



Financial Services Management

FDIC Coverage Protections

Cite

FDIC, Final Rule, 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.fdic.gov/news/board-matters/2023/2023-12-20-notice-dis-b-fr.pdf>

Impact Assessment

- Extensive compliance efforts will now be required to ensure that all IDI facilities accepting deposits and/or funds for other purposes have extensive signage or electronic displays clarifying product distinctions and when FDIC insurance applies.
- 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 impractical or even effectively outlawed.
- Fintechs and crypto issuers now have clear guidance as to when actions may be deemed misrepresentations resulting in FDIC enforcement.
- Tokenized deposit products are no longer considered crypto and thus always uninsured.

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 has finalized its proposal setting disclosure standards as well as modernizing IDI representations of their own FDIC-insured offerings in branches and through the fast-changing array of retail banking delivery channels.¹ All IDIs will now have to ensure that branches, other physical locations admitting customers, ATMs, and digital/electronic-delivery channels comply with new signage and disclosure requirements differentiating insured deposits from other deposit and non-deposit products, including those offered in conjunction with third-parties. Nonbanks soliciting consumer funds will face new legal and reputational risk if deposit-insurance status is not clearly disclosed, with the new standards making it even more difficult for cryptoasset arrangements between banks and

¹ See **DEPOSITINSURANCE117**, *Financial Services Management*, January 3, 2023.

nonbank providers. The “rent-an-FDIC-sticker” business model is thus effectively barred for all but ventures willing to run significant enforcement risk.

Impact

The last time these signage standards were updated beyond a generic FDIC 2022 rule barring misrepresentation was 2007,² 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 facilities that would now be segregated from where insured deposits are received 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.

In the course of the failures in 2023, it also became clear that consumers believed that cryptoassets related to IDIs covered deposit insurance when this was not the case. The final rule thus provides that disclosures related to FDIC coverage apply to cryptoassets. However, it deleted the proposed cryptoasset definition because commenters pointed to tokenized deposits and other products that used cryptographic techniques but are not cryptoassets. The agency intends to continue to study this issue, with Vice Chair Hill urging rapid rulemaking to ensure that confusion here does not inhibit responsible innovation.

The agency also expects that this rule will 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 nonbank asset management entities. Indeed, bank marketing may be enhanced if consumers better understand the FDIC-insurance value proposition and to which entities it actually applies. Although the complex boundary between insured and uninsured funds is a new challenge, 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 rule’s specifics and express requirements.

The more significant cost to IDIs involved with nonbank or cryptoasset firms is 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.

CFPB Director Chopra agreed with the rest of the board that this rule is needed, but emphasized that it is insufficient to ensure consumer protection due to limitations in the FDIC’s authority. As a result, he indicated that the Bureau is

² See **DEPOSITINSURANCE39**, *Financial Services Management*, August 14, 2007.

taking a ‘close look’ at linkages between IDIs and nonbanks and nonbank deposit representations to identify where UDAAP may occur. He also noted pending CFPB standards that would bring large nonbank payment providers under CFPB supervision,³ noting that this new power would be particularly valuable when it comes to any false representations of FDIC coverage.

What’s Next

The FDIC board unanimously approved this rule on December 20. It is effective on April 1, 2024, but compliance is not mandatory until January 1, 2025.

Although the rule as discussed below finalizes disclosures for digital products that may confuse the distinctions between FDIC-covered and uninsured funds and/or blur the extent of pass-through coverage, the agency remains concerned that consumers may still find it difficult to anticipate risk ahead of insolvency. It is thus considering qualitative testing to determine if some of its standards require additional refinement. Additional public-education efforts are also possible.

Analysis

A. Signage

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

1. Physical Premises

IDIs are required to show the FDIC official sign clearly and conspicuously at their principal place of doing business and all branches, with the final rule going on to add new requirements that apply signage requirements also to other physical ones with alternate designs (e.g., cafe-style branches). The traditional-branch rules are unchanged from current requirements that the sign be present at all teller windows and other deposit-taking facilities, providing 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 needs 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 rule proposes no specific design standards. Banks would, however, be banned from displaying the non-FDIC sign near the FDIC’s

³ See **PAYMENT27**, *Financial Services Management*, November 15, 2023.

official placard. These signs would also need to be displayed in traditional branches when uninsured products are offered.

2. *Electronic Signage*

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

3. *Digital Signage*

These standards cover any electronic portal through which deposits are taken. Again, IDIs would need to clearly, conspicuously, and continuously display signage on the IDI's home 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 rule.

The final rule simplifies the proposed standards for digital disclosures related to non-insured products. Static disclosures are required where appropriate, but these disclosures must be clear and conspicuous. However, a one-time disclosure of non-insured status is required if a customer accesses a non-deposit product through a third party (e.g., via a hyperlink). This one-time notice must last the time of the consumer's online inquiry and also be clear and conspicuous. If the one-time disclosures come via a pop-up or similar device, the customer must actively dismiss it before proceeding to assess the non-deposit product.

4. *ATMs and Similar Facilities*

These standards are also relaxed from the proposal, with the final rule providing flexibility when an IDI's ATM receives deposits and does not offer access to non-deposit products. However, ATMs put into service after January 1, 2025, must display required electronic signage. ATMs that accept deposits and offer non-deposit products are subject to more complex requirements (e.g., continuous displays that non-deposit products are not FDIC-insured). As proposed, the final rule states that damaged or degraded physical signage does not meet the clear-and-conspicuous standard.

B. FDIC Coverage Advertising

1. *Official Advertising Statement*

Here, options are expanded for short advertising statements.

2. *Misrepresentation*

The rule 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 may be sanctioned, as would statements about FDIC coverage for funds gathered by the nonbank that are not protected against nonbank insolvency.

Specific disclosures for digital wallets offered by nonbanks are also provided. Clear distinctions must also be drawn between insured and uninsured offerings and clear disclosures about the extent to which pass-through FDIC insurance applies are required. It would also be a material omission for a nonbank not to name the IDIs to which funds it gathered are held and insured or fail to name the network if funds are distributed to IDIs through it regardless of whether the business relationship is direct or indirect. Hyperlinks generally do not satisfy any of these requirements.

3. Policies and Procedures

IDIs must have written policies and procedures ensuring compliance with the standards commensurate with the bank's operations. The IDI must 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.

C. Cryptoassets

In addition to all the generic standards described above, the proposal included an express admonition that cryptoassets are not insured deposits along with a definition of what these deposits constituted. The final rule includes the requirements related to cryptoassets without the proposed definition, noting that the rule already includes a list of products that may be insured as provided under the FDIC's governing law and fact-specific circumstances.