



June 14, 2005

**HAND DELIVERY &
ELECTRONIC DELIVERY (W/O ATTACHMENTS)**

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



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

Dear Sir or Madam:

American Share Insurance (“ASI”) welcomes this opportunity to comment on the Federal Trade Commission’s (“FTC” or the “Commission”) proposed rule (the “Proposed Rule”) concerning disclosures for non-federally insured depository institutions under the Federal Deposit Insurance Corporation Improvement Act (“FDICIA” or the “Act”). The FDICIA requires 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.¹

At the outset, ASI takes this opportunity to affirm its support for reasonable and responsible efforts to ensure that members of non-federally insured credit unions receive adequate notice regarding the insured status of their deposits. ASI played an active role during the development and subsequent amendment of the FDICIA (in 1991 and 1994, respectively), and has invested significant resources to educate and advise its member institutions about the requirements of the Act and their responsibilities

¹ 12 U.S.C. § 1831t.

thereunder. 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 that have operated for 13 years under a cloud of regulatory uncertainty.

ASI believes the overall goal of the Proposed Rule should be to implement regulations that will protect consumers without unnecessarily burdening privately insured credit unions. As the Commission recognized in its Notice of Proposed Rulemaking (“NPR”), many of the depository institutions impacted by the Proposed Rule are small entities.² Contrary to the views of the Commission expressed in the NPR,³ ASI believes the Proposed Rule would impose a significant economic burden on these entities and potentially give rise to consumer harm and confusion.

Further, ASI believes that aspects of the Proposed Rule could have a significant anticompetitive effect by impeding the growth of, or even eliminating, private insurance as a competitive alternative to the federal insurance offered by the National Credit Union Share Insurance Fund (“NCUSIF”), which is administered by the National Credit Union Administration (“NCUA”). Competition from ASI has resulted in significant innovations and benefited consumers by providing meaningful choice in how credit unions can safely and responsibly insure their members’ deposits. By weakening the economic health of privately insured credit unions and effectively precluding credit unions that are federally insured from converting to private insurance, certain provisions of the Proposed Rule threaten to reduce or eliminate ASI as a competitive alternative to federal insurance.

To reiterate, ASI agrees in principle with the need for consumers to be informed of the insured status of their deposits. In many respects, the Proposed Rule achieves that aim through a sensible

² Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA), 70 Fed. Reg. 12,823, 12,826 (proposed Mar. 16, 2005) (to be codified at 16 C.F.R. pt. 320).

³ Id.

regulatory approach. Unfortunately, certain provisions in the Commission's Proposed Rule would impose a burden so onerous, and so unjustified, as to irreparably harm credit unions that are privately insured and improperly impede future conversions of federally insured credit unions to private insurance. These concerns are discussed in detail below. Our comments also reflect what ASI believes to be a reasoned alternative approach for regulating disclosures made by non-federally insured credit unions under the Act.

BACKGROUND

I. ASI

ASI provides primary share (deposit) insurance exclusively to state-chartered credit unions. It is a credit union-owned, private share guarantor licensed by the Ohio Department of Insurance and regulated by the Ohio Departments of Commerce and Insurance. ASI is authorized to provide share insurance to credit unions chartered by nine states, and is the nation's largest non-federal insurer of consumer deposits. In more than 30 years of doing business, ASI has never defaulted on an obligation to pay an insured share.

As of December 31, 2004, 196 state-chartered credit unions were primary insured by ASI. These credit unions represented approximately \$12.9 billion of insured shares. During the last four years alone, primary share insurance coverage has increased from \$6.2 billion to \$12.9 billion.

ASI's insured credit unions are primarily small depository institutions. In the most recent year, more than one-third of the credit unions had total assets of less than \$5 million; nearly one-half had total assets of less than \$10 million. Approximately 89% of the ASI-insured credit unions had total assets of less than \$150 million, which means that substantially all of ASI's insured credit unions would qualify as small businesses under the relevant thresholds.

II. The Nature of Private Insurance and Credit Unions

In 1970, Congress established the NCUSIF to insure member accounts at federally insured credit unions. Shortly thereafter, due to concerns over dual-regulation and federal encroachment of states' rights, the credit union industry began to develop and support a private alternative to federal share insurance. ASI was chartered in May 1974, and since that time has supported the strong dual chartering and dual insurance system that is inherent in the credit union movement. Allowing credit unions to choose either federal or state charters creates a healthy competition between charters and provides an incentive for regulators (both federal and state) to maximize efficiency in their examinations, reduce costs, and take innovative approaches to regulation while maintaining high standards for safety and soundness.

For similar reasons, private insurance provides state chartered credit unions with a competitive alternative to the federal insurance offered by NCUSIF and administered by NCUA.⁴ ASI has been a leading innovator in this regard, offering competitive benefits such as: (i) \$250,000 of share insurance per individual account; and (ii) flexible, risk-based deposit premiums.

By their nature, credit unions are financial cooperative organizations of individuals who have a common bond, such as place of employment or residence or membership in a labor union or association. Credit unions are member-owned institutions that are entirely operated by and for their members. Many such credit unions have made the conscious choice, with the consent of their members, to avail themselves of the benefits of private insurance. There is no basis to suggest that such decisions were or are being made without members being aware that their deposits were or are not federally insured or

⁴ Currently, nine states have approved ASI to provide private deposit insurance; they include: New Hampshire, Maryland, Ohio, Indiana, Illinois, Alabama, Idaho, Nevada, and California. Other states have statutory language permitting private deposit insurance subject to regulatory approval; such as: New Jersey, Pennsylvania, Louisiana, Oklahoma, New Mexico, Colorado, Montana, and Washington.

