

## **Alert** | Financial Regulatory & Compliance



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### **CFPB to Issue Consumer Financial Protection Circulars to Increase Transparency and Align Enforcement**

The Consumer Financial Protection Bureau (CFPB or the Bureau) **announced** it would begin issuing Consumer Financial Protection Circulars (Circulars) to a “broad set of government agencies responsible for enforcing federal consumer financial law.” Director Rohit Chopra explained in a May 16, 2022, blog post that while the CFPB is the “principal regulator responsible for administering the federal consumer financial laws,” it is not the only agency tasked with enforcement. By issuing Circulars, the CFPB hopes to align enforcement across various regulators, ensuring consistency.

#### **Background**

The CFPB was created by Congress in 2010. The Dodd-Frank Act established the Bureau as the main regulator for consumer financial laws, along with preexisting regulatory agencies. The Bureau regulates both bank and non-bank entities and enforces the Consumer Financial Protection Act’s prohibition on unfair, deceptive, and abusive acts or practices, as well as 18 other “enumerated consumer laws.” Given the scope of laws for which it is responsible and the time at which the CFPB was created, the Bureau shares regulatory responsibilities with the following federal agencies (together with state regulators):

1. Federal Deposit Insurance Corporation
2. Office of the Comptroller of the Currency
3. Board of Governors of the Federal Reserve System
4. National Credit Union Administration
5. Department of Justice
6. Federal Trade Commission
7. Farm Credit Administration
8. Department of Transportation
9. Department of Agriculture.

**Consumer Financial Protection Circulars** are advisory policy statements the Bureau issues under the Administrative Procedure Act, 5 U.S.C. 553(b). Circulars provide background on an applicable law and state “considerations relevant to the Bureau’s exercise of its authorities.” They also provide guidance for related regulators on how to enforce federal consumer financial law. While Circulars are issued in the name of transparency, they do not limit or otherwise restrict the Bureau’s authority, nor do they impose more legal requirements on external parties.

### **First CFPB Circular Coincides with FDIC’s UDAP Rule**

On May 17, 2022, the Bureau issued its first circular, “Deceptive representations involving the FDIC’s name or logo or deposit insurance,” which answered the question, “When do representations involving the name or logo of the Federal Deposit Insurance Corporation (FDIC) or about deposit insurance constitute a deceptive act or practice in violation of the Consumer Financial Protection Act (CFPA)?” In the Circular, the CFPB wrote that covered entities, especially fintechs and crypto companies, “likely violate the CFPA’s prohibition on deception if they misuse the name or logo of the FDIC or engage in false advertising or make misrepresentations to consumers about deposit insurance, regardless of whether such conduct (including the misrepresentation of insured status) is engaged in knowingly.”

The CFPB issued its first Circular the same day the FDIC issued its Unfair or Deceptive Acts or Practices (UDAP) rule prohibiting the misuse of the FDIC’s name and logo. The rule also prohibits entities from making misrepresentation about the FDIC’s deposit insurance. The rule sets forth how the FDIC will identify and investigate violations of Section 18(a)(4) of the Federal Deposit Insurance Act (prohibiting UDAP). The FDIC, hoping to increase transparency, promulgated the rule in response to increased observed incidents of financial services providers deceptive practices.

### **Conclusion**

The Bureau’s decision to issue Circulars demonstrates its support of the Biden administration’s stated goal of protecting consumers. The CFPB has acted to both **expand its reach** and **clarify existing federal law** to covered entities and other regulators.

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