



BILLING CODE 6714-01

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064-ZA14

Request for Information on FDIC Sign and Advertising Requirements and Potential Technological Solutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and Request for Comment.

SUMMARY: The FDIC is seeking input regarding potential modernization of its sign and advertising rules to reflect that deposit-taking via physical branch, digital, and mobile banking channels continues to evolve since the FDIC last significantly updated its rules in 2006. As banks adjust their business models to innovate and remain competitive, the FDIC is considering how to revise and clarify its sign and advertising rules related to FDIC deposit insurance. The FDIC is issuing this Request for Information (RFI) to inform FDIC efforts to align the policy objectives of its rules and keep pace with how today's banks offer deposit products and services and how consumers connect with banks, including through evolving channels. The FDIC is also seeking input on how to address potential misrepresentations by nonbanks about deposit insurance. In addition, the FDIC requests information about how technological or other solutions could be leveraged to help consumers better distinguish FDIC-insured banks and savings associations from entities that are not insured by the FDIC (nonbanks), particularly across web and digital channels.

DATES: Comments must be received by March 19, 2020.

ADDRESSES: You may submit comments, identified by RIN 3064-ZA14, by any of the following methods:

- Agency Website: <https://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the Agency Website.
- Email: Comments@fdic.gov. Include RIN 3064-ZA14 in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.
- Hand Delivery / Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street, N.W., building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m., EST.

All comments received must include the agency name and RIN for this rulemaking.

Public Inspection: All comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/>—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: David Friedman, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898-7168, dfriedman@fdic.gov; Edward Hof, Senior Consumer Affairs Specialist, Division of Depositor and Consumer Protection, (202) 898-7213, edwhof@fdic.gov; or Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424, rischwartz@fdic.gov.

SUPPLEMENTARY INFORMATION: The FDIC is an independent federal agency with a mission of maintaining stability and public confidence in the nation’s financial system by

insuring bank deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. Today, there are more than five thousand FDIC-insured banks and savings associations in the United States. The FDIC insures money deposited in FDIC-insured banks and savings associations, and FDIC deposit insurance is backed by the full faith and credit of the United States.

FDIC Official Sign and Advertising Statement Requirements

The FDIC's official sign and advertising statement regulations (12 CFR Part 328) require banks to continuously display the FDIC 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. Sign and advertising statements requirements are set forth in the Banking Act of 1935. The last major changes to the regulations were made in 2006¹ and the rules do not reflect evolving banking channels and operations.

Technology and Innovation

The FDIC has begun a number of initiatives focused on innovation and technology. For example, the FDIC established the FDIC Tech Lab ("FDiTech") to foster innovation in the financial services sector, while simultaneously protecting consumers, markets, and the Deposit Insurance Fund. FDiTech is working to lay the foundation for the next chapter of banking by encouraging innovation that meets consumer demand, promotes community banking, reduces compliance burdens, and modernizes the FDIC's supervision of banks.

¹ 71 FR 40440 (July 17, 2006).

Technology has advanced the business of banking in many ways, including how and where depositors interface with banks and savings associations when making deposits. The internet, through online and mobile banking, smart phone applications (“apps”), digital wallets, and other tools, has had a profound effect on the way banking and deposit-taking is conducted. Some banks have no physical branches. Remote deposit capture for depositing checks, introduced in the early 2000s, has become a common feature of many banking apps. In addition, some banks have moved away from the traditional branch/bank teller models to electronically-staffed kiosks and pop-up facilities and teller-less cafes where deposits can be accepted on tablets. In addition, some consumers “deposit” funds with prepaid account providers and technologically-focused financial companies (“fintechs”), some of which are not themselves FDIC-insured banks.²

Given these banking industry developments, the FDIC is seeking information on its sign and advertising requirements to align with how banks offer products through various deposit-taking channels and how consumers interface with banks.

Potential Consumer Confusion / Misleading Advertisements

Consumers may have difficulty distinguishing FDIC-insured banks and savings associations from other entities when they look for deposit products online. The types of potentially confusing, and sometimes misleading, situations consumers may encounter can generally be put into two broad categories: (1) legitimate third-party business relationships with banks or savings associations; or (2) misrepresentations by certain non-FDIC insured entities.

² Some uninsured companies enter into deposit arrangements with FDIC-insured banks, which may, under some circumstances, result in “pass-through” deposit insurance being applied per customer. *See generally*, 12 CFR Part 330.

The first circumstance relates to certain nonbanks (such as fintechs or prepaid account providers) that establish legitimate business relationships with FDIC-insured banks and savings associations. In marketing their services, some nonbanks create websites that prominently display the FDIC logo. Consumers contact the FDIC about such websites, at times under the impression that these websites belong to FDIC-insured banks or savings associations. These nonbank entities typically are not claiming to be banks. Instead, the representation is that they will deposit customer funds at one or more FDIC-insured banks or savings associations, and obtain deposit insurance for customers.

At times, this sort of representation is explicit and clear. However, in other situations, a nonbank may highlight the FDIC logo to communicate safety of funds, while omitting or minimizing significant details about deposit insurance coverage.³ This type of marketing may lead to consumer confusion about whether funds are insured.

In the second type of situation, entities establish websites and falsely claim to be “Member FDIC.” These websites commonly advertise above market interest rates and, by including the FDIC logo or in some other way claiming to be an FDIC-insured bank or savings association, they seek to convey legitimacy. More often than not, these entities are not themselves insured banks or do not have a relationship with an insured bank and do not offer accounts insured by the FDIC. In 2019, the FDIC requested that internet service providers take down over 65 such websites. Consumers who do not realize these websites are fraudulent may divulge personally identifiable information (“PII”) or transfer money, often by wire. In some cases, the amount of money can be significant, and the consumer often cannot recover his/her

³ For example, a determination as to the amount of the deposits held by a failed bank or savings association that may be covered will depend on certain regulatory requirements having been met.

funds. To assist consumers, the FDIC maintains a database (BankFind⁴) that consumers can use to determine whether an entity is an FDIC-insured bank or savings association. In addition, FDIC staff responds to consumers who ask whether an entity is an FDIC-insured bank or savings association.

Request for Comment

Given the significant changes in the marketplace, technological developments, and rapidly evolving consumer behaviors, the FDIC is issuing this RFI to seek public input regarding modernizing the FDIC's official sign and advertising rules (12 CFR Part 328) to reflect the continued evolution of physical branch, digital, and mobile banking channels. The FDIC is also seeking input about how it might address misrepresentations in this area. In addition, this RFI is requesting information about how technological and other solutions could be leveraged to allow consumers to better distinguish FDIC-insured banks or savings associations from nonbanks across digital and mobile channels.

The FDIC encourages comments from all interested parties, including but not limited to insured banks and savings associations, technology companies and fintechs, other financial institutions or companies, depositors and financial consumers (of both FDIC-insured and uninsured institutions), consumer groups, researchers, trade associations, and other members of the financial services industry. In particular, the FDIC requests input on the following topics and questions:

Official Sign

The Federal Deposit Insurance Act ("FDI Act") requires that insured depository institutions display a sign relating to the insurance of deposits at each place of business

⁴ <https://research2.fdic.gov/bankfind/>.

maintained by that institution in accordance with regulations issued by the FDIC.⁵ The implementing regulation, 12 CFR 328.2(a), specifies that the sign be displayed continuously at each station or window where insured deposits are usually and normally received in the depository institution's principal place of business and at all of its branches.⁶ The official sign must be 7" x 3" with black lettering on a gold background.⁷ The official sign is permitted – but not required – to be displayed in other locations⁸ and on or at “Remote Service Facilities.”⁹ In lieu of the official sign, banks may vary the sign subject to the minimum standards set for the sign.¹⁰ Non-English equivalent signs must be approved by the FDIC.

The FDIC seeks comments on all aspects of the sign regulation, including the following specific questions:

1. Should the rule continue to require the sign be a minimum size and a specific color? Is this needed to ensure consumers understand “deposit insurance?”
2. Should the rule continue to link the placement of the sign to each teller station or window where insured deposits are usually and normally received?
3. Should the rule take into account changes in places where deposits are “usually and normally received” by banks? How?
4. Should the FDIC’s current approach of allowing for permissive or optional placement and use of signage be broadened? How?

⁵ See 12 U.S.C. 1828(a)(1)(A).

⁶ Part 328 does not apply to uninsured offices or branches of insured depository institutions located outside the United States. 12 CFR 328.0.

⁷ 12 CFR 328.1(a).

⁸ 12 CFR 328.2(a)(1)(i).

⁹ 12 CFR 328.2(a)(1)(ii). “*Remote Service Facilities*” are defined as including “any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.”

¹⁰ 12 CFR 328.2(a)(2).

5. Does the rule's definition of "Remote Service Facility" appropriately reflect current banking practices? For example, should the list of facilities (any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received) be broadened? If so, what other "facilities" should be included?
6. Are FDIC-insured institutions currently displaying a digital representation of the FDIC sign or logo on their websites / mobile apps at account opening? If not, should they do so?
7. Are FDIC-insured institutions currently displaying a digital representation of the FDIC sign or logo on their websites / mobile apps each time a consumer deposits funds? If not, should they do so?
8. Are alternative means of displaying an official FDIC sign, beyond a two-dimensional placard, appropriate in places such as cafes and through digital means? How might this be implemented for different delivery channels (*e.g.*, brick-and-mortar, website, app-based)?
9. As noted above, the current regulation requires that the official FDIC sign be displayed continuously at each station or window where insured deposits are usually and normally received in the depository institution's principal place of business and at all of its branches. Should the rule continue to require that the sign be displayed continuously, or should it allow for digital displays or representations that are not continuously displayed?
10. To what extent do the existing rules enable consumers to distinguish between FDIC-insured institutions and uninsured entities? Are there data, surveys, and studies on this issue?

Official Advertising Statement

The current rule requires bank advertisements¹¹ that promote deposit products and services or promote non-specific banking products and services offered by the institution to state that the bank is a “Member of the Federal Deposit Insurance Corporation,” “Member of FDIC,” or “Member FDIC,” or that the bank use the FDIC’s symbol (taken from the official sign).¹² The advertising statement seeks to enable consumers to recognize FDIC-insured deposit products, as contrasted with non-deposit investment products that are not insured. Size, print legibility and proportions are prescribed.¹³ Insured and uninsured (foreign) branches must be identified.¹⁴

Insured depository institutions may not include the official advertising statement or other statements that imply Federal deposit insurance in any advertisement relating solely to “non-deposit products” or “hybrid products.”¹⁵ With “mixed” advertisements for both insured deposit products and uninsured or hybrid products, the official advertising statement must be segregated within the ad.¹⁶ “Hybrid product” means “a product or service that has both deposit product features and non-deposit product features.”¹⁷ “Non-deposit products” are defined to include “insurance products, annuities, mutual funds and securities” but not credit products.¹⁸

The FDIC seeks comments on all aspects of the official advertising statement regulation, including the following specific questions:

11. Can the regulation be better clarified regarding which types of advertising require the inclusion of the official advertising statement? Should some forms of advertising currently

¹¹ “Advertisement” is defined as “a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.” 12 CFR 328.3(a).

¹² 12 CFR 328.3(c)(1).

¹³ 12 CFR 328.3(b)(2).

¹⁴ 12 CFR 328.3(c)(2).

¹⁵ 12 CFR 328.3(e)(2) and (e)(3).

¹⁶ 12 CFR 328.3(e)(4).

¹⁷ 12 CFR 328.3(e)(1)(ii).

¹⁸ 12 CFR 328.3(e)(1)(i).

subject to the requirement be made exempt? Are there newer forms of advertising that do not now but should include the official advertising statement?

12. How do banks currently provide the advertising statement when promoting deposit products through non-traditional channels?

13. If a bank is identified in a nonbank's promotion or advertisement for a deposit product or service, should the advertising statement be required, or conversely, should it be prohibited given that the deposit product or service is from an uninsured entity?

Misrepresentations

The rule seeks to ensure that only insured banks and savings associations use the FDIC sign and advertising statement so consumers can have confidence when deposit accounts are advertised as insured. It is illegal to misuse the FDIC name or make false representations regarding deposit insurance.¹⁹ Moreover, under the FDI Act, the FDIC has the authority to issue cease and desist orders and impose civil money penalties against any person who: (1) falsely represents or implies that any deposit liability is insured by the FDIC by use of the FDIC name or symbol; or (2) otherwise knowingly misrepresents that any deposit liability is insured (or the extent of such insurance), if such deposit liability is not so insured.²⁰

The FDIC has not issued specific regulations regarding false representations related to FDIC insurance. The FDIC seeks information regarding misrepresentations in this area, including the following specific questions:

¹⁹ 18 U.S.C. 709 (may not, without authorization, use “the words “Federal Deposit”, “Federal Deposit Insurance”, or “Federal Deposit Insurance Corporation” as the name of a business or advertise or otherwise falsely represent that deposits are FDIC insured).

²⁰ See 12 U.S.C. 1828(a)(4)(C)-(D).

14. Are there examples of potential risks related to misrepresentations involving FDIC deposit insurance coverage that the FDIC should address, including those related to deposit products through use of the internet or other emerging technologies?
15. What changes can be made to the FDIC sign and advertising statement requirements that could deal with preventing misrepresentations regarding FDIC deposit insurance?
16. Are there ways that certain nonbanks should be able to advertise or otherwise represent a legitimate business relationship with an FDIC-insured institution that would be clear to consumers and consistent with the provision on misrepresentation?
17. In allowing the use of their name or mark, should banks be responsible for ensuring the proper use of the FDIC's logo, advertising and representations by nonbanks with whom the banks do business?

Technological Solutions

The FDIC regularly receives reports of fraudulent communications made to consumers that appear to be from FDIC-insured entities, but actually originate from fraudsters. These types of scams may involve a variety of electronic communication channels, including e-mails, websites, text messages, and social media posts. Some scam messages might ask the recipient to “confirm” or “update” confidential personal financial information, such as bank account numbers, Social Security numbers, dates of birth and other valuable details. Other scams might ask for payments or deposits to be sent, for example, by money order, Automated Clearing House (“ACH”) credit, wire transfer service, peer-to-peer payment service, gift cards, or digital currency. Banks also face risks that fraudsters may be using their names and brands to perpetrate such frauds.

The FDIC is exploring whether technological or other solutions might enable consumers to validate when they are interacting with a FDIC-insured financial institution, and not a fraudster, when visiting websites and using apps on mobile devices. The FDIC seeks comments on how technology might be utilized to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across various web and digital channels, including the following specific questions:

18. Do consumers look for the FDIC name or logo when using financial institution websites and apps to confirm the validity of insured institutions' authenticity? Do they look for the logo when deciding to open new deposit accounts? During every interaction?
19. What technological options or other approaches could be utilized to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels? What are the benefits and drawbacks of each approach? Is it necessary or desirable for the FDIC to try to "solve" this by rule, or can private sector initiatives better address this issue?
20. If the FDIC develops a technological solution to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels, what challenges would institutions have in implementing such solutions? How would any solution work with third parties that have established legitimate business relationships with banks or savings associations?
21. If the FDIC develops a technological solution to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels, should its use be limited to FDIC-insured banks, or should third parties that market or

facilitate access to deposit products (*e.g.*, prepaid program managers, fintechs) be permitted or required to use such a logo in certain circumstances?

Federal Deposit Insurance Corporation.

Dated at Washington, D.C., on February 20, 2020.

Annmarie H. Boyd,

Assistant Executive Secretary.

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