



Innovative Payments Association

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April 15, 2020

Submitted via E-Mail at: comments@fdic.gov

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429

Re: Request for Information on FDIC Sign and Advertising Requirements and Potential Technological Solutions
[RIN 3064-ZA14]

To Whom it May Concern:

This letter is submitted to the Federal Deposit Insurance Corporation (the "FDIC") on behalf of the Innovative Payments Association ("IPA")¹ in response to the FDIC's request for information concerning the FDIC's sign and advertising requirements, which was issued by the FDIC on February 19, 2020 (the "RFI").² The RFI seeks input from industry stakeholders on the potential modernization of the FDIC's official sign and advertising rules (the "Advertising Rules").³ Specifically, the RFI requests input on potential changes to the Advertising Rules to reflect the continued evolution of deposit taking by physical branch, digital, and mobile banking channels. The IPA and its members appreciate the opportunity to provide input on the Advertising Rules and look forward to working with the FDIC on any potential proposal that arises out of the RFI process.

Discussion

The Advertising Rules generally require an FDIC member bank to continuously display the FDIC sign wherever insured deposits are usually and normally received.⁴ The Advertising Rules also require an FDIC member bank to use an official advertising statement (e.g., "Member FDIC") when advertising its

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² FDIC.gov, available at <https://www.fdic.gov/news/news/financial/2020/fil20012.html>.

³ 12 CFR Part 328.

⁴ *Id.* § 328.2. One question posed by the RFI is whether the Advertising Rules should continue to require signage that meets specific font size and color requirements. Our members believe that to the extent signage is required, providers should have flexibility with respect to font size, color, placement and other parameters to allow more flexibility with respect to how disclosures are provided, particularly in light of the continuing advancements in technology cited by the FDIC in its RFI. For this reason, to the extent the FDIC moves forward with a proposed rule, we urge it to consider revising its formatting requirements that allow for more flexibility in how such signage is provided.



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products and services.⁵ Technological advances since the inception of the Advertising Rules, however, have dramatically changed how and where customers interact with banks including, most notably for purposes of this letter, when such customers make deposits.⁶ This change is due in large part to the growing use of online and mobile banking solutions, including digital wallets.

As noted by the FDIC in its RFI, one impact of the technological changes described above is the prevalence of third party, non-FDIC insured entities in the marketplace that offer some form of mobile, electronic, or digital banking service. Typically, these third parties either partner with FDIC member banks to market services to customers or, in some cases, market services on their own, without the participation of an FDIC member bank. In either case, the FDIC correctly notes that the advertising practices of such third parties poses a risk to consumers that they may be confused or otherwise misled with respect to which party, if any, is providing banking services to the consumer and whether or not such services are covered by FDIC deposit insurance. In the case of third parties acting on their own, without any participation from an FDIC member, the risk of such confusion is relatively clear and, in 2019, resulted in several take down requests from the FDIC.⁷ The confusion created by the former scenario, where a third party enters into a legitimate business relationship with an FDIC member, can be more difficult to assess. According to the FDIC, however, some common risks or examples of advertising practices that may lead to confusion in this type of relationship include a third party's highlighting of the FDIC logo while omitting or minimizing the role of the FDIC member in providing the product or service and the required elements for deposit insurance coverage.

The IPA and its members believe that where FDIC insurance is being offered for a product or service, consumers should receive explicit and clear representations regarding the deposit insurance coverage. With respect to advertising for products and services where there is a legitimate business relationship between an FDIC member and a third party,⁸ our members interpret the Advertising Rules to require the third party, regardless of the technology used in the deposit taking activity, to clearly and conspicuously disclose that any FDIC insurance coverage is provided by an FDIC member bank. Currently,

⁵ *Id.*

⁶ One additional important note that the FDIC should consider prior to issuing a proposed rule is that such advances of technology have also afforded more opportunity for multi-functional financial service devices. Devices like ATMs that originally provided very limited functionality now offer a host of services including, but not limited to, deposit taking. Any proposed changes to the FDIC's Advertising Rules should bear such multi-functionality in mind by, specifically, not imposing advertising restrictions or disclosure obligations at multi-functional devices that would limit or inhibit the ability of the device to provide its other services. More particularly, we note that newer devices may offer multiple functionalities some of which are FDIC insured and some of which are not, any disclosure requirements should be context sensitive and triggered by a consumer's request for a particular service. For example, a cash-accepting ATM might accept currency as a deposit to an insured financial institution, but it might also accept cash for bill pay or to purchase gift cards or virtual goods. Disclosure requirements for that ATM should be tied to the function the consumer has chosen to utilize. Disclosures linked to the device itself would suggest that the bill pay or gift card service was somehow insured, leading to consumer confusion.

⁷ RFI, page 5.

⁸ With respect to the other advertising practice cited by the FDIC in its RFI, where third parties market services as "FDIC insured" where in fact there is no relationship between the third party and any FDIC member, the IPA agrees with the FDIC that any implication that such products or services qualify for deposit insurance coverage is misleading, confusing, and should be prohibited by the Advertising Rules.



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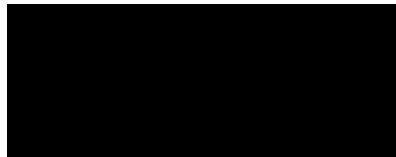
we do not believe changes to the Advertising Rules that would limit the ability of third parties operating under a legitimate business relationship to use the FDIC logo or communicate FDIC insurance coverage to end-users are necessary. In particular, the use of the FDIC logo by the third party promotes consumer confidence and imbues the product with a level of trust and security. Any risk that a consumer may be confused by the presence of the FDIC logo or representations with respect to deposit insurance coverage could be addressed through a requirement that the third party clearly and conspicuously discloses the FDIC member responsible for providing deposit insurance coverage along with any material and significant pre-conditions for receiving such insurance coverage. Again, while our members interpret the current Advertising Rules as imposing these obligations already, we would be happy to work with FDIC on any clarifying changes it believes are necessary in this regard.

Finally, we note that the RFI makes several references to prepaid account providers and prepaid account products. In light of the Consumer Financial Bureau's ("CFPB") Prepaid Account Rule (the "Prepaid Rule"),⁹ which imposes a number of disclosure obligations on providers of prepaid accounts including disclosures related to FDIC deposit insurance coverage,¹⁰ we urge the FDIC to coordinate with the CFPB on any proposed rule to ensure that any modifications to the Advertising Rules do not conflict with the requirements of the Prepaid Rule.

Conclusion

The IPA appreciates the opportunity to submit feedback on the RFI. If you have any questions, please do not hesitate to contact me at the number listed below or at: btate@ipa.org.

Sincerely,



Brian Tate
President and CEO, IPA
(202) 507-6181

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⁹ 12 CFR §§ 1005.2 et seq.

¹⁰ *Id.* at §§ 1005.18(b)(2)(xi), 1005.18(b)(4)(iii).