

LEGAL UPDATES

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FDIC Publishes FAQs on the New FDIC Signage, Advertisement, and Deposit Insurance Misrepresentations Rule

Last week, the Federal Deposit Insurance Corporation (FDIC) published Frequently Asked Questions on the final rule governing FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC Name or Logo, 12 C.F.R. Part 328. As we have previously discussed, the rule affects both federally insured banks and nonbanks including Fintechs. For banks, the rule has enterprise-wide impacts including to a bank's physical premises, certain digital platforms, and partnership relationships. The FDIC stated that the FAQs respond to questions that it has received from stakeholders to date.

Overall, the FAQs provide more helpful guidance to banks than to Fintechs including examples of disclosures that the FDIC views as satisfying the rule. We found the following insights from the FAQs valuable:

The rule requires a bank to display the FDIC official digital sign (*i.e.*, “**FDIC FDIC-Insured – Backed by the full faith and credit of the U.S. Government**”) on certain pages of a bank's digital deposit taking channels including the “landing or login page.” The FAQs clarify that a “landing or login page” generally refers to a bank's webpage or screen from which the customer can log into the bank's digital deposit taking channel. “Landing or login page” includes pages where customers enter their credentials or use other authentication methods (e.g., face identification) to access a bank's website or banking application.

The FDIC official digital sign is not required on a bank's website if the website is purely informational and has no ability to make deposits or access deposits.

The FAQs confirm that "pages where the customer may transact with deposits" include, but are not limited to, (i) mobile application pages that allow customers to deposit checks remotely, and (ii) pages where customers may transfer deposits between deposit accounts held within the same bank. The FDIC does not expect a bank to display the official digital sign on pages where a customer transfers money from a deposit account to a non-deposit account.

If a customer completes a transaction by using an embedded third-party payment platform that a customer accesses after logging into their bank's website and utilizes the platform to initiate payments/move funds out of the bank, then the FDIC official digital sign should not be posted on those pages where the customer takes these actions.

A bank is not required to display the FDIC official digital sign on a "dashboard" or "portal" that shows an account summary or a customer's financial information for various products after logging in but where a customer does not transact with deposits.

A bank is not required to post the FDIC official digital sign in the app store where its app is available for download.

The FDIC does not intend for the FDIC advertising statement (e.g., "Member FDIC") to overlap with the FDIC official digital sign. The FDIC advertising statement is not required on web pages where a bank displays the FDIC official digital sign, such as the bank's homepage. However, a bank is not prohibited from displaying the FDIC advertising statement and FDIC official digital sign on the same page so long as the advertising statement satisfies legal requirements.

If the FDIC official digital sign does not fit a particular device or screen, the digital sign can be scaled, "wrapped," or "stacked" to fit the relevant screen and may satisfy the "clear and conspicuous" requirement.

Placing the FDIC official digital sign only in a footer of a bank's webpage would not meet the clear, conspicuous, and continuous display requirement for the digital sign.

The rule does not require the FDIC official digital sign to continue to follow the user as they scroll up or down a screen in a digital deposit taking channel.

A bank may provide additional or supplemental clarifying disclosures to customers on its digital channels so long as the bank satisfies the rule's requirements.

If a banker at a physical premise opens new accounts and also "usually and normally" receives and processes deposits at the desk where the new account is opened, the FDIC official sign must be post at the new accounts desk. However, if the banker always walks the customer with an initial deposit to the teller line, the official sign is not required at the new accounts desk.

A bank must continuously, clearly, and conspicuously display the required non-deposit signage at each location within the bank's premises where non-deposit products are offered. If non-deposit products are offered in individual offices, the non-deposit sign should be visible in those offices.

The FAQs are silent on aspects of the rule that directly impact nonbank partners including Fintechs. The FAQs do not address banks' obligations to monitor and evaluate persons that provide deposit-related services to a bank or offer the bank's deposit-related products or services to third parties. The FAQs also do not cover deposit insurance misrepresentations by nonbanks. The FDIC indicated that it will periodically update the FAQs as banks and nonbanks prepare for the rule's January 1, 2025 compliance date.

In addition to the FAQs, the FDIC has hosted two of four webinars on the rule for bank staff, bank officers, and other stakeholders. Materials from the May 30 and July 31 webinars are available on the FDIC's website. This welcome guidance may help banks and nonbanks further navigate some of the rule's ambiguities and contextual requirements.

Contact us

Since the rule was finalized in February 2024, we have presented on and addressed various questions about the rule from both banks and Fintechs. Our team includes a former bank branch manager with bank operations experience, as well as attorneys experienced with bank-Fintech arrangements. This background helps us counsel on the various ways the rule could affect a bank's physical locations, digital platforms, and partner relationships. If you have questions about the rule, contact Susan Seaman, Shelby Lomax, or your Husch Blackwell attorney.