FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064–AF26

FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors conduct business with IDIs today, including through digital and mobile channels. The final rule also clarifies the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are conducting business with an IDI and whether their funds are protected by federal deposit insurance. The final rule is intended to enable consumers to better understand when they are conducting business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

DATES: The amendments made in this rule are effective April 1, 2024. Compliance is required by January 1, 2025.

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SUPPLEMENTARY INFORMATION: The FDIC is amending part 328 of its regulations, which includes requirements for use of the official FDIC sign and IDIs' advertising statements, as well as misrepresentations of insured status and misuse of the FDIC's name or logo. The final rule generally: (1) modernizes and amends the rules governing the display of the official sign in branches to also, for example, apply the rules to IDIs' physical premises with different layouts and designs where consumers have access to or transact with deposits; (2) establishes and requires the display of the FDIC official digital sign on bank websites, mobile applications, and certain IDI automated teller machines (ATMs) and other like devices; (3) requires the use of disclosures differentiating deposits and non-deposit products across all banking channels, including digital channels; (4) clarifies the FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; (5) amends the definition of ''non-deposit product'' to include crypto-assets and specifically address safe deposit box services; and (6) requires IDIs to establish and maintain written policies and procedures addressing compliance with part 328. As explained below, the final rule is intended to enable consumers to better understand when they are conducting business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

A. Policy Objectives

The banking landscape has significantly changed since 2006, when the FDIC last updated its regulation on the official sign and advertising statement. For example, consumers are increasingly relying on internet and mobile banking channels to access IDI banking services, bank branches are continually evolving to serve depositors, and financial technology (fintech) companies are offering consumers new options and alternatives for accessing banking products and services. While these developments are beneficial, they may make it more difficult for depositors and consumers to understand when they are conducting business with an IDI and when their funds are protected by FDIC deposit insurance. In addition, the FDIC has observed an increase in misleading representations about deposit insurance on the internet, which can result in consumer confusion and harm. These types of misleading statements create uncertainty and could dilute and undermine the confidence that underpins banks and our nation's broader financial system.

To address ongoing market and technological developments, the amendments to part 328 are intended to achieve several policy goals. Specifically, the FDIC intends to bring the certainty and confidence historically provided by the FDIC official sign found at banks' teller windows to IDI digital channels through which depositors are increasingly handling their banking needs today. These channels serve as the digital teller windows of the modern banking landscape, and it is critical that these channels provide clear, consistent, and accurate information about deposit insurance upon which consumers, businesses, and other entities may base their financial decisions.

The final rule establishes sign requirements across all banking channels, including evolving digital channels, to better align with how depositors conduct business with IDIs today. The sign requirements are also intended to more clearly distinguish insured deposits from non-deposit products (which are not insured) and to help consumers distinguish IDIs from non-banks in the digital age. The final rule allows consumers, businesses, and other entities to better understand when their funds are protected by FDICs deposit insurance, and when they may not be insured. At the same time, the sign requirements are intended to permit flexibility for IDIs and other firms in the marketing of their products and services.

The amendments to the FDIC's rules regarding misrepresentations of deposit insurance coverage are intended to address specific scenarios where information provided to consumers may be misleading with respect to deposit insurance coverage. In particular, the FDIC is concerned that certain business relationships between IDIs and non-banks may be confusing to many consumers. Consequently, the final rule requires clear disclosures that will better inform consumers as to when their funds are protected by FDIC deposit insurance. Further clarity in this area will be beneficial for both consumers and the industry.

B. Background

The FDIC is an independent federal agency and its mission is to maintain stability and public confidence in the nation's financial system by, among other things, insuring deposits at all IDIs. Today, there are about 4,654 IDIs in the United States.[1] Since 1933, the FDIC has taken action in accordance with its mission to restore public confidence in the banking system in times of financial turmoil, including the severe financial crisis of 2008 to 2013, during the financial stress associated with the coronavirus disease 2019 (COVID–19) pandemic, and, most recently, when large regional banks failed in the first half of 2023. The FDIC has proactively sought to protect

[1] Call Reports as of June 30, 2023.

depositors and consumers,[2] promote public confidence in insured deposits, and prevent false and misleading representations about the manner and extent of FDIC deposit insurance.

Statutory Authority and Regulations

Sign and advertising statement requirements for IDIs date back to the Banking Act of 1935 and are now set forth in section 18(a) of the Federal Deposit Insurance Act (FDI Act).[3] Section 18(a) grants the FDIC authority to prescribe regulations with respect to these requirements, which are currently contained in subpart A to 12 CFR part 328.[4]

The FDIC's official sign and advertising statement regulations require IDIs to continuously display the FDIC official sign where insured deposits are usually and normally received in the bank's principal place of business and at all of its branches and to use an official advertising statement, such as ''Member FDIC,'' when advertising deposit products and services, with few exceptions.[5] The FDIC last made major amendments to these regulations in 2006.[6] The 2006 amendments refer to an IDI's physical premises and ''Remote Service Facilities'' but do not specify other banking channels that have since evolved, such as digital banking channels.[7]

Section 18(a)(4) of the FDI Act prohibits any person from misusing the name or logo of the FDIC or from engaging in false advertising or making knowing misrepresentations about deposit insurance.[8] The FDIC has broad statutory authority in this area and, in May 2022, issued specific regulations in subpart B to 12 CFR part 328 regarding false representations related to FDIC insurance and the misuse of the FDIC name and logo.[9]

Developments in Consumer Access to Banking and Financial Services

In recent years, there have been significant changes in the provision of banking products and services, including the widespread use of digital banking channels as a critical and fundamental mechanism to access banking and financial services, the evolution of bank branches' role in serving consumers, and an increasingly broad array of financial products offered through banking channels, including access to non-deposit products. The following overview of these trends is intended to provide context for the final rule, which seeks to enable consumers to better understand when they are conducting business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

Many bank branches retain a traditional physical branch footprint, serving depositors primarily at teller windows or stations. According to the FDIC's 2021 National Survey of Unbanked and Underbanked Households (Household Survey), roughly 63.4 percent of all banked households used a bank teller to access their accounts at least once in the last 12 months, including 57.8 percent of the youngest banked households between the ages of 15 to 24, and 72.2 percent of the oldest banked households aged 65 or older.[10] However, IDIs have increasingly begun operating physical premises with different layouts and designs. These locations may include electronically-staffed kiosks, interactive ATMs that provide remote assistance with a teller, and teller-less cafés with internet access where deposits can be accepted on tablets or through ATMs. The FDIC's long-standing sign rules, focused on display of the official sign at teller windows or stations, need to be updated to reflect these market changes and the way banks and consumers conduct business.

The FDIC's long-standing sign rules also do not reflect the digital banking services now offered, such as online banking and mobile banking. For example, digital banking channels enable banks to receive customer deposits through remote deposit capture. For consumers that use these channels to make deposits, an IDI's ATM, website, or mobile application effectively serves as a digital teller window. The results of the Household Survey show that the proportion of banked households that used *mobile* banking as their primary method of bank account access increased from 34.0 percent in 2019 to 43.5 percent in 2021.[11] The proportion of banked households that used *online* banking as their primary method of bank account access was similar in 2019 (22.8 percent) and 2021 (22.0 percent).[12] Combined, 65.4 percent of banked households in 2021 used *mobile or online* banking as their primary method of bank account access, up from 56.8 percent in 2019.[13] Given that nearly two-thirds of banked households primarily access banking products through phones, computers, and other devices, the FDIC believes it is critical to update its rules and provide consistent sign requirements for digital channels.

Banking customers are also offered an increasingly wide array of financial products and services, regardless of whether they are in a branch, using an ATM, or connecting with an IDI through digital channels. In many instances, IDIs offer both deposits and non-deposit products to consumers. For example, IDIs might allow depositors in their branches to consult with an investment adviser and purchase securities or mutual funds. Options to purchase non-deposit products are continuing to evolve, with some IDIs offering ATM or digital banking customers the ability to purchase crypto-assets with their funds. In some cases, an IDI may provide its customers who initially access the IDI's website, ATM, or banking application the ability to purchase non-deposit products from a third party. Absent adequate signs or disclosures, simultaneous offering of both insured deposits and non-deposit products may lead bank customers (who are aware that the IDI is insured by the FDIC) to mistakenly conclude that all of the financial products being offered through

[2] As used in this document, the term ''consumer'' means any current or potential depositor, including natural persons, organizations, corporate entities, and governmental bodies. *See* 12 CFR 328.101.

[3] 12 U.S.C. 1828(a)(1). Section 9 of the FDI Act provides the FDIC with the authority to prescribe rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing. 12 U.S.C. 1819(a) Tenth.

[4] *See* subpart A to 12 CFR part 328 (§§ 328.0 through 328.5–328.99).

[5] *See generally,* 12 CFR part 328.

[6] 71 FR 66098 (Nov. 13, 2006).

[7] *See* 12 CFR 328.2. ''Remote Service Facility'' includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received. 12 CFR 328.2(a)(1)(ii).

[8] 12 U.S.C. 1828(a)(4). Section 18(a)(4) also provides the FDIC independent authority to investigate and take administrative enforcement actions, including the power to issue cease and desist orders and impose civil money penalties, against any person who misuses the FDIC name or logo or makes misrepresentations about deposit insurance. 12 U.S.C. 1828(a)(4)(C)–(D). Furthermore, under Federal law, it is a criminal offense to misuse the FDIC name or make false representations regarding deposit insurance. *See* 18 U.S.C. 709.

[9] 87 FR 33415 (June 2, 2022); Subpart B to 12 CFR part 328 (§§ 328.100 through 328.109). Subpart B establishes the process by which the FDIC identifies and investigates conduct that may violate section 18(a)(4), the standards under which such conduct is evaluated, and the procedures the FDIC follows when formally and informally enforcing the provisions of section 18(a)(4).

[10] Federal Deposit Insurance Corporation (FDIC), *2021 National Survey of Unbanked and Underbanked Households* (October 2022), *https://www.fdic.gov/analysis/household-survey/2021report.pdf.*

[11] *Id.* at 25.

[12] *Id.*

[13] *Id.*

their bank's website or application are FDIC-insured.

Growth in the number of fintech companies has also blurred the distinction between IDIs and non-banks in the eyes of many consumers, increasing the potential for confusion regarding deposit insurance coverage. Business arrangements between IDIs and non-banks, including fintech companies, can take many forms and continue to evolve at a rapid pace. In some cases, such business arrangements can present the risk of consumer confusion. For example, an IDI and a fintech company might enter into an arrangement where the fintech company offers the IDI's deposit products and services to the fintech company's customers. In other instances, fintech companies might deposit their customers' funds at an IDI. In such cases, the fintech company might represent to its customers that the customers' funds are FDIC-insured, or that they are insured by the FDIC on a ''pass-through'' basis, without noting that it is subject to certain conditions. The substantial increase in the number and types of arrangements and the various representations that companies are making regarding deposit insurance coverage may confuse many consumers. For example, inadequate disclosures may result in consumers not understanding whether they are dealing with an IDI, and whether their funds are insured by the FDIC.

Industry Outreach—Request for Information

In February 2020 and April 2021, the FDIC published Requests for Information (collectively, the RFIs) in the **Federal Register** to seek public input regarding potential modernization of the official sign and advertising rules to reflect changes in deposit-taking via physical branch, digital, and mobile banking channels.[14] In response to the RFIs, the FDIC received 20 comments from trade associations, IDIs, and others.[15] In addition, FDIC staff met with representatives from IDIs, a technology service provider, and consumer groups. Commenters generally recognized the importance and value of displaying FDIC signs and the advertising statement, and some commenters stressed that depositors place significant trust in FDIC signs. A summary of these comments was provided in the December 2022 Notice of Proposed Rulemaking (NPR or proposal) and the comments were considered as part of this rulemaking process.[16]

Previous Rulemaking

On May 17, 2022, the FDIC issued a final rule adding a new subpart B to 12 CFR part 328.[17] The final rule describes: (1) the process by which the FDIC will identify and investigate conduct that may violate the prohibitions against misuse and misrepresentation; (2) the standards under which such conduct will be evaluated; and (3) the procedures that the FDIC will follow when formally and informally enforcing these prohibitions. While this rulemaking was an important step, the FDIC has observed an increase in the number of instances where financial services providers or other entities or individuals have misused the FDIC's name or logo or have made misrepresentations about FDIC insurance. Although the FDIC demanded that these non-banks cease and desist from making false and misleading statements, such actions by non-banks caused continuing challenges for consumers in determining whether they are conducting business with an IDI and whether their funds are protected by the FDIC's deposit insurance coverage.[18] This final rule will provide further clarification of subpart B to address these challenges, particularly to address specific situations where consumers may be misled as to whether an entity is insured by the FDIC or as to the nature and extent of deposit insurance coverage.

December 2022 Proposal and Comments

On December 13, 2022, the FDIC Board approved an NPR on the FDIC's sign and advertising requirements, rules on misrepresentation of insured status, and misuse of the FDIC's name or logo. The FDIC sought to obtain input from the public for these proposed regulations in light of significant changes to bank branches and their role in serving consumers, the proliferation of digital channels as a critical and fundamental mechanism to access banking and financial services, and an increasingly broad array of financial products offered through banking channels, including access to non-deposit products.

Specifically, the FDIC's proposal aimed to modernize its sign and advertising requirements to reflect current banking practices, like deposit-taking via physical branches and similar locations, digital banking channels, and ATMs. The proposal included three distinct signs relating to deposit insurance. The first pertained to the official sign displayed at IDIs' principal places of business. The NPR proposed to modernize the requirements relating to display of the official sign to reflect developments in the marketplace. The second was for a new digital official sign that IDIs would be required to display on their digital deposit-taking channels, such as online banking websites, mobile applications, and ATMs. Third, the FDIC proposed requiring IDIs to display a non-deposit products sign indicating that such products: are not insured by the FDIC; are not deposits; and may lose value (where the IDI offers both insured and uninsured, non-deposit products through the same channel) in order to address potential customer confusion regarding a product's insured status. The FDIC also proposed limited amendments to its official advertising statement requirements to provide IDIs with an additional option for a shortened official advertising statement. Finally, the proposal included clarifications for the application of the misrepresentation statute in specific situations where consumers may misunderstand or be misled as to whether an entity is insured by the FDIC or the nature and extent of deposit insurance coverage.

The NPR solicited comments on all aspects of the proposed rule. The comment period ended on April 7, 2023. The FDIC received 17 substantive comments from financial institutions, industry groups, consumer organizations, investor advocacy groups, crypto-asset/blockchain groups, deposit networks, and third-party vendors.[19]

A number of comments were supportive of the proposal. More specifically, several comments supported the FDIC's efforts to modernize its rules in light of changes and innovation in the marketplace and to provide further clarity through

[14] 85 FR 18528 (Feb. 26, 2020); 86 FR 18528 (Apr. 9, 2021).

[15] Comments to the RFIs can be found on the FDIC's website, *available at: https://www.fdic.gov/resources/regulations/federal-register-publications/2020/2020-rfi-fdic-sign-and-advertising-requirements-3064-za14.html* and *https://www.fdic.gov/resources/regulations/federal-register-publications/2021/2021-rfi-fdic-official-sign-and-advertising-requirements-3064-za14.html.*

[16] 87 FR 78017, 78020 (Dec. 21, 2022).

[17] 87 FR 33415 (June 2, 2022).

[18] A public list of FDIC cease and desist letters related to violations of section 18(a)(4) of the FDI Act can be found on the FDIC's website, *available at: https://www.fdic.gov/resources/regulations/laws/section-18a4-of-fdi-act/.*

[19] Comments can be accessed at: *https://www.fdic.gov/resources/regulations/federal-register-publications/2022/2022-fdic-official-sign-advertising-requirements-3064-af26.html.* In response to a comment letter, the FDIC extended the comment period by 45 days to provide additional opportunity for the public to prepare comments to address the matters raised by the NPR.

deposit insurance signage and advertisement requirements. Several comments also supported the FDIC's efforts to ensure consumers fully understand the insured status of products offered by financial institutions. One commenter provided that the confusion over new and complex financial products could undermine public confidence in the safety and reliability of the mainstream banking system.

A number of commenters expressed a desire for more flexibility regarding the proposed signage and disclosure requirements. Some commenters advocated for increased flexibility in the placement of both physical and digital signage, noting the costs entailed to comply with the proposed rule's requirements.

Several financial institutions provided that the proposed rule focused on community banks instead of non-banks that falsify their insured status, and noted that banks already take affirmative steps to inform their customers about deposit insurance coverage. However, other commenters commended the FDIC's effort to improve clarity for customers regarding deposit insurance coverage and reduce customer confusion, given the rise of various banking services offered by the third parties.

Some comments advocated for stronger measures to address deposit insurance misrepresentations. Specifically, a commenter suggested that FDIC should expressly prohibit comparing an uninsured financial product to an insured product without clearly and conspicuously noting the difference between insured and uninsured status.

Commenters also expressed views on an appropriate effective date for the rule. One commenter recommended a minimum 18-month implementation period before the final rule becomes effective. Another commenter requested that the requirements related to the digital sign be made effective after the industry has at least one year to comply.

C. Final Rule and Discussion of Comments

The FDIC has reviewed and carefully considered public comments received and is generally finalizing the rule as proposed, with some changes and clarifications, as described below. The amendments made by this final rule will take effect on April 1, 2024. However, full compliance with the amendments made by this final rule is extended to January 1, 2025. The extended compliance date is intended to provide sufficient time for financial institutions to put in place processes, systems and technological updates to implement the new regulatory requirements described below.

1. FDIC Official Sign

The FDIC did not receive comments on its official sign and will continue to use the existing design of the official sign, which, in addition to prominently bearing the name of the FDIC, includes statements indicating that each depositor is insured up to at least $250,000 and that the FDIC's deposit insurance is backed by the full faith and credit of the United States government. In the proposed rule, the FDIC moved the reference to the display of the official sign to proposed § 328.3, including the language that the official sign must be in a size of 7″ by 3″ or larger with black lettering on a gold background. After further consideration, the FDIC is including the official sign size and color requirements as part of the official sign description under § 328.2 for ease of reference under the final rule. The FDIC also continues to reference this language in the requirements for display of the official sign in § 328.3 under the final rule.

2. Sign Requirements on IDIs' Physical Premises

Official Sign In an IDI's Physical Premises

Proposed Rule

Section 18(a) of the FDI Act requires all IDIs to display at each place of business a sign or signs relating to the insurance of the deposits of the institution. The FDIC proposed updated signage requirements in § 328.3 to govern signage within an IDI's premises. The proposed rule would have continued to require all IDIs to continuously, clearly, and conspicuously display the official sign in their principal place of business and all their U.S. branches.[20] To accommodate evolving styles and footprints of branches, the proposed rule also would have required IDIs to display the FDIC official sign in any physical location where IDIs receive deposits other than teller windows or stations (referred to as ''non-traditional branches'' in the preamble to the proposed rule).

Discussion of Comments

One commenter suggested that the FDIC eliminate references to ''non-traditional branches'' and stated that non-branch locations should not be subject to the proposed rule's sign requirement. The commenter further stated that the proposed rule's requirements for physical premises would apply only to banks' principal place of business and branches. The commenter expressed concerns that the term ''non-traditional branch'' could be over-inclusive and include non-branch locations, like deposit production offices.

Final Rule

The FDIC is revising § 328.3(b) to now require that:

> Each insured depository institution must continuously, clearly, and conspicuously display the official sign *at each place of business where consumers have access to or transact with deposits, including all of its branches (except branches excluded from the scope of this subpart under § 328.0) and other premises in which customers have access to or transact with deposits,* in the manner described in this paragraph (b).[21]

This requirement is consistent with section 18(a) of the FDI Act, which provides the FDIC authority to prescribe regulations for IDIs to display at each place of business a sign or signs relating to the insurance of deposits of the institution.[22]

With respect to the comment that requested the FDIC not use the term ''non-traditional branches,'' the FDIC did not intend to affect how the term ''branch'' is defined or interpreted in other regulations. In the preamble to the proposal, the FDIC used the term ''non-traditional branches'' to help distinguish such places of business from what are commonly viewed as the ''traditional branches'' where deposits are usually and normally received at only teller windows. The FDIC intended for the term to describe the new layouts and designs that some IDIs are using where deposits are usually and normally received in areas other than teller windows or stations.[23]

However, to prevent potential confusion related to the term ''branch'' and its applications in other regulations, the preamble to the final rule will not refer to the term ''non-traditional branches.'' Rather, under the final rule, the signage requirements apply to an IDI's places of business where consumers have access to, or transact with, deposits, including branches and other physical premises (*e.g.,* café-style locations). As a result, the types of bank premises that were intended to be covered under the proposal are covered by the final rule. For example, under a

[20] As stated in the NPR, the term ''branch'' would be defined by reference to the FDI Act's definition of ''domestic branch,'' 12 U.S.C. 1813(*o*).

[21] Final 12 CFR 328.3(b) (*emphasis added*).

[22] *See* 12 U.S.C. 1828(a)(1)(A), 1828(a)(2).

[23] *See* final 12 CFR 328.3(b)(2).

scenario where an IDI usually and normally receives insured deposits at a teller window or station *and* other areas within the same premise, then pursuant to the final rule, the IDI is required to display the official sign in accordance with the applicable signage requirements for each area as provided in § 328.3(b).

Display of Official Sign When Deposits Received at Teller Windows or Stations

Proposed Rule

Under the proposed rule, if IDIs usually and normally receive deposits at teller windows or stations, IDIs would have been required to display the official sign at each teller window or station in a size of 7″ by 3″ or larger with black lettering on a gold background. The proposed rule would also have allowed flexibility with respect to display of the official sign where the IDI usually and normally receives deposits at teller windows or stations and only offers insured deposit products on the premises. In such instances, an IDI would have the option to display the official sign at one or more locations visible from the teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area.

Discussion of Comments

One commenter suggested that the FDIC provide IDIs with flexibility to display clear and conspicuous signage and disclosures best suited for a particular branch facility. The commenter further stated that branch managers and other employees are readily available onsite to answer customer questions and address any confusion to the extent a customer may have questions, even with the presence of clear, conspicuous disclosures.

With respect to IDIs that only offer insured deposit products on the premises, one commenter requested clarification as to whether the proposed flexible option would apply if the IDI's larger locations offer non-deposit products. The same commenter also commended the FDIC for providing flexibility in signage placement but sought an example of what the FDIC would consider a sign ''*large enough to be legible from anywhere in that area*'' to satisfy this flexible option.

Final Rule

The FDIC is finalizing the proposed requirements with respect to the display of the official sign when IDIs usually and normally receive deposits at teller windows or stations. The final rule will continue to require that IDIs display the official sign at each teller window or station in a size of 7″ by 3″ or larger, with black lettering on a gold background, if insured deposits are usually and normally received at teller windows or stations.

As provided under the proposal, the FDIC believes that it is appropriate to allow additional flexibility with respect to display of the official sign in instances when the IDI usually and normally receives deposits at teller windows and stations and *only* offers insured deposit products on the premises. In such cases, the requirement to display the official sign at each teller window or station may be satisfied by displaying the official sign in one or more locations visible from the teller windows or stations, in a size large enough to be legible from anywhere in that area. This flexible option would apply to branches that do not offer non-deposit products on the premises even if the IDI's other locations offer non-deposit products.[24]

Under the final rule, whether the display of the official sign is ''*large enough to be legible from anywhere in that area*'' means that the average customer can easily see and read the sign from a reasonable distance from that area. This would depend on factors specific to the layout of the bank's physical premises or places of business and the sign used, such as the size and shape of the physical location, the area where deposits are usually and normally accepted, a sign's placement, a sign's size, and its font and colors. For example, if a bank's place of business has two teller windows right next to each other and it posts one official sign between the teller windows that is large enough to be legible to depositors at both teller windows, that approach would meet the standard. Banks' places of business vary significantly in size and layout, and the final rule is intended to provide banks the flexibility to account for these physical variations.

Display of Official Sign When Deposits Received in Areas Other Than Teller Windows or Stations

Proposed Rule

Under the proposal, if an IDI usually and normally receives deposits in areas of the premises other than teller windows or stations, IDIs would have been required to display the official sign in one or more locations in a manner that ensures the official sign is large enough so as to be legible from anywhere in those areas.

Discussion of Comments

As discussed above, a commenter suggested that non-branch locations should not be subject to the proposed rule's sign requirements.

Final Rule

Consistent with the proposal, the final rule provides that if insured deposits are usually and normally received in areas of the premises other than teller windows or stations (*e.g.,* café-style locations), the IDI is required to display the official sign in one or more locations in a size large enough to be legible anywhere in those deposit-taking areas.[25] The FDIC believes that such a requirement will help ensure that IDI customers are aware that their deposits are protected by deposit insurance.

As discussed above, an IDI's premises, including non-branch locations that receive deposits in areas other than teller windows or stations, are subject to the final rule's requirements. For example, an IDI's café-style location that does not receive deposits at a teller window or station, but where customers engage with bankers in an open area and customers have access to or transact with deposits, is subject to the sign requirements under the final rule.

Non-Deposit Signage on an IDIs' Physical Premises

Proposed Rule

When both insured deposits and non-deposit products are offered within the IDI's premises (regardless of whether deposits are received at teller windows or stations or deposits are received in areas other than teller windows or stations), the proposed rule would have required IDIs to display a non-deposit sign within a segregated area and not in close proximity to the official sign. The proposed rule would have required that IDIs continuously, clearly, and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.

Under the proposed rule, the definition of ''non-deposit product'' read as, ''Any product that is not a 'deposit', including, but not limited to: stocks, bonds, government and municipal securities, mutual funds, annuities (fixed and variable), life

[24] *See infra* Non-Deposits Sign on IDI's Premises Section for discussion on the offering of non-deposit products.

[25] As discussed, whether the display of the official sign is ''*large enough to be legible from anywhere in that area*'' means that the average customer can easily see and read the sign from a reasonable distance from that area depending on factors specific to the layout of the bank's physical branch and the sign used, such as the size and shape of the physical location, the area where deposits are usually and normally accepted, a sign's placement, a sign's size, and its font and colors.

insurance policies (whole and variable), savings bonds, and crypto-assets. For purposes of this definition, a credit product is not a non-deposit product.'' [26]

Discussion of Comments

Non-deposit product definition. One commenter requested clarification on what products constitute a non-deposit product under the proposed rule, such that they would require the display of the non-deposit sign. Specifically, the commenter noted the proposal only included life insurance policies that are whole or variable and requested clarification as to whether other types of insurance offerings are also included in the definition. Moreover, the commenter requested clarification on whether safe deposit box services would be considered a non-deposit product requiring the display of the non-deposit sign.

Non-deposit sign design. With respect to the design of the non-deposit sign, one commenter stated that it would not be necessary for the FDIC to fully standardize the design, but recommended the FDIC set minimum standards for the sign such as a minimum font size. Another commenter supported standardization of the non-deposit sign and suggested a standardized icon, such as the red circle-backslash symbol overlaid on the word ''FDIC'' or ''FDIC-insured'' with the phrase ''NOT FDIC-insured'' underneath the symbol.

Display of non-deposit sign. Some commenters requested that the FDIC take a less prescriptive approach with respect to the non-deposit sign requirements and adopt a more flexible approach that can change with evolving technology and business practices. Two commenters suggested that the FDIC adopt a single, centralized disclosure approach to address deposit and non-deposit products rather than separate signage requirements. Another commenter raised concerns that the costs of segregating physical signage across multiple branch locations would be challenging in smaller branch locations and requested further clarification when separation would be required for institutions with various service offerings.

One commenter requested the FDIC define the term ''offers'' in relation to the offering of non-deposit products on the IDI's physical premises that would require the display of the non-deposit sign. The commenter stated that they understood ''offers'' to mean that the bank has personnel on the premises who are licensed to sell non-deposit products but would exclude locations without onsite staff licensed to sell non-deposit products.

Final Rule

The FDIC is finalizing the proposed requirement to display non-deposit signs when both insured deposits and non-deposit products are offered within the IDI's premises. The final rule's non-deposit sign requirement applies to both an IDI's places of business where deposits are received at teller windows or stations and an IDI's places of business where deposits are received in areas other than teller windows or stations (*e.g.,* café-style locations). Under the final rule an IDI generally must physically segregate the areas where non-deposit products are offered from areas where insured deposits are usually and normally accepted, and display a sign in the non-deposit areas indicating that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.[27] An IDI is required to continuously, clearly, and conspicuously display this non-deposit sign; however, the final rule does not include specific design or size requirements. To minimize the potential for consumer confusion, the final rule prohibits display of non-deposit signs in close proximity to the official FDIC sign.

Non-Deposit Product Definition

Through the proposed rule, the FDIC intended to provide further clarity on the types of products that would constitute non-deposit products. In response to comments related to the non-deposit definition, the FDIC acknowledges that the proposed definition, as written, could be read as excluding products that would otherwise constitute a non-deposit product. Accordingly, the final rule generally retains the current non-deposit definition with minor changes, discussed in further detail below.

The final rule defines a non-deposit product as: ''[A]ny product that is not a 'deposit', including, but not limited to: insurance products, annuities, mutual funds, securities, and crypto-assets. For purposes of this definition, credit products and safe deposit box services are not non-deposit products.'' [28]

The definition under the final rule provides a non-exclusive list of general examples of the types of products that constitute non-deposit products that is consistent with the long-standing definition, updated to include ''crypto-assets.'' [29] However, the FDIC agrees with a commenter that safe deposit boxes should not be included in the definition for purposes of requiring display of the non-deposit sign under part 328, Subpart A, and has revised the definition under the final rule to clarify the treatment of safe deposit boxes.[30] Banks have a longstanding history of providing safe deposit box services to consumers to store valuables in a private, secure section of the bank. Accordingly, IDIs are not required to display the non-deposit sign in areas where IDIs provide safe deposit boxes and offer no other non-deposit products.

Design of Non-Deposit Sign

Consistent with the proposal, the final rule requires IDIs that offer both deposit and non-deposit products at their physical premises to display a non-deposit sign in a continuous, clear, and conspicuous manner with information indicating that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. The FDIC is not standardizing the design of the non-deposit sign as the FDIC believes the rule strikes a proper balance in providing IDIs flexibility, but also helps prevent consumer confusion by requiring signs informing consumers of the risks associated with non-deposit products. With respect to the comment to use red circle-backslash over ''FDIC'' or ''FDIC-insured,'' the FDIC views the suggestion as potentially confusing to consumers. With respect to the recommendation that the FDIC set minimum standards for the sign such as a minimum font size, the final rule, as proposed, requires that the sign be displayed in a continuous, clear, and conspicuous manner. As such, the FDIC believes this standard will help mitigate potential concerns regarding minimum font sizes and standards to ensure that consumers are able to view clearly the non-deposit sign. Accordingly, the FDIC is not adopting this recommendation and is not standardizing the design of the non-deposit sign.

Display of the Non-Deposit Sign

Under the final rule, the FDIC requires IDIs that offer both insured deposits and non-deposit products to clearly delineate and distinguish areas where activities related to the sale of non-deposit products occur from the

[26] 87 FR 78017, 78033, 78036 (Dec. 21, 2022).

[27] As noted above, this requirement is intended to be generally consistent with longstanding interagency guidance on the retail sale of non-deposit investment products that many institutions already follow and thus should be familiar to many consumers.

[28] Final §§ 328.1, 328.101.

[29] *See infra* Crypto-Assets Section for further discussion.

[30] For purposes of part 328, subpart B, the ''non-deposit definition'' includes safe deposit boxes.

areas where insured deposit-taking activities occur. The FDIC believes requiring display of the non-deposit sign in a physically segregated area would more effectively mitigate the potential for consumer confusion than a centralized disclosure as recommended by some commenters, as it would better alert consumers when products are not insured. Further, given that the final rule does not require standardization of the non-deposit sign and provides IDIs flexibility regarding the design of the non-deposit sign, the FDIC believes that the approach taken in the final rule is responsive to commenter concerns on flexibility.

With respect to comments noting concerns on the costs of segregating physical signage across multiple locations and requesting further clarification on when separation would be required, the non-deposit sign requirement is intended to be generally consistent with practices described in the longstanding interagency guidance on the retail sale of non-deposit investment products.[31] As a result, the FDIC has added a provision to the final rule, generally consistent with longstanding guidance, noting that in limited situations in which physical considerations present challenges to offering non-deposit products in a distinct area, institutions must take prudent and reasonable steps to minimize customer confusion. This guidance has informed many institutions' current approaches, and thus should be familiar to many IDIs and consumers.

Consistent with the interagency guidance, the FDIC expects IDIs to minimize the possibility of consumer confusion when delineating the areas where non-deposit activities take place from areas where insured deposit-taking activities occur. The FDIC intends for the delineation requirement to include some flexibility, depending on the circumstances. For example, IDIs could conduct non-deposit related activity in separate areas or in areas that are not in close proximity to where deposits are taken by using a desk, cubicle, partitions, railings, planters, a separate room, or other indicator that the area is distinct and separate from the deposit-taking area. In the limited situations where IDIs experience challenges in physically segregating products, IDIs must take prudent and reasonable steps to minimize consumer confusion, consistent with the regulation's requirements.

In response to the commenter requesting clarification on the term ''offers'' for purposes of displaying the non-deposit sign under part 328, the FDIC interprets ''offers'' to capture situations where customers are presented with or sold non-deposit products within an IDI's physical premises. This could include situations where personnel are not physically present on the bank premises, but the IDI presents or sells non-deposit products to consumers within the bank's premises. As an example, non-deposit signs are required in areas where the consumer is offered non-deposit products within an IDI's physical premises by personnel through an electronic communication device (*e.g.,* an interactive kiosk or tablet).

Relevance of Non-Deposit Sign Requirements to Interagency Statement of Policy

The federal banking agencies have previously issued guidance to IDIs they supervise relating to the retail sale of non-deposit investment products.[32] The FDIC's proposed rule stated that its non-deposit sign requirement was intended to be consistent with the practices described in this longstanding interagency guidance. Specifically, the proposed rule's non-deposit sign requirements were similar to disclosures related to sales of non-deposit products described in the interagency guidance.

Use of Electronic Media or Varied Signs To Satisfy Official Sign and Non-Deposit Sign Requirements on IDIs' Premises

Proposed Rule

Under the proposed rule, IDIs would have had the option to display the official sign and non-deposit sign through the use of electronic media. The proposed rule also would retain certain provisions of existing regulations that provide IDIs with flexibility in displaying the official sign. Under the proposal, IDIs would have the option to display the official sign in locations on the premises other than those required under the rule, except for in areas where non-deposit products are offered. For locations where display of the official sign is required, IDIs could choose to display signs that vary from the official sign in size, color, or material, provided that the sign is no smaller than the official sign, has the same color for the text and graphics, and includes the same content.

Discussion of Comments

Commenters supported the proposed option to use electronic media to display the official sign and non-deposit sign. One commenter recommended that the FDIC produce educational, captioned consumer videos to be displayed on digital signage within an IDI's lobby.

Final Rule

The final rule adopts the proposal to provide IDIs the flexibility to utilize electronic media to satisfy sign requirements on an IDI's premises. This provision allowing IDIs to use electronic signs applies to both display of the official sign and non-deposit signage, where required, and would similarly be subject to the continuous, clear, and conspicuous display standard. Accordingly, a rotating display will not satisfy the ''continuous'' requirement applicable to the display of official sign and non-deposit sign.

The final rule also retains certain provisions of current regulations that provide IDIs with flexibility in displaying the official sign. IDIs have the option to display the official sign in locations on the premises other than those required under the rule, except for in areas where non-deposit products are offered. For locations where display of the official sign is required, IDIs may choose to display signs that vary from the official sign in size, color, or material, provided that the sign is no smaller than the official sign, has the same color for the text and graphics, and includes the same content.

Under the final rule, the FDIC will not require IDIs to display FDIC-produced videos within their physical premises. The FDIC is, however, undertaking several efforts to educate consumers regarding deposit insurance and the role of the FDIC, including a public awareness campaign on deposit insurance launched in October 2023.[33]

3. Sign Requirements for Digital Deposit-Taking Channels

The final rule will facilitate banks providing consumers with clear, consistent, and accurate digital disclosures to promote consumers' understanding of when they are interacting with an IDI and when their funds are protected by the FDIC's deposit insurance coverage. At the same time, the FDIC intends to permit some flexibility for IDIs with respect to digital sign requirements. As such, the FDIC is

[31] *See* Interagency Statement on Retail Sales of Non-deposit Investment Products, FIL–9–94 (Feb. 17, 1994), *available at: https://www.fdic.gov/news/financial-institution-letters/1994/fil9409.html.*

[32] *Id.*

[33] FDIC's national consumer campaign (''Know Your Risk. Protect Your Money''), *available at: https://www.fdic.gov/news/campaigns/know-your-risk/index.html.*

finalizing sign requirements related to IDI digital channels, with some changes and clarifications, as described below.

a. FDIC Official Digital Sign

Proposed Rule

Under the proposal, an IDI would have been required to clearly, continuously, and conspicuously display a newly established digital sign on the IDI's homepage, landing and login pages or screens, and transactional pages or screens involving deposits, to the extent applicable. The proposal further provided that a digital sign displayed in a continuous manner, near the top of the relevant page or screen in close proximity to the IDI's name, would be considered ''clear and conspicuous.'' The proposed digital sign was intended to visually communicate to consumers that they are conducting business with an IDI rather than a non-bank. The proposal provided that the FDIC expected the digital sign to be an abbreviated version of the official sign and that it would prominently bear the name of the FDIC and the statement that insured deposits are backed by the full faith and credit of the U.S. Government.

Discussion of Comments

Some commenters raised concerns that the proposed changes in digital signage design and placement were overly prescriptive and may be difficult to implement due to technological and budgetary limits. However, other commenters supported the proposed requirement, noting the importance of ensuring that bank customers are made fully aware of situations where deposit insurance is present and is separate and distinct from product offerings that do not include deposit insurance.

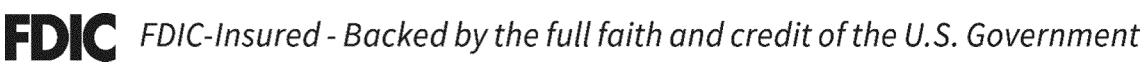
With respect to the placement of the proposed digital sign on the IDI's homepage, landing and login pages or screens, one commenter offered that home pages and landing pages are not the primary point of interaction between banks and customers, noting that home pages are generally used for marketing, not customer transactions. As such, the commenter believed only pages with transactional capacity should be subject to the proposed signage requirement. Some commenters questioned the necessity of displaying the same digital signage on each subsequent screen after a customer has logged in, and thought that the rules were unclear regarding internal transfer screens between FDIC-insured products after log-in. One comment noted that having the digital sign on login and other pages could imply to customers that deposit insurance applies to all products on the website.

Several commenters recommended that the FDIC adopt a more flexible approach where banks could place the digital sign on the bank's web page. One commenter noted that many websites use a basic template that carries through each successive web page and that template could contain the required statement. To allow for further flexibility in implementation and compliance, a commenter suggested that the FDIC add a ''reasonable person test'' when assessing the digital signage requirements in order to allow banks to continue to innovate. Another commenter provided that there would be no significant difference for a consumer in placing the FDIC official digital sign at the top of the page in close proximity to the bank name, other than increased costs for the IDIs. Other commenters supported the proposal to place the sign at the top of the screen to comply with the clear and conspicuous requirement.

The FDIC notes that a specific question was asked as part of the NPR about the design of the digital sign but no comments were received in response to this question.

Final Rule

After carefully considering the comments received, the FDIC is adopting this part of the proposed rule as final and will require IDIs to display the FDIC official digital sign ''clearly and conspicuously'' in a continuous manner, near the top of the relevant page or screen, and in close proximity to the IDI's name. The FDIC is finalizing a design for the FDIC official digital sign that consists of ''FDIC'' along with the following text: ''*FDIC-Insured- Backed by the full faith and credit of the U.S. Government.*'' Below is the design for the FDIC official digital sign under § 328.5:



The final rule establishes a clear standard to promote consistency in the use and application of the FDIC official digital sign by IDIs. The rule specifies the color, size, and font to establish an easily recognizable, consistent digital sign to convey the certainty and confidence historically provided by the FDIC official sign at banks' teller windows. Recognizing the variability in the design and color of IDI websites, the final rule also provides an alternative color if the specified colors, navy blue and black, would not be legible against the background design colors of the IDI's web page or mobile banking application.

The final rule requires ''FDIC'' in the FDIC official digital sign to be displayed with a wordmark size of 37.36 x 15.74px in navy blue (hexadecimal color code #003256), with ''*FDIC-Insured—Backed by the full faith and credit of the U.S. Government*'' in Source Sans Pro Web font (regular 400 italic), 12.8px, displayed in black (hexadecimal color code #000000) lettering. If the official FDIC digital sign in these colors would be illegible due to the color of the background, the final rule requires the ''FDIC'' and the one line of smaller type to the right of ''FDIC'' to both be displayed in white (hexadecimal color code #FFFFFF).

The FDIC official digital sign aligns with the statutory provisions in section 18 of the FDI Act on the display of signage at each IDI's principal place of business relating to the insurability of deposits and, consistent with section 18 of the FDI Act, the FDIC official digital sign includes a statement that insured deposits are backed by the full faith and credit of the U.S. Government. The FDIC appreciates the issues raised by commenters with respect to the FDIC official digital sign, including supporting flexibility and ensuring the new FDIC official digital sign does not cause depositor confusion. Given the discussion above regarding the increased use of mobile banking, as well as the FDIC's interest in protecting consumers, the FDIC believes the requirement to display the FDIC official digital sign will promote consumer confidence in the Nation's banking system and benefit IDIs by assisting consumers in more easily identifying IDI websites.

The FDIC believes that the use of the FDIC official digital sign by IDIs will assist consumers in better understanding when they are conducting business with an IDI and when they are interacting with a non-bank entity. Seeing the FDIC official digital sign on all IDI websites and mobile applications will promote awareness that consumers are doing business with FDIC-insured institutions. Display of the FDIC official digital sign

by any non-bank third party would improperly imply that the non-bank is FDIC-insured and would constitute a misrepresentation under part 328 subpart B.

The FDIC official digital sign must be displayed on the (1) initial or homepage of the website or application, (2) landing or login pages, and (3) pages where the customer may transact with deposits. For example, the FDIC official digital sign should be displayed where an IDI's mobile application allows customers to deposit checks remotely, because this electronic space is in effect a digital teller window.

In response to comments related to technical issues and potential costs, the FDIC recognizes the commenters' concerns. But several comments also highlighted the importance and value of clear and conspicuous signage to prevent consumer confusion. The FDIC believes that the benefits of the FDIC official digital sign outweigh the concerns about costs. To alleviate those concerns the FDIC is reviewing options to provide IDIs with technical assistance or guidance to assist in implementing the FDIC official digital sign requirements. The FDIC will also review options to provide an image of the FDIC official digital sign to IDIs upon request at no charge, similar to the process by which the FDIC provides banks with physical official signs.

b. Digital Display of Non-Deposit Signage

Proposed Rule

Under the proposed rule, if a digital deposit-taking channel offers access to deposits, as well as non-deposit products, IDIs would have been required to clearly, continuously and conspicuously display a non-deposit sign indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.

To satisfy this proposed requirement, the proposed rule would have required the continuous display of the non-deposit sign (referred to as the ''static'' non-deposit sign) on each IDI page relating to non-deposit products and prohibit displaying the non-deposit sign in close proximity to the FDIC official digital sign. The FDIC would expect the non-deposit signage to be in a prominent place, in an appropriate size, and displayed in a continuous manner for any consumer accessing the page to notice. The proposal provided, however, that institutions would have flexibility in the way they market non-deposit products and did not specify design or size requirements for this non-deposit sign.

In addition, under the proposed rule, IDIs would have been required to display this non-deposit sign via a ''one-time'' notification when consumers initially access a page related to non-deposit products (referred to as the one-time notification). The notification would have provided an initial, prominent display of the non-deposit information to alert consumers that they are dealing with non-deposit products that are not covered by FDIC insurance. Moreover, consumers would need to take action to dismiss the notification before accessing the relevant page or screen.

Discussion of Comments

Commenters generally recommended that the FDIC consider the costs related to implementing the digital signage requirements for IDIs and to ensure that the requirements are not overly burdensome for consumers and the industry.

More specifically, several commenters raised concerns that the increased digital signage requirements would increase costs for banks without countervailing benefits for consumers. While agreeing with the sentiment behind the proposed pop-up requirement, two commenters noted that creating pop-ups can be operationally complex and may be burdensome for smaller institutions to implement. Similarly, another commenter raised technical concerns and suggested a reduction of the repetitive disclosures.

One commenter recommended that the FDIC only finalize a requirement for non-deposit disclosures to be included statically on the applicable pages, and not require affirmative consumer action regarding such disclosures.

Some commenters also stated that the proposed digital signage requirements could lead to customer confusion and create a suboptimal customer experience. Relatedly, another commenter stated that the proposed digital pop-up message could degrade the customer experience and may cause difficulties for screen readers used by disabled customers.

One commenter expressed appreciation about the ability of ''pop-ups'', ''speedbumps'', or ''overlays'' to notify consumers of non-deposit products and ensure that they remain properly informed. However, the commenter also asserted that to reflect the various business models, products, and services, as well as adequately respect the importance of a consumer's experience in the increasingly competitive online financial services market, the FDIC should allow banks to work with their non-bank partners to ensure proper disclosure and ensure that these disclosures are properly applied to the various online platforms and consumer experiences.

Several commenters supported the proposed requirements, noting that it would be beneficial for customers to know a given entity's or product's insured status. One commenter advocated for the FDIC to require IDIs to explicitly mark every financial product as either insured or non-insured and advocated for a more comprehensive disclosure statement.

Non-Deposit Digital Signage in Final Rule: Requirements When Non-Deposit Products and Deposit Products Are Offered Through Same Digital Deposit-Taking Channel

After consideration of the comments responding to the proposed non-deposit digital signage requirements, the FDIC is finalizing certain aspects of the proposal and modifying other aspects as described below.

The FDIC is finalizing the requirement for IDIs to clearly and conspicuously display the ''static'' non-deposit signage on its digital deposit-taking channels. More specifically, if an IDI's digital deposit-taking channel offers access to both deposits at the IDI and non-deposit products, the IDI must clearly and conspicuously display [34] signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. This signage must be displayed on each IDI page relating to non-deposit products and may not be displayed in close proximity to the FDIC digital sign. The static non-deposit language described above will provide an important disclosure aimed at addressing potential customer confusion regarding the insured status of particular products offered by IDIs.

Separately, the FDIC acknowledges the commenters that discussed the one-time non-deposit notification requirement increasing costs, being operationally complex, and creating a suboptimal customer experience. The FDIC has concluded that having two separate disclosures relating to non-deposit products on an IDI's digital channel—the ''static'' signage and the one-time notification—are unnecessary.

[34] Some IDIs currently display non-deposit disclosures in small font near the bottom of web pages and application screens. Consumers are unlikely to notice such disclosures and may mistakenly believe that non-deposits products are covered by FDIC insurance. Such display of non-deposit disclosures would not satisfy the clear, continuous, and conspicuous display requirement of the proposed rule.

One such disclosure will sufficiently inform consumers and mitigate risks. As such, and in response to commenter concerns, the FDIC is only retaining a part of the proposed one-time notification requirement and is narrowing the scope for when the one-time notification is provided.

Under the final rule, IDIs will only be required to display a one-time notification when a bank customer accesses non-deposit products from a non-bank third party via an IDI's digital deposit-taking channel such as through a hyperlink (or similar weblinking feature). For example, if an IDI's digital channel offers a third party's securities product that requires the bank customer to leave the IDI's website and access the securities product on the third party's website, then the IDI will be required to provide the bank customer with a ''one time'' notification before the customer leaves the IDI's digital channel.

Moreover, under the final rule, the ''one time'' notification requirement will not apply broadly to *all* consumers accessing the IDI's website; instead, it will only apply to bank customers that have logged into their respective account at a particular IDI website. The ''one time'' notification will be required per web session, which is the period of interaction between a bank customer and the IDI's digital channel, starting when the customer logs in and ending when the customer logs off.

Consistent with the proposal, the ''one time'' notification must be clearly and conspicuously displayed and indicate that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. The one-time notification could include, for example, an IDI using a ''pop-up'', ''speedbump'', or ''overlay'' that displays a notification to the customer that the customer must dismiss before accessing the content related to non-deposit products on the third party's website.

Bank customers, who log in to their bank's website and can access non-deposit products through their IDI's deposit-taking digital channel, may click on a hyperlink that takes them to an IDI's non-deposit page or click on a hyperlink that, unbeknownst to the customer, causes them to leave the bank's website to access non-deposit products offered or presented by a third party. From the FDIC's perspective, this raises two areas of elevated risk regarding customer confusion and potential harm because a bank customer is moving: (a) from an IDI to a non-bank; and (b) from an FDIC-insured deposit area to a non-deposit area. Further, bank customers that are accessing the third party's website will not have the same benefit of the ''static'' non-deposit signage that will be available on IDI digital channels.

As described above, one commenter recommended that the FDIC allow banks to work with their non-bank partners to ensure proper disclosure and ensure that these disclosures are properly applied to the various online platforms and consumer experiences. Given that certain non-bank third parties may offer both deposit products through a bank partner and non-deposit products on its website, IDIs will have discretion to provide customers with additional disclosure information as part of its one-time notification related to products offered by the non-bank third party, which may further minimize customer confusion.

The final rule's narrower, less burdensome, one-time non-deposit notification responds to several commenters' concerns, while still mitigating the broader consumer protection risks by enabling bank customers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

Regarding the comment about digital pop-up disclosures causing issues for disabled customers that use screen readers, the FDIC encourages IDIs to ensure that their pop-up notifications can be as accessible to screen reader users as any other web content.

4. Automated Teller Machines and Similar Devices

Proposed Rule

The FDIC proposed amendments to update § 328.4 signage requirements for IDIs' ATMs and other remote electronic facilities that receive deposits. The FDIC sought to ensure that depositors receive necessary disclosures regarding deposit insurance as banks continue to devise new ways to provide services to their customers. The proposed rule intended to capture banking kiosks and other devices currently defined as ''Remote Service Facilities'' [35] that receive deposits. This section of the proposed rule was not intended to address online and mobile banking channels, which are considered ''digital deposit-taking channels.''

The proposed rule would have required electronic display of the FDIC official digital sign on IDIs' ATM and like devices. The proposed rule provided that the official FDIC sign must be electronically displayed clearly and conspicuously. ATMs and like devices would be required, at a minimum, to display the FDIC official digital sign on the home page or screen and each transaction page or screen relating to deposits.

The proposed rule would have further required electronic non-deposit signs where an IDI's ATM or like device both receives deposits for an IDI and offers access to non-deposit products.[36] In this instance, the ATM or like device would be required to clearly, continuously, and conspicuously display electronic disclosures indicating that non-deposit products are not insured by the FDIC, are not deposits, and may lose value. The proposed rule would have required the display of these disclosures on each transaction page or screen relating to non-deposit products.

Discussion of Comments

Generally, commenters expressed concern over the difficulty or cost in implementing the proposed signage requirements for ATMs. Some commenters noted that costs will disproportionately affect community banks who rely on third-party vendors that provide ATM operating software; one commenter noted that software changes take time, and these vendors would be expected to prioritize large banks. Another commenter noted that a handful of third-party vendors are utilized by many banks, and the proposed changes would create supply bottlenecks as digital platforms are individualized for each bank. Three commenters specifically requested additional time—ranging from at least one year to up to 18 months—in order to comply with any new requirements imposed for physical or software signs on ATMs or similar devices. Relatedly, another commenter urged the FDIC to consider allowing banks to use a physical sign at their ATMs instead of an electronic one.

A few comments sought clarity or expressed concern on the scope of the proposed ATM signage requirements. One commenter requested that the FDIC clarify whether the proposed ATM provision would only apply to ATMs and similar devices that receive deposits, excluding facilities that only provide balance, transfer, or withdrawal capabilities. Another commenter requested that the FDIC exclude Interactive Teller Machines (ITMs) from the ATM and like devices requirements as the commenter believed that ITMs do

[35] ''Remote Service Facility'' includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received. 12 CFR 328.2(a)(1)(ii).

[36] The FDIC would not view postage stamps sold at ATMs to require these disclosures.

not have any transaction screens visible and do not perform bank branch functions. One commenter requested that the FDIC clarify whether non-deposit signage requirements apply to the owner of the ATM and not the depository bank, if they are not the same.

Commenters representing consumer groups were supportive of the proposed rule changes relating to ATMs and similar devices. One commenter believed the proposed rules were beneficial because consumers do not have the opportunity to seek clarification from bank employees at an ATM, like they would at a bank or bank branch. One commenter advocated for more stringent signage requirements for ATMs, recommending that the FDIC require IDIs to display disclosures on each screen that references a deposit or non-deposit product.

Final Rule

The FDIC has carefully considered these comments and is adopting certain parts of the proposed ATM signage requirements, with changes discussed below. The FDIC appreciates the comments and concerns provided regarding the costs of the proposed requirements and a need for additional time and the impact of potential changes on community banks who often rely on third parties to support operating and maintaining ATMs. The FDIC believes that the benefits of the new ATM signage requirements outweigh the potential costs; however, additional flexibility is warranted in certain situations. The new ATM requirements under the final rule will provide clear information to consumers as to when they are engaging with insured deposit products and when they are engaging with non-deposit products.

For an IDI's ATM or like device that receives deposits but does not offer access to non-deposit products, the final rule provides flexibility to meet the signage requirement by either (1) displaying the FDIC official digital sign as described in § 328.5 on ATM screens, or (2) displaying the physical official sign as described in § 328.2 by attaching or posting it to the ATM. However, IDIs' ATMs or like devices that accept deposits and are put into service after January 1, 2025, must display the official digital sign (with no option to satisfy the requirement through display of the physical official sign). This approach provides IDIs with flexibility, consistent with some comments the FDIC received, and provides additional time to make related system and process revisions and updates.

For an IDI's ATM or like device that both receives deposits and offers access to non-deposit products, the final rule requires that such ATMs must: (a) display the official digital sign clearly, continuously, and conspicuously on the home page or screen and on each transaction page or screen relating to deposits; and (b) clearly, continuously, and conspicuously indicate that non-deposit products are not insured by the FDIC, are not deposits, and may lose value on each transaction page or screen relating to non-deposit products by January 1, 2025. The FDIC believes that clear signs differentiating the insured and uninsured products is important in this setting because customers often interact with ATMs alone, including when bank branches are closed or in areas that are isolated or where there are no bank branches. In such situations bank customers would not have an opportunity to ask clarifying questions of a bank representative or for bank staff to ensure that customers fully understand whether a product is covered by FDIC deposit insurance.

The final rule also provides that degraded or defaced physical official signs would not meet the ''clearly, continuously, and conspicuously'' standard. For example, an official sign defaced such that portions are illegible would not ''clearly'' signal or notify consumers that they are dealing with an FDIC-insured depository institution's ATM. However, if an ATM's physical digital sign is, for example, slightly diminished, minimally blemished, or superficially damaged, these circumstances would be considered de minimis for the purposes of determining whether a physical official sign meets the ''clearly, continuously, and conspicuous'' standard for the purposes of compliance with the final rule.

In addition, the final rule includes specific design features of the digital official sign, including specifics about colors, size, and font which should assist in implementation. In response to the comments on the scope of the rule, the final rule's ATM provisions apply to an IDI's automated teller machines or other remote electronic facilities that receive deposits. If an IDI's remote electronic facility receives deposits and is labeled an ITM (instead of an ATM), the official sign requirements in part 328 apply; however, if an ITM does not receive deposits, it is not subject to the rule.

In some cases, where there is a deposit-taking ATM or like device, the owner of the ATM and the IDI may not be the same. As noted above, § 328.4 applies to ''IDIs' automated teller machines or like devices.'' In determining whether an ATM or like device is an IDI's, the FDIC will consider circumstances such as the ATM or like device's location, branding, whether it is operated by the IDI, and other factors that reasonably indicate it is an IDI's ATM. Under the final rule, for such in-scope ATMs and like devices, the official digital sign and non-deposit signage requirements under § 328.4 apply.

In response to the comment on recommending more stringent requirements, the FDIC does not consider more stringent signage requirements as necessary to achieve its policy goals. For certain in-scope ATMs, the signage requirements under the final rule apply to each transaction page or screen for deposits and, if applicable, non-deposit products.

5. Official Advertising Statement for IDIs

Proposed Rule

The FDIC proposed limited amendments to the advertisement statement requirements applicable to IDIs. Specifically, the FDIC proposed to expand IDIs' options for use of a short advertising statement to include the term ''FDIC-insured.''

Currently, IDIs must include the official advertising statement in all advertisements that promote deposit products.[37] The term advertisement means a commercial message in any medium that is designed to attract public attention or patronage to a product or business.[38] The FDIC views this definition to include advertising published through social media channels.

The current regulation allows IDIs to use the short title ''Member of FDIC'', ''Member FDIC'', or a reproduction of the symbol of the corporation (defined in § 328.2(b)). In addition to these options, to provide additional flexibility, the proposed rule would allow the use of ''FDIC-insured''.

The FDIC also proposed to make a technical correction to the reference to the deposit insurance limit found in paragraph (d)(10) of the current regulation, which states that ''deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least $100,000 for each depositor.'' [39] As a technical correction, the proposed rule would instead reference the standard maximum deposit insurance amount (currently $250,000), as established by Congress.

[37] 12 CFR 328.3(c).

[38] 12 CFR 328.3(a).

[39] 12 CFR 328.3(d)(10).

Discussion of Comments

A comment letter submitted by several non-profit organizations opposed the addition of the term ''FDIC-insured'' for use as a shortened form of the official advertising statement and suggested that IDIs continue to use the shortened forms of the advertising statement found in the existing regulation (''Member of FDIC'' or ''Member FDIC''). The commenters stated that when IDIs offer products that are not FDIC-insured, their use of the term ''FDIC-insured'' could be misleading and poses risk of consumer confusion. The commenters asserted that the purported benefit to IDIs of increased flexibility is not worth this risk of increased consumer confusion.

Final Rule

The FDIC appreciates the concern about risk of consumer confusion stemming from use of the term ''FDIC-Insured.'' However, the FDIC believes that restrictions on usage of the advertising statement (including a shortened form) in connection with non-deposit products sufficiently mitigate any risk of consumer confusion.

Specifically, IDIs are prohibited from using the official advertising statement in any advertisement relating solely to non-deposit products. IDIs are also prohibited from using the official advertising statement in any advertisement relating solely to hybrid products, which are products that have both deposit product features and non-deposit product features. IDIs may use the official advertising statement in advertisements containing information about both insured deposit products and non-deposit or hybrid products, but are required to clearly segregate the official advertising statement from any portion of the advertisement that relates to the non-deposit products. These restrictions are part of the existing regulation and were included in the proposed rule. The FDIC is including these same restrictions in the final rule, meaning that consumers should not, for example, see statements indicating that a particular IDI is ''FDIC-Insured'' made in connection with advertisements related solely to non-deposit products.

The FDIC is finalizing the advertising statement provisions of the final rule as proposed. Under the final rule, IDIs will have the option to use ''FDIC-Insured'' as a short form of the official advertising statement to satisfy advertising statement requirements. Subject to limited exceptions, IDIs are required to include the official advertising statement in all advertisements that promote either deposit products and services or non-specific banking products and services offered by the institution. The advertising statement must be in a size and print to be clearly legible.

In addition, as noted in the proposed rule, the FDIC does not intend for the digital sign requirement to overlap with the general advertising statement requirements that apply to IDIs. For example, the advertising statement would not be required on web pages where an IDI displays the digital official sign, such as a homepage. In these situations, under § 328.6(d)(10), the advertising statement is unnecessary because the inclusion of the digital official sign makes it clear that the IDI is insured by the FDIC. However, IDIs remain responsible for complying with the official advertising statement requirements for other qualifying advertisements, including those contained on other web pages.

As under existing regulations, the final rule provides that a non-English equivalent of the official advertising statement may be used in any advertisement, provided that the translation has the prior written approval of the FDIC. The FDIC is also considering making available to the public approved translations of the official advertising statement in several common languages on its website or through other means in the future to support IDIs' efforts to communicate with their non-English-speaking customers.

6. Misrepresentations and Material Omissions by Any Person

Proposed Rule

Section 18(a)(4) of the FDI Act,[40] and its implementing regulations in subpart B to part 328,[41] prohibit any person from misusing the name or logo of the FDIC, engaging in false advertising, and making knowing misrepresentations about deposit insurance. In the NPR, the FDIC stated that it may be beneficial to provide further clarity on the application of the statutory prohibition on misrepresentations in specific situations where consumers may be misled as to whether an entity is insured by the FDIC and the nature and extent of deposit insurance coverage. The FDIC proposed to amend subpart B to expressly address these situations, making clear when specific statements or omissions constitute a misrepresentation under section 18(a)(4).

[40] *See* 12 U.S.C. 1828(a)(4).

[41] *See* §§ 328.100 through 328.109.

Use of the Official Advertising Statement or FDIC-Associated Terms or Images

Consumers have historically identified the use of the official advertising statement (such as ''Member FDIC''), FDIC-Associated Terms, or FDIC-Associated Images to signify that they are dealing with an IDI and will receive the protection of FDIC deposit insurance. The official advertising statement, FDIC-Associated Terms, and FDIC-Associated Images have increasingly been used by non-banks that purport to deposit their customers' funds at IDIs. As discussed in the NPR, the FDIC believes that use of the official advertisement, FDIC-Associated Terms, or FDIC-Associated Images in such instances presents a high risk of confusing consumers as to whether they are dealing with an IDI and whether deposit insurance applies to their funds.

To address this risk, the proposed rule would have amended § 328.102(a) and § 328.102(b) to clarify specific circumstances under which use of the official advertising statement, FDIC-Associated Terms, or FDIC-Associated Images by a non-bank would constitute a misrepresentation of insured status as it would inaccurately imply that the non-bank is FDIC-insured. For example, under the proposed rule, a non-bank's use of the ''Member FDIC'' logo on its website or in its marketing materials would have been a misrepresentation unless that logo is next to the name of one or more IDIs. The NPR also stated that a non-bank's use of either the FDIC official sign or the FDIC official digital sign would be a misrepresentation if it inaccurately implies that the non-bank is insured by the FDIC and backed by the full faith and credit of the U.S. Government. Similarly, the NPR stated that a non-bank's use of FDIC-Associated Terms in statements suggesting that the non-bank is insured by the FDIC would constitute a misrepresentation.[42]

Failure To Disclose That a Person Is a Non-Bank Is a Material Omission When a Statement Is Made Regarding Deposit Insurance

Non-banks that purport to deposit their customers' funds at IDIs sometimes make statements regarding deposit insurance coverage for those funds. Absent additional context, to the extent such statements suggest that FDIC

[42] These examples are intended to be illustrative, rather than an exhaustive list of ways in which a non-bank might misrepresent its insured status. Any use of the official advertising statement, FDIC-Associated Terms, or FDIC-Associated Images that inaccurately states or implies that the non-bank is insured by the FDIC will violate the final rule.

deposit insurance will protect consumers in the event of the non-bank's insolvency, they likely misrepresent the insured status of the non-bank. To minimize the risk of consumer confusion, the proposed rule provided that if a non-bank makes statements regarding deposit insurance for its customers, it is a material omission for the non-bank to fail to clearly and conspicuously disclose that it is not itself an FDIC-insured institution and that the FDIC's deposit insurance coverage only protects against the failure of an FDIC-insured depository institution. In the NPR, the FDIC stated that this additional disclosure is necessary to prevent consumers from misinterpreting a non-bank's assertions regarding deposit insurance coverage. The FDIC noted that some non-banks already include such language on their websites, often identifying the partner IDI through which banking services are provided.[43] The proposed rule did not prescribe specific disclosure language; however, it explained that a statement that a person is not an FDIC-insured bank and deposit insurance covers the failure of an insured bank would be considered a clear statement for purposes of this provision. The proposed rule aimed to give non-banks that wish to make statements regarding deposit insurance coverage some flexibility in how they communicate the required information.

Failure To State That Non-Deposit Products Are Not Insured by the FDIC Is a Material Omission When a Statement Is Made Regarding Deposit Insurance

The FDIC's experience suggests that deposits and non-deposit products are increasingly being offered to consumers in ways that fail to distinguish which products are insured by the FDIC. For instance, marketing materials might emphasize the deposit insurance protection that applies to some products while failing to make clear that not all of the products offered are FDIC-insured. In other instances, firms have represented to their customers that non-deposit products are eligible for deposit insurance coverage, which has led consumers to believe, mistakenly, that their money or investments are protected by deposit insurance. In the NPR, the FDIC stated it believes that where banks or non-banks make statements regarding deposit insurance in a context where deposits and non-deposit products are involved, additional information is necessary to ensure that consumers understand which products are subject to deposit insurance. To prevent consumer confusion, the proposed rule provided that if a person makes statements regarding deposit insurance in a context that involves both deposits and non-deposit products, it is a material omission to fail to disclose that non-deposit products are not insured by the FDIC, are not deposits, and may lose value. For example, under the proposed rule, if a non-bank's website offered customers the option to have their funds deposited at an IDI and protected by deposit insurance or invested in non-deposit products, it would be a material omission if the non-bank's website failed to state that the non-deposit products are not insured by the FDIC, are not deposits, and may lose value.

Failure To State That Requirements Apply to Pass-Through Deposit Insurance

The FDIC has a long history of providing ''pass-through'' deposit insurance coverage, meaning that deposits placed at an IDI by a third party on behalf of one or more owners are insured as if deposited directly at the IDI by the owner(s). Pass-through insurance allows each owner of the funds in such an arrangement to be separately insured up to the statutory deposit insurance limit, currently $250,000, even if the total deposits of all owners (in the aggregate) exceeds the $250,000 limit. Pass-through insurance only applies, however, if certain regulatory requirements are satisfied.[44]

Arrangements that rely on pass-through insurance have become increasingly common, with non-banks often claiming to provide the protection of pass-through deposit insurance for consumers' funds. Such representations, however, may be inaccurate, mislead consumers, and fail to apprise them of the risk they face in the event that the pass-through deposit insurance requirements have not been satisfied. If the pass-through requirements are not met, consumers' funds may not be fully insured in the event the IDI where their funds have been deposited were to fail. In the NPR, the FDIC would have required that parties that make statements regarding the application of pass-through deposit insurance make additional disclosure to promote awareness of this risk.

The proposed rule provided that if a person makes statements regarding pass-through deposit insurance for its customers' funds, it is a material omission to fail to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply. The proposed rule would not require a person making a statement regarding pass-through deposit insurance to list the specific conditions that must be satisfied; simply referencing that conditions must be satisfied would be sufficient under the proposed rule. The proposed rule also did not prescribe specific disclosure language, providing flexibility in how parties may wish to express the required information. For example, under the proposed rule, if a website for a financial product were to state that consumers' funds are eligible for pass-through deposit insurance, it would be a material omission to fail to clearly and conspicuously state that certain conditions must be satisfied in order for pass-through insurance to apply.

Discussion of Comments

Some commenters recommended that the rule require entities to disclose certain information that they believed was necessary to avoid material omissions when making statements about deposit insurance. For example, one commenter suggested that the FDIC impose several specific requirements, presumptions, and enforcement practices on any advertising relating to digital assets. Another commenter suggested that the FDIC prohibit non-banks from using the words ''banking'' and ''bank account'' to describe their products or services offered, and that a non-bank's failure to comply should constitute a material omission.

With respect to statements referencing deposit and non-deposit products, one commenter suggested that the FDIC should make clear that comparing an uninsured financial product to an insured one without clearly and conspicuously noting the difference in insurance status is a misrepresentation. Another commenter similarly suggested that it would be a material omission for a non-bank to fail to disclose that its non-deposit products are not FDIC-insured.

[43] For example, ''ABC Co. is not an FDIC-insured depository institution; banking services provided by XYZ Bank, Member FDIC.''

[44] *See* §§ 330.5, 330.7. For pass-through deposit insurance to apply, a consumer's funds must first be on deposit at an IDI. In addition: (1) the deposit account records of the IDI must disclose a basis for pass-through coverage, such as a custodial or agency relationship; (2) the identities and interests of the actual owners of the funds must be ascertainable either from the records of the IDI or records maintained in good faith and in the regular course of business by another party; and (3) the relationship that provides the basis for pass-through deposit insurance coverage must be genuine, with the deposited funds actually owned by the named owners. Additional requirements apply to arrangements involving multiple levels of relationships.

In connection with the proposed pass-through provision, one commenter suggested that it should be a material omission for entities that are not FDIC-insured to advertise pass-through deposit insurance without setting forth all the conditions necessary to receive such coverage. Another commenter suggested that requiring a clear and conspicuous disclosure that certain conditions must be satisfied for pass-through insurance, without more, could lead a depositor to wonder what those conditions might be and question whether pass-through claims will be honored.

One commenter requested confirmation as to whether hyperlinking would be permissible for the required disclosures. Specifically, the commenter requested confirmation that a non-bank entity placing deposits through a deposit network would still be permitted to hyperlink to the list of network banks to satisfy this provision under the new rule, as previously stated in the preamble to the 2022 final rule.[45] The same commenter also requested confirmation that a non-bank would be permitted to hyperlink to required disclosures that a non-bank is not a bank and that pass-through insurance coverage is subject to conditions.

Final Rule

As generally provided in the proposal, with specific changes noted below, the FDIC is amending subpart B to expressly address additional examples that violate part 328, making clear when specific statements or omissions constitute a misrepresentation under section 18(a)(4). Moreover, the FDIC reiterates that the specific examples set forth in the final rule are part of a non-exhaustive list of conduct that violates part 328. The FDIC has the authority to take action against conduct that constitutes a prohibited misrepresentation about deposit insurance, regardless of whether it is among the non-exhaustive list of examples included in the final rule.

The FDIC has been, and will continue to be, consistently proactive in enforcing its requirements and taking appropriate action whenever it becomes aware of prohibited conduct.

Use of the Official Advertising Statement or FDIC-Associated Terms or Images

The final rule adopts the proposed amendments to § 328.102 to clarify specific circumstances under which use of the official advertising statement, FDIC-Associated Terms, or FDIC-Associated Images by a non-bank would constitute a misrepresentation of insured status. In a technical change from the proposal, the final rule corrects an amendment to § 328.102. Proposed § 328.102(b)(4)(i) stated, without limitation, a false or misleading representation is deemed to be material if it states, suggests, or implies that, ''A person or Uninsured Financial Products are insured or guaranteed by the FDIC''. The final rule corrects the reference to ''A person'' to ''A person other than Insured Depository Institution'' and moves this amendment to new § 328.102(b)(1)(iv).[46]

Failure To Disclose That a Person Is a Non-Bank Is a Material Omission When a Statement Is Made Regarding Deposit Insurance

The FDIC is adopting the proposal that if a non-bank makes statements regarding deposit insurance for its customers, it is a material omission for the non-bank to fail to clearly and conspicuously disclose that it is not itself an FDIC-insured institution and that the FDIC's deposit insurance coverage only protects against the failure of an FDIC-insured depository institution. With respect to the comment on prohibiting non-banks from using the words ''banking'' and ''bank account,'' the final rule's amendments to subpart B are limited to addressing misrepresentations concerning deposit insurance, which is the focus of section 18(a)(4) of the FDI Act. A non-bank's use of the terms ''bank'' or ''banking account'' does not itself misrepresent deposit insurance status. However, such usage may violate other laws, including state banking laws or laws that address deceptive practices.

As stated above, the final rule makes clear that it is a misrepresentation for an entity that is not insured by the FDIC to state, suggest, or imply that it is FDIC-insured. Further, the final rule specifically notes that the FDIC considers it to be a material omission for an entity that is not an IDI to make statements about deposit insurance without clearly and conspicuously disclosing that it is not an IDI and that FDIC insurance only covers the failure of IDIs. The FDIC concludes that these provisions adequately address commenters' concerns regarding situations where an entity that is not FDIC-insured suggests that it is.

Failure To State That Non-Deposit Products Are Not Insured by the FDIC Is a Material Omission When a Statement Is Made Regarding Deposit Insurance

The final rule adopts the proposal that, if a person makes statements regarding deposit insurance in a context that involves both deposits and non-deposit products, it is a material omission to fail to disclose that non-deposit products are not insured by the FDIC, are not deposits, and may lose value, subject to the clarifications below. The FDIC believes that the final rule addresses commenters' concerns regarding misrepresentations about uninsured financial products and non-deposit products as the rule helps mitigate potential consumer confusion when deposit insurance statements are made in the context of deposit and non-deposit products. Under the final rule, if a non-bank's website offered customers the option to have their funds deposited at an IDI and protected by deposit insurance or invested in non-deposit products in close proximity, it is a material omission if the non-bank's website failed to state that the non-deposit products are not insured by the FDIC, are not deposits, and may lose value.

Non-bank digital wallets. The FDIC recognizes that certain non-banks offer payment products that are not FDIC-insured that allow consumers to store, send, or receive fiat money, for example U.S. dollars, electronically. While these products are not insured by the FDIC and therefore are vulnerable to the risks related to the non-bank's insolvency, they do not otherwise fluctuate in value. Accordingly, the FDIC believes that requiring non-banks to disclose to consumers that such products ''may lose value'' may not be beneficial. As such, if a non-bank offers customers access to deposit products and a digital wallet where funds placed in a digital wallet are not covered by FDIC deposit insurance, it will not be a material omission for the non-bank entity to not include ''may lose value'' with respect to such digital wallet products. It will be a material omission for the non-bank to fail to disclose that any such uninsured products are: ''not insured by the FDIC and are not deposits''. The FDIC believes that a disclosure that the product is not a deposit and not FDIC-insured strikes a reasonable balance by providing consumers with sufficient information if they utilize these digital wallet products from non-bank entities that also offer deposit products. The FDIC also notes that if the non-bank offers other non-deposit products as

[45] *See* 87 FR 33415, 33418 (June 2, 2022).

[46] *See* final 12 CFR 328.102(b)(4)(iv).

defined by part 328, including non-deposit products as part of its digital wallet on its website, it must disclose that the non-deposit product ''may lose value'' in addition to disclosing that the products are ''not a deposit, not FDIC insured''.

Proximity. It has been the FDIC's experience that it is more likely that a consumer will be confused about the application of deposit insurance to non-deposit products, when the deposit product is being offered in close proximity to the non-deposit product by the non-bank. For example, the FDIC has seen that some non-banks provide ''mixed advertisements'' where deposit products and non-deposit products are offered on the same web page or as part of a single social media post. As such, the FDIC believes that such offerings, in close proximity, represent clear scenarios where it would be a material omission for the entity to fail to disclose that the non-deposit product is not insured by the FDIC, is not a deposit, and may lose value.

Non-deposit products unrelated to financial or investment products. The intent of this particular clarification in the final rule is to ensure that consumers understand when deposit insurance applies, particularly when a non-bank is offering both deposits and non-deposit products. From the FDIC's experience, consumers are more likely to be confused about the application of deposit insurance when a non-bank offers deposit products and non-deposit products that are financial products subject to investment risks. Services or products offered by a non-bank that are unrelated to financial or investment products and physical goods are generally not the type of non-deposit product that would confuse consumers about deposit insurance. While the FDIC generally would not expect non-banks offering these types of non-deposit products to provide disclosures that the non-deposit product is not insured by the FDIC, is not a deposit, and may lose value, the non-bank is nevertheless prohibited from representing or implying that the non-deposit products are insured or guaranteed by the FDIC.[47]

Failure To State That Requirements Apply to Pass-Through Deposit Insurance

The FDIC is finalizing the proposal that if a person makes statements regarding pass-through deposit insurance for its customers' funds, it is a material omission to fail to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply. Under the final rule, a person making a statement regarding pass-through deposit insurance is not required to list the specific conditions that must be satisfied; simply referencing that conditions must be satisfied is sufficient. The final rule also does not prescribe specific disclosure language, providing flexibility as to how parties may express the required information.

With respect to the comments recommending that entities list all the conditions necessary to receive pass-through coverage, the FDIC believes that the final rule strikes an appropriate balance with making consumers aware of the risks they face without inundating them with a technical recitation of the pass-through conditions. Further, such technical information may be impracticable for some types of advertisements due to the amount of text required to adequately disclose the requirements. The FDIC believes that the final rule's approach reflects a better balance, as it puts consumers on notice that pass-through insurance is not automatic or guaranteed and empowers them to raise questions or concerns.

The FDIC remains concerned, however, that even with this notice, it is challenging to consumers to assess the risks related to the likelihood of receiving pass-through insurance given its technical legal requirements. In addition, consumers would not have access to banks' or non-banks' records to directly confirm that applicable conditions have been met. Given these circumstances, the FDIC is considering options for conducting qualitative consumer testing of deposit insurance disclosure language, including regarding pass-through coverage, to assess consumers' understanding and whether there are other disclosure language options that are more effective and beneficial for consumers. In the event the FDIC identifies disclosure language through consumer testing that would improve consumer understanding of the risks related to pass-through coverage, the FDIC could consider options to promote use of the disclosure.

The FDIC is also considering whether additional public education efforts would be valuable to help consumers understand the differences in deposit insurance coverage when working with IDIs directly as compared to non-bank entities. Earlier this year, the FDIC launched its ''Know your Risk. Protect your Money.'' national public awareness campaign to help consumers better understand deposit insurance and how it protects their money. This campaign complements the final rule's intended purposes, including helping consumers understand when they are interacting with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

Hyperlinking to Material Information

In the NPR, the FDIC proposed to maintain the existing provision that it is a material omission for a non-insured entity that advertises deposit insurance to fail to identify the IDIs with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumers' deposits may be placed.[48]

As explained in the proposal, the FDIC is concerned that certain business relationships between IDIs and non-banks may be confusing to consumers and proposed to require clear disclosures that would better inform consumers as to when their funds are protected by FDIC deposit insurance. The proposed rule made clear that it is a prohibited misrepresentation to fail to clearly and conspicuously disclose material information necessary to avoid a false statement, suggestion, or implication about deposit insurance. After considering the comment received on hyperlinking to the list of network banks, the FDIC is amending 12 CFR 328.102(b)(5)(i) in the final rule to expressly state that it is a material omission for a non-insured entity that advertises deposit insurance to fail to *clearly and conspicuously* identify the IDIs with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumers' deposits may be placed.[49] The addition of this language harmonizes this provision with the other specific examples in the final rule and makes clear that information about where funds may be placed must be clear and conspicuous. To the extent that a non-bank entity places deposits through a deposit network, it may satisfy this requirement by clearly and conspicuously identifying the deposit network and each IDI in the deposit network or by providing a clear and conspicuous hyperlink to a current list of all the IDIs that are part of such a network.

Further, the FDIC will evaluate the clear and conspicuous requirement in the context of the statement the information is material to, including the information's proximity, placement, and prominence in relation to the statement.

[47] 12 CFR 328.102(a).

[48] *See* proposed 12 CFR 328.102(b)(5)(i).

[49] *See* final 12 CFR 328.102(b)(5)(i) (*emphasis added*).

In particular, the FDIC believes that Federal Trade Commission guidance provides helpful principles for determining whether hyperlinks to the list of deposit network IDIs are sufficiently clear and conspicuous.[50]

In response to the comment on hyperlinking to other disclosures, the FDIC generally believes that hyperlinking to the required disclosures—that a non-bank is not an FDIC-insured depository institution, the FDIC's deposit insurance coverage only protects against the failure of an FDIC-insured depository institution, and pass-through insurance coverage is subject to conditions—would not satisfy the ''clear and conspicuous'' standard in § 328.102(b)(5) under the final rule. Failure to include these disclosures with statements regarding deposit insurance could result in consumer confusion as to whether an entity is FDIC-insured and the extent of deposit insurance coverage.

7. Policies and Procedures for IDIs

Proposed Rule

The FDIC proposed requirements for IDIs to establish written policies and procedures to comply with part 328 that are commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the institution. As part of these policies and procedures, IDIs would also need to include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties.

a. Signs and Advertising Statement

The proposal provided that such policies and procedures could include, for example, measures that an IDI would take to ensure compliance with the proposed sign and advertising requirements when the IDI changes its advertising strategy or engages with, or expands into, new physical or digital deposit-taking channels. For example, this could include, if applicable, establishing procedures to ensure that the IDI's technology (*e.g.,* websites and mobile applications) is capable of implementing the proposed signs and advertisement statement requirements across all digital deposit-taking channels.

b. Certain Third-Party Relationships and Misrepresentations

The proposal also provided that to the extent a third party has a business relationship with, and is serving as a deposit-taking channel for, an IDI, sound risk management would compel the IDI to be aware of the activities of the third party to ensure that the availability of deposit insurance is not being misrepresented. As such, the proposal would have required IDIs, as appropriate, to establish policies and procedures that include provisions related to the deposit-related services that a third party provides to the IDI or deposit-related products or services offered by the third party to other parties. These policies and procedures would include, as appropriate, provisions related to monitoring and evaluating whether such third parties are in compliance with subpart B.

c. Reservation of Authority

The proposal reserved the FDIC's authority to take appropriate actions, including supervisory or enforcement actions, against any person that violates part 328. The existence of adequate policies and procedures would not preclude the FDIC from taking actions against IDIs or third parties to address violations.

Comments

Some commenters expressed concerns that the proposed policies and procedures requirement was not aligned with existing interagency third-party risk management guidance. In addition, commenters recommended excluding non-contractual relationships from the scope of the rule and clarifying that the involvement of non-marketing related deposit services does not automatically implicate the proposed rule. Other commenters requested the FDIC cover only third parties with a contractual relationship with the IDI addressing the offering or sales of the IDI's insured deposits, and only relationships involving marketing and public dissemination of information on FDIC deposit insurance. Another commenter requested that the FDIC exclude deposit products traded in secondary markets, such as certificates of deposit, because IDIs have no control over representations made to secondary market purchasers.

Final Rule

Under 12 CFR 328.8, the FDIC is finalizing the policies and procedures requirement for IDIs as proposed. As part of the final rule, IDIs must establish and maintain written policies and procedures to achieve compliance with part 328. Such policies and procedures must be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI and must include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties.

This new requirement is consistent with the *Interagency Guidance on Third-Party Relationships: Risk Management* that was issued earlier this year.[51] The interagency guidance underscores that a banking organization's use of third parties can increase its risk, and that the use of third parties does not diminish or remove a banking organization's responsibility to perform all activities in a safe and sound manner and in compliance with applicable laws and regulations, including those related to consumer protection.

Here, the policies and procedures established and maintained by IDIs will facilitate compliance with part 328, including by ensuring that appropriate monitoring is conducted and evaluations are performed regarding activities of certain persons that provide deposit-related services to IDIs or offer an IDI's deposit products or services to other parties. The policies and procedures will help ensure activities are conducted in compliance with applicable laws and that IDIs are aware of whether certain third parties are in violation of subpart B of part 328. Having these policies and procedures in place will help mitigate the risks of consumer harm and confusion, consistent with the statutory purpose underlying section 18(a) of the FDI Act and the FDIC's mission to maintain and promote public confidence in the banking system.

IDIs should include reasonable provisions regarding compliance with part 328 in their policies and procedures, including addressing for example: the use of FDIC-Associated Terms or FDIC-Associated Images by third parties in a manner that inaccurately states or implies that a person other than an IDI is insured by FDIC; statements made that represent or imply that an advertised product is insured by the FDIC but fail to identify the IDI; and ensuring the marketing and advertising information or materials presented or made available to prospective depositors by third parties do not misrepresent the insurability of the IDI's financial products. The FDIC

[50] *See* Federal Trade Commission, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising, available at: https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf.*

[51] *See* 88 FR 37920 (June 9, 2023).

expects that IDIs, as appropriate, will implement, or enhance, current policies and procedures related to training staff to review any marketing and advertising materials about the IDI's deposit products and services and to monitor and evaluate compliance with part 328.

With respect to the comments related to the scope of the third parties' activities, IDIs should establish and maintain policies and procedures to evaluate and monitor, as appropriate, any deposit insurance-related representations made by third parties that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties. More specifically, IDIs should consider the extent to which their third-party relationships involve representations or statements subject to part 328, and the role third parties have in crafting or presenting such representations or statements for prospective depositors. For example, a third-party relationship for web hosting services may not warrant policies or procedures for compliance with part 328 to the extent the third party simply publishes and hosts content developed and directed by the IDI. However, if the IDI offers a deposit account through or by a non-bank third party on a consumer-facing website with the branding and marketing of a non-bank third party, that third party may be making representations to consumers to describe the product's characteristics in a manner that is covered by part 328 subpart B. This would warrant that the IDI include provisions in its policies and procedures to monitor and evaluate compliance with part 328 by the third party. The IDI should also consider steps that it would take to mitigate any misrepresentations related to deposit insurance that could cause potential consumer confusion and harm regarding a product provided by the IDI.

Commenters also suggested that the policies and procedures requirement should exclude non-contractual relationships. While the FDIC understands that IDIs often have provisions in their contracts with third parties to review certain marketing materials, the FDIC believes that limiting the scope of this requirement to only situations where IDIs have contractual relationships with third parties would not capture IDI relationships with certain third parties that the rule is intended to capture.

In response to commenter concerns about the scope of this requirement, the FDIC notes that the policies and procedures related to certain third parties are required to be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities. With regard to third-party relationships, IDIs will be expected to utilize a risk-based approach in determining the nature and extent of the policies and procedures that are needed to monitor and evaluate certain third parties' compliance with part 328 subpart B. For example, there may be third parties that have long-standing, well-established relationships with the IDI such that the third party has been offering products and services on the IDI's behalf for many years and appropriately representing deposit insurance. In such instances, the IDI might deem the relationship to be one that warrants less extensive monitoring and evaluation, depending on the relationship and potential risk. The FDIC notes, however, that such relationships could experience significant changes, including in personnel, risk management philosophy, or new types of products offered, that may warrant more extensive policies and procedures. Likewise, the IDI may be involved in nascent relationships with novel arrangements and products that present a greater risk of consumer confusion and warrant more extensive monitoring and evaluation. As such, IDIs should ensure that the nature and scope of the policies and procedures under the final rule are tailored to the risks identified. The policies and procedures should effectively identify, address, and mitigate potential deposit insurance misrepresentations identified by the IDI. It is also prudent for policies and procedures to include provisions ensuring that third parties that provide marketing or joint marketing services, web and other electronic channel design, or similar services, are aware of the IDI's compliance responsibilities under part 328.

Finally, the FDIC notes that if a non-bank misrepresents deposit insurance, the FDIC would still expect to devote attention to taking action against the non-bank, formally or informally, under part 328 subpart B, regardless of the presence of a bank partner.

8. Crypto-Assets

Proposed Rule

Among other things, part 328 prohibits any person from representing or implying that any uninsured financial product is insured or guaranteed by the FDIC.[52] This prohibition applies to advertisements, publications, and other disseminations of information. The FDIC has noted a number of misrepresentations of deposit insurance coverage for crypto-assets,[53] and proposed to amend part 328 to reinforce that representations regarding deposit insurance in the crypto-asset marketplace fall within its scope. Specifically, the FDIC proposed to amend the definitions of ''Non-Deposit Product'' and ''Uninsured Financial Product'' in subpart B to include crypto-assets and define crypto-asset as ''any digital asset implemented using cryptographic techniques.''

The proposed rule also included crypto-assets in subpart A's definition of ''non-deposit product'' using the definition of ''crypto-asset'' described above. Accordingly, the non-deposit sign requirements proposed in subpart A would apply to crypto-assets. For example, if an IDI's ATM offered customers the ability to purchase crypto-assets, the ATM would be required to clearly, continuously, and conspicuously display disclosures indicating that the crypto-assets are not insured by the FDIC, are not deposits, and may lose value.

Discussion of Comments

Commenters generally supported the FDIC's efforts to address deposit insurance misrepresentations involving crypto-assets. Commenters also supported including crypto-assets in the definition of ''uninsured financial product'' and applying disclosure requirements for non-deposit products to crypto-assets. One commenter noted that misrepresentations made by prominent crypto-related entities demonstrate the necessity of the FDIC's proposed rules.

Commenters also raised concerns with the proposed definition of ''crypto-asset.'' A venture capital firm commented that the proposed definition of ''crypto-asset'' was over inclusive and vague. Specifically, the commenter explained that ''cryptographic techniques'' could refer to a variety of technologies not associated with the crypto-asset ecosystem, such as the end-to-end encryption technology that secures common communications applications. The commenter stated that the broader context of the FDIC's proposal did not indicate an intent to

[52] ''Uninsured Financial Product'' is currently defined to include non-deposit products, hybrid products, investments, securities, obligations, certificates, shares, or financial products other than insured deposits.

[53] *See* FDIC Press Release PR–60–2022, *FDIC Issues Cease and Desist Letters to Five Companies for Making Crypto Related False or Misleading Representations About Deposit Insurance* (Aug. 19, 2022); FDIC Press Release PR–9–2023, *FDIC Demands Four Entities Cease Making False or Misleading Representations About Deposit Insurance* (Feb. 15, 2023).

capture such usage. The commenter recommended an alternative definition and suggested that it did not present the same ambiguities as the proposal, making the amendment to part 328 more practicable.

A trade association and a consortium composed of banks and technology firms each raised the concern that the proposed definition of ''crypto-asset'' could be problematic for banks that seek to employ blockchain technology in offering their deposit products. These commenters suggested that the proposed rule's broad definition of ''crypto-asset'' might be read to include a traditional deposit product if the bank offering it were to employ blockchain technology. The consortium stated that equating a traditional deposit product to the crypto-asset products offered by non-banks would disadvantage regulated financial institutions and deter banks from leveraging blockchain technology to improve their products.

Another trade association stated that regulators will need to pay close attention to the rapidly expanding landscape of bank products, particularly offerings involving cryptocurrencies and tokenized assets that reside on blockchains. The commenter further stated that as tokenization increases in popularity, the risk of a traded asset being confused with a bank deposit will increase as customers navigate complex product offerings that blur the lines between bank deposits and non-deposit products.

Final Rule

The FDIC recognizes that the proposed definition of ''crypto-asset'' may have been over inclusive for the purposes of this regulation. This definition was not intended to capture, for example, the use of encrypted communications technology by firms developing or offering financial products. As pointed out by commenters, however, the proposed definition of ''crypto-asset'' included language (''any digital asset implemented using cryptographic techniques'') susceptible to a broad interpretation. The FDIC notes that the proposed definition of ''crypto-asset'' was limited to ''digital asset[s]'' that are implemented using cryptographic techniques, and it is not clear that traditional deposit products could be considered ''digital assets.'' Nevertheless, the FDIC agrees that the proposed definition was somewhat ambiguous in this respect.

While one commenter recommended an alternative definition for the term ''crypto-asset,'' the FDIC is concerned that the commenter's proposed two-part test—(1) that the asset confers economic, proprietary, or access rights or powers, and (2) is recorded using a cryptographically secured distributed ledger or similar technology—could be too narrow to capture some digital assets that are broadly recognized as crypto-assets by market participants today. This could be interpreted to exempt digital assets lacking certain specific characteristics from the regulations regarding misrepresentation of deposit insurance, which would be inconsistent with the FDIC's policy goals. The FDIC is also mindful that, as noted by a commenter, the landscape of these products continues to evolve rapidly.

The FDIC further notes that the proposed definition of ''uninsured financial product'' included any financial product that is not a deposit. The definition's enumerated list of uninsured products serve as examples, rather than an exhaustive list, of the products that are not insured by the FDIC. In determining whether a particular product is an ''uninsured financial product'' for purposes of part 328, the test is whether that product falls within the statutory definition of ''deposit.'' [54] The FDIC also notes that, of the products listed in the proposed definition of ''uninsured financial product,'' only ''crypto-asset'' was specifically defined in the proposal.

In light of this, the final rule adopts a more flexible approach better suited to an evolving landscape. While ''crypto-asset'' is included in the products listed in the definition of ''uninsured financial product,'' the FDIC is not including a specific definition of ''crypto-asset'' in part 328. The FDIC believes this approach will signal that representations regarding deposit insurance in the crypto-asset marketplace are subject to the prohibitions of section 18(a) and part 328, like other financial products, without relying on a specific regulatory definition of ''crypto-asset'' that could quickly become obsolete. The FDIC has publicly stated that crypto-assets are not insured by the FDIC.[55] As noted above, the test of whether a particular financial product is an ''uninsured financial product'' will continue to be based upon application of the statutory definition of ''deposit,'' and is by its nature fact specific.

D. Expected Effects

Costs

The costs of the final rule will be incurred by IDIs, as well as some non-banks that may need to update disclosures or marketing materials. This section addresses these two groups separately.

Costs to IDIs

According to data from recent Reports of Condition and Income (Call Reports), the FDIC insures the deposits of 4,654 IDIs operating approximately 80 thousand branches in the United States.[56] These IDIs are currently subject to the existing requirements of part 328, so the costs incurred by these IDIs due to the final rule will be limited to activities to ensure compliance with the new provisions in the final rule and ameliorated by the extent to which IDIs are already complying with the new provisions. These activities include updating the display of FDIC signs in both physical and digital locations where deposits are normally received (including ATMs and websites), creating and maintaining signs for non-deposit products, segregating areas related to the sale of non-deposit products from areas where insured deposits are normally received, and ensuring that FDIC signs are not displayed in close proximity with non-deposit product signs.

Data on the costs of updating the displays of signs and segregating physical areas within bank premises are unavailable, but the FDIC expects these costs would depend on the number of branches operated by each IDI as well as the complexities of each IDI's branches and other premises. The FDIC expects that larger banks are more likely to have branches that are nontraditional, complex, and/or offer both deposit and non-deposit products. For purposes of the final rule, the FDIC estimates that IDIs with less than $10 billion in assets will spend, on average, approximately one hour per year to complete these activities at each branch while IDIs with at least $10 billion in total consolidated assets (assets) will spend, on average, approximately two hours per year per branch, for a total estimated annual burden of approximately 120 thousand hours per year across all IDIs [57] at an

[54] *See* 12 U.S.C. 1813(*l*).

[55] *See* Fact Sheet, *What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies* (July 28, 2022), *available at: https://www.fdic.gov/news/fact-sheets/crypto-fact-sheet-7-28-22.pdf.* While blockchain technology may be used for purposes other than the creation of crypto-assets, the FDIC is not expressing a view with respect to whether a product employing such technology could meet the definition of a ''deposit'' in this final rule.

[56] Call Reports as of June 30, 2023.

[57] According to Call Reports as of June 30, 2023, there were 4,496 IDIs with assets less than $10 billion operating 33,479 branches and 158 IDIs with assets at least $10 billion operating 44,133 branches.

estimated annual cost of approximately $10 million.[58]

The costs of complying with the final rule's requirements for digital deposit-taking channels will also depend on the complexities of each IDI's digital deposit-taking operations. The FDIC expects that larger banks are more likely to have more complex digital operations or offer both deposit and non-deposit products through their digital deposit-taking operations. For purposes of the final rule, the FDIC estimates that, on average, IDIs will incur a one-time burden of sixty hours to update their digital operations to incorporate the requirements in the final rule, at an approximate cost of $23 million for the industry.[59] The FDIC also estimates that, in years subsequent to the enactment of the final rule, IDIs with less than $10 billion in assets will spend, on average, approximately ten additional hours per year to comply with the digital deposit-taking operation requirements of the final rule, while IDIs with at least $10 billion in assets will spend, on average, approximately twenty additional hours per year, at an estimated annual cost of approximately $4 million for the industry.[60]

Finally, all IDIs must update their policies and procedures to comply with the final rule. These policies and procedures are required to include, as appropriate, provisions related to monitoring and evaluating whether certain third parties are in compliance with subpart B. The FDIC recognizes that the costs to implement and maintain these policies and procedures will vary across IDIs in ways that depend on the specifics of each IDI's operations or relationships with certain third parties. For purposes of the final rule, the FDIC estimates that, on average, IDIs will incur a one-time burden of eighty hours to update their policies and procedures to incorporate the requirements in the final rule, at an approximately cost of $31 million for the industry.[61] The FDIC also estimates that, in years subsequent to the enactment of the proposed rule, IDIs will spend, on average, approximately seventeen additional hours per year to ensure that their policies and procedures maintain compliance with the final rule,[62] at an estimated annual cost of approximately $7 million for the industry.[63] Based on the preceding analysis, the FDIC expects that the banking industry will incur approximately $64 million in the first year after adoption and approximately $20 million in each subsequent year to comply with the amendments to part 328.

Costs to Non-Banks

The FDIC does not have direct data on the number of non-banks that will be affected by the final rule. FDIC staff believe that the non-banks affected by the final rule would generally be classified in the following North American Industry Classification System (NAICS) industries: Miscellaneous Financial Investment Activities (NAICS Code 523999), Financial Transaction Processing, Reserve & Clearinghouse Activities (NAICS Code 522320), Computer System Design and Related Services (NAICS Code 5415), and Investment Advice (NAICS Code 523930). According to recent Census data, there were 148,235 firms in these NAICS industries in 2020, the most recent year for which such data is available.[64] However, not all of these firms enter into agreements with IDIs or otherwise engage in operations related to insured deposits; FDIC staff believe that the number of non-banks engaged in such operations is likely considerably less than the number of IDIs. For purposes of the final rule, the FDIC estimates that the number of affected non-banks will be approximately one percent of firms in the NAICS industries listed above. Therefore, the FDIC estimates that approximately 1,500 non-banks will be affected by the proposed rule.

Non-banks have been statutorily prohibited from falsely representing that uninsured financial products are FDIC-insured for many years. Thus, the final rule will not create a new prohibition on such misrepresentations, but will clarify the types of communications that can materially misrepresent deposit insurance coverage. The non-banks affected by the final rule may need to update their disclosures and marketing materials to ensure that they neither misuse the FDIC's official sign or any FDIC-associated terms or images, nor omit or fail to clearly and conspicuously disclose material information that could lead to a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. For purposes of the final rule, the FDIC estimates that, on average, each non-bank will spend an additional 2.5 hours in the first year to implement these changes and one hour per year to maintain compliance with the amendments to subpart B, for a total cost of approximately $300 thousand for the first year and $125 thousand for each subsequent year across all non-banks affected by the rule.[65]

E. Benefits

Provided that affected entities are not already complying with certain aspects of the final rule, the FDIC expects the final rule to produce benefits for the general public by providing clarity, and requiring affected entities to provide such clarity, to consumers about the extent to which or the manner in which products are insured by the FDIC. This clarity is expected to help consumers to more clearly understand when they are conducting business with IDIs and when their funds are protected by FDIC deposit insurance, thereby helping them avoid incurring financial losses as a result of investing in products they mistakenly thought were FDIC-insured. The final rule will reduce ambiguity about the nature of deposit insurance in situations where non-deposit products are offered by IDIs, where insured deposits are advertised by non-banks, or where both non-deposit products and deposit products are offered at the same location. The final rule will extend these benefits to digital deposit-taking channels where physical segregation is

[58] Dollar costs for this analysis are based on a $82.38 total hourly cost of compensation, a weighted average of the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates (OEWS) across five occupational groups in the Depository Credit Intermediation sector, as of May 2022, and adjusted by 1.51 to include non-wage compensation and 1.05 to account for the change in the seasonally adjusted Employment Cost Index for the Credit Intermediation and Related Activities sector (NAICS Code 522) between March 2022 and June 2023. For this analysis, the FDIC uses the following estimated occupational burden weights and occupational hourly labor costs: 14.6 percent for executives and managers at $131.66 per hour, 2.8 percent for lawyers at $169.85 per hour, 35.7 percent for compliance officers at $65.27 per hour, 28.5 percent for IT professionals at $103.74 per hour, and 18.3 percent for clerical workers at $37.09 per hour.

[59] According to Call Reports as of June 30, 2023: $23 million = 4,654 IDIs × 60 hours per IDI × $82.38 per hour.

[60] According to Call Reports as of June 30, 2023: $4 million = 4,496 IDIs × 10 hours per IDI × $82.38 per hour + 158 IDIs × 20 hours per IDI x $82.38 per hour.

[61] According to Call Reports as of June 30, 2023: $31 million = 4,654 IDIs × 80 hours per IDI × $82.38 per hour.

[62] The FDIC estimates that twelve of the seventeen hours are recordkeeping costs under the Paperwork Reduction Act. The five remaining hours are regulatory costs of compliance that are not under the Paperwork Reduction Act.

[63] According to Call Reports as of June 30, 2023: $7 million = 4,654 IDIs × 17 hours per IDI × $82.38 per hour.

[64] *See* United States Census Bureau, *2020 SUSB Annual Data Tables by Establishment Industry, available at: https://www.census.gov/data/tables/2020/econ/susb/2020-susb-annual.html,* last retrieved on October 23, 2023.

[65] Assuming the same average hourly wage as calculated for IDIs: 1,500 non-banks × 2.5 hours per non-bank × $82.38 per hour = approximately $300 thousand. 1,500 non-banks × 1 hour per non-bank × $82.38 per hour = approximately $125 thousand.

not possible. The final rule will also require the clear, conspicuous, and consistent use of the official FDIC sign and symbol in both physical and digital locations. These requirements are expected to enhance consumers' recognition of the FDIC's guarantee and reassure them of the nature of deposit insurance for those products. This effect will reinforce the role of FDIC deposit insurance and may bolster confidence in the U.S. banking sector.

As discussed previously, the final rule will further clarify the FDIC's procedures for evaluating potential violations of section 18(a)(4). The final rule will generally be consistent with existing practices used by the FDIC with respect to these matters. Furthermore, the final rule will not affect the application of related criminal prohibitions under 18 U.S.C. 709. Therefore, the FDIC believes that this aspect of the final rule is unlikely to have any significant effect on formal or informal enforcement of the section 18(a)(4) prohibitions.

By providing the clarity described above, the FDIC believes the final rule is likely to curtail instances in which IDIs or non-banks potentially misuse or misrepresent the FDIC's name or logo.[66] Consumers' uncertainty as to the safety of their funds may weaken the confidence that underpins bank stability and our nation's broader financial system. The final rule is likely to reduce the frequency of these types of instances going forward. The FDIC does not have the data to quantify the cost savings of this effect but expects that the reduction in such instances would strengthen public confidence in the FDIC deposit insurance and the nation's banking system.

The FDIC invited comment on the expected effects of the proposed rule. Some commenters opined that burden costs borne by smaller banks may be similar to or even higher than those borne by larger banks. Other commenters noted that the increased digital signage requirements, including the pop-up requirements, may require smaller banks to adopt more complex and costly digital platforms. The FDIC recognizes that there will be variation in the costs of compliance across banks and that some small banks may incur higher compliance costs than others. After consideration of the public comments, the final rule has narrowed the one-time notification requirement to reduce the cost and complexity while also achieving the relevant policy goals, and maintains the hourly compliance estimates presented in the proposed rule. The cost estimates described in this section reflect the FDIC's supervisory experience that larger banks have, on average, higher costs for the maintenance of signage at their physical branches and the maintenance of their digital operations.

[66] There have been at least 165 such instances recently. *See* FDIC, *2019 Annual Report,* at 38 and FDIC, *2020 Annual Report,* at 47.

F. Alternatives Considered

The FDIC has considered a number of alternatives to the final rule that could meet its objectives in this rulemaking, including proposals suggested by commenters in response to the 2020 and 2021 RFIs and the NPR. Some of these alternatives have been discussed above and additional alternatives are described below. For the reasons described, the FDIC views the final rule as the most appropriate and effective means of achieving its policy objectives with respect to part 328.

Alternatives to Digital Official Sign for Digital Deposit-Taking Channels

With respect to digital deposit-taking channels, the FDIC considered alternatives to the digital official sign required by the final rule, including plain text signage and disclosure requirements.[67] As discussed above, the FDIC official digital sign is intended to quickly and visually convey to consumers that they are dealing directly with an IDI rather than a non-bank entity. This distinction is critical to understanding the risks a consumer faces, and the FDIC believes that it warrants a requirement for consistent visual signage. Plain text signage or disclosures would not achieve this objective as effectively.

Official Advertising Statement Requirements—Allow ''One-Click-Away'' Disclosures

Some commenters recommended that the FDIC adopt a ''one click away'' approach for electronic or digital advertisements (where the advertising statement may not be immediately visible to consumers but could be reached through one mouse click) in order to permit greater flexibility in advertising formats.[68] The FDIC believes that the final rule better meets its objectives, as a ''one click away'' approach places the burden on consumers to obtain the necessary information and makes it less likely that they will do so. In addition, the advertising statement options available to IDIs under the final rule allow significant flexibility in advertising formats, as IDIs could use short titles including ''Member of FDIC'', ''Member FDIC'', or ''FDIC-insured''. The FDIC believes that these options are sufficient to permit advertising flexibility.

[67] *See e.g.,* Hancock Whitney Bank Comment Letter to 2021 RFI (May 24, 2021); Kasasa Comment Letter to 2020 RFI (March 24, 2020) (stating that the official sign should not be required on an IDI's website or mobile applications but suggesting the FDIC require, at minimum, the FDIC advertising statement on certain pages).

[68] *See* Hancock Whitney Bank Comment Letter to 2021 RFI (May 24, 2021); American Bankers Association and Bank Policy Institute joint comment letter to 2021 RFI (May 21, 2021); Kasasa Comment Letter to 2020 RFI (March 24, 2020).

Additional Disclosures Requiring a Consumer's Signature for Non-Deposit Products Offered Within an IDI's Physical Premises

One commenter recommended that the FDIC require written and oral disclosures with respect to the sale or recommendation of any non-deposit product offered within an IDI's premises and to require a consumer's signature affirming their understanding. The FDIC believes that such additional requirements would be overly burdensome for IDIs. Accordingly, the final rule will not adopt this recommendation. However, nothing contained in this regulation should be read to limit the authority of any state or Federal agency or individual under any other laws that may require such disclosures.

G. Administrative Law Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a final rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[69] However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[70]

[69] 5 U.S.C. 601 *et seq.*

[70] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured

Continued

Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

As described in the Expected Effects section, the proposed rule is expected to affect all institutions whose deposits are insured by the FDIC, as well as non-banks who may potentially use the official FDIC sign, advertising statements, or otherwise make representations that their products are insured or guaranteed by the FDIC. According to recent Call Reports, there are 4,654 IDIs.[71] Of these, approximately 3,373 are considered small entities for the purposes of RFA.[72] These small IDIs operate approximately 13 thousand deposit-taking offices. The number of deposit-taking offices at each small IDI ranges from 1 to 21. As discussed in the Expected Effects section, the FDIC expects affected IDIs with less than $10 billion in assets, which are likely to have less complex deposit-taking operations and fewer offices than larger IDIs, to spend, on average, 60 hours to update their digital operations, 80 hours to implement policies and procedures, and seven hours to update physical signage at branches in the first year. At average labor costs of $82.38 per hour, the expected first-year costs of complying with the proposed rule would average less than a percent of the small IDIs' total annual salaries and benefits. These expected first-year costs would exceed five percent of the total annual salaries and benefits for fewer than 20 small IDIs (comprising less than one percent of the total number of affected small IDIs). For subsequent years, the costs of maintaining compliance are even smaller. Thus, the proposed rule would not significantly affect a substantial number of small IDIs.

As described in the Expected Effects section, the FDIC estimates that 1,500 non-banks would be affected by the final rule. The FDIC does not have data on the number of non-banks that would be considered small entities for the purposes of RFA. As a conservative estimate, the FDIC assumes all 1,500 affected non-banks are small. As discussed in the Expected Effects section, the FDIC estimates that each non-bank, on average, would incur an additional 2.5 hours in the first year and 1 hour in each subsequent year to comply with the proposed amendments to subpart B. At an estimated compensation rate of $82.38, the expected costs of complying with the proposed rule would be less than $300 per year per non-bank, on average.

The final rule may also affect private individuals who may potentially misuse the FDIC name or logo or misrepresent the nature of deposit insurance. Private individuals are not considered ''small entities'' under the RFA.

Given that the expected costs of the proposed rule would be relatively small, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the PRA.[73] The information collection requirements (IC) contained in this final rule have been submitted to OMB for review and approval by the FDIC under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320) as a new information collection.

Title of Proposed Information Collection: Disclosure, Recordkeeping and Reporting Requirements Related to FDIC's Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.

OMB Control Number: 3064–0219

Affected Public: Businesses or other for-profit.

Respondents: Any FDIC-insured depository institution and persons that provide deposit-related services to insured depository institutions or offer insured depository institution's deposit-related products or services to other parties.

Estimated Annual Burden:

The final rule contains the following ten (10) information collection requirements:

1. Signs within Institution Premises—Banks <$10B, 12 CFR 328.3 (Third-Party Disclosure; Mandatory). Section 328.3 imposes PRA third-party disclosure burden governing signage within the premises of insured depository institutions. This burden is associated with the display of signage for non-deposit products, segregating areas offering non-deposit products, and the use of electronic media. The FDIC believes the hourly burden for these activities differs among respondents. For purposes of PRA, the FDIC would split the burden into two information collection categories: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the former group.

2. Signs within Institution Premises—Banks >$10B, 12 CFR 328.3 (Third-Party Disclosure; Mandatory). Section 328.3 imposes PRA third-party disclosure burden governing signage within the premises of insured depository institutions. This burden is associated with the display of signage for non-deposit products, segregating areas offering non-deposit products, and the use of electronic media. The FDIC believes the hourly burden for these activities differs among respondents. For purposes of PRA, the FDIC would split the burden into two ICs: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the latter group.

3. Signage for ATMs and Digital Deposit-taking Channels—Implementation, §§ 328.4 and 328.5 (Third-Party Disclosure; Mandatory). Sections 328.4 and 328.5 impose PRA third-party disclosure burden governing signs for ATMs as well as digital deposit-taking channels. This burden is associated with the display of signage for both deposit and non-deposit products. The FDIC believes banks will incur burdens in the first year to update their digital channels to incorporate the amended requirements in the rule. This IC captures the burden for these implementation activities.

4. Signage for ATMs and Digital Deposit-taking Channels—Banks <$10B—Ongoing, §§ 328.4 and 328.5 (Third-Party Disclosure; Mandatory). Sections 328.4 and 328.5 impose PRA third-party disclosure burden governing signs for ATMs as well as digital deposit-taking channels. This burden is associated with the display of signage

depository institution is ''small'' for the purposes of RFA.

[71] Call Reports as of June 30, 2023.

[72] *Id.*

[73] Information collection is defined under OMB's regulations at 5 CFR 1320(c). Certain requirements in part 328 for public disclosure of the FDIC name and/or logo are not information collections. *See* 5 CFR 1320(c)(2).

for deposit and non-deposit products. The FDIC believes that, in years subsequent to implementation, banks would incur ongoing burdens to update and maintain their digital channels to ensure continual compliance with the requirements in the rule. For purposes of PRA, the FDIC would split this ongoing burden into two ICs: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the former group.

5. Signage for ATMs and Digital Deposit-taking Channels—Banks >=$10B—Ongoing, §§ 328.4 and 328.5 (Third-Party Disclosure; Mandatory). Sections 328.4 and 328.5 impose PRA third-party disclosure burden governing signs for ATMs as well as digital deposit-taking channels. This burden is associated with the display of signage for deposit and non-deposit products. The FDIC believes that, in years subsequent to implementation, banks would incur ongoing burdens to update and maintain their digital channels to ensure continual compliance with the requirements in the rule. For purposes of PRA, the FDIC would split the burden into two ICs: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the latter group.

6. Policies and Procedures—Implementation, 12 CFR 328.8 (Recordkeeping; Mandatory). Section 328.8 requires IDIs to establish and maintain written policies and procedures to achieve compliance with part 328 including provisions related to monitor and evaluate the activities of persons that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering: (1) implementation burdens incurred in the first year in which the policies and procedures are implemented; and (2) ongoing burden incurred every subsequent year to maintain compliance. This IC captures the implementation burden.

7. Policies and Procedures—Ongoing, 12 CFR 328.8 (Recordkeeping; Mandatory). Section 328.8 requires IDIs to establish and maintain written policies and procedures to achieve compliance with part 328 including provisions related to monitoring and evaluating the activities of persons that provide deposit-related services to the Insured Depository Institution or offer the Insured Depository Institution's deposit-related products or services to other parties. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering: (1) implementation burdens incurred in the first year in which the policies and procedures are implemented; and (2) ongoing burden incurred every subsequent year to maintain compliance. This IC captures the ongoing burden.

8. Insured Depository Institution Relationships—Implementation 12 CFR 328.102(b)(5) (Third-Party Disclosure; Mandatory). Section 328.102(b)(5) requires covered non-banks to ensure that their public statements regarding deposit insurance comply with the requirements in part 328. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering: (1) implementation burdens incurred in the first year in which the public statements are amended; and (2) ongoing burden incurred every subsequent year to ensure continual compliance. This IC captures the implementation burden.

9. Insured Depository Institution Relationships—Ongoing 12 CFR 328.102(b)(5) (Third-Party Disclosure; Mandatory). Section 328.102(b)(5) requires covered non-banks to ensure that their public statements regarding deposit insurance comply with the requirements in part 328. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering: (1) implementation burdens incurred in the first year in which the public statements are amended; and (2) ongoing burden incurred every subsequent year to ensure continual compliance. This IC captures the ongoing burden.

10. Request for Consent to Use Non-English Language Advertising Statement—12 CFR 328.3(f), proposed 12 CFR 328.6(f) (Reporting; Required to Obtain or Retain a Benefit). Existing § 328.3(f), which the proposed rule moves to § 328.6(f), requires IDIs to obtain prior written approval of the FDIC before using a non-English equivalent of the official FDIC advertising statement in an advertisement.

Methodology and Assumptions

Estimated Annual Number of Respondents

ICs 1–7 and IC 10 capture PRA burdens incurred by IDIs. According to recent Call Reports, the FDIC supervised approximately 4,564 IDIs.[74] These include 158 IDIs with assets at least $10 billion and 4,496 IDIs with assets less than $10 billion. Of these, 3,373 IDIs are considered small entities for purposes of the Regulatory Flexibility Act.

IC 1 captures PRA burdens incurred by all IDIs with less than $10 billion in assets, and IC 2 captures PRA burdens incurred by all IDIs with at least $10 billion in assets. Using the Call Report data summarized above, the FDIC estimates 4,496 annual respondents for IC 1 and 158 annual respondents for IC 2.

ICs 3 and 6 capture implementation burdens incurred by all 4,496 IDIs. Implementation burdens are incurred in the first year after the proposed rule would become effective. Given that this information collection request (ICR) covers PRA burdens over three years, the FDIC annualizes the counts of respondents by dividing the total number of respondents by three. Thus, the FDIC estimates 1,551 annual respondents for ICs 3 and 6.

ICs 4, 5, and 7 capture the ongoing PRA burdens incurred by the 4,496 IDIs with less than $10 billion in assets, the 158 IDIs with at least $10 billion in assets, and all 4,654 IDIs, respectively. Ongoing burdens are incurred in two of the three years after the rule would become effective. The FDIC annualizes the counts of respondents accordingly. Thus, the FDIC estimates 2,997 annual respondents for IC 4, 105 annual respondents for IC 5 and 3,103 annual respondents for IC 7.

ICs 8 and 9 capture PRA requirements incurred by non-banks. The FDIC does not have direct data on the number of non-banks that would be subject to part 328. The FDIC assumes that the affected non-banks would generally be classified in the following North American Industry Classification System (NAICS) industries: Miscellaneous Financial Investment Activities (NAICS Code 523999), Financial Transaction Processing, Reserve & Clearinghouse Activities (NAICS Code 522320), Computer System Design and Related Services (NAICS Code 5415), and Investment Advice (NAICS Code 523930). As discussed in the Expected Effects section, there were 148,235 firms in these NAICS industries in 2020, the most recent year for which such data is available. However, not all of these firms enter into agreements with IDIs or otherwise engage in operations related to insured deposits; the FDIC assumes that the number of non-banks engaged in such operations would be considerably less than the number of IDIs. For purposes of this estimation, the FDIC assumes that the number of covered non-banks would be approximately one percent of firms in the NAICS industries listed above.

[74] According to Call Reports as of June 30, 2023.

Therefore, the FDIC estimates that approximately 1,500 non-banks will incur burdens associated with part 328. ICs 8 and 9 are implementation and ongoing burdens, respectively. The FDIC annualizes the count of respondents accordingly. Thus, the FDIC estimates 500 annual respondents for IC 8 and 1,000 annual respondents for IC 9.

IC 10 captures PRA requirements incurred by IDIs that submit requests to the FDIC for the use of a non-English equivalent of the official FDIC advertising statement. The FDIC does not have data on the historical annual number of such requests submitted. However, the FDIC has not handled such a request since at least January 1, 2021, and believes it is unlikely that such a request from an IDI would be received within the next three years. As OMB's system of record for PRA burdens does not allow non-positive respondent counts, the FDIC uses an annual respondent count of one for IC 10 to preserve the estimated burden calculations.

Estimated Annual Number of Responses per Respondent

ICs 1 and 2 capture the activities that respondents undertake at each of their branches to comply with the PRA requirements in 12 CFR 328.3. For purposes of this ICR, the FDIC designates the activities at a single branch as a single response by the respondent. According to recent Call Reports, IDIs with assets less than $10 billion operate approximately seven branches each, on average, while IDIs with assets of at least $10 billion have approximately 279 branches each, on average.[75] Accordingly, the FDIC estimates seven responses per year for IC 1 and 279 responses per year for IC 2.

For ICs 3–10, the activities that respondents undergo throughout the year to comply with the PRA requirements in each IC can all be considered part of a single annual response to that IC. Therefore, the FDIC uses one as the number of annual responses per respondent for these ICs.

Estimated Burden Hours per Response

ICs 1 and 2 capture the third-party disclosure burden of ensuring that signage within the premises of insured depository institutions comply with part 328. Data on this burden is unavailable. The FDIC assumes that larger banks are more likely to have branches that are nontraditional, complex, and/or offer both deposit and non-deposit products. While smaller IDIs are more likely to operate simple branches that offer only deposit products and may not require extensive revisions of signage, those that do may require updates to their designated areas. For purposes of this ICR, the FDIC estimates the burden would be approximately one hour per branch, on average, for institutions with less than $10 billion in assets and approximately two hours per branch, on average, for institutions with at least $10 billion in assets. Accordingly, the FDIC estimates burdens as one hour per response for IC 1 and two hours per response for IC 2.

ICs 3, 4, and 5 capture the third-party disclosure burden of ensuring that signs for ATMs and digital deposit-taking channels comply with part 328. Data on this burden is unavailable. The FDIC assumes that larger banks are more likely to have more complex digital operations or offer both deposit and non-deposit products through their digital deposit-taking operations. However, these larger banks may also have permanent IT teams in place that could facilitate and/or reduce the hourly burden of these changes. Conversely, for smaller banks relying on third-party web service providers, many may be seeking compliance through the same channel as others, which could create a backlog of work on the third-party web service providers, making it so other small banks experience a delay in compliance timelines. For purposes of this ICR, FDIC assumes that each IDI will spend 60 hours, on average, in the first year to implement the changes to its ATM and digital deposit-taking channels to comply with part 328. In subsequent years, IDIs with less than $10 billion in assets would spend approximately 10 additional hours per year, on average, to maintain ongoing compliance, while IDIs with at least $10 billion in assets would spend approximately 20 additional hours per year, on average, to maintain ongoing compliance. As such, FDIC estimates burdens as 60 hours per response for IC 3, 10 hours per response for IC 4, and 20 hours per response for IC 5.

ICs 6 and 7 capture the recordkeeping burden of ensuring that the IDIs' policies and procedures comply with part 328. The FDIC assumes the recordkeeping burden imposed relates to documenting the development of policies and procedures by compliance officers and senior management that would be appropriate to the institution's risk profile. This program would then be reviewed, revised, and then approved by the board of directors or other executives at the institution. In addition, part 328 requires that IDIs monitor and evaluate certain third parties to ensure that these third parties are also in compliance with part 328. Additional recordkeeping burden would be incurred in documenting the results of such monitoring activities. Data on the hourly burden of these activities is unavailable. For purposes of this ICR, the FDIC assumes that each IDI, on average, would spend approximately 80 hours in the first year to establish and/or implement policies and approximately 12 hours in each subsequent year to revise and update these documents. The FDIC estimates burdens as 80 hours per response for IC 6 and 12 hours per response for IC 7.

ICs 8 and 9 capture the burden of ensuring that covered non-banks' third-party disclosures comply with part 328. Data on this burden is unavailable. The FDIC assumes each covered non-bank entity, on average, would spend approximately two and one-half hours in the first year to implement these procedures and approximately one hour in each subsequent year to revise and maintain ongoing compliance. The FDIC estimates burdens as two and one-half hours per response for IC 8 and one hour per response for IC 9.

IC 10 captures the reporting burden incurred when an IDI requests approval from the FDIC to use the non-English equivalent of the official advertising statement in any of its advertisements. The FDIC believes that an IDI would spend approximately two hours per year, on average, to prepare and submit such requests.

Estimated Annual Burden Summary

The estimated PRA burdens for the proposed rule are summarized in the *Summary of Estimated Annual Burden* table below. For each IC, the burden table lists the estimated annual number of responses per respondent and estimated time per response, as described in the sections above. Note that the counts of annual respondents for ICs 3–9 have been annualized to reflect a three-year PRA cycle in which respondents incur implementation costs in the first year and ongoing costs in the second and third years.

[75] According to Call Reports as of June 30, 2023, there were 4,496 IDIs with assets less than $10 billion operating 33,479 branches and 158 IDIs with assets at least $10 billion operating 44,133 branches.

SUMMARY OF ESTIMATED ANNUAL PRA BURDEN

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Average number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
1. Signs within Institution Premises—Banks <$10B, 12 CFR 328.3 (Mandatory).	Third-Party Disclosure (Annual).	4,496	7	1:00	31,472
2. Signs within Institution Premises—Banks >=$10B, 12 CFR 328.3 (Mandatory).	Third-Party Disclosure (Annual).	158	279	2:00	88,164
3. Signage for ATMs and Digital Deposit-taking Channels—Implementation, 12 CFR 328.4 and .5 (Mandatory).	Third-Party Disclosure (Annual).	1,551	1	60:00	93,060
4. Signage for ATMs and Digital Deposit-taking Channels—Banks <$10B—Ongoing, 12 CFR 328.4 and .5 (Mandatory).	Third-Party Disclosure (Annual).	2,997	1	10:00	29,970
5. Signage for ATMs and Digital Deposit-taking Channels—Banks >=$10B—Ongoing, 12 CFR 328.4 and .5 (Mandatory).	Third-Party Disclosure (Annual).	105	1	20:00	2,100
6. Policies and Procedures—Implementation, 12 CFR 328.8 (Mandatory).	Recordkeeping (Annual)	1,551	1	80:00	124,080
7. Policies and Procedures—Ongoing, 12 CFR 328.8 (Mandatory).	Recordkeeping (Annual)	3,103	1	12:00	37,236
8. Insured Depository Institution Relationships—Implementation 12 CFR 328.102(b)(5) (Mandatory).	Third-Party Disclosure (Annual).	500	1	2:30	1,250
9. Insured Depository Institution Relationships—Ongoing 12 CFR 328.102(b)(5) (Mandatory).	Third-Party Disclosure (Annual).	1,000	1	1:00	1,000
10. Request for Consent to Use Non-English Language Advertising Statement—12 CFR 328.6(f) (Required to Obtain or Retain a Benefit).	Reporting (On occasion).	1	1	2:00	2
Total Annual Burden (Hours)					408,334

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.

Congressional Review Act

For purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the OMB makes a determination as to whether a final rule constitutes a ''major rule.'' If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[76] The FDIC has submitted the final rule to the OMB for this major rule determination. As required by the Congressional Review Act, the FDIC will also submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.[77]

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invited comment regarding the use of plain language, but did not receive any comments on this topic.

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

[76] *See* 5 U.S.C. 804(2).

[77] *See* 5 U.S.C. 801(a)(1).

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 328 of title 12 of the Code of Federal Regulations as follows:

PART 328—FDIC OFFICIAL SIGNS, ADVERTISEMENT OF MEMBERSHIP, FALSE ADVERTISING, MISREPRESENTATION OF INSURED STATUS, AND MISUSE OF THE FDIC'S NAME OR LOGO

■ 1. The authority citation for part 328 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819 (Tenth), 1820(c), 1828(a).

■ 2. Revise the part heading to read as set forth above.

■ 3. Revise subpart A to read as follows:

Subpart A—FDIC Official Signs and Advertisement of Membership

Sec.

§ 328.0 Purpose.

Subpart A of this part describes the official signs and advertising statement and prescribes their use by insured depository institutions, as well as other signs to prevent customer confusion in the event non-deposit products are offered by an insured depository institution. Subpart A applies to insured depository institutions, including insured branches of foreign banks, but does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

§ 328.1 Definitions.

Branch has the same meaning as the term ''domestic branch'' as set forth under section 3(*o*) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*o*).

Corporation means the Federal Deposit Insurance Corporation.

Deposit has the same meaning as set forth under section 3(*l*) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*).

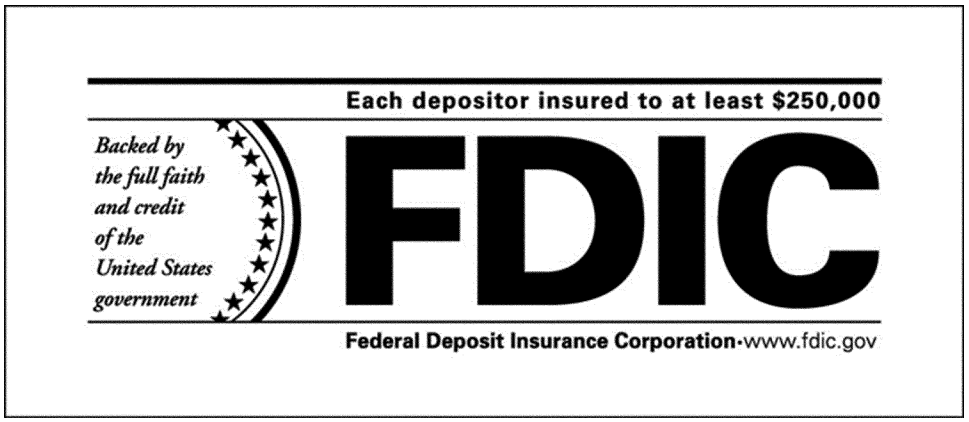
Digital deposit-taking channel means websites, banking applications, and any other electronic communications method through which an insured depository institution accepts deposits. *Hybrid product* means a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

Insured depository institution has the same meaning as set forth under section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2).

Non-deposit product means any product that is not a ''deposit'', including, but not limited to: insurance products, annuities, mutual funds, securities and crypto-assets. For purposes of this definition, credit products and safe deposit boxes are not non-deposit products.

§ 328.2 Official sign.

(a) *Design.* Except as otherwise provided in this section, the official sign referred to in this part shall be 7'' by 3'' in size, with black lettering and gold background, and has the following design:



(b) *Symbol.* The ''symbol'' of the Corporation, as used in this subpart, shall be that portion of the official sign consisting of ''FDIC'' and the two lines of smaller type above and below ''FDIC.''

(c) *Procuring signage.* An insured depository institution may procure the official sign from the Corporation for official use at no charge. Information on obtaining the official sign is posted on the FDIC's internet website, *https://www.fdic.gov.* Alternatively, insured depository institutions may, at their expense, procure from commercial suppliers, signs that vary from the official sign in size, color, or material. Any insured depository institution which has promptly submitted a written request for an official sign to the Corporation shall not be deemed to have violated this subpart by failing to display the official sign, unless the insured depository institution fails to display the official sign after receipt thereof.

(d) *Required changes in signage.* The Corporation may require any insured depository institution, upon at least thirty (30) days' written notice, to change the wording or color of the official sign in a manner deemed necessary for the protection of depositors or others.

§ 328.3 Signs within institution premises and offering of non-deposit products within institution premises.

(a) *Scope.* This section governs signage within the premises of insured depository institutions and the offering of non-deposit products within the premises of insured depository institutions.

(b) *Display of official sign.* Each insured depository institution must continuously, clearly, and conspicuously display the official sign at each place of business where

consumers have access to or transact with deposits, including all of its branches (except branches excluded from the scope of this subpart under § 328.0) and other premises in which customers have access to or transact with deposits, in the manner described in this paragraph (b).

(1) *Deposits received at teller windows or stations.* If insured deposits are usually and normally received at teller windows or stations, the insured depository institution must display the official sign:

(i) At each teller window or station where insured deposits are usually and normally received, in a size of 7″ by 3″ or larger with black lettering on a gold background as described in § 328.2(a); or

(ii) If the insured depository institution does not offer non-deposit products on the premises, at one or more locations visible from the teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area.

(2) *Deposits received in areas other than teller windows or stations.* If insured deposits are usually and normally received in areas of the premises other than teller windows or stations, the insured depository institution must display the official sign in one or more locations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in those areas.

(3) *Other locations within the premises.* An insured depository institution may display the official sign in locations at the institution other than those required by this section, except for areas where non-deposit products are offered.

(4) *Varied signs.* An insured depository institution may display signs that vary from the official sign in size, color, or material at any location where display of the official sign is required or permitted under this paragraph. However, any such varied sign that is displayed in locations where display of the official sign is required must not be smaller in size than the official sign, must have the same color for the text and graphics, and includes the same content.

(5) *Newly insured institutions.* An insured depository institution shall display the official sign as described in this section no later than its twenty-first calendar day of operation as an insured depository institution, unless the institution promptly requested the official sign from the Corporation but did not receive it before that date.

(c) *Non-deposit products offered on insured depository institution premises—*

(1) *Segregated areas.* Except as provided in paragraph (c)(3) of this section, if non-deposit products are offered within the premises, those products must be physically segregated from areas where insured deposits are usually and normally accepted. The institution must identify areas where activities related to the sale of non-deposit products occur and clearly delineate and distinguish those areas from the areas where insured deposit-taking activities occur.

(2) *Non-deposit signage.* At each location within the premises where non-deposit products are offered, an insured depository institution must continuously, clearly, and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. Such signage may not be displayed in close proximity to the official sign.

(3) *Physical area limitations.* In limited situations where physical considerations present challenges to offering non-deposit products in a distinct area, an institution must take prudent and reasonable steps to minimize customer confusion.

(d) *Electronic media.* Insured depository institutions may use electronic media to display the official sign and non-deposit sign required by this section.

§ 328.4 Signs for automated teller machines and like devices.

(a) *Scope.* This section governs signage for insured depository institutions' automated teller machines or other remote electronic facilities that receive deposits.

(b) *ATMs or like devices that do not offer access to non-deposit products.* Except as provided in paragraph (e), an insured depository institution's automated teller machine or like device that receives deposits for an insured depository institution and does not offer access to non-deposit products may comply with the official sign requirement of this section by either:

(1) Displaying the physical official sign as described in § 328.2 on the automated teller machine, subject to paragraph (f); or

(2) Displaying the FDIC official digital sign as described in paragraph (c) of this section.

(c) *Display of FDIC official digital sign.* An insured depository institution's automated teller machine or like device that receives deposits for an insured depository institution and offers access to non-deposit products must clearly, continuously, and conspicuously display the FDIC official digital sign as described in § 328.5 on its home page or screen and on each transaction page or screen relating to deposits.

(d) *Non-deposit signage.* An insured depository institution's automated teller machine or like device that receives deposits for an insured depository institution and offers access to non-deposit products must clearly, continuously, and conspicuously display electronic disclosures indicating that such non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. These disclosures must be displayed on each transaction page or screen relating to non-deposit products. Such signage may not be displayed in close proximity to the FDIC official digital sign.

(e) *Automated teller machines and like devices placed into service after January 1, 2025.* An insured depository institution's automated teller machine or like device that receives deposits for an insured depository institution and does not offer access to non-deposit products, that is placed into service after January 1, 2025 must display the official digital sign as described in paragraph (c) of this section.

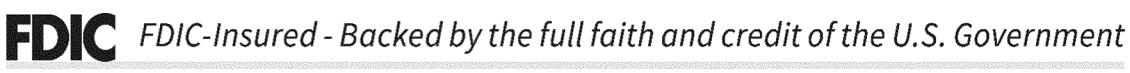
(f) *Degraded or defaced physical official signs.* A physical official sign that is displayed on an insured depository institution's automated teller machine or like device under paragraph (b)(1) that is degraded or defaced would not be displayed ''clearly, continuously, and conspicuously'' for purposes of paragraph (b)(1) of this section.

§ 328.5 Signs for digital deposit-taking channels.

(a) *Scope.* This section governs signage for digital deposit-taking channels, including insured depository institutions' websites and web-based or mobile applications that offer the ability to make deposits electronically and provide access to deposits at insured depository institutions.

(b) *Design.* In general, the ''FDIC'' in the FDIC official digital sign shall be displayed with a wordmark size of 37.36 × 15.74px, in navy blue (hexadecimal color code #003256), and the ''*FDIC-Insured—Backed by the full faith and credit of the U.S. Government*'' shall be displayed in regular 400 italic (12.8px) and with black (hexadecimal color code #000000) lettering. The entire FDIC official digital sign shall be displayed in Source Sans Pro Web. If the FDIC official digital sign in these colors would be illegible in a digital-taking channel, due to the color of the background, the entire FDIC official

digital sign shall be displayed in white (hexadecimal color code #FFFFFF). The official digital sign required by the provisions of this section shall have the following design:



(c) *Digital symbol.* The ''digital symbol'' of the Corporation, as used in this subpart, shall be that portion of the FDIC official digital sign consisting of ''FDIC'' and the one line of smaller type to the right of ''FDIC''.

(d) *Display of FDIC official digital sign.* An insured depository institution must clearly, continuously and conspicuously display the FDIC official digital sign specified in paragraph (b) of this section on its digital deposit-taking channels on the following pages or screens:

(1) Initial or homepage of the website or application;

(2) Landing or login pages; and

(3) Pages where the customer may transact with deposits.

(e) *Legibility.* The FDIC official digital sign shall be clearly legible across all insured depository institution deposit-taking channels.

(f) *Clear and conspicuous placement of FDIC official digital sign.* An official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the insured depository institution's name would be considered clear and conspicuous.

(g) *Display of non-deposit signage.* (1) Continuous Display of Non-deposit signage. If a digital deposit-taking channel offers both access to deposits at an insured depository institution and non-deposit products, the insured depository institution must clearly and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. This signage must be displayed continuously on each page relating to non-deposit products. This non-deposit signage may not be displayed in close proximity to the digital sign required by paragraph (d) of this section.

(2) One-Time Notification for Bank Customers Related to Third-Party Non-deposit Products. If a digital deposit-taking channel offers access to non-deposit products from a non-bank third party's online platform, and a logged-in bank customer attempts to access such non-deposit products, the insured depository institution must provide a one-time per web session notification on the insured depository institution's deposit-taking channel before the customer leaves the insured depository institution's digital deposit-taking channel. The notification must be dismissed by an action of the bank customer before initially accessing the third party's online platform and it must clearly, conspicuously indicate that the third party's non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. Nothing in this paragraph shall be read to limit an insured depository institution's ability to include additional disclosures in the notification that may help prevent consumer confusion, including, for example, that the bank customer is leaving the insured depository institution's website.

(h) *Required changes in digital signage.* The Corporation may require any insured depository institution, upon at least thirty (30) days' written notice, to change the wording, color or placement of the FDIC official digital sign and other signs for digital deposit-taking channels when it is deemed necessary for the protection of depositors or others or to ensure consistency with this part's requirement.

§ 328.6 Official advertising statement requirements.

(a) *Advertisement defined.* The term ''advertisement,'' as used in this subpart, shall mean a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

(b) *Official advertising statement.* The official advertising statement shall be in substance as follows: ''Member of the Federal Deposit Insurance Corporation.''

(1) *Optional short title and symbol.* The short title ''Member of FDIC'', ''Member FDIC'', ''FDIC-Insured'', or a reproduction of the symbol of the Corporation (as described in § 328.2(b)), may be used by insured depository institutions at their option as the official advertising statement.

(2) *Size and print.* The official advertising statement shall be of such size and print to be clearly legible. If the symbol of the Corporation is used as the official advertising statement, and the symbol must be reduced to such proportions that the two lines of smaller type above and below ''FDIC'' are indistinct and illegible, those lines of smaller type may be blocked out or dropped.

(c) *Use of official advertising statement in advertisements*—(1) *General requirement.* Except as provided in paragraph (d) of this section, each insured depository institution shall include the official advertising statement prescribed in paragraph (b) of this section in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution. For purposes of this section, an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution. An example of such an advertisement would be, ''Anytown Bank, offering a full range of banking services.''

(2) *Foreign depository institutions.* When a foreign depository institution has both insured and noninsured U.S. branches, the depository institution must also identify which branches are insured and which branches are not insured in all of its advertisements requiring use of the official advertising statement.

(3) *Newly insured institutions.* A depository institution shall include the official advertising statement in its advertisements no later than its twenty-first day of operation as an insured depository institution.

(d) *Types of advertisements which do not require the official advertising statement.* The following types of advertisements do not require use of the official advertising statement:

(1) Statements of condition and reports of condition of an insured depository institution which are required to be published by State or Federal law;

(2) Insured depository institution supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, etc.;

(3) Signs or plates in the insured depository institution offices or attached to the building or buildings in which such offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured depository institution;

(6) Entries in a depository institution directory, provided the name of the insured depository institution is listed on any page in the directory with a symbol or other descriptive matter indicating it is a member of the Federal Deposit Insurance Corporation;

(7) Joint or group advertisements of depository institution services where the names of insured depository institutions and noninsured institutions are listed and form a part of such advertisements;

(8) Advertisements by radio or television, other than display advertisements, which do not exceed thirty (30) seconds in time;

(9) Advertisements which are of the type or character that make it impractical to include the official advertising statement, including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; and

(10) Advertisements which contain a statement to the effect that the depository institution is a member of the Federal Deposit Insurance Corporation, or that the depository institution is insured by the Federal Deposit Insurance Corporation, or that its deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least the standard maximum deposit insurance amount (as defined in § 330.1(o)) for each depositor.

(e) *Restrictions on using the official advertising statement when advertising non-deposit products*—(1) *Non-deposit product advertisements.* Except as provided in paragraph (e)(3) of this section, an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement relating solely to non-deposit products.

(2) *Hybrid product advertisements.* Except as provided in paragraph (e)(3) of this section, an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement relating solely to hybrid products.

(3) *Mixed advertisements.* In advertisements containing information about both insured deposit products and non-deposit products or hybrid products, an insured depository institution shall clearly segregate the official advertising statement or any similar statement from that portion of the advertisement that relates to the non-deposit products.

(f) *Official advertising statement in non-English language.* The non-English equivalent of the official advertising statement may be used in any advertisement, provided that the translation has had the prior written approval of the Corporation.

§ 328.7 Prohibition against receiving deposits at same teller station or window as noninsured institution.

(a) *Prohibition.* An insured depository institution may not receive deposits at any teller station or window where any noninsured institution receives deposits or similar liabilities.

(b) *Exception.* This section does not apply to deposits received at an automated teller machine or other remote electronic facility that receives deposits for an insured depository institution, or to deposits facilitated through a digital deposit-taking channel.

§ 328.8 Policies and procedures.

(a) *Policies and Procedures.* An insured depository institution must establish and maintain written policies and procedures to achieve compliance with this part. Such policies and procedures must be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the insured depository institution and must include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the insured depository institution or offer the insured depository institution's deposit-related products or services to other parties.

(b) *Reservation of authority.* Nothing in this section shall be construed to limit the FDIC's authority to address violations of this part, the FDIC's authority to interpret the rules in this part, or any other authority the FDIC has pursuant to any other laws or regulations.

■ 3. Amend § 328.101 by adding the definition for ''Deposit'' in alphabetical order, and revising the definitions for ''FDIC-Associated Images'', ''Hybrid Product'', ''Non-Deposit Product'', and ''Uninsured Financial Product'' to read as follows:

§ 328.101 Definitions.

* * * * *

Deposit has the same meaning as set forth under section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l).

* * * * *

FDIC-Associated Images means the Seal of the FDIC, alone or within the letter C of the term FDIC; the Official Sign and Symbol of the FDIC, as set forth in § 328.2; the FDIC Official Digital Sign and Digital Symbol set forth in § 328.5; the Official Advertising Statement, as set forth in § 328.6; any similar images; and any other signs and symbols that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed in whole or in part by the FDIC.

* * * * *

Hybrid Product has the same meaning as set forth under § 328.1.

* * * * *

Non-Deposit Product means any product that is not a ''deposit'', including, but not limited to: insurance products, annuities, mutual funds, securities, and crypto-assets. For purposes of this definition, credit products and safe deposit box services are not Non-Deposit Products.

* * * * *

Uninsured Financial Product means any Non-Deposit Product, Hybrid-Product, investment, security, obligation, certificate, share, crypto-asset or financial product other than an ''Insured Deposit'' as defined in this section.

■ 4. Amend § 328.102 by adding paragraph (a)(3)(viii) and (b)(1)(iv) and revising paragraphs (b)(3)(ii), (b)(5), and (b)(6)(ii) to read as follows:

§ 328.102 Prohibition.

(a) * * *

(3) * * *

(viii) Use of FDIC-Associated Terms or FDIC-Associated Images, in a manner that inaccurately states or implies that a person other than an insured depository institution is insured by the FDIC.

(b) * * *

(1) * * *

(iv) A person other than an insured depository institution is an FDIC-insured depository institution. This includes use of FDIC-Associated Terms or FDIC-Associated Images, in a manner that inaccurately states or implies that a person other than an insured depository institution is insured by the FDIC.

(3) * * *

(ii) The statement omits or fails to clearly and conspicuously disclose material information that would be necessary to prevent a reasonable consumer from being misled, regardless of whether any such consumer was actually misled.

(5) Without limitation, a statement regarding deposit insurance will be deemed to omit or fail to clearly and conspicuously disclose material information if the absence of such

information could lead a reasonable consumer to believe any of the material misrepresentations set forth in paragraph (b)(4) of this section or could otherwise result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. Examples of such material information include, but are not limited to, the following:

(i) A statement made by a person other than an insured depository institution that represents or implies that an advertised product is insured by the FDIC that fails to clearly and conspicuously identify the insured depository institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed;

(ii) A statement made by a person that is not an insured depository institution regarding deposit insurance that fails to clearly and conspicuously disclose that the person is not an FDIC-insured depository institution and that FDIC insurance only covers the failure of the FDIC-insured depository institution. A statement that a person is not an FDIC-insured bank and deposit insurance covers the failure of an insured bank would be considered a clear statement for purposes of this provision.

(iii) A statement made by a person regarding deposit insurance in a context where deposits and Non-Deposit products are both offered on a website in close proximity, that fails to clearly and conspicuously differentiate between insured deposits and Non-Deposit Products by disclosing that Non-Deposit Products: are not insured by the FDIC; are not deposits; and may lose value, except that:

(A) Services unrelated to financial products or investments and physical goods shall not be considered Non-Deposit Products for purposes of clause (b)(5)(iii) of this section; and

(B) In the case of a Non-Deposit Product that is a product that allows consumers to store, send, or receive fiat money and does not fluctuate in value, failure to disclose that the Non-Deposit Product may lose value will not be a material omission for purposes of clause (b)(5)(iii) of this section.

(iv) A statement made by a person regarding pass-through deposit insurance coverage that fails to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply.

(6) * * *

(ii) Has been advised by the FDIC in an advisory letter, as provided in § 328.106(a), or has been advised by another governmental or regulatory authority, including, but not limited to, another Federal banking agency, the Federal Trade Commission, the Bureau of Consumer Financial Protection, the U.S. Department of Justice, or a state bank supervisor, that such representations are false or misleading; and

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 20, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–28629 Filed 1–17–24; 8:45 am]

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