credit unions. The Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Pub. L. 104-121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA does not believe this rule is a major rule for purposes of SBREFA.

Paperwork Reduction Act

NCUA has determined that the rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 et seq.; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on February 26, 2009.

Mary F. Rupp

Secretary of the Board

For the reasons set forth above, NCUA amends 12 CFR part 740 as follows.

PART 740 — ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

2. Amend §740.1 by revising paragraph (b), and adding paragraph (c), to read as follows:

§740.1 Definitions.

* * * * *

(b) *Insured credit union and federally insured credit union* as used in this part mean a credit union with National Credit Union Administration share insurance.

(c) *Nonfederally insured credit union* as used in this part means a credit union with either no account insurance or with primary account insurance provided by some entity other than the National Credit Union Administration.

3. Amend §740.4 by revising paragraph (c) to read as follows:

§740.4 Requirements for the official sign.

* * * * *

(c) To avoid any member confusion from the use of the official NCUA sign, federally insured credit unions are prohibited from receiving account funds at any teller station or window where any nonfederally insured credit union also receives account funds. As exceptions to this prohibition:

(1) A teller in a branch of a federally insured credit union may accept account funds for nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states "This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union

is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color, and font.

(2) A teller in a facility operated by a non-credit union entity may accept account funds for both federally insured credit unions and nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating "This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color, and font.

(3) A teller in a branch of a nonfederally insured credit union may accept account funds for federally insured credit unions. No teller in a nonfederally insured credit union may display the official NCUA sign.

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