

July 7, 2021

Via Electronic Submission

Mr. James P. Sheesley,
Assistant Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: RIN 3064–AF71

Mr. Sheesley:

On behalf of the members of the Community Development Bankers Association (CDBA), we respectfully submit the enclosed comments in response to the Notice of Proposed Rulemaking by the Federal Deposit Insurance Corporation (FDIC) on False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo.¹

CDBA is the national trade association for CDFI banks and thrifts. Our members have a primary mission of promoting community development and target at least 60% of their total lending and activities to Low- and Moderate-Income (LMI) communities and customers that are underserved by traditional financial service providers.

We are concerned about one clause in the proposed rule that we believe will inadvertently prevent appropriate and necessary communications by important bank service provider organizations, such as those providing US Treasury-designated Community Development Financial Institution (CDFI) banks access to reciprocal and sweep deposits. More specifically, we believe that a provision in proposed section 328.102(b)(3)(ii) should be changed. Under the provision, if a person that is not a bank makes any “statement regarding deposit insurance,” the person’s “failure to identify the name(s) of the Insured Depository Institution(s) that will be receiving the deposits is deemed a material omission.”²

A lack of discretionary income in the communities served by CDFI banks often requires our members to raise deposits from civic-minded and socially motivated individuals and institutions such as local governments, charitable organizations, corporations, and CRA-motivated traditional banks. The nation’s Minority Depository Institutions (MDIs), many of which are also CDFIs, often follow the same funding strategy for the same reason. Investors are willing to invest much larger deposits in CDFI banks and MDIs if they are assured those deposits are secured. Further, many of these depositors often have requirements that their deposits be fully insured. Reciprocal deposits are service that help provide that assurance. In turn, our members leverage these deposits into deeply impactful community development loans, investments, and services in struggling rural, urban, and disinvested minority communities across the

¹ 86 Fed. Reg. 24,770 (May 10, 2021).

² Proposed 12 C.F.R. § 328.102(b)(3)(ii).

country. Without access to these large deposits, facilitated via reciprocal and sweep deposits, many of these loans would not be made.

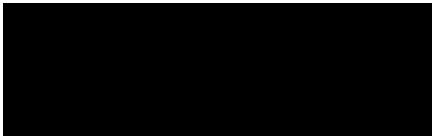
A deposit placement network can include hundreds or thousands of banks. It is impossible to name which banks in the network will receive specific deposits until right before those deposits are placed. Because nearly all advertising and other descriptions of deposit placement networks necessarily mention deposit insurance and occur well before deposit placement, nearly all such advertising and other description by a person that is not a bank would appear to violate the rule proposed in section 328.102(b)(3)(ii). In turn, the inability of a network sponsor or other non-bank to advertise or describe the network would sharply reduce the availability of valuable network deposits to CDFI and MDI banks.

We appreciate the FDIC's efforts to prevent false and misleading statements regarding deposit insurance. The misuse of the FDIC's name and logo to promote uninsured financial products is a real and growing menace. We applaud the FDIC's steps to address this matter, both with this rulemaking and through the agency's enforcement powers. However, the risks of proposed section 328.102(b)(3)(ii) significantly constrain the dissemination of perfectly accurate information by and about deposit placement networks. As stated above, CDFI and MDI banks rely on such funding to support impactful community development products and services.

We recognize that this effect was likely inadvertent, and we respectfully recommend that the FDIC modify the proposed rule so that it does not restrict otherwise accurate descriptions of deposit placement networks merely because they do not identify banks by name. We believe that the FDIC can attend to this concern while still providing ample protection for consumers.

Thank you for considering our comments.

Sincerely,



Jeannine Jacokes
Chief Executive Officer