

§ 327.50

and shall provide copies to the requesting institution. If an institution that was notified under paragraph (c) does not submit a response to the request for review, that institution may not:

(1) Subsequently dispute the information submitted by other institutions on the transaction(s) at issue in the review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(f) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(g) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance, (or his or her designee), notifying the requesting and affected institutions of the determination of the Director as to whether the requested change is warranted. Notice of the procedures applicable to appeals under paragraph (h) of this section will be included with the Director's written determination. Whenever feasible, the FDIC will provide the institution with the aforesaid written response the later of:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information.

(h) Subject to paragraph (e) of this section, the insured depository institution that requested review under this section, or an insured depository institution materially affected by the Director's determination, that disagrees with that determination may appeal to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals under this section

12 CFR Ch. III (1-1-23 Edition)

will be included with the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

(i) Any adjustment to an institution's credits resulting from a determination by the Director of the FDIC's Assessment Appeals Committee shall be reflected in the institution's next assessment invoice. The adjustment to credits shall affect future assessments only and shall not result in a retroactive adjustment of assessment amounts owed for prior periods.

Subpart C—Implementation of Dividend Requirements

AUTHORITY: 12 U.S.C. 1817(e)(2), (4).

SOURCE: 73 FR 73162, Dec. 2, 2008, unless otherwise noted.

§ 327.50 Dividends.

(a) *Suspension of dividends.* The Board will suspend dividends indefinitely whenever the DIF reserve ratio exceeds 1.50 percent at the end of any year.

(b) *Assessment rate schedule if DIF reserve ratio exceeds 1.50 Percent.* In lieu of dividends, when the DIF reserve ratio exceeds 1.50 percent, assessment rates shall be determined as set forth in section 327.10, as appropriate.

[76 FR 10725, Feb. 25, 2011]

PART 328—ADVERTISEMENT OF MEMBERSHIP, FALSE ADVERTISING, MISREPRESENTATION OF INSURED STATUS, AND MISUSE OF THE FDIC'S NAME OR LOGO

Subpart A—Advertisement of Membership

Sec.

328.0 Scope.

328.1 Official sign.

328.2 Display and procurement of official sign.

328.3 Official advertising statement requirements.

328.4 Prohibition against receiving deposits at same teller station or window as non-insured institution.

328.5-328.99 [Reserved]

Subpart B—False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

Federal Deposit Insurance Corporation

§ 328.2

- 328.100 Scope.
- 328.101 Definitions.
- 328.102 Prohibition.
- 328.103 Inquiries and complaints.
- 328.104 Investigations of potential violations.
- 328.105 Referral to appropriate authority.
- 328.106 Informal resolution.
- 328.107 Formal enforcement actions.
- 328.108 Appeals process.
- 328.109 Other actions preserved.

AUTHORITY: 12 U.S.C. 1818, 1819 (Tenth), 1820(c), 1828(a).

SOURCE: 71 FR 66102, Nov. 13, 2006, unless otherwise noted.

Subpart A—Advertisement of Membership

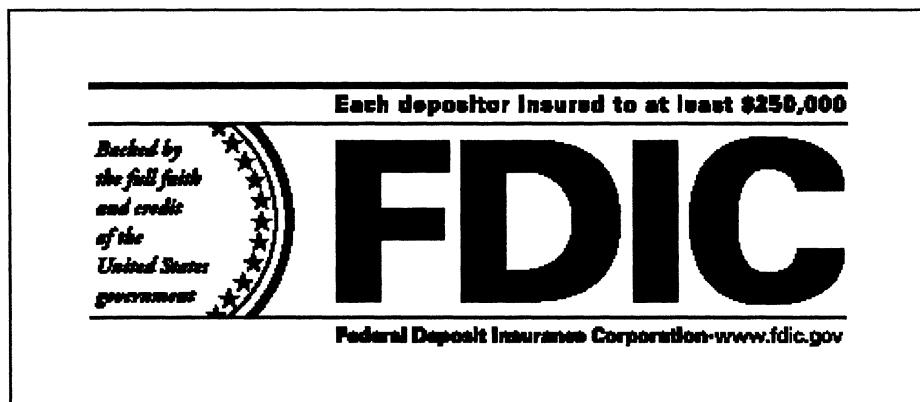
§ 328.0 Scope.

Part 328 describes the official sign of the FDIC and prescribes its use by in-

sured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of part 328, the term “insured depository institution” includes insured branches of a foreign depository institution. Part 328 does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

§ 328.1 Official sign.

(a) The official sign referred to in this part shall be 7" by 3" in size, with black lettering and gold background, and of the following design:



(b) The “symbol” of the Corporation, as used in this part, shall be that portion of the official sign consisting of “FDIC” and the two lines of smaller type above and below “FDIC.”

[72 FR 66102, Nov. 13, 2006, as amended at 75 FR 49365, Aug. 13, 2010]

§ 328.2 Display and procurement of official sign.

(a) *Display of official sign.* Each insured depository institution shall continuously display the official sign at each station or window where insured deposits are usually and normally received in the depository institution's

principal place of business and in all its branches.

(1) *Other locations—(i) Within the institution.* In addition to locations where display of the official sign is required under this § 328.2(a), an insured depository institution may display the official sign in other locations at the institution.

(ii) *Other facilities.* An insured depository institution may display the official sign on or at Remote Service Facilities. If an insured depository institution displays the official sign at a Remote Service Facility, and if there are any noninsured institutions that

§ 328.3

share in the Remote Service Facility, any insured depository institution that displays the official sign must clearly show that the sign refers only to a designated insured depository institution(s). As used in this part, the term "Remote Service Facility" includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

(2) *Varied signs.* Instead of displaying the official sign, an insured depository institution may display signs that vary from the official sign in size, color, or material at any location where display of the official sign is required or permitted under this § 328.2(a). However, any such varied sign that is displayed in locations where display of the official sign is required under this § 328.2(a) must not be smaller in size than the official sign and must have the same color for the text and symbols.

(3) *Newly insured institutions.* A depository institution shall display the official sign no later than its twenty-first day of operation as an insured depository institution, unless the institution promptly requested the official sign from the Corporation, but did not receive it before that date.

(b) *Procuring official sign.* An insured depository institution may procure the official sign from the Corporation for official use at no charge. Information on obtaining the official sign is posted on the FDIC's internet Web site, <http://www.fdic.gov>. Alternatively, insured depository institutions may, at their expense, procure from commercial suppliers signs that vary from the official sign in size, color, or material. Any insured depository institution which has promptly submitted a written request for an official sign to the Corporation shall not be deemed to have violated this § 328.2 by failing to display the official sign, unless the insured depository institution fails to display the official sign after receipt thereof.

(c) *Required changes in sign.* The Corporation may require any insured depository institution, upon at least thirty (30) days' written notice, to change the wording of the official sign in a manner deemed necessary for the protection of depositors or others.

12 CFR Ch. III (1-1-23 Edition)

§ 328.3 Official advertising statement requirements.

(a) *Advertisement defined.* The term "advertisement," as used in this subpart, shall mean a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

(b) *Official advertising statement.* The official advertising statement shall be in substance as follows: "Member of the Federal Deposit Insurance Corporation."

(1) *Optional short title and symbol.* The short title "Member of FDIC" or "Member FDIC," or a reproduction of the symbol of the Corporation (as described in § 328.1(b)), may be used by insured depository institutions at their option as the official advertising statement.

(2) *Size and print.* The official advertising statement shall be of such size and print to be clearly legible. If the symbol of the Corporation is used as the official advertising statement, and the symbol must be reduced to such proportions that the two lines of smaller type above and below "FDIC" are indistinct and illegible, those lines of smaller type may be blocked out or dropped.

(c) *Use of official advertising statement in advertisements—(1) General requirement.* Except as provided in § 328.3(d), each insured depository institution shall include the official advertising statement prescribed in § 328.3(b) in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution. For purposes of this § 328.3, an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution. An example of such an advertisement would be, "Anytown Bank, offering a full range of banking services."

(2) *Foreign depository institutions.* When a foreign depository institution has both insured and noninsured U.S. branches, the depository institution must also identify which branches are

Federal Deposit Insurance Corporation

§ 328.3

insured and which branches are not insured in all of its advertisements requiring use of the official advertising statement.

(3) *Newly insured institutions.* A depository institution shall include the official advertising statement in its advertisements no later than its twenty-first day of operation as an insured depository institution.

(d) *Types of advertisements which do not require the official advertising statement.* The following types of advertisements do not require use of the official advertising statement:

(1) Statements of condition and reports of condition of an insured depository institution which are required to be published by State or Federal law;

(2) Insured depository institution supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, etc.;

(3) Signs or plates in the insured depository institution offices or attached to the building or buildings in which such offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured depository institution;

(6) Entries in a depository institution directory, provided the name of the insured depository institution is listed on any page in the directory with a symbol or other descriptive matter indicating it is a member of the Federal Deposit Insurance Corporation;

(7) Joint or group advertisements of depository institution services where the names of insured depository institutions and noninsured institutions are listed and form a part of such advertisements;

(8) Advertisements by radio or television, other than display advertisements, which do not exceed thirty (30) seconds in time;

(9) Advertisements which are of the type or character that make it impractical to include the official advertising statement, including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; and

(10) Advertisements which contain a statement to the effect that the deposi-

tory institution is a member of the Federal Deposit Insurance Corporation, or that the depository institution is insured by the Federal Deposit Insurance Corporation, or that its deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least \$100,000 for each depositor.

(e) *Restrictions on using the official advertising statement when advertising non-deposit products—(1) Definitions—*

(i) *Non-deposit product.* As used in this subpart, the term “non-deposit product” shall include, but is not limited to, insurance products, annuities, mutual funds, and securities. For purposes of this definition, a credit product is not a non-deposit product.

(ii) *Hybrid product.* As used in this subpart, the term “hybrid product” shall mean a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

(2) *Non-deposit product advertisements.* Except as provided in § 328.3(e)(4), an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement relating solely to non-deposit products.

(3) *Hybrid product advertisements.* Except as provided in § 328.3(e)(4), an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of federal deposit insurance, in any advertisement relating solely to hybrid products.

(4) *Mixed advertisements.* In advertisements containing information about both insured deposit products and non-deposit products or hybrid products, an insured depository institution shall clearly segregate the official advertising statement or any similar statement from that portion of the advertisement that relates to the non-deposit products.

(f) *Official advertising statement in non-English language.* The non-English equivalent of the official advertising statement may be used in any advertisement, provided that the translation

§ 328.4

has had the prior written approval of the Corporation.

[72 FR 66102, Nov. 13, 2006, as amended at 87 FR 33420, June 2, 2022]

§ 328.4 Prohibition against receiving deposits at same teller station or window as noninsured institution.

(a) *Prohibition.* An insured depository institution may not receive deposits at any teller station or window where any noninsured institution receives deposits or similar liabilities.

(b) *Exception.* This § 328.4 does not apply to deposits received at a Remote Service Facility.

§§ 328.5-328.99 [Reserved]

Subpart B—False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo

SOURCE: 87 FR 33420, June 2, 2022, unless otherwise noted.

§ 328.100 Scope.

This subpart applies to any person who:

(a) Falsely represents, expressly or by implication, that any deposit liability, obligation, certificate, or share is FDIC-insured by using the FDIC’s name or logo;

(b) Knowingly misrepresents, expressly or by implication, that any deposit liability, obligation, certificate, or share is insured by the FDIC if such an item is not so insured;

(c) Knowingly misrepresents, expressly or by implication, the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the FDIC, if such an item is not insured to the extent or manner represented; or

(d) Aids or abets another in any of the foregoing listed in paragraphs (a) through (c) of this section.

§ 328.101 Definitions.

For purposes of this subpart:

Advertisement means a commercial message, in any medium, that is designed to attract public attention or patronage to a product, business, or service.

12 CFR Ch. III (1-1-23 Edition)

Appropriate Federal Banking Agency has the meaning set forth in section 3(q) of the FDI Act (12 U.S.C. 1813(q)).

Consumer means any current or potential depositor, including natural persons, organizations, corporate entities, and governmental bodies.

FDI Act means the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

FDIC means the Federal Deposit Insurance Corporation.

FDIC-Associated Images means the Seal of the FDIC, alone or within the letter C of the term FDIC; the Official Sign and Symbol of the FDIC, as set forth in § 328.1; the Official Advertising Statement, as set forth in § 328.3(b); any similar images; and any other signs and symbols that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed in whole or in part by the FDIC.

FDIC-Associated Terms means the abbreviation “FDIC,” and the following words or phrases: “Federal Deposit Insurance Corporation,” “Federal Deposit,” “Federal Deposit Insurance,” “FDIC-insured,” “FDIC insurance,” “insured by FDIC,” “member FDIC;” any similar words or phrases; or any other terms that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed by the FDIC.

Federal Banking Agency has the meaning set forth in section 3(z) of the FDI Act, 12 U.S.C. 1813(z).

General Counsel means the General Counsel of the FDIC or his or her designee.

Hybrid Product has the same meaning as set forth under § 328.3(e)(1)(ii).

Institution-Affiliated Party (IAP) has the same meaning as set forth under section 3(u) of the FDI Act, 12 U.S.C. 1813(u).

Insured Deposit has the same meaning as set forth under section 3(m) of the FDI Act, 12 U.S.C. 1813(m).

Insured Depository Institution has the same meaning as set forth under section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

Non-Deposit Product has the same meaning as set forth under § 328.3(e)(1)(i).

Person means a natural person, sole proprietor, partnership, corporation,

Federal Deposit Insurance Corporation

§ 328.102

unincorporated association, trust, joint venture, pool, syndicate, agency or other entity, association, or organization, including a “Regulated Institution” as defined in this section.

Regulated Institution means any institution for which the FDIC, the Office of the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System is the “appropriate Federal banking agency” under section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

Third-Party Publisher means any party that publishes, places, distributes, or circulates advertising or marketing materials, regardless of the platform or media used for distribution, containing FDIC-Associated Images, FDIC-Associated Terms, or other claims regarding FDIC insurance or guarantees. Third-Party Publishers include, but are not limited to: Publishers and distributors of written, visual, or print advertising; broadcasters of video or audio advertisements; telemarketers; internet or web-based distributors, including internet service providers, and email marketers; and direct mail marketers and distributors.

Uninsured Financial Product means any Non-Deposit Product, Hybrid-Product, investment, security, obligation, certificate, share, or financial product other than an “Insured Deposit” as defined in this section.

§ 328.102 Prohibition.

(a) *Use of the FDIC name or logo.* (1) No person may represent or imply that any Uninsured Financial Product is insured or guaranteed by the FDIC by using FDIC-Associated Terms as part of any business name or firm name of any person.

(2) No person may represent or imply that any Uninsured Financial Product is insured or guaranteed by the FDIC by using FDIC-Associated Terms or by using FDIC-Associated Images as part of an Advertisement, solicitation, or other publication or dissemination.

(3) This section applies, but is not limited, to:

(i) An Advertisement for any Uninsured Financial Product that features or includes one or more FDIC-Associated Terms or FDIC-Associated Images, without a clear, conspicuous, and prominent disclaimer that the products

being offered are not FDIC insured or guaranteed.

(ii) An Advertisement for any Uninsured Financial Product that may be backed or guaranteed by an entity other than the FDIC, but features or includes one or more FDIC-Associated Terms or FDIC-Associated Images, without a clear, conspicuous, prominent, and accurate explanation as to the actual nature and source of the guarantee.

(iii) An Advertisement for any Non-Deposit Product or Hybrid Product by a Regulated Institution that includes any statement or symbol which implies or suggests the existence of deposit insurance relating to the Non-Deposit Product or Hybrid Product.

(iv) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is an FDIC-insured institution if this is not in fact true.

(v) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is associated with an FDIC-insured institution if the nature of the association is not clearly, conspicuously, prominently, and accurately described.

(vi) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is the FDIC or any office, division, or subdivision thereof, if this is not in fact true.

(vii) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is associated with the FDIC or any office, division, or subdivision thereof, if the nature of the association is not clearly, conspicuously, prominently, and accurately described.

(b) *False or misleading representations regarding FDIC insurance.* (1) No person may knowingly make false or misleading representations about deposit insurance, including:

(i) That any deposit liability, obligation, certificate, or share is insured under this subpart if such a deposit is not so insured;

§ 328.102

12 CFR Ch. III (1-1-23 Edition)

(ii) The extent to which any deposit liability, obligation, certificate, or share is insured under this subpart if such item is not insured to the extent represented; or

(iii) The manner in which any deposit liability, obligation, certificate, or share is insured under this subpart if such item is not insured in the manner represented.

(2) For the purposes of this section, a statement is deemed to be a statement regarding deposit insurance, if it:

(i) Includes any FDIC-Associated Images or FDIC-Associated Terms;

(ii) Makes any representation, suggestion, or implication about the existence of FDIC insurance or the extent or manner of coverage; or

(iii) Makes any representation, suggestion, or implication about the existence, extent, or effectiveness of any guarantee by FDIC in the event of financial distress by Insured Depository Institutions, whether a specific Insured Depository Institution or Insured Depository Institutions generally, including but not limited to bank failure, insolvency, or receivership of such institutions.

(3) For the purposes of this section, a statement regarding deposit insurance violates this section, if:

(i) The statement contains any material representations which would have the tendency or capacity to mislead a reasonable consumer, regardless of whether any such consumer was actually misled; or

(ii) The statement omits material information that would be necessary to prevent a reasonable consumer from being misled, regardless of whether any such consumer was actually misled.

(4) Without limitation, a false or misleading representation is deemed to be material if it states, suggests, or implies that:

(i) Uninsured Financial Products are insured or guaranteed by the FDIC;

(ii) Insured Deposits (whether generally or at a particular Regulated Institution) are not insured or guaranteed by the FDIC;

(iii) The amount of deposit insurance coverage is different (whether greater or less) than actually provided under the FDI Act;

(iv) The circumstances under which deposit insurance may be paid are different than actually provided under the FDI Act;

(v) The requirements to qualify for deposit insurance, or the process by which deposit insurance would be paid, are different from what is provided under the FDI Act and its implementing regulations in this chapter, including false or misleading claims related to actions required of consumers to qualify for or obtain such insurance; or

(vi) Regulated Institutions may convert Insured Deposits into another form of liability that is not insured, such as unsecured debt or equity.

(5) Without limitation, a statement regarding deposit insurance will be deemed to omit material information if the absence of such information could lead a reasonable consumer to believe any of the material misrepresentations set forth in paragraph (b)(4) of this section or could otherwise result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. For example, if a statement is made by a person other than an Insured Depository Institution that represents or implies that an advertised product is insured or guaranteed by the FDIC, it will be deemed to be a material omission to fail to identify the Insured Depository Institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed.

(6) Without limitation, a representation is deemed to have been knowingly made if the person making the representation:

(i) Has made false or misleading representations regarding deposit insurance;

(ii) Has been advised by the FDIC in an advisory letter, as provided in § 328.106(a), or has been advised by another governmental or regulatory authority, including, but not limited to, another Federal banking agency, the Federal Trade Commission, the U.S. Department of Justice, or a state bank supervisor, that such representations are false or misleading; and

Federal Deposit Insurance Corporation

§ 328.106

(iii) Thereafter, continues to make these, or substantially-similar, representations.

§ 328.103 Inquiries and complaints.

Should any person have reason to believe that anyone is or may be acting in violation of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) or this subpart, or have questions regarding the accuracy of deposit-related representations, such individuals may contact the FDIC at the FDIC Information and Support Center, <http://ask.fdic.gov/fdicinformationandsupportcenter/s/>, or by telephone at 1-877-275-3342 (1-877-ASK-FDIC).

§ 328.104 Investigations of potential violations.

(a) The General Counsel has delegated authority to investigate potential violations of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) and this subpart.

(b) Such investigations will be conducted as prescribed under section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of this chapter (12 CFR 308.144 through 308.150). Notwithstanding the general confidentiality provisions of 12 CFR 308.147, in cases that may pose a risk of imminent harm to consumers, the FDIC may disclose or confirm the existence of an investigation that does not involve an Insured Depository Institution or a known IAP thereof. Such disclosure must not disclose any information obtained or uncovered during the course of the investigation.

§ 328.105 Referral to appropriate authority.

(a) If, in connection with the receipt of an inquiry or complaint, or during the course of an investigation, informal resolution, or formal enforcement under this subpart:

(1) The FDIC becomes aware of conduct by a Regulated Institution for which another Federal banking agency is the appropriate Federal banking agency or an Institution-Affiliated Party of such an institution, that appears to violate section 18(a) of the FDI Act (12 U.S.C. 1828(a)), the FDIC may recommend that the appropriate Federal banking agency take appropriate

enforcement action. If the appropriate Federal banking agency does not take the recommended action within 30 days, the FDIC may pursue any and all remedies available under section 18(a) or the FDI Act (12 U.S.C. 1828(a)) and this subpart;

(2) The FDIC becomes aware of conduct that the FDIC has reason to believe violates a civil law or regulations within the jurisdiction of another regulatory authority, the FDIC may take steps to notify the appropriate authority; and

(3) The FDIC becomes aware of conduct that the FDIC has reason to believe violates 18 U.S.C. 709, the FDIC may notify FDIC's Office of Inspector General for referral to the appropriate criminal law enforcement authority.

(b) To the extent that any records are provided to a regulatory or criminal law enforcement authority, as set forth in paragraph (a) of this section, the provision of such records will be made in accordance with the requirements of part 309 of this chapter. Where such records were obtained during the course of an investigation, informal resolution, or formal enforcement action, the General Counsel will be considered the Director of the FDIC's Division having primary authority over records so obtained.

§ 328.106 Informal resolution.

(a) If the FDIC has reason to believe that any person may be misusing an FDIC-Associated Image or FDIC-Associated Term or otherwise violating § 328.102(a), or may be making false or misleading representations regarding deposit insurance in violation of § 328.102(b), the FDIC may issue an advisory letter to such a person and/or any person who aids or abets another in such conduct, including any Third-Party Publisher. Generally, such an advisory letter will:

(1) Alert the recipient of advisory letter of the basis for the FDIC's concerns;

(2) Request that the person and/or Third-Party Publisher:

(i) Take reasonable steps to prevent any violations of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) and this subpart;

§ 328.107

(ii) Commit in writing to refrain from such violations in the future; and
(iii) Notify the FDIC in writing that the identified concerns have been fully addressed and remediated; and

(2) Offer the person or Third-Party Publisher the opportunity to provide additional information, documentation, or justifications to substantiate the representations made or otherwise refute the FDIC's expressed concerns.

(b) Except in cases where the FDIC has reason to believe that consumers or Insured Depository Institutions may suffer harm arising from continued violations, recipients of advisory letters described in paragraph (a) of this section will be provided not less than fifteen (15) days to provide the requested commitment, explanation, or justification.

(c) Where a recipient of an advisory letter described in paragraph (a) of this section provides the FDIC with the requested written commitments within the timeframe specified in the letter, and where any required remediation has been verified by FDIC staff, the FDIC will generally take no further administrative enforcement against such a party under § 328.107.

(d) Where a recipient of an advisory letter described in paragraph (a) of this section fails to respond to the letter, fails to make the requested commitments, or fails to provide additional information, documentation, or justifications that the FDIC, in its discretion, finds adequate to substantiate the representations made or otherwise refute the concerns set forth in the advisory letter, the FDIC may pursue all remedies set forth in this subpart.

(e) Nothing in this section will prevent the FDIC from commencing a formal enforcement action under § 328.107 at any time before or after the issuance of an advisory letter under this section if:

(1) The FDIC has reason to believe that consumers or Insured Depository Institutions may suffer harm arising from continued violations; or

(2) The person to whom such an advisory letter would be sent has previously received a similar advisory letter from the FDIC under paragraph (a) of this section.

12 CFR Ch. III (1-1-23 Edition)

§ 328.107 Formal enforcement actions.

(a) *Enforcement authority.* For the purpose of enforcing the requirements of section 18(a)(4) of the FDI Act (12 U.S.C. 1818(a)(4)) and this subpart, the General Counsel has delegated authority to bring administrative enforcement actions against any person under sections 8(b), (c), (d), and (i) of the FDI Act (12 U.S.C. 1818(b), 1818(c), 1818(d), and 1818(i)). In the case of conduct by a Regulated Institution for which another Federal banking agency is the appropriate Federal banking agency or an institution-affiliated party of such an institution, the General Counsel may not bring an enforcement action under this subpart unless the FDIC has provided the appropriate Federal banking agency with notice as set forth in § 328.105(a)(1) and the appropriate Federal banking agency failed to take the recommended action.

(b) *Venue.* Unless the person who is the subject of the enforcement action consents to a different location, the venue for an administrative action commenced under section 18(a)(4) of the FDI Act (12 U.S.C. 1818(a)(4)), will be as follows:

(1) In a case where the person who is the subject of the action is an Insured Depository Institution or an IAP of an Insured Depository Institution, in the Federal judicial district or territory in which the home office of the Insured Depository Institution is located.

(2) In a case where the person who is the subject of the action is not an Insured Depository Institution or an IAP of an Insured Depository Institution, the Federal judicial district or territory where the person who is the subject of the action resides, if the subject resides in the United States. If the subject of the action does not reside in the United States, the venue will be where the subject of the action conducts business or the Federal judicial district for the District of Columbia.

(3) For the purposes of paragraph (b)(1) of this section, a natural person is deemed to reside in the Federal judicial district where the natural person is domiciled. A person other than a natural person is deemed to reside in the Federal judicial district where it is headquartered or has its principal place of business.

Federal Deposit Insurance Corporation

§ 329.1

(c) *Rules of practice and procedure.* All actions brought and maintained under this section will be subject to the FDIC's Rules of Practice and Procedure in subparts A through C of part 308 of this chapter (12 CFR 308.1 through 308.109).

§ 328.108 Appeals process.

(a) A person who is the subject of a final order issued after an administrative action commenced pursuant to this subpart may obtain judicial review of such order in accordance with the procedures set forth in section 8(h)(2) of the FDI Act (12 U.S.C. 1818(h)(2)).

(b) Petitions for review under this section may be filed in the court of appeals for the circuit where the hearing was held or the United States Court of Appeals for the District of Columbia Circuit.

§ 328.109 Other actions preserved.

No provision of this subpart shall be construed as barring any action otherwise available, under the laws or regulations of the United States or any state, to any Federal or state agency or person.

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

Subpart A—General Provisions

Sec.

- 329.1 Purpose and applicability.
- 329.2 Reservation of authority.
- 329.3 Definitions.
- 329.4 Certain operational requirements.

Subpart B—Liquidity Coverage Ratio

329.10 Liquidity coverage ratio.

Subpart C—High-Quality Liquid Assets

329.20 High-quality liquid asset criteria.

329.21 High-quality liquid asset amount.

329.22 Requirements for eligible high-quality liquid assets.

Subpart D—Total Net Cash Outflow

329.30 Total net cash outflow amount.

329.31 Determining maturity.

329.32 Outflow amounts.

329.33 Inflow amounts.

329.34 Cash flows related to Covered Federal Reserve Facility Funding.

Subpart E—Liquidity Coverage Shortfall

329.40 Liquidity coverage shortfall: Supervisory framework.

Subpart F—Transitions

329.50 Transitions.

Subparts G–J [Reserved]

Subpart K—Net Stable Funding Ratio

- 329.100 Net stable funding ratio.
- 329.101 Determining maturity.
- 329.102 Rules of construction.
- 329.103 Calculation of available stable funding amount.
- 329.104 ASF factors.
- 329.105 Calculation of required stable funding amount.
- 329.106 RSF factors.
- 329.107 Calculation of NSFR derivatives amounts.
- 329.108 Funding related to Covered Federal Reserve Facility Funding.
- 329.109 Rules for consolidation.

Subpart L—Net Stable Funding Shortfall

329.110 NSFR shortfall: supervisory framework.

Subpart M—Transitions

329.120 Transitions.

AUTHORITY: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p-1, 5412.

SOURCE: 79 FR 61523, Oct. 10, 2014, unless otherwise noted.

Subpart A—General Provisions

§ 329.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain FDIC-supervised institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) An FDIC-supervised institution is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

- (i) It is a:
 - (A) GSIB depository institution supervised by the FDIC;
 - (B) Category II FDIC-supervised institution; or
 - (C) Category III FDIC-supervised institution; or
- (ii) The FDIC has determined that application of this part is appropriate