



Credit Union National Association

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June 5, 2009

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

To Whom it May Concern:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Federal Trade Commission's (FTC's) proposed rule that will require disclosures for financial institutions that do not have federal deposit or share insurance. CUNA represents approximately 90 percent of our nation's 8,000 state and federal credit unions, which serve approximately 92 million members.

### **Summary of CUNA's Comments**

- The rule should not require that credit unions or other financial institutions obtain signed acknowledgment of the required disclosures from existing members or accountholders.
- With regard to shared branches, the FTC should give deference to the National Credit Union Administration's (NCUA's) rule that addresses these types of disclosures.

### **Discussion**

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) imposes disclosure requirements for financial institutions that do not provide federal deposit or share insurance. However, Congress prohibited the FTC from spending resources on implementing these requirements until 2003. The FTC then issued a proposed rule in 2005 for these required disclosures, which was never finalized.

In general, FDICIA requires non-federally insured financial institutions to disclose that they do not have federal insurance and that the federal government does not guarantee depositors will receive their money if the institution fails. This



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disclosure must be on periodic statements, signature cards, passbooks, and share certificates. In addition, the institution must disclose that it lacks federal insurance on most advertisements and at deposit windows, principal places of business, and branches. We estimate there are approximately 200 state-chartered credit unions that do not have federal share insurance.

In 2006, Congress enacted the Financial Services Regulatory Relief Act (FSRRA), which amended the FDICIA provisions and addressed many of the concerns raised in comments that were submitted in response to the 2005 proposed rule. The proposed rule now being issued by the FTC incorporates the FSRRA provisions. However, although the FSRRA addressed a number of issues, we remain concerned about the requirements with regard to obtaining signed acknowledgements from existing members and the requirements with regard to servicing centers and shared branches.

The requirements to obtain a signed acknowledgement from depositors that the institution is not federally insured and that the federal government does not guarantee the depositor will receive money if the institution fails will now allow institutions under certain circumstances to provide notice instead of obtaining the signed acknowledgement. Under these provisions, institutions must obtain signed acknowledgements from anyone who becomes a depositor after October 13, 2006, except for those who become depositors through the conversion or merger of a federally insured institution to a non-federally insured institution. For those who were depositors as of October 13, 2006, the institution must have either obtained a signed acknowledgement or have made two attempts to obtain the acknowledgement by sending a card with the required disclosures, along with a signature line and instructions for returning the card to the institution.

CUNA strongly urges the FTC to change this threshold date from October 13, 2006 to the date in which compliance with this rule becomes effective. We have no objection to requiring the signed acknowledgement from new members or accountholders. However, it is simply not feasible to expect financial institutions to force existing members or account holders to sign an acknowledgement of these disclosures as they would have no means or ability to require such action. The only "leverage" that a financial institution would have to force such action is to deny services until the acknowledgement is signed, but this would be nothing more than a public relations nightmare, which would be even more precarious in light of the current economic environment.

As for the date in which compliance with this rule should be effective, we believe this date should be no sooner than nine months after the final rule is issued. This will be necessary to ensure that there is adequate time to prepare the new disclosures and to provide sufficient staff training.

As an aside, we note that the proposal requires that the first of the two attempts to obtain an acknowledgement by sending the card with the required disclosures

must occur within three months of October 13, 2006, which is of course impossible since that time period has already elapsed. This would need to be corrected in the final rule, regardless of whether the FTC makes other changes in the final rule.

Under the proposal, the required disclosures must be placed clearly and conspicuously at each station or window place where deposits are received, at each principal place of business, in all branches where the institution accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on the Internet home page. This will also require disclosures at credit union servicing centers and shared branches to the extent they have stations or windows “where deposits are normally received.”

We do not believe it is necessary to impose these requirements on credit union servicing centers and shared branches. Under NCUA’s rules, a shared branch must display a sign that 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. 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 urge the FTC to acknowledge that compliance with NCUA’s rule with regard to shared branches is sufficient for purposes of complying with the FTC’s rule. NCUA recently reviewed the issue of disclosures for shared branches and adopted a final rule earlier this year that incorporated certain changes, which carefully balances the benefits of these disclosures for members with the burdens they impose on credit unions. We respectfully request that the FTC give deference to NCUA’s deliberative review and analysis of these issues.

Thank you for the opportunity to comment on the proposed rule that will require disclosures for financial institutions that do not have federal deposit or share insurance. If you have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Jeffrey P. Bloch  
Senior Assistant General Counsel