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FDIC Amends Signage, Advertising, and FDIC Insurance Misrepresentation Rules to Address Digital Banking Services and Bank-Fintech Arrangements

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In December 2023, the Federal Deposit Insurance Corporation (FDIC) finalized amendments to its rules on official FDIC signage, bank advertisements, deposit insurance misrepresentations, and the misuse of the FDIC's name or logos (12 C.F.R. Part 328). Through these amendments, the FDIC aimed to modernize the rules for digital banking services, address the wide array of non-deposit products offered by banks (including crypto assets), and clarify the extent of deposit insurance coverage in bank-fintech arrangements.

In addition to federally insured banks, the amendments affect nonbanks (including BaaS providers and other fintechs) that make statements regarding FDIC deposit insurance coverage. We have summarized key provisions for banks and nonbanks below. The amendments become effective on April 1, 2024, and compliance is required by January 1, 2025 (although nonbanks should be cautious about this extended compliance date).

Key provisions for federally insured banks

New FDIC signage with digital banking services – The amendments create a new FDIC official digital sign and address how banks must display the new official digital sign on ATMs and other remote deposit electronic facilities. The amendments also establish a set of rules for the display of the new official digital sign in a bank's "digital deposit-taking channels," which the rules specifically define. The rules require the official digital sign to be clearly, continuously, and conspicuously displayed on certain pages or screens in a bank's digital deposit-taking channels.

More flexibility with bank advertising statement – The rule changes permit banks to use "FDIC-Insured" in addition to "Member FDIC" as a shortened version of the official advertising statement, "Member of the Federal Deposit Insurance Corporation." The full or shortened versions of the official advertising statement must appear in certain bank advertisements.

Separating non-deposit products – The FDIC created new provisions to help consumers understand when a product is a deposit product covered by FDIC insurance and when a product is a "non-deposit" product. The term "non-deposit product" expressly includes crypto-assets (undefined) and other non-deposit products, but excludes credit products or safety deposit boxes. The amendments identify situations where banks may not offer deposit and non-deposit products in close proximity to each other. When banks are permitted to offer deposit and non-deposit products in the same channel, the new rules require banks to provide certain disclosures regarding the non-deposit product. Banks must also provide a one-time per web session notification when logged-in bank customers leave a bank's digital deposit-taking channel to access non-deposit products on a third-party nonbank's website.

Modernizing official FDIC signage in physical premises – The amendments modernize rules on displaying the FDIC official sign in physical premises where consumers have access to, or transact with, deposits beyond the traditional teller window.

Policies and procedures – Under the new rules, banks must establish and maintain written policies and procedures to address compliance with Part 328. Notably, the policies and procedures must include provisions related to monitoring and evaluating activities of certain third parties that provide deposit-related services to the bank or offer the bank's deposit-related services to others (such as BaaS providers). Banks will be responsible for ensuring that their nonbank partners do not make deposit insurance misrepresentations and follow the new rules summarized below.

Key provisions for fintechs/nonbanks

Use of FDIC terms and logos – The new rules prohibit a nonbank from using the FDIC official advertising statement, FDIC-associated terms, or FDIC-associated images in a manner that inaccurately states or implies that a person other than a federally insured bank is insured by the FDIC, unless the official advertising statement (e.g., "Member FDIC") is next to the name of one or more insured banks.

Disclosures on lack of FDIC insurance coverage – If a nonbank makes a statement regarding deposit insurance, the nonbank must make certain clear and conspicuous disclosures related to the nonbank's lack of FDIC insurance coverage and when FDIC insurance covers deposit losses.

Non-deposit product disclosure – If a nonbank offers deposit and non-deposit products in close proximity on a website and a nonbank makes a statement regarding deposit insurance, then the nonbank must display the non-deposit product disclosure described above subject to some exceptions.

Pass-through deposit insurance disclosures – If a nonbank makes a statement about pass-through deposit insurance, the nonbank must clearly and conspicuously disclose that certain conditions must be satisfied for pass–through deposit insurance coverage to apply.

Policies and procedures – A nonbank offering a bank's deposit services to customers or providing deposit services to the bank should expect to have its activities monitored and evaluated by the bank for compliance with Part 328 in accordance with the new bank policies and procedures mandated by the FDIC's amendments.

The new rules in the broader context

The new rules modernize the FDIC signage and advertising requirements for the digital age. The last major amendments to the FDIC signage and bank advertisement rules occurred in 2006. In addition to requiring new bank policies and procedures, the new rules may necessitate that banks perform a wholesale review of the disclosures in their deposit taking channels.

The new rules are also part of the FDIC's larger efforts to crack down on what the FDIC views as increased misrepresentations regarding deposit insurance coverage on the internet by nonbanks particularly in connection with crypto-assets. The FDIC has issued a series of cease and desist orders to nonbanks demanding that they stop making false or misleading deposit insurance representations. The FDIC finalized a rule in 2022 that added specific prohibitions and disclosure requirements when a nonbank makes deposit insurance statements or uses the FDIC images or logos. The December 2023 rules (described above) identify additional situations where customers may be confused on whether a product or person is covered by FDIC insurance in bank-fintech arrangements. Nonbanks like BaaS providers that offer a bank's deposit services to end users should carefully consider these new prohibitions and disclosure requirements and revise their end user experience as necessary.

Contact us

If you have questions about the modernized FDIC signage and advertising requirements, the new bank policies and procedures requirement, or about regulatory considerations when making deposit insurance statements as a nonbank, please contact Susan Seaman, Shelby Lomax, or your Husch Blackwell attorney.