

May 24, 2022

On May 17, 2022, the Consumer Financial Protection Bureau released its first substantive Consumer Financial Protection Circular – [Circular 2022-02](#) – a day after announcing its new circular system. The circular’s key message is that misuse of the Federal Deposit Insurance Corporation’s name or logo, and misrepresentations about deposit insurance coverage, may violate the Consumer Financial Protection Act (CFPA) prohibition on deceptive practices. The circular’s publication was accompanied by [a statement from CFPB Director Rohit Chopra](#) emphasizing the illegality of the practice and anti-competitive harm it causes, with rhetoric similar to what we have seen in recent announcements.

At the same time, the [FDIC issued a final rule](#) prohibiting misleading use of the FDIC’s logo or name, or misrepresenting deposit insurance coverage. The FDIC’s final rule also focuses on nonbanks, such as fintech and cryptocurrency companies, noting in the commentary that it “will primarily affect non-bank entities and individuals who are potentially misusing the FDIC’s name or logo or are making misrepresentations about deposit insurance.” As a member of the FDIC Board of Directors, Chopra, unsurprisingly, confirmed that he voted in favor of the final rule.

Circular 2022-02

In Circular 2022-02, the CFPB puts entities – “especially those involving new technologies such as digital assets, including crypto-assets” – on notice that misrepresentations about deposit insurance and misuse of the FDIC logo or name can violate the CFPA. It underscores federal regulators’ commitment to addressing practices involving fintech and cryptocurrency products and services using existing authorities. It also aligns with Chopra’s focus on those companies, as captured in his statement addressing the FDIC rule. In that statement, he expressed concern “about potential misconduct involving novel technologies, including so-called stablecoins and other crypto-assets,” and cautioned that they “pose risks to consumers who may be baited by misrepresentations or false advertisements about deposit insurance.”

The circular explains that misrepresentations about deposit insurance, misuse of the FDIC’s name or logo, or false advertising by companies could violate the CFPA’s prohibition against deceptive acts or practices. The CFPB has authority to enforce violations of the CFPA and has chosen to do so with some frequency since its inception. The CFPB provided the following examples of deceptive conduct:

- Engaging in, or purporting to engage in, deposit-taking activity by accepting, or offering to accept, funds for use by consumers and misrepresenting that those funds are FDIC-insured when they are not.
- Claiming that consumer financial products or services are “regulated” by the FDIC or “insured” or “eligible” for FDIC insurance, if those claims expressly or implicitly indicate that the product is FDIC-insured when that is not the case.

The circular underscored that disclaimers may not cure otherwise deceptive messages or practices. It also emphasized that misrepresentations may violate the CFPA regardless of whether the covered person or service provider engage in the conduct knowingly.

The CFPB specifically expressed concern that “firms offering or providing digital assets, including crypto-assets, may be particularly prone to making ... deceptive claims to consumers about FDIC deposit insurance coverage.” It is clear from this messaging that the CFPB is concerned that deceptive statements about deposit insurance coverage will harm consumers and may disadvantage institutions that truthfully market FDIC-insured accounts.

The new circular system

On May 16, 2022, in [Consumer Financial Protection Circular 2022-01](#), the CFPB first announced that it would be issuing such circulars to other state and federal government agencies with authority to enforce federal consumer financial laws. According to the CFPB, the circulars “will provide background information about applicable law, articulate considerations relevant to the CFPB’s exercise of its authorities, and advise other parties with authority to enforce federal consumer financial law.” Although these circulars will be issued to other government agencies, they also serve as important announcements of the CFPB’s enforcement priorities and interpretation of federal consumer financial law.

What does this mean for you?

The CFPB’s release of Circular 2022-02 and the FDIC’s final rule are yet another example of coordination between the CFPB and other federal agencies with authority over consumer financial laws. While critics have argued that federal regulation, and enforcement in particular, have been slow to catch up to the explosion of digital assets and cryptocurrency products in recent years, the circular shows that the CFPB continues to look for angles to exert jurisdiction over digital asset and cryptocurrency entities. Companies engaged in offering products involving custodial or otherwise handling cryptocurrencies or digital assets should review their marketing materials and other statements, including website or mobile application disclaimers, to assess any explicit or implicit representations that a product or service is regulated, insured, or eligible for FDIC insurance.

More generally, companies subject to the CFPB’s jurisdiction also should monitor the CFPB’s circular system, as it is another channel it will utilize to announce industry guidance. Awareness of this guidance is of paramount importance in understanding the CFPB’s stance while it enforces consumer financial laws.

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