employees' choices, *id.* at 7. As such, the proposed rule's subjugation of employees' individual interests to federal unions' institutional interests appears to conflict with § 7115(a)'s animating purpose.

Moreover, if the majority must issue this premature Notice, then I am gratified that the Notice invites comments on whether there should be a one-month, government-wide revocation period for terminating authorizations of dues withholding. This idea comes from one of the more interesting arguments in the petition. Specifically, the Petitioner asserts that ''the most apt analogy'' to the system of dues-withholding revocation that the Petitioner desires is ''health insurance premium payroll deductions.'' Pet. at 8. In that regard, the Petitioner notes that once federal employees select their health insurance, they generally must wait a year to change or cancel that insurance ''during a one-month window period called open season.'' *Id.* In keeping with the Notice, I urge commenters to offer their views on whether to amend § 2429.19 so that employees have at least one full month each year—occurring at the same time for all federal employees—to decide whether to terminate dues withholding.

There are good reasons to explore a framework for dues-withholding revocation that resembles the federal open season for health insurance. Under the previous system of dues-withholding revocation, before § 2429.19 was adopted, most union members could revoke their dues assignments only during short window periods that preceded the anniversary dates of the members' union enrollments. In an attempt to ensure higher and more predictable dues revenues, most federal unions erected obstacles to revocations. Miscellaneous and General Requirements, 85 FR 41,169, 41,171 (July 9, 2020) (discussing barriers to dues-withholding revocations). The Petitioner's proposed rule would reauthorize such obstacles. Far from a highly advertised, month-long decision period like open season, most employees under the previous system had about two weeks to revoke their previously authorized dues withholdings. Moreover, revocation forms could be rejected if employees did not know their anniversary dates, or did not correctly calculate their unique window periods using contract wording that was indecipherable to most readers. Miscellaneous and General Requirements, 85 FR at 41,171 (providing, as an example, that a revocation form ''must be submitted to the Union between the anniversary date of the effective date of the dues withholding and twenty-one (21) calendar days prior to the anniversary date''). Rather than seeking regulatory authorization to make revocations more difficult again, the Petitioner could ensure predictable revenues—and better serve employees—by offering quality benefits and services that convince union members of the value in continuing their dues payments.

Although the Notice necessarily requests comments on the implications of potentially rescinding § 2429.19 entirely, I wish that the majority had included in the Notice at least a glimpse of the potential consequences of this approach, in order to better focus any comments on this question. By mentioning rescission as little more than an afterthought, the Notice hampers commenters' abilities to offer thoughtful perspectives. Therefore, I encourage commenters to offer fulsome assessments of the potential rescission scenario—in particular, how it would affect the Authority's ability to adjudicate future dues-revocation disputes.

Finally, for the sake of accuracy, I wish to emphasize that § 2429.19 had both an ''effective date'' and an ''applicability date.'' Miscellaneous and General Requirements, 85 FR at 41,169. This distinction was critical to the Authority's conclusion that the rule applied only to the revocation of assignments that were authorized on or after August 10, 2020, and not to the revocation of assignments that were authorized before that date. *See* Office of the Federal Register, *Document Drafting Handbook,* Aug. 2018 Ed. (Rev. 1.4, dated Jan. 7, 2022) 3–9 to 3–10 (discussing the distinction between effective dates and applicability dates), *https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf.*

I continue to strongly disagree that the Authority should expend valuable resources on this rulemaking. However, if commenters offer the benefit of their insights on the important matters that I have raised here, as well as the matters set forth in the Notice, then I hope that the majority will afford their perspectives the careful consideration that they deserve. I assure potential commenters that I will afford their views such consideration.

[FR Doc. 2022–27495 Filed 12–20–22; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064–AF26

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

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposal to modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with an IDI and whether their funds are protected by deposit insurance. The proposal is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

DATES: Comments must be received by the FDIC no later than February 21, 2023.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064–AF26, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF26 in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AF26, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted

without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the proposed rule will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Depositor and Consumer Protection: Luke H. Brown, Associate Director, 202–898–3842, *LuBrown@FDIC.gov;* Meron Wondwosen, Senior Policy Analyst, 202–898–7211, *MeWondwosen@FDIC.gov;* Edward J. Hof, Senior Policy Analyst, 202–898–7213, *EdwHof@FDIC.gov;* Legal Division: James Watts, Counsel, 202–898–6678, *jwatts@FDIC.gov;* Vivek Khare, Counsel, 202–898–6847, *vkhare@fdic.gov.*

SUPPLEMENTARY INFORMATION: The FDIC is proposing to amend part 328 of its regulations, which includes requirements for use of the official FDIC sign and IDIs' advertising statements, as well as misrepresentations of insured status and misuse of the FDIC's name or logo. The proposed rule would generally: (1) modernize and amend the rules governing the display of the official sign in branches, to, for example, apply the rules to non-traditional IDI branches; (2) require the use of the FDIC official sign, a new digital sign, and other signs differentiating deposits and non-deposit products across all banking channels, including automated teller machines (ATMs) and evolving digital channels (which functionally serve as digital teller windows); (3) clarify the FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; (4) amend definitions of ''non-deposit product'' to include crypto-assets; and (5) require IDIs to maintain policies and procedures addressing compliance with part 328. As explained below, the proposal is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

Policy Objectives

In recent years there have been significant changes in the banking landscape, including continued evolution of bank branches and their role in serving depositors, substantially increased reliance on internet and mobile banking channels to access IDI banking services, and growth in financial technology (fintech) companies that seek to offer new options for accessing banking products and services. While these developments are beneficial, they may make it more difficult for depositors and consumers to understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance. In addition, the FDIC has observed increased misleading representations about deposit insurance in internet banking channels, which can result in consumer confusion and harm. These types of misleading statements create uncertainty and could dilute and weaken the confidence that underpins banks and our nation's broader financial system.

To keep pace with the ongoing market and technological developments, the proposed amendments to part 328 are intended to promote several policy goals. Specifically, the FDIC hopes to bring the certainty and confidence historically provided by the FDIC sign at traditional IDI branch teller windows to the varied and evolving digital channels through which depositors are increasingly handling their banking needs today. These channels serve as the digital teller windows of the modern banking landscape, and it is critical that they provide clear, consistent, and accurate information about deposit insurance upon which consumers, businesses, and other entities may base their financial decisions.

The proposed rule would establish sign requirements across all banking channels, including evolving digital channels, to align with marketplace developments. The proposed sign requirements are also intended to more clearly distinguish insured deposits from non-deposit products, and to better distinguish IDIs from non-banks in the digital space. The proposed rule would allow consumers, businesses, and other entities to better understand when their funds are protected by the FDIC's deposit insurance. At the same time, the proposed sign requirements are intended to permit flexibility for IDIs and other firms in the marketing of their products and services.

The proposed amendments to the FDIC's rules regarding misrepresentations of deposit insurance coverage are intended to address specific scenarios where information provided to consumers may be misleading with respect to deposit insurance coverage. In particular, the FDIC is concerned that certain business relationships between IDIs and non-banks may be confusing to consumers, and proposes to require clear disclosures that would better inform consumers as to when their funds are protected by FDIC deposit insurance. Further clarity in this area would be beneficial for both consumers and the industry.

Background

The FDIC is an independent agency that maintains stability and public confidence in the nation's financial system by, among other things, insuring the deposits of all IDIs. The FDIC has helped to maintain public confidence in the nation's banking system in times of financial turmoil, including the period from 2008 to 2013, when the United States experienced a severe financial crisis, and more recently during the financial stress associated with the COVID–19 pandemic. The FDIC has proactively sought to protect consumers,[1] promote public confidence in insured deposits, and prevent false and misleading representations about the manner and extent of FDIC deposit insurance. Today, there are nearly 5,000 IDIs in the United States.[2]

Statutory Authority and Regulations

Sign and advertising statement requirements for IDIs date back to the Banking Act of 1935, and are now set forth in section 18(a) of the Federal Deposit Insurance Act (FDI Act).[3] Section 18(a) grants the FDIC authority to prescribe regulations with respect to these requirements, which are currently contained in subpart A to 12 CFR part 328.[4]

[1] As used in this document, the term ''consumer'' means any current or potential depositor, including natural persons, organizations, corporate entities, and governmental bodies. *See* 12 CFR 328.101.

[2] FDIC's BankFind Suite, available at: *https://banks.data.fdic.gov/bankfind-suite/bankfind.*

[3] 12 U.S.C. 1828(a)(1). Section 9 of the FDI Act provides the FDIC the authority to prescribe rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing. 12 U.S.C. 1819(a) Tenth.

[4] *See* subpart A to 12 CFR part 328 (§§ 328.0 through 328.5–328.99).

The FDIC's official sign and advertising statement regulations require banks to continuously display the FDIC official sign where insured deposits are usually and normally received in the bank's principal place of business and at all of its branches and to use an official advertising statement, such as ''Member FDIC,'' when advertising deposit products and services.[5]

The agency last made major amendments to these regulations in 2006.[6] The current text of the FDIC's sign regulations refer to an IDI's physical premises and Remote Service Facilities, but does not specify other banking channels that have since developed.[7]

In addition, section 18(a)(4) of the FDI Act prohibits any person from misusing the name or logo of the FDIC or from engaging in false advertising or making knowing misrepresentations about deposit insurance.[8] The FDIC has broad statutory authority in this area, and earlier this year, issued specific regulations in subpart B to 12 CFR part 328 regarding false representations related to FDIC insurance and the misuse of the FDIC name and logo.[9] Since the new subpart B regulations took effect, the FDIC has observed additional misconduct by entities misusing the FDIC's name or logo and misrepresenting the extent of FDIC insurance coverage.

Developments in Consumer Access to Banking and Financial Services

In recent years, there have been significant changes in the banking landscape, including the evolution of bank branches and their role in serving consumers, the proliferation of digital channels as a critical and fundamental mechanism to access banking and financial services, and an increasingly broad array of financial products offered through banking channels, including access to non-deposit products. The following overview of these trends is intended to provide context for the proposed rule, which seeks to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by FDIC deposit insurance coverage.

Many bank branches retain a traditional physical branch footprint, serving depositors primarily at teller windows or stations. According to the FDIC's 2021 National Survey of Unbanked and Underbanked Households (Household Survey), roughly 63.4 percent of all banked households used a bank teller to access their accounts at least once in the last 12 months, including 57.8 percent of the youngest banked households between the ages of 15 to 24, and 72.2 percent of the oldest banked households aged 65 or older.[10] However, IDIs have increasingly begun operating branches with different styles and designs. These locations may include electronically-staffed kiosks, interactive ATMs that provide remote assistance with a teller, and teller-less cafés where deposits can be accepted on tablets or through ATMs. The FDIC's existing sign rules, which focus on display of the official sign at teller windows or stations, have not kept pace with these developments.

The existing sign rules also do not reflect evolving digital channels, which have become an increasingly important means of access to banking products and services. While some consumers continue to visit branches, others rely on ATM access and digital channels such as online banking and mobile banking. For these consumers, an IDI's ATM, website, or mobile application effectively serves as a digital teller window. The results of the Household Survey show that the proportion of banked households that used *mobile* banking as their primary method of bank account access increased from 34.0 percent in 2019 to 43.5 percent in 2021.[11] The proportion of banked households that used *online* banking as their primary method of bank account access was similar in 2019 (22.8 percent) and 2021 (22.0 percent).[12] Combined, 65.4 percent of banked households in 2021 used *mobile or online* banking as their primary method of bank account access, up from 56.8 percent in 2019.[13] Given that nearly two-thirds of banked households primarily access banking products through phones, computers, and other devices, the FDIC believes it is critical to update and provide consistent sign requirements for digital channels.

Banking customers are also offered an increasingly wide array of products and services, regardless of whether they are in a branch, using an ATM, or connecting with an IDI through digital channels. In many instances, IDIs offer both deposits and non-deposit products to consumers. For example, IDIs might allow depositors in their branches to consult with an investment adviser and purchase securities or mutual funds. Options to purchase non-deposit products are continuing to evolve, with some IDIs offering ATM or digital banking customers the ability to purchase crypto-assets with their funds. Absent adequate signs or disclosures, simultaneous offering of both insured deposits and non-deposit products may lead consumers (who are aware that the IDI is insured by the FDIC) to mistakenly conclude that all of the products being offered are insured. Some of these uninsured products may be speculative.

Growth in the fintech sector has also served to blur the distinction between IDIs and non-banks in the eyes of many consumers, increasing the potential for confusion regarding deposit insurance coverage. Business arrangements between IDIs and non-banks can take many forms and continue to evolve at a rapid pace. For example, an IDI might enter into an arrangement with the fintech company to offer the IDI's products to the fintech company's customers. In other instances, fintech companies might deposit their customers' funds at an IDI. In such cases, the fintech company might state to its customers that their funds are FDIC-insured, or that they are insured by the FDIC on a ''pass-through'' basis, without an accurate explanation of what this means. The proliferation of relationships and disclosures may confuse consumers as to whether they are dealing with an IDI, whether their funds are insured by the FDIC, and the risks they are protected against.

Industry Outreach—Request for Information

In February 2020 and April 2021, the FDIC published Requests for Information (collectively, the ''RFIs'') in the **Federal Register** to seek public input regarding potential modernization

[5] *See generally,* 12 CFR part 328.

[6] 71 FR 66098 (Nov. 13, 2006).

[7] *See* 12 CFR 328.2. ''Remote Service Facility'' includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received. 12 CFR 328.2(a)(1)(ii).

[8] 12 U.S.C. 1828(a)(4). Section 18(a)(4) also provides the FDIC independent authority to investigate and take administrative enforcement actions, including the power to issue cease and desist orders and impose civil money penalties, against any person who misuses the FDIC name or logo or makes misrepresentations about deposit insurance. 12 U.S.C. 1828(a)(4)(C)–(D). Further, under Federal law, it is also criminal offense to misuse the FDIC name or make false representations regarding deposit insurance. *See* 18 U.S.C. 709.

[9] 87 FR 33415 (June 2, 2022); Subpart B to 12 CFR part 328 (§§ 328.100 through 328.109). Subpart B establishes the process by which the FDIC will identify and investigate conduct that may violate section 18(a)(4), the standards under which such conduct will be evaluated, and the procedures which the FDIC will follow when formally and informally enforcing the provisions of section 18(a)(4).

[10] Federal Deposit Insurance Corporation (FDIC), *2021 National Survey of Unbanked and Underbanked Households* (October 2022).

[11] *Id.*

[12] *Id.*

[13] *Id.*

of the official sign and advertising rules to reflect changes in deposit-taking via physical branch, digital, and mobile banking channels.[14] In response to the RFIs, the FDIC received 20 comments from trade associations, IDIs, and others.[15] In addition, FDIC staff met with representatives from IDIs, a technology service provider, and consumer groups. Commenters generally recognized the importance and value of displaying FDIC signs and the advertising statement, and some commenters stressed that depositors place significant trust in FDIC signs.

The majority of comments recognized the need for updating FDIC sign and advertising requirements in response to changes in industry practice and the increasingly significant role played by digital and mobile banking. At the same time, commenters generally favored greater flexibility in terms of the size, design, and location of the official FDIC sign at IDIs' branches. Several commenters proposed requiring a single, conspicuous physical or digital display in the teller area as opposed to smaller signs placed at each window. Some commenters suggested amending the continuous display requirement to allow for rotating digital disclosures.

Commenters also indicated that consumers assume products offered through IDIs are insured and emphasized the importance of enabling consumers to identify uninsured products and understand the role of third parties in offering such products.

Commenters also suggested that the FDIC clarify how sign requirements apply to digital and mobile banking channels. While some requested clarity on the size and location of the FDIC sign on web pages and mobile applications, others urged the FDIC to adopt a flexible policy that better accounts for technological limitations and preservation of user experience. Similarly, several commenters requested clarity on how teller window sign requirements apply to digital banking channels and revisions to the definition of Remote Service Facility to incorporate digital and mobile banking. Some IDIs also indicated that they voluntarily display the FDIC advertising statement on their digital pages.

One commenter noted the increase in uninsured entities offering products and services similar to banks, and indicated the risk of consumer confusion will likely increase. This commenter suggested a clear articulation by the FDIC regarding the obligations that non-banks have with respect to offering these products and services, whether insured or not, can promote consumer understanding and mitigate the risk of consumer confusion.

With respect to advertising requirements, many commenters sought clarification on which products and services require the advertising statement. Some commenters proposed permitting advertisements to host the required statement ''one click away'' in order to permit greater flexibility in advertising format, while others expressed concern that such an arrangement would lead to greater consumer confusion about whether advertised products qualify for deposit insurance.

The FDIC carefully considered comments received in response to the RFIs in formulating this proposal, and remains committed to considering further public input on the modernization of its sign and advertising requirements through this document and comment process. Certain commenters' suggestions are discussed in further detail in the ''Alternatives Considered'' section of this document.[16]

Previous Rulemaking

On May 17, 2022, the FDIC issued a final rule adding a new subpart B to 12 CFR part 328. The final rule describes: (1) the process by which the FDIC will identify and investigate conduct that may violate the prohibitions against misuse and misrepresentation; (2) the standards under which such conduct will be evaluated; and (3) the procedures that the FDIC will follow when formally and informally enforcing these prohibitions.

While this rulemaking was an important step, the FDIC has observed an increase in the number of instances where financial services providers or other entities or individuals have misused the FDIC's name or logo or have made misrepresentations about FDIC insurance. This has caused continuing challenges for consumers in determining whether they are doing business with an IDI and whether their funds are protected by the FDIC's deposit insurance coverage. The FDIC believes that further clarification of subpart B may be helpful to address these challenges, particularly to address specific situations where consumers may be misled as to whether an entity is insured by the FDIC or the nature and extent of deposit insurance coverage.

Description of the Proposed Rule

As explained above, the FDIC is proposing to modernize its sign and advertising requirements to reflect current banking practices, including updating the rules to reflect that deposit-taking via physical branch, digital, and mobile banking channels has evolved since the FDIC last significantly updated its rules in 2006. While various channels are used to access bank products, the FDIC aims to establish sign and advertising requirements that enable IDIs' customers to clearly understand when their funds are protected by the FDIC's deposit insurance coverage. The proposed changes to the sign rules include requirements for physical bank premises, digital channels such as online banking websites and mobile applications, and automated teller machines and similar devices. For simplicity, requirements applicable to each of these channels are set forth in separate sections of the proposed rule.

The proposed rule's sign requirements include three distinct signs relating to deposit insurance. The first is the FDIC's official sign, which is currently displayed at IDIs' principal place of business and branches. Second, the proposed rule would require the display of a digital sign on IDIs' digital deposit-taking channels, such as online banking websites and mobile applications. The digital sign, which would be an abbreviated version of the FDIC's official sign, would promote a clear understanding by consumers of when they are interacting with an IDI rather than a non-bank and when their funds are insured by the FDIC. Third, the proposed rule includes a non-deposit sign requirement that would address the potential for consumer confusion where an IDI offers both insured deposits and non-deposit products through the same channel (*e.g.,* insured deposits and non-deposit products are both offered at a branch). In such instances, the IDI's display of the official FDIC sign could lead consumers to believe that the non-deposit products are insured, absent additional information. Although sold via IDI banking channels, these products: are not insured by the FDIC; are not deposits; and may lose value. This non-deposit sign requirement is intended to be generally consistent with practices described in the longstanding interagency guidance on the retail sale

[14] 85 FR 18528 (Feb. 26, 2020); 86 FR 18528 (Apr. 9, 2021).

[15] Comments to the RFIs can be found on the FDIC's website, *available at https://www.fdic.gov/resources/regulations/federal-register-publications/2020/2020-rfi-fdic-sign-and-advertising-requirements-3064-za14.html and https://www.fdic.gov/resources/regulations/federal-register-publications/2021/2021-rfi-fdic-official-sign-and-advertising-requirements-3064-za14.html.*

[16] *See infra* Section IV.

of non-deposit investment products [17] that many institutions already follow, and thus should be familiar to many consumers.

The FDIC is also proposing limited amendments to its official advertising statement requirements. These updates would provide IDIs with an additional option for a shortened official advertising statement, and include technical corrections to address the statutory increase of the deposit insurance amount that has occurred since the regulation was last amended.

In addition, the FDIC is proposing to amend the provisions of subpart B to provide further clarity on the application of the misrepresentation statute in specific situations where consumers may misunderstand or be misled as to whether an entity is insured by the FDIC or the nature and extent of deposit insurance coverage. The proposed rule is described in further detail below.

Official Sign for IDIs

The proposed rule would retain the existing design of the official sign, which, in addition to prominently bearing the name of the FDIC, includes statements indicating that each depositor is insured up to at least $250,000 and that the FDIC's deposit insurance is backed by the full faith and credit of the U.S. government. Also consistent with current regulations, the proposed rule would define the ''symbol'' of the FDIC as the portion of the official sign that consists of ''FDIC'' and the statements ''Each depositor insured to at least $250,000'' and ''Federal Deposit Insurance Corporation *www.fdic.gov*.''

The proposed rule would retain an IDI's ability to procure physical versions of the official sign from the FDIC for official use at no charge, or to procure similar signage from commercial suppliers at their own expense. Any IDI that promptly submits a written request for an official sign to the FDIC would not be deemed to have violated the rule by failing to display the official sign, unless the IDI fails to display the official sign after receiving it.

Sign Requirements on IDIs' Physical Premises

Section 328.3 of the proposed rule would govern signage within an IDI's premises. Consistent with current regulations, all IDIs would be required to continuously, clearly, and conspicuously display the official sign in their principal place of business and all their U.S. branches.[18] To accommodate evolving styles and footprints of branches, however, the proposed rule would provide separate requirements for traditional footprint branches and non-traditional branches or other places of business, such as café-style branches.

Official Sign in Traditional Branches

IDIs have traditionally received deposits at teller windows or stations, and the proposed rule would continue to provide for display of the official sign at traditional footprint branches in a manner consistent with current regulations. If deposits are usually and normally received at teller windows or stations, IDIs would generally be required to display the official sign at each teller window or station in a size of 7″ by 3″ or larger, with black lettering on a gold background. The FDIC believes, however, that it is appropriate to allow additional flexibility with respect to display of the official sign in instances where the IDI only offers deposit products on the premises. In such cases, the requirement to display the official sign could be satisfied by displaying the official sign in one or more locations visible from the teller windows or stations, in a size large enough to be legible from anywhere in that area. If the IDI also offers non-deposit products on the premises, display of the official sign at each teller window would be required, consistent with current regulations. Under the proposed rule, non-deposit signage would also be required as described below.

Official Sign in Non-Traditional Branches

The proposed rule also would include sign requirements that accommodate the non-traditional footprint branches operated by some IDIs. For example, some IDIs operate café-style branches that include open areas where customers work with bankers. These branches may, or may not, include traditional teller windows or stations. Under the proposed rule, if insured deposits are usually and normally received in areas of the premises other than teller windows or stations, the IDI would be required to display the official sign in one or more locations in a size large enough to be legible anywhere in those areas. The FDIC believes that such signage would ensure that customers are aware that their deposits are protected by deposit insurance. If the IDI also offers non-deposit products on the premises, under the proposed rule, non-deposit signage would also be required as described below.

Non-Deposit Signs on IDIs' Premises

The FDIC is proposing a new requirement for non-deposit signs when both insured deposits and non-deposit products are offered within the IDI's premises. In such instances, an IDI would be required to physically segregate the areas where non-deposit products are offered from areas where insured deposits are usually and normally accepted, and display a sign in the non-deposit areas indicating that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.[19] This non-deposit sign would be required to be continuously, clearly, and conspicuously displayed; however, the proposed rule does not include specific design or size requirements. To minimize the potential for consumer confusion, the proposed rule would prohibit display of non-deposit signs in close proximity to the official FDIC sign. The proposed rule's non-deposit sign requirements would apply to both traditional footprint branches and non-traditional footprint branches. IDIs that do not offer non-deposit products through traditional or non-traditional branches would not be impacted by this part of the proposal.

Use of Electronic Media or Varied Signs To Satisfy Official Sign and Non-Deposit Sign Requirements on IDIs' Premises

The proposal also provides IDIs the flexibility to utilize electronic media to satisfy sign requirements on an IDI's premises. Electronic signs have become increasingly common in retail environments, and the proposed rule includes a provision expressly permitting the use of electronic media to display required signs. This would apply to both display of the official sign and non-deposit signage, where required. However, where the proposed rule requires ''continuous'' display of signs, this applies equally to signs

[17] *See Interagency Statement on Retail Sales of Nondeposit Investment Products,* FIL–9–94 (Feb. 17, 1994).

[18] The term ''branch'' would be defined by reference to the FDI Act's definition of ''domestic branch,'' 12 U.S.C. 1813(*o*). The FDI Act broadly defines ''domestic branch'' to include any branch bank, branch office, branch agency, additional office, or branch places of business at which deposits are received or checks paid, or money lent. The FDIC believes this definition would generally also include non-traditional footprint branches where customers can receive customer assistance from bank personnel to perform these core banking functions.

[19] As noted above, this requirement is intended to be generally consistent with longstanding interagency guidance on the retail sale of non-deposit investment products that many institutions already follow, and thus should be familiar to many consumers.

utilizing electronic media. Accordingly, a rotating display that includes the required sign periodically would not satisfy the ''continuous'' requirement.

The proposed rule also would retain certain provisions of current regulations that provide IDIs with flexibility in displaying the official sign. IDIs would have the option to display the official sign in locations on the premises other than those required under the rule, except for in areas where non-deposit products are offered. For locations where display of the official sign is required, IDIs could choose to display signs that vary from the official sign in size, color, or material, provided that the sign is no smaller than the official sign, has the same color for the text and graphics, and includes the same content.

New Institutions

Also consistent with current regulations, an IDI would be required to display the official sign at its premises no later than its twenty-first calendar day of operation as an insured institution, unless it promptly requested the official sign from the FDIC but did not receive the official sign before that date.

Sign Requirements for IDIs' Digital Channels

As explained above, consumers are increasingly using IDIs' websites and mobile banking applications to open deposit accounts, deposit and transfer funds, and buy and sell non-deposit products. For many consumers, an IDI's website and applications are the primary method of accessing banking products and, in turn, these platforms functionally serve as a digital teller window. Given these developments, the FDIC believes it is important to require signage with respect to IDIs' digital deposit-taking channels that is consistent with in-branch signage, to the extent feasible. This would promote a clear understanding by consumers of when they are interacting with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

The proposed rule aims to establish sign requirements applicable to any medium through which deposits are usually and normally received. These changes are intended to enhance consistency of signage between IDIs' digital deposit-taking channels and other traditional channels, providing helpful clarity for consumers.

Digital Deposit-Taking Channels

Section 328.5 of the proposed rule would define ''digital deposit-taking channels'' to mean any electronic communications methods through which an IDI accepts insured deposits. This would include, but not be limited to, IDI websites, web-based applications, and mobile applications that offer consumers access to insured deposits at IDIs. The FDIC intends that the proposed rule would apply to digital channels where insured deposits are received that are analogous to the traditional teller windows or stations that consumers interact with at an IDI's physical premises. The language of the proposed rule is intended to accommodate the ongoing evolution of internet and mobile application infrastructure.

Digital Sign Requirement for Digital Deposit-Taking Channels

Under the proposed rule, an IDI would be required to clearly, continuously, and conspicuously display a digital sign on the IDI's homepage, landing and login pages or screens, and transactional pages or screens involving deposits, to the extent applicable. This digital sign would be intended to visually communicate to consumers that they are doing business with an IDI rather than a non-bank entity. As the homepage and landing page are generally the primary point of interaction between IDIs and consumers, such display would prominently disclose to consumers that the entity is FDIC-insured. The FDIC also believes it is appropriate to require the digital sign on the login page so consumers are informed before signing up for or signing into an online account that such an account is associated with an IDI rather than a non-bank entity. Display of the digital sign also would be required on pages where the customer transacts with insured deposits.

IDIs would be required to display the digital sign clearly, continuously, and conspicuously on the relevant pages or screens under the proposed rule. To be clear and conspicuous, the digital sign must be displayed in a continuous manner, near the top of the relevant page or screen, in close proximity to the IDI's name. Display of the digital sign at the footer of the relevant page or a similar location would not satisfy the clear and conspicuous standard.

It may be helpful to consumers if IDIs link the digital sign to the FDIC's online BankFind tool. Such a link would take the consumer to FDIC's BankFind web page and make consumer due diligence easier than it is currently, which in turn would help consumers differentiate IDIs from non-banks.[20] This is not a requirement under the proposed rule, however, and IDIs would have the discretion to include such a link when displaying the digital sign.

Digital Sign Design

The FDIC recognizes that IDIs may not as easily display the official FDIC sign, described above, on websites and application pages and is therefore proposing to require a digital sign that would be an abbreviated version of the official sign. The FDIC expects that a digital sign would prominently bear the name of the FDIC and the statement that insured deposits are backed by the full faith and credit of the U.S. Government. The proposed rule does not include, and the FDIC is soliciting comment on, a design for the digital sign that includes these elements.

Digital Deposit-Taking Channels Are Not Advertisements

The FDIC does not intend for the proposed digital sign requirement to overlap with the general advertising statement requirements that apply to IDIs. As discussed above, the proposed digital sign would be displayed on an IDI's homepage, landing and login pages, and transactional pages involving insured deposits. The FDIC views these pages as environments where the customer may interact directly with the IDI, rather than as ''advertisements'' as defined in the rule's advertising statement requirements.[21] To the extent these pages can be considered ''advertisements,'' the inclusion of the digital sign on these pages would make clear that the IDI is insured by the FDIC, making use of the official advertising statement unnecessary under proposed § 328.6(d)(10). IDIs, however, would remain responsible for complying with the official advertising statement requirements for other qualifying advertisements, including those contained on other web pages.

Non-Deposit Digital Signage Requirements When Non-Deposit Products and Deposit Products Are Offered Through Same Digital Deposit-Taking Channel

The FDIC believes there is an increased risk of consumer confusion regarding deposit insurance coverage when both deposits and non-deposit products are offered through the same digital deposit-taking channel. Under the proposed rule, if a digital deposit-taking channel offers both access to deposits and non-deposit products, the

[20] The FDIC intends to update its online BankFind page with useful deposit insurance information for consumers as well as instructions on how to use BankFind so consumers could more easily verify that an entity is FDIC-insured.

IDI would be required to clearly and conspicuously display signage indicating that the non-deposit products are: (1) not insured by the FDIC; (2) are not deposits; and (3) may lose value. IDIs would be required to display this non-deposit signage via a one-time notification when consumers initially access such a page. Such notification would provide an initial, prominent display of the non-deposit signage to alert consumers that they are dealing with non-deposit products that are not subject to FDIC-insurance. Moreover, consumers would need to take action to dismiss the notification before accessing the relevant page or screen. This could include, for example, an IDI using a ''pop-up,'' [22] ''speedbump,'' [23] or ''overlay'' [24] that displays a notification to the consumer that the consumer must dismiss before accessing the content related to non-deposit products.

In addition, the proposed rule would require the continuous display of the non-deposit signage on each page relating to non-deposit products and prohibit displaying the non-deposit signage in close proximity to the digital FDIC sign. The FDIC would expect the non-deposit signage to be in a prominent place, in an appropriate size, and displayed in a continuous manner for a consumer accessing the page to notice.[25] The FDIC believes, however, that institutions should have flexibility in the way they market non-deposit products and is not proposing specific design or size requirements for this non-deposit signage.

Automated Teller Machines and Similar Devices

Section 328.4 of the proposed rule governs signage requirements for IDIs' automated teller machines (ATMs) and other remote electronic facilities that receive deposits. The FDIC seeks to ensure that depositors receive necessary disclosures regarding deposit insurance as banks continue to devise new ways to provide services outside of physical branches. The proposed rule intends to capture banking kiosks and other devices currently defined as ''Remote Service Facilities'' [26] that receive deposits. This section of the proposed rule is not intended to address online and mobile banking channels, which are considered ''digital deposit-taking channels'' under the proposed rule.

Under current regulations governing ATMs and like devices, IDIs have the option to display the physical official FDIC sign. The FDIC believes, however, that accurate signage across digital, mobile, and physical banking channels is critical to providing clear information on deposit insurance coverage to depositors. The proposed rule would require display of the official FDIC sign on IDIs' ATMs and like devices. The FDIC recognizes that requiring a physical sign may lead to formatting issues, maintenance costs, and difficulty in updating devices when signage requirements change. In order to accommodate those concerns, the proposed rule would require the electronic display of the official sign on the ATM or like device.

The proposed rule provides that the official FDIC sign must be electronically displayed clearly and conspicuously. ATMs and like devices must, at a minimum, display the official FDIC sign on the home page or screen and each transaction page or screen relating to deposits.

While ATMs and similar devices offer less of an opportunity to physically separate deposit products from non-deposit products, the proposed rule nevertheless distinguishes these products to reduce the potential for consumer confusion. Clear signage can be important in this setting because customers often interact with ATMs alone, including when bank branches are otherwise closed, without an opportunity to ask clarifying questions or for a bank representative to ensure that customers fully understand disclosures. As such, the proposed rule would require electronic non-deposit signs where an ATM or like device both receives deposits for an IDI and offers access to non-deposit products.[27] The ATM or like device would be required to clearly, continuously, and conspicuously display electronic disclosures indicating that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. The proposed rule would require the display of these disclosures on each transaction page or screen relating to non-deposit products.

Official Advertising Statement for IDIs

The FDIC is proposing limited amendments to the advertisement statement requirements. The proposed rule would expand IDIs' options for use of a short advertising statement.

Currently, IDIs must include the official advertising statement in all advertisements that promote deposit products. The term advertisement means a commercial message in any medium that is designed to attract public attention or patronage to a product or business.[28] The FDIC views this definition to include advertising published through social media channels.

The current regulation allows IDIs to use the short title ''Member of FDIC,'' ''Member FDIC,'' or a reproduction of the symbol of the corporation (defined in § 328.2(b)). In addition to these options, to provide additional flexibility, the proposed rule would allow the use of ''FDIC-insured.''

The FDIC also proposes to make a technical correction to the reference to the deposit insurance limit found in paragraph (d)(10) of the current regulation, which states that ''deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least $100,000 for each depositor.'' As a technical correction, the proposed rule would instead reference the standard maximum deposit insurance amount defined in § 330.1 of the FDIC's regulations, currently $250,000.

Misrepresentations and Material Omissions by Any Person

The FDIC believes that it may be beneficial to provide further clarity on the application of the misrepresentation statute in specific situations where consumers may be misled as to whether an entity is insured by the FDIC or the nature and extent of deposit insurance coverage. The FDIC is proposing to amend subpart B to expressly address these situations, making clear when specific statements or omissions constitute a misrepresentation under section 18(a)(4).

Use of the Official Advertising Statement or FDIC-Associated Terms or Images

Consumers have historically identified the use of the official advertising statement (such as ''Member FDIC'') and FDIC-Associated Terms or FDIC-Associated Images to signify that they are dealing with an IDI and will

[22] A ''pop-up'' refers to a screen generated when a consumer clicks on particular hyperlink.

[23] A ''speedbump'' refers to an intermediate page that appears, requiring the user to take action to transition to the next page.

[24] An ''overlay'' refers to a content box that appears on a web page or screen and obscures the background content.

[25] Some IDIs currently display non-deposit disclosures in small font near the bottom of web pages and application screens. Consumers are unlikely to notice such disclosures and may mistakenly believe that non-deposits products are covered by FDIC-insurance. Such display of non-deposit disclosures would not satisfy the clear, continuous, and conspicuous display requirement of the proposed rule.

[26] ''Remote Service Facility'' includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received. 12 CFR 328.2(a)(1)(ii).

[27] The FDIC would not view postage stamps sold at ATMs to require these disclosures.

[28] 12 CFR 328.3(a), (c).

receive the protection of deposit insurance. As noted above, however, the official advertising statement and FDIC-Associated Terms and FDIC-Associated Images have increasingly been used by non-banks that purport to deposit their customers' funds at IDIs. The FDIC believes that use of the official advertisement or FDIC-Associated Terms or FDIC-Associated Images in such instances presents a high risk of confusing consumers as to whether they are dealing with an IDI and whether deposit insurance applies to their funds.

To address this risk, the proposed rule would amend § 328.102(a) to clarify specific circumstances under which use of the official advertising statement, FDIC-Associated Terms, or FDIC-Associated Images by a non-bank would constitute a misrepresentation of insured status. The FDIC believes that use of the official advertising statement, FDIC-Associated Terms, or FDIC-Associated Images by a non-bank may inaccurately imply that the non-bank is FDIC-insured. For example, a non-bank's use of the ''Member FDIC'' logo on its website or in its marketing materials would be a misrepresentation unless that logo is next to the name of one or more IDIs. As another example, a non-bank's use of either the official FDIC sign or the digital sign that IDIs would be required to display through their digital deposit-taking channels (under proposed § 328.5) would be a misrepresentation if it inaccurately implies that the non-bank is insured by the FDIC and backed by the full faith and credit of the U.S. government. Similarly, a non-bank's use of FDIC-Associated Terms in statements suggesting that the non-bank is insured by the FDIC would constitute a misrepresentation.[29]

Failure To Disclose That a Person Is a Non-Bank Is a Material Omission When a Statement Is Made Regarding Deposit Insurance

Non-banks that purport to deposit their customers' funds at IDIs sometimes make statements regarding deposit insurance coverage for those funds. Absent additional context, such statements misrepresent the insured status of the non-bank and suggest that the FDIC's deposit insurance will protect consumers in the event of the non-bank's insolvency. To minimize risk of consumer confusion, the proposed rule provides that if a non-bank makes statements regarding deposit insurance for its customers, it is a material omission for the non-bank to fail to clearly and conspicuously disclose that it is not itself an FDIC-insured institution and that the FDIC's deposit insurance coverage only protects against the failure of an FDIC-insured depository institution. In the FDIC's view, this additional disclosure is necessary to prevent consumers from misinterpreting a non-bank's assertions regarding deposit insurance coverage. The FDIC notes that some non-banks already include such language on their websites, often identifying the partner IDI through which banking services are provided.[30] The proposed rule does not prescribe specific disclosure language; however, it explains that a statement that a person is not an FDIC-insured bank and deposit insurance covers the failure of an insured bank would be considered a clear statement for purposes of this provision. This approach gives non-banks that wish to make statements regarding deposit insurance coverage some flexibility in how they communicate the required information.

Failure To State That Non-Deposit Products Are Not Insured by the FDIC Is a Material Omission When a Statement Is Made Regarding Deposit Insurance

The FDIC's experience suggests that deposits and non-deposit products are increasingly being offered to consumers in ways that fail to distinguish which products are insured by the FDIC. For instance, marketing materials might emphasize the deposit insurance protection that applies to some products while failing to make clear that not all of the products offered are FDIC-insured. In other instances, firms have represented to their consumers that non-deposit products are eligible for deposit insurance coverage, which has led consumers to believe, mistakenly, that their money or investments are protected by deposit insurance. The FDIC believes that where banks or non-banks make statements regarding deposit insurance in a context where deposits and non-deposit products are involved, additional information is necessary to ensure that consumers understand which products are subject to deposit insurance. To prevent consumer confusion, the proposed rule provides that if a person makes statements regarding deposit insurance in a context that involves both deposits and non-deposit products, it is a material omission to fail to disclose that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. For example, if a non-bank's website offered customers the option to have their funds deposited at an IDI and protected by deposit insurance or invested in non-deposit products, it would be a material omission if the non-bank's website failed to state that the non-deposit products are not insured by the FDIC, are not deposits, and may lose value.

Failure To State That Requirements Apply To Pass-Through Deposit Insurance

The FDIC has a long history of providing ''pass-through'' deposit insurance coverage, meaning that deposits placed at an IDI by a party on behalf of one or more owners are insured as if deposited directly at the IDI by the owner(s). Pass-through insurance allows each owner of the funds in such an arrangement to be separately insured up to the statutory deposit insurance limit, currently $250,000, even if the total deposit of all owners (in the aggregate) exceeds the $250,000 limit. Pass-through insurance only applies, however, if certain regulatory requirements are satisfied.[31]

Arrangements that rely on pass-through insurance have become increasingly common, with non-banks often claiming to provide the protection of pass-through deposit insurance for consumers' funds. Such representations, however, may be inaccurate and mislead consumers and fail to apprise them of the risk they face in the event that the pass-through deposit insurance requirements have not been satisfied. If the pass-through requirements are not met, consumers' funds may not be fully insured in the event the IDI where the funds have been deposited were to fail. The FDIC believes that where parties make statements regarding the application of pass-through deposit insurance, additional disclosure is necessary to ensure that consumers are aware of this risk.

[29] These examples are intended to be illustrative, rather than an exhaustive list of ways in which a non-bank might misrepresent its insured status. Any use of the official advertising statement, FDIC-Associated Terms, or FDIC-Associated Images that inaccurately states or implies that the non-bank is insured by the FDIC would violate the proposed rule.

[30] For example, ''ABC Co. is not an FDIC-insured depository institution; banking services provided by XYZ Bank, Member FDIC.''

[31] *See* 12 CFR 330.5, 330.7. For pass-through deposit insurance to apply: (1) the deposit account records of the IDI must disclose a basis for pass-through coverage, such as a custodial or agency relationship; (2) the identities and interests of the actual owners of the funds must be ascertainable either from the records of the IDI or records maintained in good faith and in the regular course of business by another party; and (3) the relationship that provides the basis for pass-through deposit insurance coverage must be genuine, with the deposited funds actually owned by the named owners. Additional requirements apply to arrangements involving multiple levels of relationships.

The proposed rule provides that if a person makes statements regarding pass-through deposit insurance for its customers' funds, it is a material omission to fail to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply. The proposed rule would not require a person making a statement regarding pass-through deposit insurance to list the specific conditions that must be satisfied; simply referencing that conditions must be satisfied would be sufficient under the proposed rule. The proposed rule also does not prescribe specific disclosure language, providing flexibility in how parties may wish to express the necessary information. For example, if a website for a financial product were to state that consumers' funds are eligible for pass-through deposit insurance, it would be a material omission to fail to clearly and conspicuously state that certain conditions must be satisfied in order for pass-through insurance to apply.

Policies and Procedures for IDIs

As described in this document, the FDIC is proposing changes to (1) its signage and advertising statement requirements for IDIs under subpart A and (2) clarifications to the misrepresentations rule under subpart B. The proposed rule would require IDIs to establish written policies and procedures related to these requirements that are commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the institution. As part of these policies and procedures, IDIs would also need to include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the IDI or offer IDI's deposit-related products or services to other parties.

Signs, Advertising Statement, and Misrepresentations

Such policies and procedures could include, for example, measures that an IDI would take to ensure compliance with the proposed sign and advertising requirements when the IDI changes its advertising strategy or engages with, or expands into, new physical or digital deposit-taking channels. For example, this could include, if applicable, establishing procedures to ensure that the IDI's technology (*e.g.,* websites and mobile applications) is capable of implementing the proposed sign and advertisement statement requirements across all digital deposit-taking channels.

Ultimately, an institution's policies and procedures would need to be commensurate with the nature, size, complexity, scope, and potential risk of its deposit-taking activities. For instance, an IDI that offers an array of non-deposit products and engages with consumers through a variety of digital channels would be expected to have more detailed and sophisticated policies and procedures in place than a traditional community bank that has a smaller presence in such products and banking channels.

Certain Third Party Relationships

The FDIC recognizes that IDIs have been increasingly entering into business relationships with non-bank third parties to provide banking products and other financial services to new customers and expand the IDIs' access to deposits. For example, IDIs can connect with third-party fintech companies or non-financial enterprises via application programming interfaces (APIs) in a business relationships often referred to as banking as a service (BaaS). In such cases, third parties make available certain IDI products and services to offer those products and services directly to customers. As part of these relationships, third parties often use marketing materials that may include representations about the availability of FDIC insurance for certain products. In essence, from the customer's perspective, the third parties perform the same functions that the bank would typically perform through its own deposit-taking channels (*e.g.,* branches, which were contemplated under section 18(a)(1) of the FDI Act).[32]

To the extent a third party has a business relationships with, and is serving as a deposit-taking channel for, an IDI, sound risk management would compel the IDI to be aware of the activities of the third party to ensure that the availability of deposit insurance is not being misrepresented. As such, under the proposed rule, and as appropriate, IDIs would establish policies and procedures that include provisions related to the deposit-related services that a third party provides to the IDI or deposit-related products or services offered by the third party to other parties. These policies and procedures would include, as appropriate, provisions related to monitoring and evaluating whether such third parties are in compliance with subpart B. Having policies and procedures in place relating to certain third party relationships is critical to mitigating the risks of consumer harm and confusion, consistent with the statutory purpose underlying section 18(a) of the FDI Act, and the FDIC's mission to maintain and promote public confidence in the banking system.

To the extent an IDI has a business relationship with a third party that provides deposit related services, it would include reasonable provisions in its policies and procedures to ensure the marketing and advertising materials provided to prospective depositors by that third party do not misrepresent the insurability of financial products. This includes, for example, policies related to training staff to review the marketing and advertising materials to evaluate whether such materials contain misrepresentations about deposit insurance.

Further, as appropriate to the potential risk, an IDI should consider policies and procedures related to steps that the IDI might take to mitigate its risk were the third party to misrepresent deposit insurance and therefore cause potential consumer confusion and harm about a product provided by the IDI.

The policies and procedures related to certain third parties would be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities. With regard to third party relationships, IDIs would be expected to focus on the relationships that pose a higher degree of risk to consumers. For example, there may be third parties that have long-standing, well-established, relationships with the IDI such that the third party has been offering products and services on the IDI's behalf for many years. Moreover, during this time, the third party has been appropriately representing deposit insurance. In other cases, the IDI may be involved in nascent relationships that are less established, and involve novel arrangements such that consumers may not fully appreciate how deposit insurance may or may not apply to the IDI products and services that are being offered. Assuming all other relevant factors are equal, it would be reasonable for an IDI to view the former relationship as lower risk vis-à-vis the latter, which would be considered higher risk. Accordingly, in this instance, it would be appropriate for an IDI to focus its policies and procedures on the higher-risk relationship, as the activities performed via that relationship pose a higher risk of deposit insurance misrepresentation and potential consumer harm.

It would also be prudent for policies and procedures to include ensuring that

[32] 12 U.S.C. 1828(a)(1).

third parties that provide marketing or joint marketing services, web and other electronic channel design, or similar services, are aware of the IDIs compliance policies under part 328.

Reservation of Authority

The proposed rule also provides that the FDIC would reserve the authority to take appropriate actions, including supervisory or enforcement actions, against any person that violates part 328. The existence of adequate policies and procedures would not preclude the FDIC from taking actions against IDIs or third parties to address violations.

Crypto-Assets

Among other things, part 328 currently prohibits any person from representing or implying that any Uninsured Financial Product is insured or guaranteed by the FDIC.[33] This prohibition applies to advertisements, publications, and other disseminations of information. The FDIC has recently noted a number of misrepresentations of insurance coverage and crypto-assets,[34] and believes that part 328 should be amended to make clear that representations concerning crypto-assets fall within its scope. Accordingly, the proposed rule would amend the definitions of ''Non-Deposit Product'' and ''Uninsured Financial Product'' in subpart B to include crypto-assets and define crypto-asset as ''any digital asset implemented using cryptographic techniques.'' This would include a digital asset that is a digital representation of value that functions as a medium of exchange, a unit of account, and, or a store of value; as well as a digital asset that has an equivalent value in and is convertible to real currency, or that acts as a substitute for real currency and is not legal tender.

The proposed rule also includes crypto-assets in subpart A's definition of ''non-deposit product,'' using the definition of ''crypto-asset'' described above. Accordingly, the non-deposit sign requirements proposed in subpart A would apply to crypto-assets. For example, if an IDI's ATM offered customers the ability to purchase crypto-assets, the ATM would be required to clearly, continuously, and conspicuously display disclosures indicating that the crypto-assets: are not insured by the FDIC; are not deposits; and may lose value.

Expected Effects

Costs

The costs of the proposed rule would be incurred by IDIs, as well as some non-bank entities that may need to update disclosures or marketing materials. This section addresses these two groups separately.

Costs to IDIs

According to data from recent Reports of Condition and Income (Call Reports), the FDIC insures the deposits of 4,780 IDIs operating approximately 80 thousand branches in the United States.[35] These IDIs are currently subject to the existing requirements of part 328, so the costs incurred by these IDIs by the proposed rule would be limited to activities to ensure compliance with the new provisions in the proposed rule and ameliorated by the extent to which IDIs are already complying with the new provisions. These activities include updating the display of FDIC signs in both physical and digital locations where deposits are normally received (including ATMs and websites), creating and maintaining signs for non-deposit products, segregating areas related to the sale of non-deposit products from areas where insured deposits are normally received, and ensuring that FDIC signs are not displayed in close proximity with non-deposit product signs.

Data on the costs of updating the displays of signs and segregating physical areas within bank premises are unavailable, but the FDIC expects these costs would depend on the number of branches operated by each IDI as well as the complexities of each IDI's branches. The FDIC expects that larger banks are more likely to have branches that are nontraditional, complex, and/or offer both deposit and non-deposit products. For purposes of the proposed rule, the FDIC estimates that IDIs with less than $10 billion in assets would spend approximately one hour per year to complete these activities at each branch while IDIs with at least $10 billion in total consolidated assets (assets) would spend approximately two hours per year per branch, for a total annual burden of approximately 120 thousand hours per year across all IDIs[36] at an annual cost of approximately $10 million.[37]

The costs of complying with the proposed rule's requirements for digital deposit-taking channels would also depend on the complexities of each IDI's digital deposit-taking operations. The FDIC expects that larger banks are more likely to have more complex digital operations or offer both deposit and non-deposit products through their digital deposit-taking operations. For purposes of the proposed rule, the FDIC estimates that, on average, IDIs would incur a one-time burden of sixty hours to update their digital operations to incorporate the requirements in the proposed rule, at an approximately cost of $23 million for the industry.[38] The FDIC also estimates that, in years subsequent to the enactment of the proposed rule, IDIs with less than $10 billion in assets would spend approximately ten additional hours per year to comply with the digital deposit-taking operation requirements of the proposed rule, while IDIs with at least $10 billion in assets would spend approximately twenty additional hours per year, at an annual cost of approximately $4 million for the industry.[39]

Finally, all IDIs must update their policies and procedures to comply with the proposed rule. These policies and procedures would include, as appropriate, provisions related to monitoring and evaluating whether certain third parties are in compliance with subpart B. The FDIC recognizes that the costs to implement and maintain these policies and procedures will vary across IDIs in ways that depend on the specifics of each IDI's operations or relationships with certain third parties. For purposes of the proposed rule, the FDIC estimates that, on average, IDIs would incur a one-time

[33] ''Uninsured Financial Product'' is currently defined to include non-deposit products, hybrid products, investments, securities, obligations, certificates, shares, or financial products other than insured deposits.

[34] *See* FDIC Press Release PR–60–2022, *FDIC Issues Cease and Desist Letters to Five Companies for Making Crypto-Related False or Misleading Representations About Deposit Insurance* (Aug. 19, 2022).

[35] Call Reports as of June 30, 2022.

[36] According to Call Reports as of June 30, 2022, there were 4,619 IDIs with assets less than $10 billion operating 33,895 branches and 161 IDIs with assets at least $10 billion operating 45,372 branches.

[37] Dollar costs for this analysis are based on a $81.12 total hourly cost of compensation, a weighted average of the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates (OEWS) across five occupational groups in the Depository Credit Intermediation sector, as of May 2021, and adjusted by 1.51 to include non-wage compensation and 1.08 to account for the change in the seasonally adjusted Employment Cost Index for the Credit Intermediation and Related Activities sector (NAICS Code 522) between March 2021 and June 2022. For this analysis, the FDIC uses the following estimated occupational burden weights and occupational hourly labor costs: 14.4 percent for executives and managers at $132.10 per hour, 4.3 percent for lawyers at $163.63 per hour, 36.5 percent for compliance officers at $63.78 per hour, 25.5 percent for IT professionals at $101.32 per hour, and 19.3 percent for clerical workers at $37.34 per hour.

[38] According to Call Reports as of June 30, 2022. $23 million = 4,780 IDIs × 60 hours per IDI × $81.12 per hour.

[39] According to Call Reports as of June 30, 2022. $4 million = 4,619 IDIs × 10 hours per IDI × $81.12 per hour + 161 IDIs × 20 hours per IDI × $81.12 per hour.

burden of eighty hours to update their policies and procedures to incorporate the requirements in the proposed rule, at an approximately cost of $31 million for the industry.[40] The FDIC also estimates that, in years subsequent to the enactment of the proposed rule, IDIs would spend, on average, approximately seventeen additional hours per year to ensure that their policies and procedures maintain compliance with the proposed rule,[41] at an annual cost of approximately $7 million for the industry.[42] Based on the preceding analysis, the FDIC expects that, if the proposed rule were to be adopted, the banking industry would incur approximately $64 million in the first year after adoption and approximately $21 million in each subsequent year to comply with the proposed amendments to part 328.

Costs to Non-Bank Entities

The FDIC does not have direct data on the number of non-bank entities that would be affected by the proposed rule. FDIC staff believe that the non-bank entities affected by the requirement would generally be classified in the following North American Industry Classification System (NAICS) industries: Miscellaneous Financial Investment Activities (NAICS Code 523999), Financial Transaction Processing, Reserve & Clearinghouse Activities (NAICS Code 522320), Computer System Design and Related Services (NAICS Code 5415), and Investment Advice (NAICS Code 523930). According to recent Census data, there were 144,556 firms in these NAICS industries in 2019, the most recent year for which such data is available.[43] However, not all of these firms enter into agreements with IDIs or otherwise engage in operations related to insured deposits; FDIC staff believe that the number of non-bank entities engaged in such operations would be considerably less than the number of IDIs. For purposes of the proposed rule, the FDIC estimates that the number of affected non-bank entities would be approximately one percent of firms in the NAICS industries listed above. Therefore, the FDIC estimates that approximately 1,500 non-bank entities would be affected by the proposed rule.

Nonbanks have been statutorily prohibited from falsely representing that uninsured financial products are FDIC-insured for many years. Thus, the proposed rule would not create a new prohibition on such misrepresentations, but would clarify the types of communications that can materially misrepresent deposit insurance coverage. The nonbank entities affected by the proposed rule may need to update their disclosures and marketing materials to ensure that they neither mis-use the FDIC's official sign or any FDIC-associated terms or images, nor omit or fail to clearly and conspicuously disclose material information that could lead to a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. For purposes of the proposed rule, the FDIC estimates that, on average, each nonbank entity would spend an additional thirty minutes per year to comply with the proposed amendments to subpart B., for a total cost of approximately $60 thousand per year across all nonbank entities affected by the rule.[44]

Benefits

Provided that affected entities are not already complying with certain aspects of the proposed rule, it would, if adopted, produce benefits for the banking industry as well as the general public by providing clarity, and requiring affected entities to provide such clarity, to consumers about the extent to which or the manner in which products are insured by the FDIC. This clarity would help consumers to more clearly understand when they are conducting business with IDIs and when their funds are protected by the FDIC's deposit insurance, thereby helping them avoid incurring financial losses as a result of investing in products they mistakenly thought were FDIC-insured. The proposed rule would reduce ambiguity about the nature of deposit insurance in situations where non-deposit products are offered by IDIs, where insured deposits are advertised by non-bank entities, or where both non-deposit products and deposit products are offered at the same premise. The proposed rule would also extend these benefits to digital deposit-taking channels where physical segregation is not possible. The proposed rule would also require the clear, conspicuous, and consistent use of the official FDIC sign and symbol in both physical and digital locations. These requirements would facilitate consumers' recognition of the FDIC's guarantee and reassure them of the nature of deposit insurance for those products. This effect will reinforce the role of FDIC deposit insurance and bolster confidence in the U.S. banking sector.

As discussed previously, the proposed rule would further clarify the FDIC's procedures for evaluating potential violations of section 18(a)(4). The proposed rule would generally be consistent with existing practices used by the FDIC with respect to these matters. Furthermore, the proposed rule, if adopted, would not affect the application of related criminal prohibitions under 18 U.S.C. 709. Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any significant effect on formal or informal enforcement of the section 18(a)(4) prohibitions.

By providing the clarity described above, the FDIC believes the proposed rule would curtail instances in which IDIs or non-bank entities potentially misuse or misrepresent the FDIC's name or logo.[45] When such an instance is made public,[46] the resulting public discourse may increase consumer uncertainty as to whether their own funds are protected by the FDIC's deposit insurance. Consumers' uncertainty as to the safety of their funds may weaken the confidence that underpins banks and our nation's broader financial system. The proposed rule would reduce the frequency of these types of instances going forward. The FDIC does not have the data to quantity the cost savings of this effect, but expects that the reduction in such instances would strengthen public confidence in the FDIC deposit insurance and the nation's banking system.

The FDIC invites comments on all aspects of this Expected Effects section. In particular, are there any effects of the proposed rule that have not been identified?

Alternatives Considered

The FDIC has considered a number of alternatives to the proposed rule that could meet its objectives in this rulemaking, including proposals

[40] According to Call Reports as of June 30, 2022. $31 million = 4,780 IDIs × 80 hours per IDI × $81.12 per hour.

[41] The FDIC estimates that twelve of the seventeen hours are recordkeeping costs under the Paperwork Reduction Act. The five remaining hours are regulatory costs of compliance that are not under the Paperwork Reduction Act.

[42] According to Call Reports as of June 30, 2022. $7 million = 4,780 IDIs × 17 hours per IDI × $81.12 per hour.

[43] (1,110 + 3,163 + 120,070 + 20,213 = 144,556) 2019 County Business Patterns. See number of firms *available at: https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html,* last retrieved on June 30, 2022.

[44] $7 million = 1,500 non-bank entities × 0.5 hours per IDI × $81.12 per hour.

[45] There have been at least 165 such instances recently—see FDIC 2019 Annual Report, p. 38 and FDIC 2020 Annual Report, p. 47.

[46] See, for example, a recent incident of a misrepresentation of FDIC deposit insurance status at *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20220728a1.pdf*.

suggested by commenters in response to the 2020 and 2021 RFIs. Some of these alternatives are described below. For the reasons described, the FDIC views the proposed rule as the most appropriate and effective means of achieving its policy objectives with respect to part 328.

Alternatives to Digital Official Sign for Digital Deposit-Taking Channels

With respect to digital deposit-taking channels, the FDIC considered alternatives to the digital official sign required by the proposed rule, including plain text signage and disclosure requirements.[47] As discussed above, the proposed digital sign is intended to quickly and visually convey to consumers that they are dealing directly with an IDI rather than a non-bank entity. This distinction is critical to understanding the risks a consumer faces, and the FDIC believes that it warrants a requirement for consistent visual signage. Plain text signage or disclosures would not achieve this objective as effectively.

Official Advertising Statement Requirements—Allow ''One-Click-Away'' Disclosures

Some commenters recommended that the FDIC adopt a ''one click away'' approach for electronic or digital advertisements (where the advertising statement may not be immediately visible to consumers but could be reached through one mouse click) in order to permit greater flexibility in advertising formats.[48] The FDIC believes that the proposed rule better meets its objectives, as a ''one click away'' approach places the burden on consumers to obtain the necessary information and makes it less likely that they will do so. In addition, the advertising statement options available to IDIs under the proposed rule allow significant flexibility in advertising formats, as IDIs could use short titles including ''Member of FDIC,'' ''Member FDIC,'' or ''FDIC-insured.'' The FDIC believes that these options would be sufficient to permit advertising flexibility.

[47] *See e.g.,* Hancock Whitney Bank Comment Letter to 2021 RFI (May 24, 2021); Kasasa Comment Letter to 2020 RFI (March 24, 2020) (stating that the official sign should not be required on an IDI's website or mobile applications but suggests requiring, at minimum, the FDIC advertising statement on certain pages).

[48] *See* Hancock Whitney Bank Comment Letter to 2021 RFI (May 24, 2021); American Bankers Association and Bank Policy Institute joint comment letter to 2021 RFI (May 21, 2021); Kasasa Comment Letter to 2020 RFI (March 24, 2020).

Administrative Law Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[49] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $750 million.[50] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

As described in the Expected Effects section, the proposed rule is expected to affect all institutions whose deposits are insured by the FDIC, as well as non-bank entities who may potentially use the official FDIC sign, advertising statements, or otherwise make representations that their products are insured or guaranteed by the FDIC. According to recent Call Reports, there are 4,780 FDIC-insured IDIs.[51] Of these, approximately 3,394 would be considered small entities for the purposes of RFA.[52] These small IDIs operate approximately 13 thousand deposit-taking offices. The number of deposit-taking offices for each IDI range from 1 to 21. As discussed in the Expected Effects section, the FDIC expects affected IDIs with less than $10 billion in assets, which are likely to have less complex deposit-taking operations and fewer offices than larger IDIs, would spend, on average, 60 hours to update their digital operations, 80 hours to implement policies and procedures, and seven hours to update physical signage at branches in the first year. At average labor costs of $81.12 per hour, the expected first-year costs of complying with the proposed rule would average less than a percent of the small IDIs' total annual salaries and benefits. These expected first-year costs would exceed five percent of the total annual salaries and benefits for only 20 small IDIs (comprising less than one percent of the total number of affected small IDIs). For subsequent years, the costs of maintaining compliance are even smaller. Thus, the proposed rule would not significantly affect a substantial numbers of small IDIs.

[49] 5 U.S.C. 601 *et seq.*

[50] The SBA defines a small banking organization as having $750 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 87 FR 18627, effective May 2, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[51] FDIC Call Reports, June 30, 2020.

[52] *Id.*

As described in the Expected Effects section, the FDIC estimates that 1,500 non-bank entities would be affected by this proposed rule. The FDIC does not have data on the number of non-bank entities that would be considered small entities for the purposes of RFA. As a conservative estimate, the FDIC assumes all 1,500 affected non-bank entities are small. As discussed in the Expected Effects section, the FDIC estimates that each non-bank entity would incur an additional 30 minutes per year to comply with the proposed amendments to subpart B. At an estimated compensation rate of $81.12, the expected costs of complying with the proposed rule would be less than $100 per year per non-bank small entity.

The proposed rule may also affect private individuals who may potentially misuse the FDIC name or logo or may potentially misrepresent the nature of deposit insurance. Private individuals are not considered ''small entities'' under the RFA.

Given that the expected costs of the proposed rule would be relatively small, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the PRA.[53] The information collection requirements (IC) contained in this notice of proposed rulemaking have been submitted to OMB for review and approval by FDIC under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320) as a new information collection.

Title of Proposed Information Collection: Disclosure, Recordkeeping and Reporting Requirements Related to FDIC's Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.

OMB Control Number: 3064–[NEW].

Affected Public: Businesses or other for-profit.

Respondents: Any FDIC-insured depository institution and persons that provide deposit-related services to insured depository institutions or offer insured depository institution's deposit-related products or services to other parties.

Estimated Annual Burden:

The proposed rule contains the following ten (10) information collection requirements:

1. *Signs within Institution Premises—Banks <$10B, 12 CFR 328.3 (Third-Party Disclosure; Mandatory).* Proposed § 328.3 would impose PRA third-party disclosure burden governing signage within the premises of insured depository institutions. This burden is associated with the display of signage for non-deposit products, segregating areas offering non-deposit products, and the use of electronic media. The FDIC believes the hourly burden for these activities differ among respondents. For purposes of PRA, the FDIC would split the burden into two information collection categories: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the former group.

2. *Signs within Institution Premises—Banks >$10B, 12 CFR 328.3 (Third-Party Disclosure; Mandatory).* Proposed § 328.3 would impose PRA third-party disclosure burden governing signage within the premises of insured depository institutions. This burden is associated with the display of signage for non-deposit products, segregating areas offering non-deposit products, and the use of electronic media. The FDIC believes the hourly burden for these activities differ among respondents. For purposes of PRA, the FDIC would split the burden into two ICs: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the latter group.

3. *Signage for ATMs and Digital Deposit-taking Channels—Implementation, 12 CFR 328.4 and 328.5 (Third-Party Disclosure; Mandatory).* Proposed §§ 328.4 and 328.5 would impose PRA third-party disclosure burden governing signs for ATMs as well as digital deposit-taking channels. This burden is associated with the display of signage for both deposit and non-deposit products. The FDIC believes banks will incur burdens in the first year to update their digital channels to incorporate the amended requirements in the proposed rule. This IC captures the burden for these implementation activities.

4. *Signage for ATMs and Digital Deposit-taking Channels—Banks <$10B–Ongoing, 12 CFR 328.4 and 328.5 (Third-Party Disclosure; Mandatory).* Proposed §§ 328.4 and 328.5 would impose PRA third-party disclosure burden governing signs for ATMs as well as digital deposit-taking channels. This burden is associated with the display of signage for deposit and non-deposit products. The FDIC believes that, in years subsequent to implementation, banks would incur ongoing burdens to update and maintain their digital channels to ensure continual compliance with the requirements in the proposed rule. For purposes of PRA, the FDIC would split this ongoing burden into two ICs: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the former group.

5. *Signage for ATMs and Digital Deposit-taking Channels—Banks ≥$10B–Ongoing, 12 CFR 328.4 and 328.5 (Third-Party Disclosure; Mandatory).* Proposed §§ 328.4 and 328.5 would impose PRA third-party disclosure burden governing signs for ATMs as well as digital deposit-taking channels. This burden is associated with the display of signage for deposit and non-deposit products. The FDIC believes that, in years subsequent to implementation, banks would incur ongoing burdens to update and maintain their digital channels to ensure continual compliance with the requirements in the proposed rule. For purposes of PRA, the FDIC would split the burden into two ICs: one for banks with less than $10 billion in total consolidated assets (assets) and one for banks with at least $10 billion in assets. This IC captures the burden for the latter group.

6. *Policies and Procedures—Implementation, 12 CFR 328.8 (Recordkeeping; Mandatory).* Proposed § 328.8 would require IDIs to establish and maintain written policies and procedures to achieve compliance with part 328 including provisions related to monitor and evaluate the activities of persons that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering (1) implementation burdens incurred in the first year in which the policies and procedures are implemented and (2) ongoing burden incurred every subsequent year to maintain compliance. This IC captures the implementation burden.

7. *Policies and Procedures—Ongoing, 12 CFR 328.8 (Recordkeeping; Mandatory).* Proposed § 328.8 would require IDIs to establish and maintain written policies and procedures to achieve compliance with part 328 including provisions related to monitoring and evaluating the activities of persons that provide deposit-related services to the Insured Depository Institution or offer the Insured Depository Institution's deposit-related products or services to other parties. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering (1) implementation burdens incurred in the first year in which the policies and procedures are implemented and (2) ongoing burden incurred every subsequent year to maintain compliance. This IC captures the ongoing burden.

8. *Insured Depository Institution Relationships—Implementation 12 CFR 328.102(b)(5) (Third-Party Disclosure; Mandatory).* Proposed § 328.102(b)(5) would require covered non-bank entities to ensure that their public statements regarding deposit insurance comply with the requirements in part 328. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering (1) implementation burdens incurred in the first year in which the public statements are amended and (2) ongoing burden incurred every subsequent year to ensure continual compliance. This IC captures the implementation burden.

9. *Insured Depository Institution Relationships—Ongoing 12 CFR*

[53] Information collection is defined under OMB's regulations at 5 CFR 1320(c). Certain requirements in part 328 for public disclosure of the FDIC name and/or logo are not information collections. *See* 5 CFR 1320(c)(2).

328.102(b)(5) (Third-Party Disclosure; Mandatory). Proposed § 328.102(b)(5) would require covered non-bank entities to ensure that their public statements regarding deposit insurance comply with the requirements in part 328. The FDIC believes the hourly burden for these activities can be categorized into two distinct ICs covering (1) implementation burdens incurred in the first year in which the public statements are amended and (2) ongoing burden incurred every subsequent year to ensure continual compliance. This IC captures the ongoing burden.

10. *Request for Consent to Use Non-English Language Advertising Statement—12 CFR 328.3(f), proposed 12 CFR 328.6(f) (Reporting; Required to Obtain or Retain a Benefit).* Existing § 328.3(f), which the proposed rule moves to § 328.6(f), requires IDIs to obtain prior written approval of the FDIC before using a non-English equivalent of the official FDIC advertising statement in an advertisement.

Methodology and Assumptions

Estimated Annual Number of Respondents

ICs 1–7 and IC 10 capture PRA burdens incurred by insured depository institutions (IDIs). According to recent Reports of Condition and Income (Call Reports), the FDIC supervised approximately 4,780 insured depository institutions (FDIC-supervised IDIs).[54] These include 161 IDIs with assets at least $10 billion and 4,619 IDIs entities with assets less than $10 billion. Of these, 3,394 IDIs are considered small entities for purposes of the Regulatory Flexibility Act.[55]

IC 1 captures PRA burdens incurred by all IDIs with less than $10 billion in assets, and IC 2 captures PRA burdens incurred by all IDIs with at least $10 billion in assets. Using the Call Report data summarized above, FDIC estimates 4,169 annual respondents for IC 1 and 161 annual respondents for IC 2.

ICs 3 and 6 capture implementation burdens incurred by all 4,780 IDIs. Implementation burdens are incurred in the first year after the proposed rule would become effective. Given that this information collection request (ICR) covers PRA burdens over three years, FDIC annualize the counts of respondents by dividing the total number of respondents by three. Thus, FDIC estimates 1,593 annual respondents for ICs 3 and 6.

ICs 4, 5, and 7 capture the ongoing PRA burdens incurred by the 4,169 IDIs with less than $10 billion in assets, the 161 IDIs with at least $10 billion in assets, and all 4,780 IDIs, respectively. Ongoing burdens are incurred in two of the three years after the proposed rule would become effective. FDIC annualizes the counts of respondents accordingly. Thus, FDIC estimates 3,080 annual respondents for IC 4, 107 annual respondents for IC 5 and 3,187 annual respondents for IC 7.

ICs 8 and 9 capture PRA requirements incurred by non-bank entities. The FDIC does not have direct data on the number of non-bank entities that would be subject to part 328. FDIC assumes that the affected non-bank entities would generally be classified in the following North American Industry Classification System (NAICS) industries: Miscellaneous Financial Investment Activities (NAICS Code 523999), Financial Transaction Processing, Reserve & Clearinghouse Activities (NAICS Code 522320), Computer System Design and Related Services (NAICS Code 5415), and Investment Advice (NAICS Code 523930). According to recent Census data, there were 144,556 firms in these NAICS industries in 2019, the most recent year for which such data is available.[56] However, not all of these firms enter into agreements with IDIs or otherwise engage in operations related to insured deposits; FDIC assumes that the number of non-bank entities engaged in such operations would be considerably less than the number of IDIs. For purposes of this estimation, the FDIC assumes that the number of covered non-bank entities would be approximately one percent of firms in the NAICS industries listed above. Therefore, FDIC estimates that approximately 1,500 non-bank entities would incur burdens associated with part 328. ICs 8 and 9 are implementation and ongoing burdens, respectively. FDIC annualizes the count of respondents accordingly. Thus, FDIC estimates 500 annual respondents for IC 8 and 1,000 annual respondents for IC 9.

IC 10 captures PRA requirements incurred by IDIs that submit requests to the FDIC for the use of a non-English equivalent of the official FDIC advertising statement. The FDIC does not have data on the historical annual number of such requests submitted. However, the FDIC has not handled such a request since at least January 1, 2021 and believes it is unlikely that such a request from an IDI would be received within the next three years. Since OMB's system of record for PRA burdens does not allow non-positive respondent counts, FDIC uses an annual respondent of one for IC 10 to preserve the estimated burden calculations.

Estimated Annual Number of Responses per Respondent

ICs 1 and 2 capture the activities that respondents undertake at each of their branches to comply with the PRA requirements in 12 CFR 328.3. For purposes of this ICR, FDIC designates the activities at a single branch as a single response by the respondent. According to recent Call Reports, IDIs with assets less than $10 billion operate approximately 7 branches each, on average, while IDIs with assets of at least $10 billion have approximately 282 branches each, on average.[57] Accordingly, FDIC estimates 7 responses per year for IC 1 and 282 responses per year for IC 2.

For ICs 3–10, the activities that respondents undergo throughout the year to comply with the PRA requirements in each IC can all be considered part of a single annual response to that IC. Therefore, FDIC uses one as the number of annual responses per respondent for these ICs.

Estimated Burden Hours per Response

ICs 1 and 2 capture the third-party disclosure burden of ensuring that signage within the premises of insured depository institutions comply with part 328. Data on this burden are unavailable. The FDIC assumes that larger banks are more likely to have branches that are nontraditional, complex, and/or offer both deposit and non-deposit products. While smaller IDIs are more likely to operate simple branches that offer only deposit products and may not require extensive revisions of signage, those that do may require updates to their designated areas. For purposes of this ICR, FDIC

[54] *See* FDIC Call Reports, June 30, 2022.

[55] The SBA defines a small banking organization as having $750 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 87 FR 18627, effective May 2, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses an IDI's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the IDI is ''small'' for the purposes of RFA.

[56] (1,110 + 3,163 + 120,070 + 20,213 = 144,556) 2019 County Business Patterns. See number of firms at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html,* last retrieved on June 30, 2022.

[57] According to Call Reports as of June 30, 2022, there were 4,619 banks with assets less than $10 billion operating 33,895 branches and 161 IDIs with assets at least $10 billion operating 45,372 branches.

estimates the burden would be approximately one hour per branch, on average, for institutions with less than $10 billion in assets and approximately two hours per branch, on average, for institutions with at least $10 billion in assets. Accordingly, FDIC estimates burdens as one hour per response for IC 1 and two hours per response for IC 2.

ICs 3, 4, and 5 capture the third-party disclosure burden of ensuring that signs for ATMs and digital deposit-taking channels with part 328. Data on this burden are unavailable. The FDIC assumes that larger banks are more likely to have more complex digital operations or offer both deposit and non-deposit products through their digital deposit-taking operations. However, these larger banks may also have permanent IT teams in place that could facilitate and/or reduce the hourly burden of these changes. Conversely, for smaller banks relying on third-party web service providers, many may be seeking compliance through the same channel as others, which could create a backlog of work on the third party web service providers, making it so other small banks experience a delay in compliance timelines. For purposes of this ICR, FDIC assumes that each IDI will spend 60 hours, on average, in the first year to implement the changes to its ATM and digital deposit-taking channels to comply with part 328. In subsequent years, IDIs with less than $10 billion in assets would spend approximately 10 additional hours per year, on average, to maintain ongoing compliance, while IDIs with at least $10 billion in assets would spend approximately 20 additional hours per year, on average, to maintain ongoing compliance. As such, FDIC estimates burdens as 60 hours per response for IC 3, 10 hours per response for IC 4, and 20 hours per response for IC 5.

ICs 6 and 7 capture the recordkeeping burden of ensuring that the IDIs' policies and procedures comply with part 328. FDIC assumes the recordkeeping burden imposed relates to documenting the development of policies and procedures by compliance officers and senior management that would be appropriate to the institution's risk profile. This program would then be reviewed, revised, and then approved by the board of directors or other executives at the institution. In addition, part 238 requires that IDIs monitor and evaluate certain third parties to ensure that these third parties are also in compliance with part 328. Additional recordkeeping burden would be incurred in documenting the results of such monitoring activities. Data on the hourly burden of these activities are unavailable. For purposes of this ICR, the FDIC assumes that each IDI, on average, would spend approximately 80 hours in the first year to establish and/or implement policies and approximately 12 hours in each subsequent year to revise and update these documents. FDIC estimates burdens as 80 hours per response for IC 6 and 12 hours per response for IC 7.

ICs 8 and 9 capture the burden of ensuring that covered non-bank entities' third-party disclosures comply with part 328. Data on this burden are unavailable. The FDIC assumes each covered non-bank entity, on average, would spend approximately two and one-half hours in the first year to implement these procedures and approximately one hour in each subsequent year to revise and maintain ongoing compliance. FDIC estimates burdens as 2.5 hours per response for IC 8 and 1 hour per response for IC 9.[58]

IC 10 captures the reporting burden incurred when an IDI requests approval from the FDIC to use the non-English equivalent of the official advertising statement in any of its advertisements. The FDIC believes that an IDI would spend approximately two hours per year, on average, to prepare and submit such requests.

Estimated Annual Burden Summary

The estimated PRA burdens for the proposed rule are summarized in the *Summary of Estimated Annual Burden* table below. For each IC, the burden table lists the estimated annual number of responses per respondent and estimated time per response, as described in the sections above. Note that the counts of annual respondents for ICs 3–9 have been annualized to reflect a three year PRA cycle in which respondents incur implementation costs in the first year and ongoing costs in the second and third years.

SUMMARY OF ESTIMATED ANNUAL BURDEN

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (Hours)
1. Signs within Institution Premises—Banks <$10B, 12 CFR 328.3 (Mandatory).	Third-Party Disclosure (Annual).	4619	7	1:00	32,333
2. Signs within Institution Premises—Banks ≥$10B, 12 CFR 328.3 (Mandatory).	Third-Party Disclosure (Annual).	161	282	2:00	90,804
3. Signage for ATMs and Digital Deposit-taking Channels—Implementation, 12 CFR 328.4 and 328.5 (Mandatory).	Third-Party Disclosure (Annual).	1593	1	60:00	95,580
4. Signage for ATMs and Digital Deposit-taking Channels—Banks <$10B–Ongoing, 12 CFR 328.4 and 328.5 (Mandatory).	Third-Party Disclosure (Annual).	3080	1	10:00	30,800
5. Signage for ATMs and Digital Deposit-taking Channels—Banks ≥$10B–Ongoing, 12 CFR 328.4 and 328.5 (Mandatory).	Third-Party Disclosure (Annual).	107	1	20:00	2,140
6. Policies and Procedures—Implementation, 12 CFR 328.8 (Mandatory).	Recordkeeping (Annual).	1593	1	80:00	127,440
7. Policies and Procedures—Ongoing, 12 CFR 328.8 (Mandatory).	Recordkeeping (Annual).	3187	1	12:00	38,244

[58] Note that these hourly burden estimates are higher than the corresponding estimates in the notice and request for comment published in the **Federal Register** on September 8, 2022. The increase reflects the additional requirements in the proposed rule's amendments to 12 CFR 328.102(b)(5).

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (Hours)
8. Insured Depository Institution Relationships—Implementation 12 CFR 328.102(b)(5) (Mandatory).	Third-Party Disclosure (Annual).	500	1	2:30	1,250
9. Insured Depository Institution Relationships—Ongoing 12 CFR 328.102(b)(5) (Mandatory).	Third-Party Disclosure (Annual).	1000	1	1:00	1,000
10. Request for Consent to Use Non-English Language Advertising Statement—existing 12 CFR 328.3(f), proposed 12 CFR 328.6(f) (Required to Obtain or Retain a Benefit).	Reporting (On occasion).	1	1	2:00	2
Total Annual Burden (Hours)					*419,593*

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

Comments are invited on:

• Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• The accuracy of the agency's estimate of the burden of the collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected;

• Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

• Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

• Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?

• Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?

• Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

Request for Comment

The FDIC invites comment on all aspects of this proposed rulemaking. In particular, the FDIC seeks feedback on the scope of the proposed rule and its requirements, and responses to the following specific questions:

Physical Signage

(1) Are there any aspects of the proposed rule's on-premises signage requirements that would be challenging to satisfy in a non-traditional footprint branch? How could the proposed rule be modified to better accommodate signage needs in such branches while also satisfying the FDIC's objectives?

(2) With respect to the proposed rule's non-deposit signage requirements, are there better alternative methods by which IDIs might help consumers distinguish insured deposits from non-deposit products?

(3) Would it be beneficial to consumers to standardize the design of the proposed rule's non-deposit signage? If a standard design were required, which design elements would minimize any potential challenges associated with integrating it into an IDI's other non-deposit product marketing materials?

Digital Channels

(4) Are there any particular aspects of a potential design or the placement of the digital sign that might improve its presentation or readability for consumers, or minimize the any potential technical challenges of introducing this sign into digital interfaces?

(5) Would it be beneficial to consumers to require the digital sign on other pages in addition to the homepage, application, landing, login, and transactional pages of an IDI's digital channels, including websites and mobile applications?

(6) Should the proposed rule require, rather than permit, IDIs to link the digital sign to the FDIC BankFind tool? Would IDIs face any unique technological challenges in complying with such a requirement?

(7) Does the proposed rule sufficiently address the risk of confusion where

consumers interact with deposits and non-deposit products through the same digital channels? Are there any additional or alternative requirements that would draw a clear distinction between deposits and non-deposit products on digital channels?

ATMs and Similar Devices

(8) Does the proposed rule's requirement to display the digital version of the FDIC official sign on ATMs and similar devices present technical challenges? If so, are there ways to address those challenges while still displaying clear signage on deposit insurance coverage for consumers?

(9) Do the proposed rule's disclosure requirements for ATMs and similar devices sufficiently differentiate between deposits and non-deposit products? If not, please suggest better alternative methods.

(10) Given potential requirements for signs in physical branches, ATMs, and digital channels, how long would it take to revise systems and process for the purposes of complying with a rule; what should the compliance date(s) for the rule be?

IDI Policies and Procedures

(11) With respect to the proposed requirement for IDI's to establish policies and procedures to comply with part 328, are there additional, or more specific, criteria that institutions should consider as part of its policies and procedures?

Official Advertising Statement

(12) In addition to ''FDIC-insured'', are there other options for the short advertising statement that the proposed rule should allow?

Misrepresentations and Material Omissions

(13) Are there additional practices or scenarios that the FDIC should clarify as being misrepresentations of deposit insurance?

Non-Deposit Products

(14) Is the proposed definition of crypto-asset in subparts A and B appropriate?

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 328 as follows:

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

■ 1. The authority citation for part 328 continues to read as follows:

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

■ 2. Revise subpart A to read as follows:

Subpart A—Advertisement of Membership

§ 328.0 Purpose.

Subpart A of this part describes the official sign and advertising statement and prescribes their use by insured depository institutions, as well as other signs to prevent customer confusion in the event non-deposit products are offered by an insured depository institution. Subpart A applies to insured depository institutions, including insured branches of foreign banks, but does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

§ 328.1 Definitions.

Branch has the same meaning as the term ''domestic branch'' as set forth under section 3(*o*) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*o*).

Corporation means the Federal Deposit Insurance Corporation.

Crypto-asset means any digital asset implemented using cryptographic techniques.

Deposit has the same meaning as set forth under section 3(*l*) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(*l*).

Digital deposit-taking channel means any electronic communications method through which an insured depository institution accepts deposits.

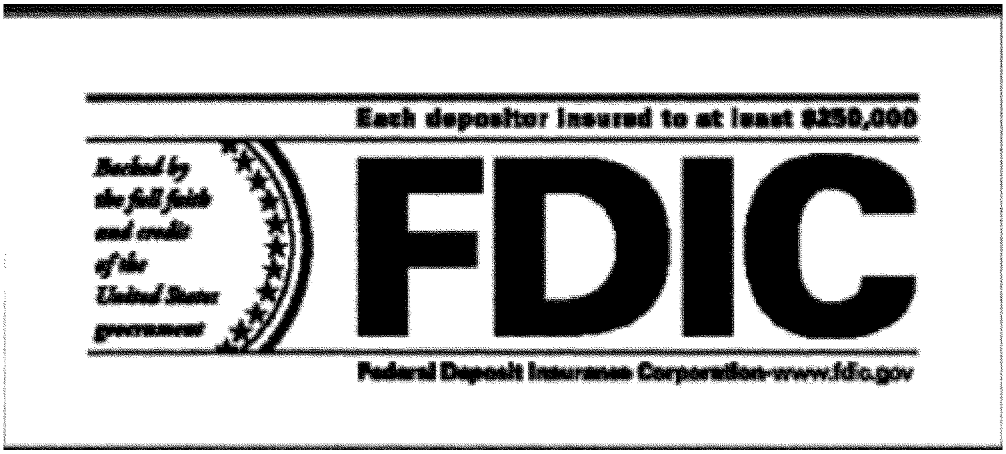
Hybrid product means a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

Insured depository institution has the same meaning as set forth under section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2).

Non-deposit product means any product that is not a ''deposit'', including, but not limited to: stocks, bonds, government and municipal securities, mutual funds, annuities (fixed and variable), life insurance policies (whole and variable), savings bonds, and crypto-assets. For purposes of this definition, a credit product is not a non-deposit product.

§ 328.2 Official sign.

(a) *Design.* The official sign has the following design:



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

(c) *Procuring signage.* 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 website, *https://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 subpart by failing to display the official sign, unless the insured depository institution fails to display the official sign after receipt thereof.

(d) *Required changes in signage.* 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.

§ 328.3 Signs within institution premises and offering of non-deposit products within institution premises.

(a) *Scope.* This section governs signage within the premises of insured depository institutions and the offering of non-deposit products within the premises of insured depository institutions.

(b) *Display of official sign.* Insured depository institutions must continuously, clearly, and conspicuously display the official sign in its principal place of business and all of its branches (except branches excluded from the scope of this subpart under § 328.0) in the manner described in this paragraph (b).

(1) *Deposits received at teller windows or stations.* If deposits are usually and normally received at teller windows or stations, the insured depository institution must display the official sign:

(i) At each teller window or station where deposits are usually and normally received, in a size of 7″ by 3″ or larger with black lettering on a gold background; or

(ii) If the insured depository institution does not offer non-deposit products on the premises, at one or more locations visible from the teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area.

(2) *Deposits received in areas other than teller windows or stations.* If insured deposits are usually and normally received in areas of the premises other than teller windows or stations, the insured depository institution must display the official sign in one or more locations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in those areas.

(3) *Other locations within the premises.* An insured depository institution may display the official sign in locations at the institution other than those required by this section, except for areas where non-deposit products are offered.

(4) *Varied signs.* 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 paragraph. However, any such varied sign that is displayed in locations where display of the official sign is required must not be smaller in size than the official sign, must have the same color for the text and graphics, and includes the same content.

(5) *Newly insured institutions.* An insured depository institution shall display the official sign as described in this section no later than its twenty-first calendar 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.

(a) *Non-deposit products offered on IDI premises*—(1) *Segregated areas.* If non-deposit products are offered within the premises, those products must be physically segregated from areas where insured deposits are usually and normally accepted. The institution must identify areas where activities related to the sale of non-deposit investment products occur and clearly delineate and distinguish those areas from the areas where insured deposit-taking activities occur.

(2) *Non-deposit signage.* At each location within the premises where non-deposit products are offered, an insured depository institution must continuously, clearly, and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits and may lose value. Such signage may not be displayed in close proximity to the official sign.

(d) *Electronic media.* Insured depository institutions may use electronic media to display the official sign and non-deposit sign required by this section.

§ 328.4 Signage for automated teller machines and like devices.

(a) *Scope.* This section governs signage for IDI's automated teller machines or other remote electronic facilities that receive deposits.

(b) *Display of official sign.* An IDI's automated teller machine or like device that receives deposits for an insured depository institution must clearly, continuously, and conspicuously display a digital version of the official sign on its home page or screen and on each transaction page or screen relating to deposits.

(c) *Non-deposit signage.* If an IDI's automated teller machine or like device receives deposits for an insured depository institution and offers access to non-deposit products, the machine must clearly, continuously, and conspicuously display electronic disclosures indicating that such non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. These disclosures must be displayed on each transaction page or screen relating to non-deposit products.

§ 328.5 Signs for digital deposit-taking channels.

(a) *Scope.* This section governs signage for digital deposit-taking channels, including insured depository institutions' websites and web-based or mobile applications that offer the ability to make deposits electronically and access to deposits at insured depository institutions.

(b) *Design.* The digital sign required by the provisions of this section has the following design: [Image of sign for digital deposit-taking channels that FDIC expects would prominently bear the name of the FDIC and the statement that insured deposits are backed by the full faith and credit of the U.S. Government TBD]

(c) *Display of digital sign.* An insured depository institution must clearly, continuously and conspicuously display the digital sign specified in paragraph (b) of this section on its digital deposit taking channels in the following pages or screens:

(1) The initial or homepage of the website or application;

(2) Landing or login pages; and

(3) Pages where the customer may transact with deposits.

(4) A digital sign continuously displayed near the top of the relevant page or screen in close proximity to the IDI's name would be considered clear and conspicuous.

(d) *Non-deposit signage.* If a digital deposit-taking channel offers both access to deposits at an insured depository institution and non-deposit products, the insured depository institution must clearly and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits and may lose value. This signage must be displayed:

(1) Via a one-time notification that is dismissed by an action of the user, when the page is initially accessed; and

(2) Continuously on each page relating to non-deposit products. This non-deposit signage may not be displayed in close proximity to the digital sign required by paragraph (c) of this section.

§ 328.6 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,'' ''Member FDIC,'' ''FDIC-insured,'' or a reproduction of the symbol of the Corporation (as described in § 328.2(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 paragraph (d) of this section, each insured depository institution shall include the official advertising statement prescribed in paragraph (b) of this section 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 section, 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 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 depository 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 the standard maximum deposit insurance amount (as defined in § 330.1(o)) for each depositor.

(e) *Restrictions on using the official advertising statement when advertising non-deposit products*—(1) *Non-deposit product advertisements.* Except as provided in paragraph (e)(3) of this section, 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.

(2) *Hybrid product advertisements.* Except as provided in paragraph (e)(3) of this section, 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.

(3) *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 has had the prior written approval of the Corporation.

§ 328.7 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 section does not apply to deposits received at an automated teller machine or other remote electronic facility that receives deposits for an insured depository institution, or to deposits facilitated through a digital deposit-taking channel.

§ 328.8 Policies and Procedures.

(a) *Policies and Procedures.* An Insured Depository Institution must establish and maintain written policies and procedures to achieve compliance with this part. Such policies and procedures must be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the Insured Depository Institution and must include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the Insured Depository Institution or offer the Insured Depository Institution's deposit-related products or services to other parties.

(b) *Reservation of authority.* Nothing in this section shall be construed to limit the FDIC's authority to address violations of this part, the FDIC's authority to interpret the rules in this part, or any other authority the FDIC has pursuant to any other laws or regulations.

■ 3. Amend § 328.101 by adding the definitions for ''Crypto-asset'' and ''Deposit'' in alphabetical order, and revising the definitions for ''FDIC-Associated Images'', ''Hybrid Product'', ''Non-Deposit Product'', and ''Uninsured Financial Product'' to read as follows:

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

§ 328.101 Definitions.

* * * * *

Crypto-asset means any digital asset implemented using cryptographic techniques.

Deposit has the same meaning as set forth under section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l).

* * * * *

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 § 328.2; the digital sign set forth in § 328.5; the Official Advertising Statement, as set forth in § 328.6; 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.

* * * * *

Hybrid Product has the same meaning as set forth under § 328.1.

* * * * *

Non-Deposit Product means any product that is not a ''deposit'', including, but not limited to: stocks, bonds, government and municipal securities, mutual funds, annuities (fixed and variable), life insurance policies (whole and variable), savings bonds, and crypto-assets. For purposes of this definition, a credit product is not a non-deposit product.

* * * * *

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

■ 4. Amend § 328.102 by adding paragraph (a)(3)(viii) and revising paragraphs (b)(3)(ii), (b)(4)(i), (b)(5), and (b)(6)(ii) to read as follows:

§ 328.102 Prohibition.

(a) * * *

(3) * * *

(viii) Use of FDIC-Associated Terms or FDIC-Associated Images, in a manner that inaccurately states or implies that a person other than an Insured Depository Institution is insured by the FDIC.

(b) * * *

(3) * * *

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

(4) * * *

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

* * * * *

(5) Without limitation, a statement regarding deposit insurance will be deemed to omit or fail to clearly and conspicuously disclose 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. Examples of such material information include, but are not limited to, the following:

(i) A statement made by a person other than an Insured Depository Institution that represents or implies that an advertised product is insured by the FDIC that fails 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;

(ii) A statement made by a person that is not an insured depository institution regarding deposit insurance that fails to clearly and conspicuously disclose that the person is not an FDIC-insured depository institution and that FDIC insurance only covers the failure of the FDIC-insured depository institution. A statement that a person is not an FDIC-insured bank and deposit insurance covers the failure of an insured bank would be considered a clear statement for purposes of this provision.

(iii) A statement made by a person regarding deposit insurance in a context where deposits and non-deposit products are involved that fails to clearly and conspicuously differentiate between Insured Deposits and Non-Deposit Products by disclosing that Non-Deposit Products: are not insured by the FDIC; are not deposits; and may lose value.

(iv) A statement made by a person regarding pass-through deposit insurance coverage that fails to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply.

(6) * * *

(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 Bureau of Consumer Financial Protection, the U.S. Department of Justice, or a state bank supervisor, that such representations are false or misleading; and

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 13, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–27349 Filed 12–20–22; 8:45 am]

BILLING CODE 6714–01–P

CONSUMER PRODUCT SAFETY COMMISSION

14 CFR Part 1421

[Docket No. CPSC–2021–0014]

Notice of Availability and Request for Comment: "Study of Debris Penetration of Recreational Off-Highway Vehicle (ROV) Proof-of-Concept (POC) Floorboard Guards"

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is announcing the availability of, and seeking comment on, a report from SEA, Ltd. (SEA), ''Study of Debris Penetration of Recreational Off-Highway Vehicle (ROV) Proof-of-Concept (POC) Floorboard Guards'' (SEA Technical Report). This report is related to CPSC's notice of proposed rulemaking (NPR) regarding off-highway vehicle debris penetration hazards. CPSC contracted with SEA to perform debris penetration tests on POC floorboard guards per the test methods described in the NPR. The SEA Technical Report also evaluates an alternative test method for debris penetration that is proposed in two draft voluntary standards. The SEA testing evaluates the effectiveness of the test methods in addressing the debris penetration hazard and the feasibility of the proposed requirements in the NPR.

DATES: Comments must be received by January 20, 2023.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2021–0014, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/hand delivery/courier/confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to *www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2021–0014, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Han Lim, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2327; email: *hlim@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC is engaged in a rulemaking to address debris penetration hazards associated with ROVs and Utility Task/Terrain Vehicles (UTVs). On July 21, 2022, the Commission published in the **Federal Register** an NPR regarding a Safety Standard for Debris Penetration Hazards, 87 FR 43688.

The NPR proposed test methods to address debris penetration hazards associated with ROVs and UTVs. The Outdoor Power Equipment Institute (OPEI) and Recreational Off-Highway Vehicle Association (ROHVA), two industry groups that represent ROV and UTV manufacturers in the United States, have proposed a different debris penetration test method in two draft voluntary standards.[1] These two draft standards, ANSI/OPEI B71.9–202x and ANSI/ROHVA–1–202x, include a drop test with an impact energy of 355 joules (the ''355 J drop test'') that OPEI and ROHVA assert will address the debris penetration hazard.[2] OPEI and ROHVA proposed this test method as an alternative to the NPR test methods. OPEI and ROHVA assert that the energy level used in the 355 J drop test method is based on the OPEI and ROHVA members' warranty claim and incident data.

CPSC contracted with SEA to perform debris penetration tests on POC floorboard guards per the test methods described in the NPR and the 355 J drop test method in the two draft voluntary standards. The Technical Report, ''Study of Debris Penetration of Recreational Off-highway Vehicle (ROV) Proof-of-Concept (POC) Floorboard Guards,'' completed by SEA in October 2022, provides discussion and test results from testing to the proposed requirements in the NPR, and to the 355 J drop test method proposed in the two draft voluntary standards. SEA conducted this testing to evaluate the feasibility and effectiveness of POC

[1] OPEI balloted the proposed test on August 3, 2022. ROHVA balloted the proposed test on September 8, 2022.

[2] OPEI included the draft proposed drop test procedure in a comment to the ROV/UTV Debris Penetration NPR (pages 29 to 32 in the PDF attachment): *https://www.regulations.gov/comment/CPSC-2021-0014-0191.* The drop test method involves a 2-inch diameter wood penetrator dowel that strikes an ROV/UTV floorboard surface when an 80-pound weight is dropped onto the dowel from 1 meter. The drop weight is dropped in a guided path using a plastic pipe or other means to allow for vertical free fall.