

# FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 328

### RIN 3064-AF71

#### **False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo**

**Agency:** Federal Deposit Insurance Corporation.

**Action:** Final Rule.

**Summary:** The Federal Deposit Insurance Corporation is adopting a final rule to implement section 18(a)(4) of the Federal Deposit Insurance Act. The final rule establishes the process by which the Federal Deposit Insurance Corporation will identify and investigate conduct that may violate section 18(a)(4) of the Federal Deposit Insurance Act, the standards under which such conduct will be evaluated, and the procedures which the Federal Deposit Insurance Corporation will follow when formally and informally enforcing the provisions of section 18(a)(4) of the Federal Deposit Insurance Act.

**Dates:** The rule is effective on [thirty days after publication in the Federal Register].

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Policy Objectives**

Section 18(a)(4) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(a)(4), (Section 18(a)(4)) prohibits any person from misusing the name or logo of the Federal Deposit Insurance Corporation (FDIC) or from engaging in false advertising or making knowing misrepresentations about deposit insurance. The FDIC has observed an increasing number of instances where financial services providers or other entities or individuals have misused the FDIC's name or logo or have made false or misleading representations about deposit insurance. To provide transparency into how the FDIC will address these and similar concerns, the FDIC is adopting regulations to further clarify its procedures for identifying,

investigating, and where necessary taking formal and informal action to address potential violations of Section 18(a)(4). The regulations also establish a point-of-contact for receiving complaints and inquiries about potential misrepresentations regarding deposit insurance. Although the FDIC is not required to promulgate regulations to implement section 18(a)(4), the FDIC nonetheless believes that the final rule establishes a more transparent process that will benefit all parties and promotes stability and confidence in FDIC deposit insurance and the nation's financial system.

## **II. Background**

The FDIC has steadfastly and proactively sought to protect consumers<sup>1</sup> by limiting the use of the FDIC's name, seal, and logo to insured depository institutions (IDIs) and preventing false and misleading representations about the manner and extent of FDIC deposit insurance (deposit insurance). Section 18(a)(4) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(a)(4) (Section 18(a)(4)), prohibits any person from engaging in false advertising by misusing the name or logo of the FDIC or from making knowing misrepresentations about the existence of or the extent or manner of deposit insurance.<sup>2</sup> Section 18(a)(4) 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.<sup>3</sup>

Although the FDIC has broad statutory authority in this area, the FDIC has never issued specific regulations regarding false representations related to deposit insurance or the misuse of the FDIC's name or logo. Recently, the FDIC has observed an increasing number of instances where financial service providers or other entities or individuals have misused the FDIC's name or logo or have made false or misleading representations about deposit insurance. Therefore, the FDIC adopts the following rule, which provides certain procedures the FDIC will follow for identifying, investigating, and taking formal and

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<sup>1</sup> As used in this regulation, the term "consumer" is broadly defined to encompass all current and potential depositors, including natural persons, organizations, corporate entities, and governmental bodies.

<sup>2</sup> 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.

<sup>3</sup> 12 U.S.C. 1828(a)(4)(C)-(D).

informal action to address potential violations of Section 18(a)(4). The rule also provides for an established point-of-contact responsible for receiving complaints about potential violations of Section 18(a)(4) and responding to inquiries about deposit insurance coverage representations.

### **III. Requests for Information, The Proposed Rule, and Comments Received**

#### *Requests for Information*

On February 26, 2020, the FDIC published a Request for Information (2020 RFI) related to potential modernization of its signage and advertising rules set out in part 328 of the FDIC regulations.<sup>4</sup> Some of the questions in the 2020 RFI related to the deposit insurance misrepresentations addressed in this final rule. The comment period for the 2020 RFI was extended on March 13, 2020,<sup>5</sup> but efforts to modify the rules under part 328 of the FDIC regulations were postponed in light of the COVID-19 national emergency. Subsequently, the FDIC published a new Request for Information in the Federal Register on April 9, 2021 (2021 RFI) which focused on soliciting information on the FDIC's advertising requirements applicable to IDIs and related topics, and removed specific questions relating to misrepresentations and misuse.

#### *The Proposed Rule*

On May 10, 2021, the FDIC published a notice of proposed rulemaking (NPR) to implement Section 18(a)(4). The NPR proposed a regulation redesignating the existing regulations in part 328 as subpart A to part 328 and establishing a new subpart B to part 328, entitled "False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo." The proposed subpart described certain procedures by which the FDIC would identify and investigate conduct that may violate Section 18(a)(4), the standards under which such conduct would be evaluated, and the procedures which the FDIC would follow when formally and informally enforcing the provisions of Section 18(a)(4).

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<sup>4</sup> 85 FR 10997 (Feb. 26, 2020).

<sup>5</sup> 85 FR 14678 (Mar. 13, 2020).

## *Comments on the Proposed Rule*

### *A. Overview*

The FDIC issued the NPR on May 10, 2021 with a 60-day comment period. In the NPR, the FDIC also stated that it would consider any relevant comments submitted in response to the 2021 RFI. The FDIC received nineteen comments in response to the NPR.<sup>6</sup> Commenters included trade associations, insured depository institutions, advocacy groups, and other interested parties. All of the commenters expressed support for the proposed rule. Some noted that they have seen similar trends of misuse in the industry that the proposal is meant to combat. Several commenters applauded the FDIC's efforts to prevent false and misleading statements regarding deposit insurance and promote public confidence in FDIC-insured institutions. Additionally, commenters stated that the proposal sufficiently identifies situations that present potential risks related to false or misleading representations regarding deposit insurance coverage and the misuse of the FDIC's name or logo. Further, commenters stated that the proposed informal and formal enforcement processes were adequate. Additionally, the FDIC received two comments in response to the 2021 RFI that contained comments relevant to this rulemaking, one from a trade association and one from an IDI. These comments generally echoed the FDIC's concerns about consumers' ability to understand whether and how funds placed with non-IDIs are insured.

### *B. Requests for Clarification*

Many commenters requested certain changes to clarify specific elements of the proposed rule. For example, a number of commenters asked that the FDIC clarify that IDIs have the authority to submit complaints of possible violations. Other commenters requested that the FDIC define certain terms in the proposed rule. For example, in regard to 12 CFR 308.147, one commenter requested the FDIC to clarify the meaning of the phrase "a known IAP" of an IDI.<sup>7</sup>

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<sup>6</sup> Of the comments received, some comments were identical.

<sup>7</sup> The draft regulation defined the term "IAP" to mean an "institution-affiliated party" under section 3(u) of the FDI Act, 12 U.S.C. 1813(u). As discussed more fully below, the term "known IAP" was not defined in the proposed regulation.

Additionally, in reviewing the comments, the FDIC noted that commenters used differing terms to refer to those impacted by potential misrepresentations. Some commenters referred to these as “consumers.” Others referred to them as “consumers or depositors.” Others used the terms, “depositors or prospective depositors.” Finally, one commenter noted that “individuals . . . local governments, charitable organizations, corporations,” and others could be impacted.

### *C. Suggested Alternatives*

Commenters also suggested the FDIC take additional actions beyond the proposal. For example, commenters suggested the FDIC adopt a “one-click rule” for social media and internet advertising,<sup>8</sup> adopt standard disclosure language, create a closed database accessible to IDIs that lists IAPs who have violated these regulations, and adopt a voluntary public register of FDIC-insured products. Additionally, one commenter suggested the FDIC implement an information sharing mechanism designed to notify states of any formal or informal actions taken against an individual or entity in their jurisdiction. Additionally, some comments submitted in response to the NPR and the 2021 RFI suggested that the FDIC mandate that non-IDIs make certain affirmative statements regarding deposit insurance, including affirmative statements that non-insured products are not insured and statements explaining how and when deposits placed with IDIs by third parties are insured.

### *D. Section 328.102(b)(3)(ii)*

The FDIC received ten comments related to proposed section 328.102(b)(3)(ii), which provided that, if a non-bank entity makes claims regarding the insured-status of its products, the failure to identify the name(s) of the IDI(s) which would be receiving deposits would be a material omission in violation of

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<sup>8</sup> The “one-click” rule is found in the official interpretation to Regulation Z and Regulation DD and deals with how certain advertising disclosures may be provided. *See* 12 CFR Part 1026, Supp. I, Comment 16(c)(1)-2, and 12 CFR Part 1030, Supp. I, Comment 8(a)-9. Generally, under these regulations, when a triggering term is mentioned in an advertisement, additional disclosures may be required. In the case of electronic advertisements, these regulations allow the additional disclosures to be located on a separate webpage, so long as the triggering term is accompanied by a link that directly takes the consumer to the additional information.

the rule. The commenters, mostly trade associations, recommended that the FDIC clarify the provision because they argued it could constrain the dissemination of information by and about so-called “deposit placement networks.”<sup>9</sup> They explained that a deposit network may involve many IDIs, making it difficult to name the specific IDI(s) in the network that will receive a deposit until the deposit is placed. The commenters urged the FDIC to modify or remove this requirement in the final rule..

#### *E. Hybrid Products*

Two commenters requested that the FDIC clarify the advertising and marketing requirements applicable to non-deposit and hybrid products. One commenter asked in particular how the proposed rule and the 2020 RFI would work together, and how the FDIC will consider and investigate complaints and statements regarding hybrid products.

#### *Responses to Comments*

With respect to requests that the FDIC clarify that IDIs can submit complaints under the proposed rule, the FDIC reviewed the language of proposed section 328.103, which allows any “person” to submit complaints, and the definition of “person” under proposed section 328.101, which specifically includes Regulated Institutions like IDIs. The FDIC believes these provisions make it sufficiently clear that IDIs can submit complaints, and therefore is not making any changes to these sections of the proposed rule.

Similarly, the FDIC does not believe it is necessary to amend the proposed rule to further define the phrase “known IAP” as it is used in proposed section 328.104. The FDIC interprets this phrase to mean any person who is actually known to the FDIC to be an IAP, as defined under 12 U.S.C. 1813(u), either because the FDIC is aware that the person is a director, officer, employee or controlling shareholder

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<sup>9</sup> The term “Deposit Placement Network” is a defined term under section 29(g) of the FDI Act (12 U.S.C. 1831f(g)) in relation to brokered deposits. Although the commenters used the term “deposit placement networks” in their comment letters, their comments appeared intended to apply more broadly to any deposit network administered by a non-bank entity (referred to here as a “deposit network sponsor”) that, through a network of IDIs with which it has business relationships, arranges or facilitates the placement of deposits. To distinguish these broader networks from “Deposit Placement Networks,” as described in section 29(g) of the FDI Act, the FDIC will refer to the former as merely “deposit networks.”

of an IDI, or because the FDIC has already made a determination that the person is an IAP. The FDIC believes that this interpretation is consistent with the plain language of the phrase “known IAP.”

Based upon the comments received, the FDIC recognizes the need to define a single term to describe those that may be adversely impacted by violations of Section 18(a)(4). To provide clarification, the FDIC has added a defined term, “Consumer,” to include all current or potential depositors, including natural persons, organizations, corporate entities, and governmental bodies.<sup>10</sup>

With regard to the suggestion that the FDIC implement standard disclosures and a “one-click” rule for social media and internet advertising, the FDIC does not believe it is advisable to adopt these suggestions in light of the pace of technological change in these areas. The FDIC believes any formats prescribed at this time could quickly become obsolete or even counterproductive as technology continues to evolve. Accordingly, the FDIC believes the proposed rule as currently drafted, which sets forth standard-based requirements as opposed to prescribing specific formats, is more appropriate.

With regard to the suggestion that the FDIC create a database of IAPs who have potentially violated the proposed rule, the FDIC believes that such a database could risk reputational harm to individuals who have not yet been found to have engaged in a violation. Further, to the extent the FDIC pursues formal enforcement action under the proposed rule, a public notice of charges or order will be issued. The FDIC believes that the publication of such notices and orders would be generally sufficient to provide IDIs with information about any individual who the FDIC believes has violated section 18(a)(4) or the implementing regulation.

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<sup>10</sup> As noted in the NPR, the standards governing this rule were adapted in part from those applicable to deception under Section 5 of the Federal Trade Commission Act, 5 U.S.C. 45 (Section 5). The FDIC recognizes that, in some but not all cases, Section 18(a)(4)’s prohibitions only apply to “knowing” misrepresentations, while Section 5 more broadly prohibits any material misrepresentations in commerce without regard to the advertising party’s intent or knowledge. Regardless of any difference this presents, the FDIC believes that Section 5, which prohibits unfair or deceptive acts or practices in commerce offers a valuable framework for evaluating misrepresentations under Section 18(a)(4). Accordingly, the FDIC has looked to the standards governing deception under Section 5 to inform its understanding of what constitutes a misrepresentation that violates Section 18(a)(4). Similarly, the FDIC believes that Section 5 is useful in defining who Section 18(a)(4) protects, and federal courts have concluded that the protections offered by Section 5 extend broadly to “consumers,” including natural persons, businesses, and not-for-profit organizations. *See, e.g., FTC v. IFC Credit Corp.*, 543 F.Supp.2d 925, 934 (N.D.Ill. 2008). The FDIC believes similarly broad protection is appropriate here and consistent with the statute.

With regard to the suggestion of a voluntary register of FDIC-insured products, the FDIC does not believe such a register would be advisable. The voluntary nature of such a register would limit its usefulness. Moreover, the FDIC resources that would be required to maintain such a register would likely be significant and outweigh any benefit it may have.

With regard to the proposal that the FDIC institute an information sharing system with state authorities, the FDIC does not believe any changes to the proposed rule are necessary. Proposed section 328.105 authorizes the FDIC to notify other authorities (including state regulators) of conduct that may fall within their jurisdiction. The FDIC recognizes the importance of working with other state and federal agencies to address false, misleading, or otherwise deceptive representations regarding deposit insurance. Conduct that violates Section 18(a)(4) may also violate other statutory schemes, including but not limited to Section 5 of the FTC Act, 5 U.S.C. § 45, (Section 5) and Section 1031 of the Dodd-Frank Act, 12 U.S.C. § 5531 (Section 1031). Indeed, other laws or regulations may encompass broader conduct than that reached by Section 18(a)(4). For example, certain of Section 18(a)(4)'s prohibitions apply only to knowing misrepresentations, while several other statutes prohibiting deception do not require that misrepresentations be made knowingly. Nothing contained in this regulation should be read to limit the authority of any state or federal agency or individual under any other law, including but not limited to the Consumer Financial Protection Bureau, the Federal Trade Commission, the Federal Reserve Board of Governors, the U.S. Department of Justice, state Attorneys General, and the FDIC itself.<sup>11</sup>

Based upon the facts and circumstances presented in individual cases, the FDIC anticipates that it will work with other agencies to address misrepresentations regarding deposit insurance when appropriate. The FDIC believes the referral authority currently contained in section 328.105 adequately provides for such cooperation. However, to further clarify, conduct that violates Section 18(a)(4) may at times violate other statutory schemes as well. As such, the FDIC is adding a new section 328.109 to expressly reiterate that the FDIC's authority under Section 18(a)(4) does not bar any other action

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<sup>11</sup> For example, to the extent a misrepresentation about deposit insurance was made by an IDI or IAP, the FDIC would also be able to pursue the matter under section 8 of the FDIA, 12 U.S.C. § 1818, as well as Section 18(a)(4).



authorized by law, by the FDIC or any other agency. While this reservation of authority to the FDIC and other agencies and individuals is provided in the plain language of Section 18(a)(4), the FDIC believes it is helpful to reference it in the final rule to avoid any confusion on this point.

Finally, in response to the suggestions that the FDIC require non-IDIs to make certain affirmative statements related to deposit insurance, the FDIC made revisions to the proposed section 328.102(b)(3)(ii), discussed below. The FDIC is not precluded from imposing additional requirements to ensure appropriate use of its official sign and advertisement language if the facts and circumstances warrant such action.

With respect to the comments regarding the language of proposed section 328.102(b)(3)(ii), the FDIC's aim in the proposed rule was to address situations in which non-bank entities were making unsubstantiated claims about the availability of deposit insurance without directly or indirectly identifying the IDIs with which these entities were ostensibly doing business. In such cases, consumers and the FDIC are unable to effectively evaluate the accuracy of such claims by non-bank entities. Moreover, even if the non-bank entity actually placed deposits at one or more IDIs, information identifying the IDI(s) at which such funds were being placed is vital to understanding the extent and manner of deposit insurance provided. Omission of this information could impact the insurability of the deposited funds to the consumer's detriment.<sup>12</sup>

Commenters have pointed out that it may not always be possible to identify with specificity the IDI(s) that will receive funds placed through a deposit network until those funds are actually deposited at the IDI(s).<sup>13</sup> Nonetheless, the FDIC continues to believe that in order for a non-bank entity to avoid the

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<sup>12</sup> For example, assume an individual consumer had \$50,000 on deposit at Bank A. If the consumer saw an advertisement by a non-bank entity that promised full FDIC deposit insurance on large certificates of deposit (CDs), and the consumer obtained a \$250,000 CD from the non-bank entity, the consumer would not necessarily receive the full value of the promised deposit insurance if the non-bank entity placed the consumer's funds at Bank A. Assuming these deposits, totaling \$300,000, were held in the same capacity at Bank A, they would only be insured for up to \$250,000.

<sup>13</sup> For example, if a customer places a deposit through a deposit network, the deposit network may be unable to tell the consumer in advance whether the entirety of the deposit will be placed at a single institution or whether it might be divided and placed at multiple institutions.

prohibition under Section 18(a)(4) against making misrepresentations about deposit insurance, a non-bank entity cannot advertise that its products are or will be FDIC-insured without providing consumers with sufficient information to adequately understand the extent and manner of deposit insurance provided. Such information allows consumers to verify representations about deposit insurance directly with IDIs and also allows consumers to avoid a situation where their total combined deposits at a particular IDI may exceed the maximum deposit insurance amount. Accordingly, the FDIC is amending proposed section 328.102(b)(3)(ii) and has created a new 328.102(b)(5) to accommodate and address these competing concerns.<sup>14</sup>

Rather than requiring non-bank entities that are advertising FDIC-insured deposits to identify the specific IDI(s) that *will* receive a consumer's deposit, the FDIC is adopting a final rule that will require such non-bank entities to identify the IDI(s) with which the non-bank entities have existing direct or indirect business relationships and into which consumers' deposits *may* be placed.<sup>15</sup> The use of the word "may" does not allow non-bank entities to satisfy this requirement by merely identifying IDIs with which such non-bank entities might one day do business. The final rule provides that such non-bank entities must identify the IDIs with which such an entity has an existing direct or indirect business relationship for the placement of deposits and into which consumers' deposits may be placed.<sup>16</sup> To the extent that a non-bank entity places deposits through a deposit network, it may satisfy this requirement by identifying the deposit network and each IDI in the deposit network or by providing a hyperlink to a current list of all the IDIs that are part of such a network.<sup>17</sup> The FDIC believes that the final rule provides sufficient flexibility for non-bank entities, which as a result of relationships with deposit network sponsors may not be able to

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<sup>14</sup> The section 328.102(b)(5) that was included in the NPR has likewise been redesignated as section 328.102(b)(6).

<sup>15</sup> A non-bank entity may have an indirect relationship with an IDI if it places deposits through a deposit network.

<sup>16</sup> As an example, a non-bank entity may identify such IDIs by providing consumers with a link to a current list on its website of the IDIs with which it has existing business relationships for the placement of deposits.

<sup>17</sup> A non-bank entity may satisfy this requirement by providing a link to a list it maintains. Alternatively, if the deposit network maintains a current list of IDIs with which the deposit network has existing business relationships on the deposit network sponsor's public website, the non-bank entity may provide consumers with a link to such a list on the deposit network's website.

directly identify the IDI(s) that will receive consumers' deposits, while still providing consumers with access to adequate information about the extent and manner of deposit insurance provided.

With respect to comments requesting clarification relating to advertisements for hybrid products, the FDIC does not believe that any change to the proposed rule is necessary. The proposed rule prohibits misrepresentations about deposit insurance in advertising related to hybrid products. The proposed rule adopts the definition of hybrid products contained in subpart A, and its prohibitions related to advertising of hybrid products are consistent with the requirements of subpart A. To the extent that there are any future amendments to subpart A that impact the proposed rule's provisions related to hybrid products, the FDIC will address them at that time.

#### **IV. The Final Rule**

For the reasons stated above, the final rule adopts the proposed rule with certain limited changes. The FDIC is amending section 328.101 to add a definition for the terms, "Consumer," to identify those intended to be protected under the regulation. The FDIC is also amending section 328.102(b)(3)(ii), adding a new section 328.102(b)(5), and redesignating section 328.102(b)(5) as 328.102(b)(6) in order to clarify how marketing related to deposit networks can comply with the regulation.

Additionally, the FDIC is adding a new section 328.109 to make clear that, in accordance with the plain language of Section 18(a), the existence of the FDIC's authority to pursue enforcement actions under this subpart does not impact the authority of any other state or federal agency or individual to pursue any other action authorized by any law. The FDIC is also making a minor, technical amendment to section 328.107 to provide clarity regarding the General Counsel's delegated authority to initiate and prosecute formal enforcement actions under the final rule.

Finally, the FDIC is redesignating the existing regulations in part 328 as subpart A to part 328, entitled "Advertisement of Membership," and is establishing a new subpart B to part 328, entitled "False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo" containing the new regulations described herein. Finally, the FDIC is making technical amendments to section

328.3, limiting the applicability of definitions in that section to subpart A of part 328, and not to part 328, generally.

## V. Expected Effects

The final rule will primarily affect non-bank entities and individuals who are potentially misusing the FDIC's name or logo or are making misrepresentations about deposit insurance. The FDIC currently insures 4,960 depository institutions<sup>18</sup> that could also be affected; however in practice, the final rule will primarily affect non-bank entities and private individuals. Since the adoption of Section 18(a)(4) in 2008, the FDIC has issued only one formal enforcement order against a non-bank entity for misuse of the FDIC's name or logo or for misrepresentations or false advertising in relation to deposit insurance. However, between January 1, 2019, and December 31, 2020, the FDIC reached informal resolutions regarding the potential misuse of the FDIC's name or logo and/or misrepresentations relation to deposit insurance in at least 165 instances.<sup>19</sup> Based on this experience, the FDIC estimates that the final rule will apply to relatively few formal enforcement actions and conservatively estimates that it will affect fewer than 165 informal resolutions with non-bank entities and individuals each year.

As discussed previously, the final rule will clarify the FDIC's procedures for evaluating potential violations of Section 18(a)(4). The final rule will generally be consistent with existing practices used by the FDIC with respect to these matters. Further the rule will not affect the application of related criminal prohibitions under 18 U.S.C. § 709. Therefore, the FDIC believes that the final rule is unlikely to have any significant effect on formal and informal enforcement of the Section 18(a)(4) prohibitions.

The final rule could pose some indirect disclosure costs on non-depository entities. The rule's description of "material omission" provides that a statement that a product is insured or guaranteed by the FDIC violates the rule if non-depository entities who make representations about deposit insurance fail to directly or indirectly identify the IDIs into which consumers' deposits may be placed. As described

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<sup>18</sup> Call Report data, June 30, 2021.

<sup>19</sup> See *FDIC 2019 Annual Report*, p. 38; *FDIC 2020 Annual Report*, p. 47.

above, a non-bank entity may comply with this provision by publicly disclosing the name(s) of all IDI(s) with which the entity has existing direct or indirect business relationships for the placement of deposits and into which consumers' deposits may be placed. If the non-bank entity places deposits through a deposit network, it may publicly disclose the name(s) of the IDIs that are part of the deposit network. Such a list could be provided in writing or through a hyperlink to a website containing this information. Such a website could be maintained by the non-bank entity or the deposit network. In turn, the rule could result in deposit networks making publicly available lists of the IDIs with which they have existing business relationships for the placement of deposits, to the degree those entities are not already doing so. In either case, the FDIC believes that any such costs are likely to be relatively small.

The FDIC believes that the final rule will benefit FDIC-insured institutions and members of the public by further clarifying what constitutes a violation of Section 18(a)(4), by creating a process by which institutions and members of the public can report suspected instances of false advertising, misuse, or misrepresentation regarding deposit insurance, and by establishing clear procedures by which the FDIC will investigate and, where necessary, formally and informally resolve potential violations of Section 18(a)(4). Specifically, the added transparency on the FDIC's processes for investigating potential instances of misuse or misrepresentation and, if needed, resolution are expected to benefit the parties involved by establishing a common understanding of those processes.

## **VI. Alternatives**

The FDIC has considered alternatives to the rule but believes that adopting subpart B to Part 328 represents the most appropriate option. As discussed previously, Section 18(a)(4) establishes prohibitions against the misuse of the FDIC's name or logo and prohibits misrepresentations and false advertising in relation to deposit insurance. The FDIC considered the status quo alternative of not adopting a regulation. However, the FDIC believes that the final rule is the most appropriate action because it provides clarity for the public regarding what constitutes misuse of FDIC name or logo or misrepresentation with respect to FDIC insurance, how the FDIC will identify and investigate suspected instances of misuse or

misrepresentation, and the process by which the FDIC will pursue formal or informal resolution of instances of misuse or misrepresentation.

## **VII. Administrative Law Matters**

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.<sup>20</sup> 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 and publishes its certification and a short explanatory statement in the Federal Register together with the rule. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$750 million.<sup>21</sup> 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 provided below, the FDIC certifies that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2021, the FDIC insured 4,960 depository institutions, of which 3,374 are considered small banking organizations for the purposes of RFA.<sup>22</sup> Potential instances of misuse of the

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<sup>20</sup> 5 U.S.C. 601, et seq.

<sup>21</sup> The SBA defines a small banking organization as having \$750 million or less in assets, where “a financial institution’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). “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 FDIC-supervised institution is “small” for the purposes of RFA.

<sup>22</sup> FDIC Call Report data, June 30, 2021.

FDIC name or logo, or misrepresentations about deposit insurance, by IDIs are usually addressed under the normal supervisory authority of the appropriate federal financial regulator; therefore although the final rule could affect IDIs, in practice the proposed rule would primarily affect non-bank entities and private individuals. Private individuals are not considered “small entities” under the RFA.<sup>23</sup>

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.<sup>24</sup> The FDIC’s OMB control numbers for its “Customer Assistance Forms” information collection is 3064–0134. The final rule does not revise this existing information collection pursuant to the PRA and consequently, no submission in connection with this OMB control numbers will be made to the OMB for review. However, Section 328.102(b)(5) of the final rule imposes third-party disclosure requirements which will be addressed in a separate Federal Register notice. In particular, Section 328.102(b)(5) of the final rule imposes disclosure requirements for non-bank entities that make certain types of statements regarding deposit insurance. Under the PRA, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information is not approved by the OMB. Consequently, the FDIC will not subject anyone to penalties for violations of Section 328.102(b)(5) related to such third-party disclosures until the information collection request is approved by the OMB.

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<sup>23</sup> How to Comply with the Regulatory Flexibility Act, August 2017, The U.S. Small Business Administration, Office of Advocacy, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf>

<sup>24</sup> U.S.C. 3501–3521

### *C. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act 48 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 invited comment regarding the use of plain language, but did not receive any comments on this topic.

### *D. The Congressional Review Act*

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule. If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The OMB has determined that the final rule [is/is not] a major rule for purposes of the Congressional Review Act.

As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

### *E. Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>25</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository

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<sup>25</sup> 12 U.S.C. 4802(a).



institutions (IDIs), each Federal banking agency must 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. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>26</sup> The FDIC has determined that the final rule would not impose any additional reporting, disclosure, or other new requirements on IDIs, and thus the requirements of the RCDRIA do not apply.

## **List of Subjects**

### **12 CFR Part 328**

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

### **Federal Deposit Insurance Corporation**

#### **12 CFR Chapter III**

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

1. Revise the heading for part 328 to read as follows:

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

2. Revise the authority citation for part 328 to read as follows:

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

3. Add new subpart A of part 328 entitled “Subpart A—Advertisement of Membership.”

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<sup>26</sup> *Id.*

4. Redesignate §§ 328.0 through 328.4 as subpart A of part 328.

5. Revise 12 CFR 328.3(a) to read as follows:

**(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.

6. Revise 12 CFR 328.3(e)(1) to read as follows:

**(1) Definitions -**

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

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

7. Reserve §§ 328.5 through 328.99.

8. Add a new subpart B of part 328 to read as follows:

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

**Name or Logo.**

Sec.

328.100	Scope
328.101	Definitions
328.102	Prohibition
328.103	Inquiries and Complaints
328.104	Investigations of Potential Violations
328.105	Referral to Appropriate Authority
328.106	Informal Resolution

328.107 Formal Enforcement Actions

328.108 Appeals Process

328.109 Other Actions Preserved

## **Subpart B— False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s**

### **Name or Logo**

#### **§ 328.100 Scope.**

This Subpart applies to any person who: (1) falsely represents, expressly or by implication, that any deposit liability, obligation, certificate, or share is FDIC-insured by using the FDIC’s name or logo; (2) knowingly misrepresents, expressly or by implication, that any deposit liability, obligation, certificate, or share is insured by the FDIC if such an item is not so insured; (3) knowingly misrepresents, expressly or by implication, the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the FDIC, if such an item is not insured to the extent or manner represented; or (4) aids or abets another in any of the foregoing.

#### **§ 328.101 – Definitions.**

For purposes of this subpart:

- (a) **Advertisement** means a commercial message, in any medium, that is designed to attract public attention or patronage to a product, business, or service.
- (b) **Appropriate Federal Banking Agency** has the meaning set forth in section 3(q) of the FDI Act (12 U.S.C. 1813(q)).
- (c) **Consumer** means any current or potential depositor, including natural persons, organizations, corporate entities, and governmental bodies.
- (d) **FDI Act** means the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*
- (e) **FDIC** means the Federal Deposit Insurance Corporation.
- (f) **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 12 CFR 328.1; the Official Advertising

Statement, as set forth in 12 CFR 328.3(b); any similar images; and any other signs and symbols that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed in whole or in part by the FDIC.

- (g) **FDIC-Associated Terms** means the abbreviation “FDIC,” and the following words or phrases: “Federal Deposit Insurance Corporation,” “Federal Deposit,” “Federal Deposit Insurance,” “FDIC-insured,” “FDIC insurance,” “insured by FDIC,” “member FDIC;” any similar words or phrases; or any other terms that may represent or imply that any deposit, liability, obligation certificate, or share is insured or guaranteed by the FDIC.
- (h) **Federal Banking Agency** has the meaning set forth in section 3(z) of the FDIC (12 U.S.C. 1813(z)).
- (i) **General Counsel** means the General Counsel of the FDIC or his or her designee.
- (j) **Hybrid Product** has the same meaning as set forth under 12 CFR 328.3(e)(1)(ii).
- (k) **Institution-Affiliated Party (IAP)** has the same meaning as set forth under section 3(u) of the FDI Act, 12 U.S.C. 1813(u).
- (l) **Insured Deposit** has the same meaning as set forth under section 3(m) of the FDI Act, 12 U.S.C. 1813(m).
- (m) **Insured Depository Institution** has the same meaning as set forth under section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).
- (n) **Non-Deposit Product** has the same meaning as set forth under 12 CFR 328.3(e)(1)(i).
- (o) **Person** means a natural person, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity, association, or organization, including a Regulated Institution as defined in paragraph (p) of this section.
- (p) **Regulated Institution** means any institution for which the FDIC, the Office of the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System is the “appropriate Federal banking agency” under section 3(q) of the FDI Act, 12 U.S.C. 1813(q).
- (q) **Third-Party Publisher** means any party that publishes, places, distributes, or circulates advertising or marketing materials, regardless of the platform or media used for distribution, containing FDIC-

Associated Images, FDIC-Associated Terms, or other claims regarding FDIC insurance or guarantees. Third-Party Publishers include, but are not limited to: publishers and distributors of written, visual, or print advertising; broadcasters of video or audio advertisements; telemarketers; internet or web-based distributors, including internet service providers, and email marketers; and direct mail marketers and distributors.

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

**§ 328.102 – Prohibition.**

- (a) *Use of the FDIC Name or Logo.*

- (1) No person may represent or imply that any Uninsured Financial Product is insured or guaranteed by the FDIC by using FDIC-Associated Terms as part of any business name or firm name of any person;
- (2) No person may represent or imply that any Uninsured Financial Product is insured or guaranteed by the FDIC by using FDIC-Associated Terms or by using FDIC-Associated Images as part of an Advertisement, solicitation, or other publication or dissemination.
- (3) This subsection applies, but is not limited, to:
  - (i) An Advertisement for any Uninsured Financial Product that features or includes one or more FDIC-Associated Terms or FDIC-Associated Images, without a clear, conspicuous, and prominent disclaimer that the products being offered are not FDIC insured or guaranteed;
  - (ii) An Advertisement for any Uninsured Financial Product that may be backed or guaranteed by an entity other than the FDIC, but features or includes one or more FDIC-Associated Terms or FDIC-Associated Images, without a clear, conspicuous, prominent, and accurate explanation as to the actual nature and source of the guarantee;

- (iii) An Advertisement for any Non-Deposit Product or Hybrid Product by a Regulated Institution that includes any statement or symbol which implies or suggests the existence of deposit insurance relating to the Non-Deposit product or Hybrid Product;
- (iv) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is an FDIC-insured institution if this is not in fact true.
- (v) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is associated with an FDIC-insured institution if the nature of the association is not clearly, conspicuously, prominently, and accurately described.
- (vi) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is the FDIC or any office, division, or subdivision thereof, if this is not in fact true.
- (vii) Publication or dissemination of information, regardless of the media or platform, that suggests or implies that the party making the representation is associated with the FDIC or any office, division, or subdivision thereof, if the nature of the association is not clearly, conspicuously, prominently, and accurately described.

(b) *False or Misleading Representations regarding FDIC Insurance.*

(1) No person may knowingly make false or misleading representations about deposit insurance, including:

- (i) that any deposit liability, obligation, certificate, or share is insured under this subpart if such a deposit is not so insured;
- (ii) the extent to which any deposit liability, obligation, certificate, or share is insured under this subpart if such item is not insured to the extent represented; or
- (iii) the manner in which any deposit liability, obligation, certificate, or share is insured under this subpart if such item is not insured in the manner represented.

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

- (i) includes any FDIC-Associated Images or FDIC-Associated Terms;
- (ii) makes any representation, suggestion, or implication about the existence of FDIC insurance or the extent or manner of coverage; or
- (iii) makes any representation, suggestion, or implication about the existence, extent, or effectiveness of any guarantee by FDIC in the event of financial distress by Insured Depository Institutions, whether a specific Insured Depository Institution or Insured Depository Institutions generally, including but not limited to bank failure, insolvency, or receivership of such institutions.

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

- (i) the statement contains any material representations which would have the tendency or capacity to mislead a reasonable consumer, regardless of whether any such consumer was actually misled; or
- (ii) the statement omits material information that would be necessary to prevent a reasonable consumer from being misled, regardless of whether any such consumer was actually misled.

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

- (i) Uninsured Financial Products are insured or guaranteed by the FDIC;
- (ii) Insured Deposits (whether generally or at a particular Regulated Institution) are not insured or guaranteed by the FDIC;
- (iii) the amount of deposit insurance coverage is different (whether greater or less) than actually provided under the FDI Act;

- (iv) the circumstances under which deposit insurance may be paid are different than actually provided under the FDI Act;
  - (v) the requirements to qualify for deposit insurance, or the process by which deposit insurance would be paid, are different from what is provided under the FDI Act and its implementing regulations, including false or misleading claims related to actions required of consumers to qualify for or obtain such insurance; or
  - (vi) Regulated Institutions may convert Insured Deposits into another form of liability that is not insured, such as unsecured debt or equity.
- (5) Without limitation, a statement regarding deposit insurance will be deemed to omit material information if the absence of such information could lead a reasonable consumer to believe any of the material misrepresentations set forth in paragraph (b)(4) of this section or could otherwise result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. For example, if a statement is made by a person other than an Insured Depository Institution that represents or implies that an advertised product is insured or guaranteed by the FDIC, it will be deemed to be a material omission to fail to identify the Insured Depository Institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed.
- (6) Without limitation, a representation is deemed to have been knowingly made if the person making the representation:
- (i) has made false or misleading representations regarding deposit insurance;
  - (ii) has been advised by the FDIC in an advisory letter, as provided in § 328.106(a) or has been advised by another governmental or regulatory authority, including, but not limited to, another Federal banking agency, the Federal Trade Commission, the U.S. Department of Justice, or a state bank supervisor, that such representations are false or misleading; and
  - (iii) thereafter, continues to make these, or substantially-similar, representations.



### **§ 328.103 – Inquiries and Complaints.**

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

### **§ 328.104 – Investigations of Potential Violations**

- (a) The General Counsel has delegated authority to investigate potential violations of section 18(a) of the FDI Act (12 U.S.C. 1828(a)) and this subpart.
- (b) Such investigations will be conducted as prescribed under section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of the FDIC's Rules of Practice and Procedure (12 CFR 308.144-150). Notwithstanding the general confidentiality provisions of 12 CFR 308.147, in cases that may pose a risk of imminent harm to consumers, the FDIC may disclose or confirm the existence of an investigation that does not involve an Insured Depository Institution or a known IAP thereof. Such disclosure must not disclose any information obtained or uncovered during the course of the investigation.

### **§ 328.105 – Referral to Appropriate Authority.**

- (a) If, in connection with the receipt of an inquiry or complaint, or during the course of an investigation, informal resolution, or formal enforcement under this subpart:
  - (1) the FDIC becomes aware of conduct by a Regulated Institution for which another Federal banking agency is the appropriate Federal banking agency or an Institution-Affiliated Party of such an institution, that appears to violate section 18(a) of the FDI Act (12 U.S.C. 1828(a)), the FDIC may recommend that the appropriate Federal banking agency take appropriate enforcement action. If the appropriate Federal banking agency does not take the recommended action within

30 days, the FDIC may pursue any and all remedies available under section 18(a) or the FDI Act (12 U.S.C. 1828(a)) and this subpart;

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

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

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

#### **§ 328.106 – Informal Resolution.**

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

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

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

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

(ii) commit in writing to refrain from such violations in the future; and

- (iii) notify the FDIC in writing that the identified concerns have been fully addressed and remediated; and
- (3) Offer the person or Third-Party Publisher the opportunity to provide additional information, documentation, or justifications to substantiate the representations made or otherwise refute the FDIC's expressed concerns.
- (b) Except in cases where the FDIC has reason to believe that consumers or Insured Depository Institutions may suffer harm arising from continued violations, recipients of advisory letters described in paragraph (a) of this section, will be provided not less than fifteen (15) days to provide the requested commitment, explanation, or justification.
- (c) Where a recipient of an advisory letter described in paragraph (a) of this section, provides the FDIC with the requested written commitments within the timeframe specified in the letter, and where any required remediation has been verified by FDIC staff, the FDIC will generally take no further administrative enforcement against such a party under § 328.107.
- (d) Where a recipient of an advisory letter described in paragraph (a) of this section, fails to respond to the letter; fails to make the requested commitments; or fails to provide additional information, documentation, or justifications that the FDIC, in its discretion, finds adequate to substantiate the representations made or otherwise refute the concerns set forth in the advisory letter, the FDIC may pursue all remedies set forth in this subpart.
- (e) Nothing in this section will prevent the FDIC from commencing a formal enforcement action under § 328.107 at any time before or after the issuance of an advisory letter under this section if:
  - (1) the FDIC has reason to believe that consumers or Insured Depository Institutions may suffer harm arising from continued violations; or
  - (2) the person to whom such an advisory letter would be sent has previously received a similar advisory letter from the FDIC under § 328.106(a).

**§ 328.107 – Formal Enforcement Actions.**

- (a) *Enforcement Authority* - For the purpose of enforcing the requirements of Section 18(a)(4) of the FDI Act (12 U.S.C. 1818(a)(4)) and this subpart, the General Counsel has delegated authority to bring administrative enforcement actions against any person under sections 8(b), (c), (d), and (i) of the FDI Act (12 USC 1818(b), 1818(c), 1818(d), and 1818(i)). In the case of conduct by a Regulated Institution for which another Federal banking agency is the appropriate Federal banking agency or an institution-affiliated party of such an institution, the General Counsel may not bring an enforcement action under this subpart unless the FDIC has provided the appropriate Federal banking agency with notice as set forth in section 105(a)(1) of this subpart and the appropriate Federal banking agency failed to take the recommended action.
- (b) *Venue* - Unless the person who is the subject of the enforcement action consents to a different location, the venue for an administrative action commenced under Section 18(a)(4) of the FDI Act (12 U.S.C. 1818(a)(4)), will be as follows:
- (1) In a case where the person who is the subject of the action is an Insured Depository Institution or an IAP of an Insured Depository Institution, in the federal judicial district or territory in which the home office of the Insured Depository Institution is located;
  - (2) In a case where the person who is the subject of the action is not an Insured Depository Institution or an IAP of an Insured Depository Institution, the federal judicial district or territory where the person who is the subject of the action resides, if the subject resides in the United States. If the subject of the action does not reside in the United States, the venue will be where the subject of the action conducts business or the federal judicial district for the District of Columbia.
  - (3) For the purposes of paragraph (1) of this section, a natural person is deemed to reside in the federal judicial district where the natural person is domiciled. A person other than a natural person is deemed to reside in the federal judicial district where it is headquartered or has its principal place of business.
- (c) *Rules of Practice and Procedure*. All actions brought and maintained under this section will be

subject to the FDIC's Rules of Practice and Procedure, Subparts A - C of Part 308 (12 CFR 308.1 – 308.109).

**§ 328.108 – Appeals Process.**

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

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

**§ 328.109 – Other Actions Preserved.**

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