



Innovative Payments Association

110 Chestnut Ridge Rd, Suite 111

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June 8, 2021

Submitted via E-Mail at: comments@fdic.gov

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429

Re: Notice of Proposed Rulemaking on FDIC Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo
[RIN 3064-AF71]

To Whom it May Concern:

This letter is submitted to the Federal Deposit Insurance Corporation (the "**FDIC**") on behalf of the Innovative Payments Association ("**IPA**")¹ in response to the FDIC's notice of proposed rulemaking concerning the FDIC's sign and advertising requirements, which was issued by the FDIC on April 22, 2021 and published in the Federal Register on May 10, 2021 (the "**Proposed Rule**").² The Proposed Rule would implement section 18(a)(4) of the Federal Deposit Insurance Act ("**FDIA**"), which prohibits persons from making false or misleading representations about deposit insurance or from using the FDIC's name or logo in a manner that would imply that an uninsured financial product is insured or guaranteed by the FDIC. The IPA and its members appreciate the opportunity to provide input on the Proposed Rule and look forward to working with the FDIC on its proposal.

Discussion

Summary of the Proposed Rule

The Proposed Rule describes the process by which the FDIC proposes to identify and investigate conduct that may violate section 18(a)(4) of the FDIA; the standards under which such conduct will be evaluated; and the procedures which the FDIC will follow in enforcing any final rule.

With respect to identifying conduct that may violate section 18(a)(4) of the FDIA, the Proposed Rule focuses on two activities where potential violations may occur: (i) the misuse of the FDIC name or logo, and (ii) false or misleading representations regarding FDIC insurance. In each case, the Proposed Rule provides a non-exhaustive list of examples of activity that the FDIC believes would violate these

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² 86 Fed. Reg. 24770 – 24778 (May 10, 2021).



prohibitions. For the misuse of the FDIC name or logo, an example includes advertisements for uninsured products that feature FDIC images or terminology without a clear disclaimer that the products being offered are not FDIC insured. For false or leading representations, examples include representations that mislead persons with respect to the insured status of a financial product, the amount of deposit insurance coverage available for that product, or the qualifications or process for benefiting from insured status. Notably, the Proposed Rule notes that it is a material omission for any person to fail to identify the insured depository institution that will receive deposits.

In terms of investigating and taking enforcement action against violations of section 18(a)(4) of the FDIA, once the FDIC becomes aware of a potential violation, the Proposed Rule provides that the agency may investigate in accordance with its existing Rules of Practice and Procedure. In addition, the Proposed Rule would give the FDIC the ability to refer matters to other regulatory authorities or to resolve apparent violations through an informal resolution process. The informal resolution process would require the FDIC sending a potential violator an advisory letter and an opportunity to provide the FDIC with a response and supplemental information.

With respect to enforcement, the Proposed Rule would authorize the FDIC to bring formal actions, subject to an appeals process that includes judicial review, under section 18(a)(4) of the FDIA against any person in the same manner and to the extent that the FDIC can bring such actions against insured state nonmember banks and institution affiliated parties.

IPA Comments to Specific Feedback Requested by the FDIC on the Proposed Rule

The FDIC invites comment on all aspects of its Proposed Rule, including certain specific questions posed by the FDIC. Our response to the specific questions posed by the FDIC are provided below:

False Advertising, Misuse of Logo, and Misrepresentations

1. Please describe the extent to which the proposed rule sufficiently identifies situations that present potential risks related to false or misleading representations regarding deposit insurance coverage and the misuse of the FDIC's name or logo, including those related to specific products and advertising channels. If there are additional types of false or misleading representations about deposit insurance coverage that may not be effectively captured by the rule, please describe them.

The IPA's members believe the Proposed Rule sufficiently identifies those situations that present potential risks related to false or misleading representations regarding deposit insurance coverage and the misuse of the FDIC's name or logo, and, in particular, those situations where a third party offers some form of mobile, electronic, or digital banking product or service either in partnership with an FDIC member bank or on the third party's own.

The IPA and its members believe that where FDIC insurance is being offered for a product or service, consumers should receive explicit and clear representations regarding the deposit insurance coverage and, as such, we support the requirements of the Proposed Rule. In particular, with respect to advertising for products and services where there is a legitimate business relationship between an FDIC member and a third party, our members support the requirement in



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the Proposed Rule that the third party clearly and conspicuously disclose that any FDIC insurance coverage is provided by an FDIC member bank.

Our members, however, are wary of any obligations that would limit the ability of third parties operating under a legitimate business relationship with a member bank to use the FDIC logo or communicate FDIC insurance coverage to end-users. While we do not interpret the Proposed Rule as imposing such a limitation, we wish to highlight this concern to the FDIC for consideration as it moves forward in its rulemaking process. In particular, we note that the use of the FDIC logo by the third party promotes consumer confidence and imbues the product with a level of trust and security. Any risk that a consumer may be confused by the presence of the FDIC logo or representations with respect to deposit insurance coverage is addressed through the Proposed Rule's requirement that the third party clearly and conspicuously discloses the FDIC member responsible for providing deposit insurance coverage along with any material and significant pre-conditions for receiving such insurance coverage.

2. Please describe the extent to which the proposed rule sufficiently addresses false or misleading representations regarding deposit insurance and the misuse of the FDIC's name and logo. If there are additional or alternative ways to more effectively or efficiently address such misrepresentations and/or misuse, please describe them.

Please see our response to Question 1 above.

3. Please describe any suggested additions to the proposed rule for preventing and addressing the risks of false or misleading representations regarding deposit insurance and/or the misuse of the FDIC's name and logo.

Please see our response to Question 1 above.

Procedures for Investigations, Informal Resolution, and Formal Enforcement Actions

4. Are the proposed complaint and inquiry procedures sufficiently clear about how business entities and members of the public may contact the FDIC if they have questions or concerns relating to potentially false or misleading representations regarding deposit insurance or misuse of the FDIC's name and logo? Are there other types of procedures the FDIC should consider? If so, please describe them.

No comment or feedback at this time.

5. Are there other alternative, effective, and efficient methods by which a customer can ensure that a third-party's representations regarding deposit insurance are true and accurate? If so, please describe them.

No comment or feedback at this time.



6. Is the proposed informal resolution process an adequate means of addressing, in the first instance in most circumstances, potentially false or misleading representations regarding deposit insurance or misuse of the FDIC's name and logo? Should the FDIC consider other or additional procedures? If so, please describe them.

No comment or feedback at this time.

7. The proposed rule contains a provision that would permit the FDIC, in those limited circumstances where there is risk of imminent harm to consumers or depositors, to confirm the existence of a formal investigation, so long as the target of the investigation was not an IDI or a known IAP thereof. This provision would be an exception to the longstanding confidentiality provisions found in 12 CFR 308.147. Is such an exception appropriate? Does the proposed rule strike an appropriate balance between the need to maintain the confidentiality of investigations involving IDIs and known IAPs, versus the potential value in identifying the existence of investigations into non-bank persons and entities whose conduct may result in risk of imminent harm to consumers and depositors? Are there alternatives the FDIC should consider? If so, please describe them.

No comment or feedback at this time.

8. Is the formal enforcement action process sufficiently clear, given that Section 18(a)(4) expressly references the use of established enforcement mechanisms set forth in Section 8 of the FDI Act? Should other provisions be added? If so, please describe them.

No comment or feedback at this time.

9. Do the investigation, informal resolution, and formal enforcement action processes described in the proposed rule strike the appropriate balance between addressing in a timely manner potentially false or misleading representations regarding deposit insurance and allowing the parties identified as potentially participating in the false or misleading representations an opportunity to present additional facts or provide a legal defense?

No comment or feedback at this time.

Other Areas of Concern

10. Upon entering into a relationship or arrangement with a third-party non-bank entity, as part of FDIC-insured institutions' due diligence, do such institutions currently take steps to ensure: (a) that the non-bank is aware of existing laws and regulations related to the use of the FDIC's name and logo, and (b) that representations made by the non-bank regarding the insured status of bank products are accurate and comply with existing laws and regulations? If not, are there practices that FDIC-insured institutions could adopt to spread awareness of and compliance with these laws and regulations by non-banks?

In our experience, most FDIC-insured institutions that enter into relationships or arrangements with third-party non-bank entities will, as part of their due diligence and third-party oversight



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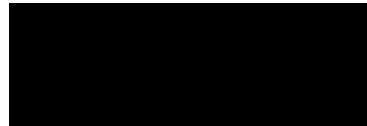
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responsibilities, take a number of steps to ensure the third-party is aware of its responsibilities and obligations for compliance, including with respect to any representations made as to the insured status of bank products. Such steps include, but are not limited to, (i) contractual obligations imposed on the third-party with appropriate penalties in place for non-compliance; (ii) the provision of bank policies and guidelines that the third-party is contractually required to adhere to with respect to the marketing of the products, (iii) the bank's prior review of marketing materials prepared by the third-party before they are used, and (iv) the bank's ability to audit and / or require changes to the third-party's marketing materials or practices at any time in order to comply with applicable law.

Conclusion

The IPA appreciates the opportunity to submit feedback on the Proposed Rule. If you have any questions, please do not hesitate to contact me at the number listed below or at: btate@ipa.org.

Sincerely,



Brian Tate
President and CEO, IPA
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