

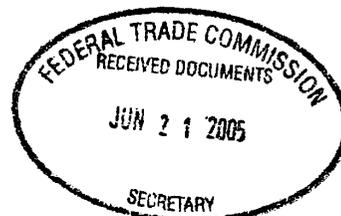
810 South Boulder Highway

Henderson, Nevada 89015

Telephone (702) 564-2646

June 14, 2005

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex A)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580



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

Dear Sir or Madam:

We have reviewed the proposed rule regarding the consumer disclosures required to be made by privately insured credit unions under the FDIC Improvement Act of 1991 (FDICIA). As a result there are some comments we wish to make regarding the rule and hope they will be considered, as the process goes forward to determining the final rule, in the following areas:

#### **ACKNOWLEDGMENT OF DISCLOSURE**

- We have been privately insured from the time we were granted a State Charter on May 1, 1997.

We complied with the required regulations by NCUA to clearly notify our members of the change from Federal Insurance to Private Insurance at the time of change from Federal Charter.

In addition, we also complied with the 1994 three-mailer notice to all members in 1994. However, all records have been destroyed since so many years have passed since that time and there really wasn't any guidance from the FTC as to record retention requirements. Because of that it isn't possible to actually submit proof that we complied.

- Prior to the June 1994 requirement we changed our Member Account Agreement to include a statement that the credit union is not federally insured. So, in order to

apply for membership an individual must sign the Member Account Agreement and receive a copy of the statement (see attached).

We have faithfully complied with the requirements, as we understand them. And we are very concerned that any possible additional requirements to go back to our members with additional forms would result in a significant regulatory burden and cost. It's difficult to predict what those costs might be as we don't know what could be required but it is always expensive for a credit union our size – not only the initial cost but any cost associated with proof of compliance, etc.

We would encourage the FTC to take into consideration the lack of federal oversight or guidance since the passage of the original law prior to 1994. In fact, it is our feeling that credit unions that are privately insured be considered exempt, as of the effective date of the final rule, from non-compliance penalties regarding the acknowledgment of disclosure provisions since June of 1994.

- It is hoped that significant effort has been made to consider the numerous ways members' access credit union services, especially in the area of electronic transactions such as Payroll Deposits, Automatic Clearing House items, Internet Banking and so forth. We can see a real possibility of some unsatisfactory solutions that could cause some expensive and damaging problems that are greater than the benefits derived from securing acknowledgments from members who prefer the way they do business.
- We aren't anticipating the need to merge with another credit union at this time. But we can see a real potential problem if mergers between federally insured and privately insured credit unions are contemplated. Would the members of the federal credit union into a privately insured credit union constitute "new members" under the FTC final rule? If so, would all business cease for the members of the previously federally insured credit union until an acknowledgment was signed?

Such a situation might have occurred many years ago when a federally insured credit union was merged with ours – if such a requirement had been in effect – and we had been a privately insured financial institution as we are now.

And such a requirement would be onerous indeed. It's suggested that by regulation, the FTC would effectively eliminate the rights afforded under most state laws for a federally insured credit union to merge with a privately insured credit union. Continuing credit unions should be given the option to send three sequential notices, as previously permitted in 1994, to the new members gained through the merger.

## **CONSPICUOUS DISCLOSURES**

- We support Section 320.3 of the proposed rule. We believe it's a reasonable disclosure.

However, we don't want to lose our present right to continue disclosing the nature and type of private share insurance coverage alongside the mandatory statement regarding the lack of federal insurance.

## **SIGNAGE DISCLOSURES**

- Our credit union has 1 ATM that we own. However, we belong to a CO-OP ATM network and are aware that many individuals that use our machine are members of federally insured credit unions. A requirement to place signage about the lack of federal insurance might confuse a consumer.

As a suggestion, we would like to encourage the final rule to state that signage disclosures be placed only on a machine that is housed within an office or branch of privately insured credit unions, and not those located outside of the main lobby or branch offices, or in non-banking public venues.

Also, it is our experience that by far the greatest numbers of transactions done on our ATM are withdrawals. This is probably true for other credit unions as well.

- We have looked into the possibility of offering our members services in "shared branching" facilities. If we do this in the future, it is our opinion that NCUA's Rule 740.4(c) adequately addresses this issue.

## **ADVERTISING DISCLOSURES**

- We can envision this portion of the final rule could also be onerous. For example, would the final rule require us to disclose the lack of federal insurance on giveaways -such as pens, clothing and other items used in advertising?
- Would a disclosure be required to be placed on any type of promotion or the marketing of a new service?
- We disclose the information required on each and every statement sent to every account holder.

In the final analysis, we feel the law was designed to protect the depositor, not the borrower. And once a member has signed up and received a statement of account with the required disclosures why would they still need to see it on every promotional piece

and newsletter. So we feel it's not necessary to disclose on advertising materials such as we have listed above. In addition, it would seem reasonable to us that we wouldn't be required to disclose on other materials such as:

Statements of Condition, which are required to be published by state or federal law;

Credit union supplies such as stationery, envelopes, deposit slips checks and drafts;

Signs or plates in the credit union office or attached to the building(s) in which the credit union is located;

Listing in directories;

Joint or group advertisements;

Advertisements that do not relate to member accounts such as loans, safekeeping services, credit insurance products, traveler's checks, etc.

#### **DEPOSIT SLIPS/RECEIPTS DISCLOSURES**

We can see that this area of disclosure could be abusive if not carefully studied. For example, if the credit union was to be required to disclose on deposit slips and/or checks what would the compliance nightmare be for those members who choose to purchase those items from outside vendors?

What about receipts for transactions processed on-line?

Federally insured credit unions are statutorily exempt from a disclosing statement on deposit slips and we feel it should be the same for privately insured credit unions.

Thank you for considering our comments. Please contact me if you need additional comments.

Kent Rhees

President/CEO

# MEMBER ACCOUNT AGREEMENT



**OWNERSHIP OF ACCOUNT:** The ownership specified on this agreement will remain the same for all accounts listed below.

- INDIVIDUAL       TRUST - SEPARATE AGREEMENT DATED:  
 JOINT - WITH SURVIVORSHIP (and not as tenants in common or community property)       JOINT - NO SURVIVORSHIP (as tenants in common)  
 COMMUNITY PROPERTY ACCOUNT - NO SURVIVORSHIP

REVOCABLE TRUST DESIGNATION AS DEFINED IN THE ACCOUNT TERMS AND CONDITIONS.  
 Name and Address of Beneficiaries: \_\_\_\_\_

DATE OPENED \_\_\_\_\_ OPENED BY \_\_\_\_\_  
 INITIAL AMOUNT \$ \_\_\_\_\_ FORM:  CASH

Form of Identification: \_\_\_\_\_  
 Name and address of someone who will always know your location: \_\_\_\_\_

All New Accounts will be verified through: \_\_\_\_\_  
 I qualify for membership in this Credit Union because \_\_\_\_\_  
 ADDITIONAL INFORMATION: \_\_\_\_\_

CHECKING/SHARE DRAFT       MONEY MARKET      \_\_\_\_\_  
 TYPE OF ACCOUNT  SAVINGS/SHARE SAVINGS      \_\_\_\_\_      \_\_\_\_\_

By signing below the undersigned agree to the by-laws of this Credit Union and applicable account terms and conditions, as amended from time to time; to pay any membership or entrance fee; and authorize the Credit Union to verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency. The undersigned certify that the information provided on this agreement is true and correct and that the terms of this agreement apply to all listed accounts. The undersigned acknowledge receipt of a copy of the terms and conditions applicable to each listed account and the following policy disclosures:

- Funds Availability     Electronic Fund Transfers     Truth in Savings     Privacy    \_\_\_\_\_

ACCOUNT OWNER NAME & ADDRESS      Member No./Account No.

- (1): x  
 (2): x  
 (3): x  
 (4): x

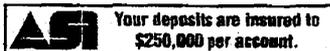
NUMBER OF SIGNATURES REQUIRED FOR WITHDRAWAL \_\_\_\_\_  This is a Temporary account agreement.

AGENTS - THE INDIVIDUAL SIGNING ABOVE ON LINE(S) \_\_\_\_\_ IS SIGNING AS:  
 Power of Attorney - agreement on file     A Successor Custodian of a UTMA account     Parent/Guardian  
 Authorized Signer    \_\_\_\_\_

### BACKUP WITHHOLDING CERTIFICATIONS

TIN: \_\_\_\_\_

TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.       EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.  
 BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.      SIGNATURE - I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).  
 X \_\_\_\_\_ (Date)



This credit union is not federally insured, and if the institution fails, the Federal Government does not guarantee that depositors will get back their money.