



April 7, 2023

Submitted Electronically

James P. Sheesley,
Assistant Executive Secretary
Attention: Comments—RIN 3064–AF26
Federal Deposit Insurance Corporation
550 17th Street NW,
Washington, DC 20429

Re: FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo; RIN 3064–AF26

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing nearly 200 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Federal Deposit Insurance Corporation’s (FDIC) proposed rulemaking to modernize its advertising rules (proposal).

Introduction

FDIC has proposed changes to its rules governing use of the official FDIC sign and insured depository institutions’ (bank) advertising statements to reflect how depositors do business with banks today, including through digital and mobile channels. The proposed rule also would clarify the FDIC’s regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with a bank and whether their funds are protected by deposit insurance. The proposal is intended to enable consumers to better understand when they are doing business with a bank and when their funds are protected by the FDIC’s deposit insurance coverage.

As discussed in the proposal, innovation and evolution of the banking industry through new technologies has expanded the options available for accessing banking products and services. As banks strive to bring the benefit of these developments to their customers, WBA understands FDIC’s desires to maintain clarity for depositors to understand when they are doing business with a bank and when their funds are protected by the FDIC’s deposit insurance. However, it is not the banking industry that misrepresents insurance coverage. Wisconsin banks take all effort to ensure that deposit insurance is not misrepresented, including through internet banking channels, where they are already mindful of the potential for confusion. WBA is concerned that FDIC’s proposal goes too far in what it asks of banks, in an effort to curb the confusion created by non-banks. As such, WBA offers the following comments regarding the proposal in consideration of FDIC’s desire to update its advertising rules.

Discussion

FDIC has proposed updates to account for deposits taken at physical branches as well as those through digital and mobile banking channels and automated teller machines and similar devices. The proposal provides three separate signs relating to deposit insurance including FDIC’s official sign, display of a digital sign, and a non-deposit sign designed to more clearly draw a

distinction when a bank offers both insured deposits and non-insured products through the same channel. FDIC has also proposed updates for shortened advertising statements, and clarifications designed to address specific situations where consumers may misunderstand or be misled as to whether an entity is insured by FDIC.

Many Wisconsin banks now provide depository products through digital and mobile channels, and as banks continue to utilize market and technological developments to meet consumer needs, so too have banks taken efforts to ensure consumers are not confused or otherwise misled regarding deposit insurance coverage. This includes currently utilizing the FDIC logo in both digital services and advertising such as through website services, mobile banking, and other similar channels. Overall, WBA is in support of FDIC's efforts to improve clarity in deposit insurance coverage, but requests that FDIC do so with the fact that banks have already taken steps to meet this need to do so and any final rules should accommodate these efforts rather than create unnecessary burden.

The proposed updates to the official sign are sensible and reflect FDIC's goals of clarity for customers to understand the extent of deposit insurance coverage, while maintaining flexibility in its use, including options for display based upon the type of branch. The proposal also provides banks with the flexibility to utilize electronic media to satisfy sign requirements. Furthermore, FDIC has proposed limited amendments to the advertisement statement requirements which would expand options for use of a short advertising statement.

However, WBA observes that the proposal would create significant burdens in requiring banks to adjust all existing efforts to meet advertising and statement requirements across all digital platforms, including updates to existing policies and procedures, and encourages FDIC to scale back some of these requirements and be flexible wherever possible. WBA appreciates the need for clarity, but observes that banks are not the ones making misrepresentations regarding deposit insurance. Customers aren't confused about banks, and FDIC should focus on non-banks who are misrepresenting rather than hoisting further burdens upon banks. The following comments are provided to further illustrate the task that banks will face under the proposal and recommendations for greater flexibility.

As proposed, a bank would be required to clearly, continuously, and conspicuously display a digital sign on the bank's homepage, landing and login pages or screens, and transactional pages or screens involving deposits, to the extent applicable. WBA agrees that as the homepage and landing page have become a primary point of interaction between banks and consumers, it is beneficial that such display would prominently disclose to consumers that the entity is FDIC-insured. As such, most Wisconsin banks have taken efforts to include such disclosure on their initial homepage of the website, landing and login pages, pages where the customer may interact with deposits, and application pages.

However, FDIC has proposed to more specifically define "clear and conspicuous" for these purposes. The proposal specifies that in order to be clear and conspicuous, the digital sign must be displayed in a continuous manner, near the top of the relevant page or screen, in close proximity to the bank's name. Display of the digital sign at the footer of the relevant page or a similar location would not satisfy the clear and conspicuous standard. In order to ensure compliance with this new standard, WBA expects that many Wisconsin banks will need to invest a significant amount of time, and work with multiple vendors to update various pages across multiple channels. WBA suggests that FDIC consider a more flexible standard in order to accommodate additional mechanisms by which a bank could meet this standard, such as by reconsidering the "one-click-away" standard. At a minimum, WBA requests that FDIC remain mindful of these burdens when issuing final rules.



Furthermore, FDIC has proposed that if a digital deposit taking channel offers both access to deposits and non-deposit products, bank would be required to clearly and conspicuously display signage indicating that the non-deposit products are: (1) not insured by the FDIC; (2) are not deposits; and (3) may lose value. WBA appreciates the option to provide such disclosures as a one-time notification, but notes again that implementation will take additional time and resources to arrange for such a “pop-up” or “speedbump” to be implemented through these channels. For example, different landing pages may have different functions, as will different platforms depending on the media, for example between traditional online and mobile banking, as well as additional components such as remote deposit capture. Banks will need to consult with various vendors to ensure implementation and WBA encourages FDIC to be as flexible as possible when writing its final rules.

The proposal would also require display of the official FDIC sign on bank’s ATMs and like devices. Many banks currently make such a display as a physical sign or sticker. However, FDIC has expressed concerns with formatting issues, maintenance costs, and difficulty in updating devices when signage requirements change and proposed to require the electronic display of the official sign on the ATM or like device. WBA recommends that FDIC reconsider the flexibility of permitting a physical sign as the formatting, maintenance, and difficulty updating the sign are no more or less burdensome than doing so electronically.

Lastly, WBA notes that banks must comply with a variety of disclosures and signage requirements depending on their operation and office layout. The exact methods for meeting this other, non-FDIC requirements will vary, depending on what is appropriate for the bank. Banks make careful consideration of these requirements, in relation to FDIC signage and advertising requirements, so as not to misrepresent products or deposit insurance coverage. In order to accommodate these measures, WBA requests that FDIC maintain flexibility in its own rules with respect to the fact that banks will be required to display other signs and make other disclosures.

Conclusion

WBA appreciates the need to update FDIC’s advertising rules to accommodate digital channels. Overall, WBA supports FDIC’s effort to improve consumer clarity regarding deposit insurance coverage, but banks should not bear the burden of dispelling the confusion caused by nonbank entities. WBA requests that FDIC consider the above comments and suggestions and, at a minimum, issue final rules which are mindful of the time and effort banks will need to invest in order to comply.

WBA appreciates the opportunity to comment on the proposal.

Respectfully,



Rose Oswald Poels
President/CEO