FDIC-Insurance Status Representation

Cite
CFPB, Consumer Financial Protection Circular 2022-02, Deceptive Representations Involving the FDIC's Name or Logo

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Impact Assessment

- Fintechs that seek consumer funds face new legal and reputational risk.
- This may reduce regulatory arbitrage and enhance the ability of banks to regain lost deposit-taking share.
- CFPB action here is evidence of vigorous enforcement policy versus nonbanks based on administrative policies, not formal rules. Future actions addressing other Bureau concerns are likely.
- Enforcement actions by state authorities are also encouraged.

Overview

Using a new approach to issuing enforcement edicts – a circular – the CFPB has made use of its controversial decision to bring nonbanks under its ambit[1] to bolster the FDIC's efforts to enhance consumer understanding of which funds are entrusted to FDIC-insured depositories and which may be at greater risk in other hands. Even inadvertent violations that may suggest FDIC insurance where it does not apply could result in significant legal risk under either federal or state action.

Impact

The CFPB issued this circular in conjunction with FDIC finalization of a rule defining when and how deposit insurance can be advertised. The final rule is little different than the agencies' proposal,[2] establishing clear standards which may nonetheless have limited practical impact because neither the FDIC nor

1 See **CONSUMER41**, *Financial Services Management*, April 27, 2022.

2 See **DEPOSITINSURANCE112**, *Financial Services Management*, May 13, 2021.

other federal regulators can reach to fintechs and other entities that may gather consumer funds in ways that – intentionally or not – create the impression of protection akin to that enjoyed at traditional banking organizations. The Bureau's circular is intended to govern these firms based on the agency's recent determination that it has enforcement power over nonbanks even if it does not enjoy express regulatory or supervisory authority over them.

The Bureau has also recently invited state authorities to join it in enforcing any of the laws within its purview. As a result, nonbanks believed to violate the FDIC's standards would be at still more immediate risk. Both the FDIC and CFPB are particularly concerned about the extent to which new virtual-currency and digital-asset products may be mistaken for insured deposits. Entities offering stablecoins and similar products may thus face particular legal and reputational risk.

What's Next

The Bureau issued this circular on May 17, the same day its director joined the rest of the FDIC board in approving the final deposit-insurance advertising standards referenced above. The CFPB's policy is effective immediately.

Analysis

The circular makes it clear that misrepresentation of insurance status, false advertising, and misuse of the FDIC's name and logo are deceptive even if not done knowingly. It cites specific practices subject to sanction, including saying that funds taken by an entity are "eligible" for FDIC insurance when the funds cannot in fact be insured because the deposit-taker is not able to offer FDIC coverage.

This knowing standard may be more stringent than the law directly covering the FDIC expressly allows, but the Bureau cites other statutes for its authority in this instance. This prohibition also appears to apply to violations related to NCUSIF coverage, but this is mentioned only in passing.

Any violations found by the CFPB would be considered a deceptive act or practice, not necessarily also unfair and abusive under the agency's sweeping new examination policy in this regard.[3]

3 See **CONSUMER39**, *Financial Services Management*, March 22, 2022.