

[6714-01-P]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 328**

**RIN 3064 –AD05**

**Advertisement of Membership**

**AGENCY: Federal Deposit Insurance Corporation (FDIC).**

**ACTION: Notice of proposed rulemaking.**

**SUMMARY:** The FDIC is proposing to revise its regulation governing official FDIC signs and advertising of FDIC membership. The proposed rule would replace the separate signs used by Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF) members with a new sign, or insurance logo, to be used by all insured depository institutions. In addition, the proposed rule would extend the advertising requirements to savings associations and consolidate the exceptions to those requirements. The proposed rule also would restructure the text in certain sections in order to make them easier to read. Finally, the current prohibition pertaining to receipt of

deposits at the same teller's station or window as noninsured institutions would be placed in its own section.

**DATES:** Written comments must be received by the FDIC on or before [Insert the date sixty days after FEDERAL REGISTER publication date].

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web site:* <http://www.FDIC.gov/regulations/laws/federal/propose.html>.  
Follow the instructions for submitting comments.
- *E-mail:* [comments@fdic.gov](mailto:comments@fdic.gov).
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW, Washington, D.C. 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17<sup>th</sup> Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, Virginia 22226, between 9:00 a.m. and 5:00 p.m. on business days.
- *Internet Posting:* Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.
- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Kara L. Ritchie, Policy Analyst, (202) 898-3716, Division of Supervision and Consumer Protection (DSC); John M. Jackwood, Acting Chief, Compliance Section, (202) 898-3991, DSC; Kathleen G. Nagle, Supervisory Consumer Affairs Specialist, (202) 898-6541, DSC; or Richard B. Foley, Counsel, (202) 898-3784, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:**

**I. The Proposed Rule**

**A. Section 328.0 – Scope**

The scope provision would be revised by the proposed rule to reflect that there would now be one sign used by all insured depository institutions and the advertising requirements in section 328.3 would be extended to savings associations.

**B. Section 328.1 – Official Sign**

Pursuant to section 18(a) of the Federal Deposit Insurance Act (FDI Act), as amended by section 2(c)(2) of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Public Law 109-173, 119 Stat. 3601-19 (FDIRCA Act), the

FDIC must promulgate regulations prescribing a sign or signs that each insured depository institution will be required to display at each place of business it maintains. Section 18(a)(1)(B) of the FDI Act, as amended by the FDIRCA Act, specifies that the required sign must include a statement that insured deposits are backed by the full faith and credit of the United States Government. Therefore, this section would be revised to eliminate the separate official bank sign and official savings association sign, and display a black and white version of the new official sign that would be used by all insured depository institutions.

The proposed official sign would be 7” by 3” in size, with black lettering and gold background. The design is similar in color scheme and layout to the current bank sign but with the following differences: First, the language above “FDIC” states “Each depositor insured to at least \$100,000,” instead of “Each depositor insured to \$100,000.” The revised language more accurately reflects the new deposit insurance coverage limits in the FDIRCA Act and the Federal Deposit Insurance Reform Act of 2005, Public Law 109-171, title II, subtitle B, 120 Stat. 9-21. Second, the proposed sign includes the FDIC’s internet website and leaves out the FDIC seal. Finally, the full faith and credit statement required by the FDIRCA Act is in italics on the left side of the proposed sign and is bordered by a semi-circle of stars, a design that partially reflects the current savings association sign.

Section 328.1 also describes the “symbol” of the Corporation that insured depository institutions could use at their option as the official advertising statement. The

“symbol” would be that portion of the proposed official sign consisting of “FDIC” and the two lines of smaller type above and below “FDIC.”

**C. Section 328.2 – Display and Procurement of Official Sign**

Conforming changes have been proposed to this section in order to make it applicable to all insured depository institutions, not just insured banks. The proposed rule also restructures this section to make it easier to read but without making any substantive changes.

Part 328 uses the term “automatic service facilities” in some places, and the term “remote service facilities” in other places, although the two terms have the same meaning within that part. The proposed rule uses the term "remote service facility" in each place and defines that term in section 328.2(a)(1)(ii) to include any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

The current sections 328.2 and 328.4 are virtually identical, except that one applies to insured banks and the other applies to insured savings associations. The key difference between these provisions is that section 328.4 has a paragraph (e) prohibiting insured savings associations from using the official bank sign. As the new official sign would be applicable to all insured depository institutions, the proposed rule would combine current sections 328.2 and 328.4 into a new section 328.2.

As in the current section 328.2, the proposed revision would allow an insured depository institution to vary the size, color, and materials of the official sign at its expense, and to display such altered signs within the institution at locations other than where insured deposits are received. However, the official sign provided by the FDIC would adhere to the specifications of section 328.1, and only the official sign could be displayed where insured deposits are received. The proposed rule refers to the FDIC's internet website, [www.fdic.gov](http://www.fdic.gov), for information on obtaining the official sign.

**D. Section 328.3 – Official Advertising Statement Requirements**

(1) *Proposal to Extend Official Advertising Statement Requirement to Savings Associations*

Section 328.3 requires insured banks to include the official advertising statement in all their advertisements (with certain exceptions). The basic form of the statement is “Member of the Federal Deposit Insurance Corporation,” which may be shortened to “Member FDIC.” There is no equivalent requirement for insured savings associations. The FDIC proposes to revise section 328.3 to provide for consistent treatment of banks and savings associations by requiring all insured depository institutions to include the official advertising statement in their advertisements.

The FDIC believes there are compelling reasons to apply the advertising requirements equally to banks and savings associations, particularly now that the BIF and SAIF have been merged into one fund, the Deposit Insurance Fund, and there will be one

official sign for both banks and savings associations. Consistent treatment of banks and savings associations on this matter would significantly enhance the public's ability to determine whether an institution's deposits are federally insured or not, and it would eliminate any possibility for public confusion. A consistent and uniform rule applicable to both banks and savings associations would best serve the interests of the public and best protect the Deposit Insurance Fund.

(2) *Proposals to Consolidate Exceptions to the Required Use of the Official Advertising Statement*

There are currently twenty exceptions to the required use of the official advertising statement. The FDIC proposes to simplify the advertising requirements by reducing the number of exceptions to five. The proposed rule does this by limiting the applicability of section 328.3 to advertisements that specifically promote deposit products or generally promote banking services offered by an insured depository institution. The latter would include advertisements that contain an institution's name and a statement about the availability of general banking services. The term *advertisement* is defined as a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business. By limiting the applicability of section 328.3 in this way, most of the current exceptions to the advertising requirements become unnecessary. The exemptions eliminated from the proposed rule are for: statements and reports of condition; bank supplies; listings in directories; and advertisements relating to loan services, safekeeping box services, trust services, real estate services, armored car services, service or analysis charges, securities services, travel department business, and savings bank life insurance.

(3) *Other Proposed Revisions*

The proposed rule also would make certain clarifying, non-substantive, and conforming editorial changes in section 328.3. In addition, three provisions in the current rule have not been included in the proposed rule because they address narrow situations that rarely occur. The first provision, section 328.3(a)(2), allows the Board to grant temporary exemptions from the advertising requirements for good cause. The second provision, section 328.3(a)(3), concerns advertising copy not including the official advertising statement that is on hand on the date the advertising requirements become operative. The third provision, section 328.3(d), addresses how to handle outstanding billboard advertisements that require use of the official advertising statement.

**E. Section 328.4 – Prohibition Against Receiving Deposits at Same Teller’s Station or Window as Noninsured Institution**

Section 328.2 currently has a provision that prohibits banks from receiving deposits at the same teller’s station or window where a noninsured institution receives deposits, except for a remote service facility. Since this provision does not relate directly to the display and procurement of the official sign and is significant enough that it should be set apart in a separate section, the proposed rule would move the provision to section 328.4.

## **II. Effective Date**

In order to give insured depository institutions a transition period to adjust to the new requirements in the proposed revision of part 328, the final rule would be effective six months after publication in the *Federal Register*.

## **III. Request for Comments**

The FDIC requests comments on all aspects of the proposed rule and, in particular, the following issues:

### *(1) Effective Date*

The final rule would be effective six months after publication in the *Federal Register*. The FDIC solicits comment on whether the proposed effective date would give insured depository institutions sufficient time to adjust to the new requirements in the proposed revision of part 328.

### *(2) Use of Official Advertising Statement in Advertisements Marketing Non-deposit Products*

Many insured depository institutions offer both deposit products and non-deposit products (NDPs). NDPs include both insurance and investment products. Where NDPs are offered, insured depository institutions are required to disclose that they are not federally insured.<sup>1</sup> However, consumers may be confused about federal deposit insurance coverage when the official advertising statement is used in advertisements that

market NDPs. The FDIC therefore solicits comment on whether the final rule should include a provision that would: (1) prohibit use of the official advertising statement in advertisements relating solely to NDPs or hybrid products containing NDP and deposit features (*e.g.*, sweep accounts); and (2) require that the official advertising statement be clearly segregated from information about NDPs in advertisements containing information about both NDPs and insured deposit products.

#### **IV. Paperwork Reduction Act**

The proposed rule does not contain any “collections of information” within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 USC 3502(3)).

#### **V. Regulatory Flexibility Act**

Display of the official sign is required by section 18(a) of FDI Act, as amended by section 2(c)(2) of the FDIRCA Act. There would not be any compliance costs with displaying the official sign, because it would be provided by the FDIC free of charge. Insured banks have complied with similar advertising requirements for over seventy years without significant expense. Although savings associations have not been subject to such advertising requirements, many have used the official advertising statement voluntarily. Moreover, mandatory compliance with the advertising requirements by savings association would not entail significant expense. Accordingly, the Board hereby certifies that the proposed rule would not have a significant economic impact on a

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<sup>1</sup> See, *e.g.*, 12 CFR 343.40 (Consumer Protection in Sales of Insurance rules applicable to FDIC supervised institutions) and the *Interagency Policy Statement on Retail Sales of Nondeposit Investment Products*, issued on February 15, 1994.

substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 USC 601-612).

**VI. The Treasury and General Government Appropriations Act, 1999 –  
Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

**List of Subjects in 12 CFR Part 328**

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

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 328 of title 12, chapter III of the Code of Federal Regulations by revising it to read as follows:

**PART 328 – ADVERTISEMENT OF MEMBERSHIP**

Sec.

328.0 Scope.

328.1 Official sign.

328.2 Display and procurement of official sign.

328.3 Official advertising statement requirements.

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

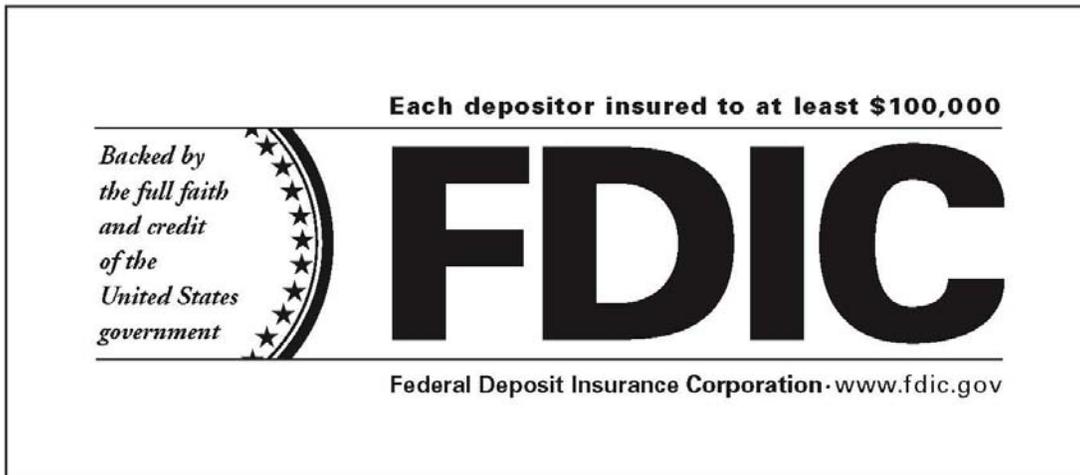
**Authority:** 12 U.S.C. 1818(a), 1819 (Tenth), 1828(a).

**§ 328.0 Scope.**

Part 328 describes the official sign of the FDIC and prescribes its use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of part 328, the term "insured depository institution" includes insured branches of a foreign depository institution. Part 328 does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

**§ 328.1 Official sign.**

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



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

**§ 328.2 Display and procurement of official sign.**

(a) *Display of official sign.* Each insured depository institution shall continuously display the official sign at each station or window where insured deposits are usually and normally received in the depository institution’s principal place of business and in all its branches.

(1) *Other locations –*

(i) *Within the institution.* An insured depository institution may display signs in other locations within the insured depository institution that vary from the official sign in size, colors, or materials.

(ii) *Other facilities.* An insured depository institution may display the official sign on or at Remote Service Facilities. If an insured depository institution displays the official sign at a Remote Service Facility, and if there are any noninsured institutions that share in the Remote Service Facility, any insured depository institution that displays the official sign must clearly show that the sign refers only to a designated insured depository institution(s). As used in this part, the term “Remote Service Facility” includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

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

(b) *Procuring official sign.* An insured depository institution may procure the official sign from the Corporation for official use at no charge. Information on obtaining the official sign is posted on the FDIC’s internet website, [www.fdic.gov](http://www.fdic.gov). Alternatively, insured depository institutions may procure from commercial suppliers signs that vary from the official sign in size, colors, or materials. However, only the official sign may be displayed at stations or windows where insured deposits are usually and normally received. 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

section by failing to display the official sign, unless the insured depository institution fails to display the official sign after receipt thereof.

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

### **§ 328.3 Official advertising statement requirements.**

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

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

(1) *Optional short title and symbol.* The short title "Member of FDIC" or "Member FDIC," or a reproduction of the "symbol" of the Corporation (as defined in section 328.1 of this part), 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 all 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 generally promote banking services offered by the institution.

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

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

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

(4) 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

(5) 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 \$100,000 for each depositor.

(e) *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.

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

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

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

By order of the Board of Directors.

Dated at Washington D.C., this \_\_\_\_ day of \_\_\_\_\_, 2006.

FEDERAL DEPOSIT INSURANCE CORPORATION

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**Robert E. Feldman**

*Executive Secretary*