Financial Services Management

FDIC Coverage Protections

Cite

FDIC, Notice of Proposed Rulemaking, FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

Recommended Distribution:

Policy, Branch Operations, Marketing, Compliance, Legal, Government Relations

Website

https://www.govinfo.gov/content/pkg/FR-2022-12-21/pdf/2022-27349.pdf

Impact Assessment

- Extensive compliance efforts will now be required to ensure that all IDI facilities accepting insured deposits and/or funds for other purposes have extensive signage or electronic displays clarifying product distinctions.
- IDIs with nonbank partnerships involving deposits will need to take additional steps to ensure that consumers fully understand when FDIC insurance does and does not apply. Some partnerships may be effectively impractical or even outlawed.
- Fintechs and crypto issuers now have clear guidance as to when actions may be deemed misrepresentation resulting in FDIC enforcement actions.
- Customers are likely to have a better understanding of their own risks.
- Risk to IDIs with unconventional business models is also likely to drop, albeit at cost to earnings.

Overview

In the wake of increasing instances in which customers are confused and even misled about the extent to which fintech and cryptoasset holdings are insured deposits, the FDIC is proposing new standards addressing this problem as well as ways to modernize IDI representations of their own FDIC-insured offerings in branches and through the fast-changing array of retail banking delivery channels. The last time these signage standards were updated beyond a generic FDIC 2022 rule barring misrepresentation was 2007,[1] a time of course well before digital finance took off. Now, new signage, displays, or postings would need to clearly, conspicuously, and continuously advise retail customers when funds are FDIC insured and that FDIC insurance does not cover offerings in the

[1] See **DEPOSITINSURANCE39**, *Financial Services Management*, August 14, 2007.

facilities that would now be segregated from where insured deposit are receipt to accept non-deposit funding. IDIs would also need to take additional steps to safeguard consumers when they take funds from marketing generated by fintechs and cryptoasset issuers and these nonbanks would have clearer guidance as to when the enforcement actions for insurance status misrepresentation threatened in 2022 are most likely from the FDIC and the CFPB.

Impact

The FDIC believes this proposal enhances consumers' understanding of when they are doing business with an IDI and when the IDI's offerings carry FDIC coverage. The agency is especially concerned that IDI relationships with fintechs and cryptoasset entities cloud FDIC-coverage status, an issue that went from hypothetical to real when a major stablecoin issuer failed and customers at a mid-sized IDI unsuccessfully sought coverage for the fiat-currency value of their holdings.[2] The FDIC – along with the other banking agencies – has yet to finalize broader standards designed to limit risks to banks in these arrangements,[3] despite strong urging from the FSOC to do so in its recent report on cryptoasset risk.[4]

The agency also intends for its rules not to impede IDI marketing activities, a critical concern given the plethora of deposit-like products across the retail-finance marketplace and the extent to which cash-equivalent investment funds are offered by both banks and nonbanks asset management entities. Disclosures making it clear that FDIC insurance does not apply to investment, insurance, or other non-deposit products are generally already required and many IDIs meet these requirements with signage. The FDIC thus believes that banks will have little difficulty complying with new standards but change to current practices may nonetheless be required due to the proposal's specifics and express requirements (e.g., non-deposit alerts may not be used rotationally along with promotional electronic signage).

The more significant cost to IDIs involved with nonbank or cryptoasset firms are the additional clarity required for funds held by an IDI for a nonbank or received as a result of nonbank deposit-solicitation efforts. This would force IDIs to rely more on their own deposit gathering resources, likely raising the cost of funds in many cases. However, the benefit of this cost to IDIs not engaged in these activities is greater competitive power and that to the FDIC is reduced risk of loss.

What's Next

The FDIC board unanimously adopted this proposal on December 13 and comments are due January 20.

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2 See *Client Memo* **m120522**, December 5, 2022.

3 See **VENDOR9**, *Financial Services Management*, July 21, 2021.

4 See *Client Report* **CRYPTO33**, October 5, 2022.

In addition to the FDIC actions noted above, the CFPB issued its own edict stating that it would take enforcement action against nonbanks misrepresenting FDIC coverage. It remains to be seen if, following this FDIC rule, it seeks to do the same for IDIs that it feels failed to provide clear FDIC-coverage disclosures, adding to or even supplanting FDIC enforcement actions in such cases.

Analysis

A. Signage

In general, this proposal retains the current official FDIC sign announcing FDIC coverage, updating it now to include the coverage threshold as $250,000.

1. Physical Premises

As now, IDIs would be required to show the FDIC official sign clearly and conspicuously at their principal place of doing business and all branches, with the proposal going on to add new requirements that differentiate traditional branches from those with alternate designs (e.g., cafe-style branches). The traditional-branch rules would be unchanged from current requirements that the sign be present at all teller windows and other deposit-taking facilities, going on to provide more flexibility for fewer signs in areas that only take deposits and requiring a sign at every venue at which deposits are taken and non-deposit products are offered or accepted. In nontraditional branches where deposits are taken, the official sign would need to be clearly visible from all such locations; where both deposit and non-deposit products are offered, these two functions would need to be physically separated, with signs in the non-deposit area making it clear that product offerings are not backed by the FDIC and are subject to loss.

Although this sign would need to be clearly, conspicuously, and constantly displayed, the NPR proposes no specific design standards. Banks would, however, be banned from displaying the non-FDIC sign near the FDIC's official placard. These signs would also need to be displayed in traditional branches when uninsured products are offered.

In addition to these more conventional signage requirements, IDIs would have the option to use electronic signage if it meets the needs outlined above and other conditions detailed in the NPR.

2. Digital Signage

These standards would cover any electronic portal through which deposits are taken. Again, IDIs would need clearly, conspicuously, and continuously display signage on the IDI's home, landing, and log-in pages as well as on transactional pages making it clear that they are doing business with an IDI, not a nonbank. The digital sign would be an abbreviated version of the physical one pursuant to specifications in the NPR, with comment sought on how best to set these standards. IDIs would also need to meet FDIC standards related to advertising regardless of these postings.

Similar to the physical-signage standards, the digital ones also detail how IDIs must make it clear that non-deposit products are uninsured and may pose risk. However, here consumers would need actively to dismiss the page before proceeding to access specific non-deposit product offerings. Again, no specific size or design requirements are proposed.

3. ATMs and Similar Facilities

These facilities would need to bear the physical FDIC-insurance sign, as well as electronic signage so that consumers are aware of their protection even if physical signs are damaged or otherwise problematic. If an ATM or other unit handles non-deposit products, then non-deposit signage would be required in electronic form.

B. Official Advertising Statement

Here, options would be expanded for short advertising statements.

C. Misrepresentation

The proposal also provides an illustrative list of specific statements or omissions that would constitute misrepresentation of FDIC-insurance status, essentially barring non-IDIs from using FDIC images or any statement pertaining to the FDIC. Failure also to disclose that the entity is a nonbank would also be sanctioned, as would statements about FDIC coverage for funds gathered by the nonbank that are not protected against nonbank insolvency. Clear distinctions would also need to be drawn between insured and uninsured offerings. Clear disclosures about the extent to which pass-through FDIC insurance applies would also be mandated.

D. Policies and Procedures

IDIs would need to have written policies and procedures ensuring compliance with the standards commensurate with the bank's operations. The IDI should also have sound risk management to govern the activities of a nonbank gathering deposits on the IDI's behalf to ensure compliance with these signage and advertising standards.

E. Enforcement

The agency expressly reserves authority to take enforcement action for violations of these standards.

F. Request for Comment

Views are sought on alternatives initially suggested in the RFIs, although the agency notes all the reasons it decided against them even as it asks for comment.

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