



VIA ELECTRONIC DELIVERY

July 9, 2021

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

Re: False Advertising, Misrepresentation of Insured Status, Misuse of the FDIC's Name or Logo (RIN 3064-AF71)

Dear Mr. Sheesley:

The Texas Bankers Association, representing over 400 Texas banks, welcomes the opportunity to comment on the Federal Deposit Insurance Corporation's notice of proposed rulemaking and request for information relating to false advertising, misrepresentation of insured status, and misuse of the FDIC's name or logo, 86 Fed. Reg. 24770. The agency is to be commended for its awareness of the misleading practices and increasing misuse of the FDIC's name and logo by non-banks. A more thorough and transparent process to investigate these abuses is welcomed by our banks and will, more importantly, benefit consumers.

The Texas banking industry continues to advance its digital presence and many members partner with fintechs and other financial services providers. However, they continue to encounter entities in the marketplace that want to be perceived as banks without being regulated like banks. Furthermore, Texas banks have noticed an increase in the misuse of FDIC signage and the misrepresentation of deposit insurance coverage by non-bank entities, which is confusing to consumers unfamiliar with the strict guidelines in place that govern the use of the FDIC's name and logo.

To protect consumers and to promote transparency, we believe that it is imperative that an enforcement mechanism be established to deter the assertion of actual or implied FDIC coverage by non-banks.

We offer the following comments on provisions in the proposed rule:

- At the outset, we believe a clear distinction needs to be drawn between entities supporting and providing back-office functions to banks and entities in the marketplace implying they are banks. With regard to entities in the marketplace implying they are banks or are providing "banking" services, TBA believes these entities should be required to conspicuously disclose in all marketing: **“(Entity) IS NOT A BANK.**

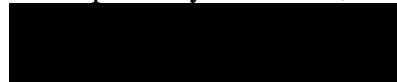
Banking services provided by (insert FDIC insured institution name.)” We believe consumers should be clearly informed when the entity with whom they are conducting financial transactions is or is not an FDIC-insured institution.

- In addition to the referral of possible violations to primary bank regulators, the FDIC should also consider referrals to the CFPB, SEC, and FTC. Many of these abuses are not only violations of the Federal Deposit Insurance Act, they could also constitute deceptive practices under other federal laws.
- Additionally, we ask that the FDIC clarify that banks have the authority to submit complaints of possible violations. Banks are often in the best position to witness these violations through their relationships with their customers. Banks may also need to notify the FDIC of a potential violation by a non-bank.
- In Question 10 of the proposal, the FDIC asks if banks should take additional steps to police non-bank partners. Banks have a vested interest in policing third-party providers because of reputational risk, however, they cannot police activities that they are not aware of. Additionally, we do not believe that banks should be held responsible for violations by their non-bank partners, especially when those violations are outside the scope of their relationships with the banks.

While beyond potential violations of Section 18(a)(4) of the Federal Deposit Insurance Act, it is critical to note the explosive growth in the internet banking space which, in many ways, is becoming a shadow banking system. Many entities imply that they are “banks” or they market “banking” services, but these services are provided by third parties. Their advertising does not conspicuously describe FDIC coverage and there is often no mention of their primary regulator. Transparency about these entities and their relationships must be fundamental to the future of a safe and sound banking system.

The Texas Bankers Association appreciates the opportunity to comment on the proposed rule. If you have any questions, please contact John Heasley at john@texasbankers.com.

Respectfully submitted,



Chris Furlow
President & CEO
Texas Bankers Association