

SALTMARSH, CLEVELAND & GUND

Saltmarsh
Saltmarsh, Cleaveland & Gund
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

March 4, 2025

FDIC Logo, Websites, and other Advertising Requirements

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FAST FACTS

Saltmarsh, Cleaveland & Gund

At Saltmarsh, we believe the way to achieve success is by contributing to the success of others, which is why we thrive in **genuine relationships**. Our passion for people and **excellence** is more than a shared value; it's the foundation of our work.

SIZE OF FIRM



OFFICE LOCATIONS

5

FLORIDA
Destin
Orlando
Pensacola
Tampa

TENNESSEE
Nashville

AFFILIATIONS

SALTMARSH FINANCIAL ADVISORS, LLC
Saltmarsh
Financial Advisors, LLC
AN AFFILIATE OF SALTMARSH, CLEVELAND & GUND

THE BDO ALLIANCE USA
AN INDEPENDENT MEMBER OF
BDO
ALLIANCE USA

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Saltmarsh, Cleaveland & Gund
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

WHAT WE DO

Audit & Assurance | Business Valuation | Employee Benefits Consulting | Financial Planning | Litigation Support & Dispute Advisory | Outsourced Accounting Solutions | Tax Compliance & Consulting | Technology & Managed IT Consulting | Wealth Management

WHO WE SERVE

Financial Institutions | Construction & Real Estate Development | Governments, Municipalities & Pension Plans | High Net Worth Individuals | Manufacturing & Distribution | Non-Profit | Post-Acute Healthcare | Professional Employer Organizations (PEOs)

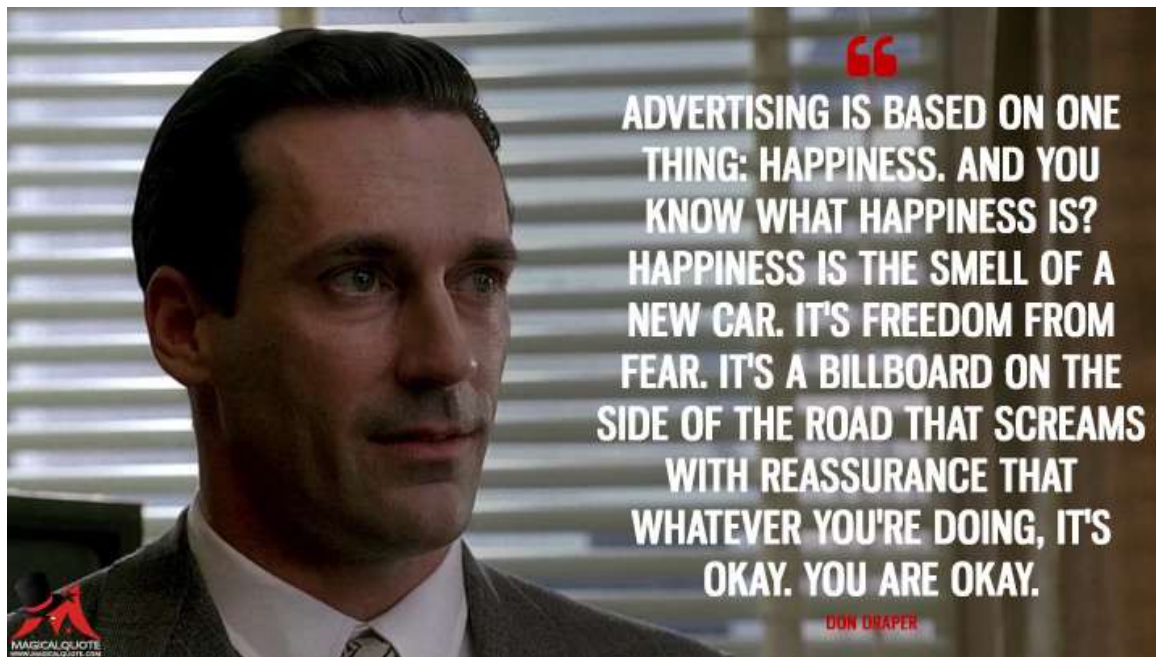


saltmarshcpa.com | (800) 477-7458

Agenda:

- Common Advertising Rules for FIs
- Regulation DD
- Regulation Z
- UDAAP
- Social Media in Advertising
- 12 CFR Part 328, Subpart A

What is Advertising?



So how do we sell happiness?





Not So Fast!!

If you are doing this, you have a problem:



"HOW HIGH CAN THE ADJUSTABLE INTEREST RATE GO? WELL, NOW, WE DON'T WANT TO GET BOGGED DOWN IN A LOT OF TECHNICALITIES, DO WE?"



"I didn't know my mortgage was that adjustable!"

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Non-Compliant Bank Advertisements

Misrepresenting deposit contracts (Regulation DD)

- Representing an overdraft service as a line of credit or claiming that an institution will honor all overdrafts.

Misrepresenting interest rates (Regulation Z)

- Highlighting a low introductory rate without mentioning potential rate hikes.

Failing to disclose important terms (Regulation DD and Regulation Z)

- Not providing clear and conspicuous disclosures about interest rates, fees, or other terms.

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

- Making false or misleading claims about a products benefits;
- Hiding important terms and conditions;
- Targeting vulnerable consumers with predatory lending practices.

Misusing the FDIC's name or logo (12 CFR Part 328, Subpart A)

- Using the FDIC's official advertising statement in a way that implies someone other than an Insured Depository Institution (IDI) is insured by the FDIC.

Regulation DD

- 12 CFR Part 1030
- Implements the Truth in Savings Act (TISA) of 1991
- Requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions
- The advertising rules in § 1030.8 apply to any person who advertises an account offered by a depository institution, including deposit brokers.

Common Reg. DD Violations

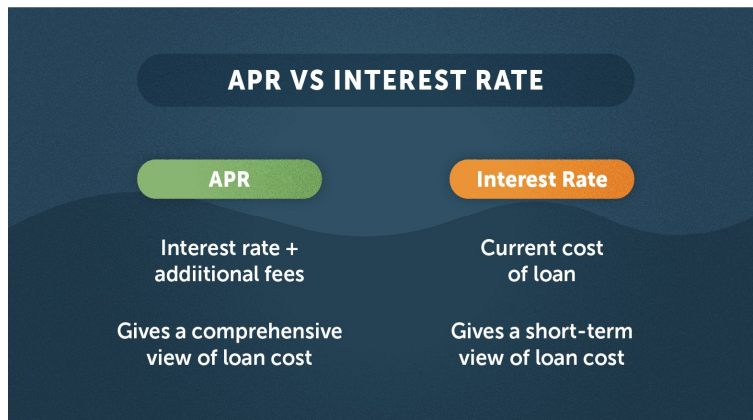
- Referring to an account as “free” or “no cost” if a maintenance or activity fee may be imposed on the account.
- Stating the APY in an ad and **not**
 - Stating a variable rate may change after account opening
 - Stating the period of time the APY will be offered, or a statement the APY is accurate as of a specified date.
- Employees marketing products and services on personal social media sites (Facebook, LinkedIn, etc.)

Regulation Z

- 12 CFR Part 1026
- Implements the Truth in Lending Act (TILA)
- Promote the informed use of consumer credit by requiring disclosures about its terms and costs
- Advertising Rules: §1026.24



Common Reg. Z Violations



- Ad uses the simple interest rate as the disclosed Annual Percentage Rate (APR)
 - Ads may state the simple interest rate along with the APR, but the simple interest rate must be less conspicuous.
- Ad discloses the APR but:
 - For variable rate loans does not disclose the APR may increase after consummation.
 - For dwelling secured loans, does not disclose a formula for determining the rate (index and margin) based on a reasonably current index and margin.
- Ad for dwelling secured loan discloses a payment amount but:
 - The ad does not contain a statement that payments do not include amounts for taxes and insurance along with a warning that the actual payment will be greater.



UDAAP

- 12 U.S.C 5531
- In response to the 2007-2008 financial crisis, Congress passed the Consumer Financial Protection Act of 2010 (CFPA).
- Congress concluded that the manner in which agencies had enforced the prohibitions on unfair and deceptive acts or practices was too limited to be effective at preventing the financial crisis.
- In the CFPA, Congress granted authority over **unfair or deceptive acts or practices** to the States, the Federal banking agencies, and the newly created Consumer Financial Protection Bureau (CFPB).
- Congress also added a prohibition on **abusive acts or practices**.



What DOES UDAAP Prohibit

Unfair Acts or Practices

- The standard for unfairness in the Dodd-Frank Act is that an act or practice is unfair when:
 - 1) It causes or is likely to cause substantial injury to customers;
 - 2) The injury is not reasonably avoidable by consumers; and
 - 3) The injury is not outweighed by countervailing benefits to consumers or to competition.

What DOES UDAAP Prohibit, cont.

Deceptive Acts or Practices

- A representation, omission, act, or practice is deceptive when:
 - 1) The representation, omission, act, or practice misleads or is likely to mislead the consumer;
 - 2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
 - 3) The misleading representation, omission, act, or practice is material.

What DOES UDAAP Prohibit, cont.

Abusive Acts or Practices

- The Dodd-Frank Act makes it unlawful for any covered person or service provider to engage in “abusive act or practice.” An abusive act or practice:
 - 1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or;
 - 2) Takes unreasonable advantage of:
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

UDAAP Examples

Great news !

You've been offered **guaranteed approval** for a \$1,000 credit line, courtesy of **No Fee**

No matter your current score, you can get the funding you need to buy what you want!

Tap below to supercharge your spending.

[Review Your \\$1,000 Credit Line Offer](#)

With rewards & special discounts each month, your financial future is looking bright!

No Fee

This ad-supported email was sent to REDACTED because you've subscribed on our site or made a purchase.

[Update preferences](#) or [Unsubscribe](#)

- **Guaranteed approval:** While credit card issuers may have different underwriting criteria and standards, the use of the term "guaranteed" implies that all applicants will be approved for a credit line, regardless of their creditworthiness or financial situation. If consumers are led to believe that they will be approved without question but are later denied or subject to additional conditions, this can be considered a deceptive practice.
- **No matter your current score:** While some credit cards may offer no credit check or limited credit checks, the use of this language can mislead consumers into believing that there will be no credit evaluation at all. In reality, even if a credit check is not performed, the issuer will still review the applicant's financial and personal information to make a credit decision.
- **No fee:** While there may be no annual fee associated with the card, there could be other fees, such as balance transfer fees, foreign transaction fees, or late payment fees, that are not disclosed. Since these fees are not disclosed, consumers may reasonably believe that they will not incur any fees when using the account based on the marketing materials, which isn't entirely true.

UDAAP Examples

YOU CAN GET
IMMEDIATE APPROVAL!

Get a
\$1,000
CREDIT LINE

✓ **NO CREDIT CHECK**

✓ NO APPLICATION DENIED FOR **POOR CREDIT**

APPLY NOW

1234 5678 9012 3456
CARDHOLDER NAME
EXPIRY 06/23
MM YY

- **Immediate approval:** Similar to example #1, this email implies that all applicants will be approved for a credit line, regardless of their creditworthiness or financial situation. This email also promises “immediate” approval. Using the term “immediate” implies that a particular action or outcome will happen instantly, without any delay or waiting period. However, in the context of financial products, there may be certain processes and procedures that need to be followed before an action can be taken or an outcome can be achieved.
- **No credit check/poor credit:** While some credit cards may offer no credit check or limited credit checks, the use of this language can mislead consumers into believing that there will be no credit evaluation at all. In this particular example, in the fine print of the promotion's landing page, the company requires a consumer to “be over the age of 18, have a valid debit card or credit card, have the ability to make a monthly payment of \$250 if the entire credit line is used and have paid the necessary fees for enrollment.” While there's no hard credit check, there are still certain criteria for a consumer to meet before they can be approved.
- **Failure to disclose additional fees:** When you click through to this ad, there are additional fees associated with being approved for this credit line, which includes a \$29.95 application fee and a \$19.95 maintenance fee for every month after that. This email makes no mention of those additional fees in order for consumers to receive their funds, which could be considered misleading and deceptive.

How Does Social Media Fit In?

“Banking regulations that protect consumers apply to bank activities even when they use social media. For example, there are FDIC regulations prohibiting the use of false advertising, misrepresentations of deposit insurance coverage, and misuse of the FDIC’s name and logo.”

[-FDIC Consumer News, October 2024](#)



How Does Social Media Fit In?

“Social media may be used to market products and originate new accounts. When used to do either, a financial institution is expected to take steps to ensure that advertising, account origination, and document retention are performed in compliance with applicable consumer protection and compliance laws and regulations.”

- Truth in Savings Act/Regulation DD and Part 207
- Truth in Lending Act/Regulation Z
- Fair Lending Laws: Equal Credit Opportunity Act/Regulation B3 and Fair Housing Act
- Real Estate Settlement Procedures Act
- Fair Debt Collection Practices Act
- Unfair, Deceptive, or Abusive Acts or Practices
- Deposit Insurance or Share Insurance

[- FFIEC September 2013 Guidance, “Social Media: Consumer Compliance Risk Management Guidance”.](#)

12 CFR Part 328, Subpart A

Rule to modernize use of the official FDIC signs and advertising statements, recognizing various physical layout and design, and the widespread use of digital banking channels.

- FDIC Official Sign
- New FDIC Official **Digital** Sign for bank websites, apps, and ATMs

FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*

- Non-Deposit Signage

*Sign and advertising statement requirements for Insured Depository Institutions (IDIs) date back to the Banking Act of 1935. **This rule amends Part 328, Subpart A***

When

Amendments were effective April 1, 2024.

*Compliance is required by **May 1, 2025**. (Extended from January 1, 2025.*

The FDIC's long-standing sign rules do not reflect the digital banking services now offered, such as online banking and mobile banking. An IDI's ATM, website, or mobile application effectively serves as a digital teller window. **Combined, 65.4% of banked households in 2021 used mobile or online banking as their primary method of bank account access.** 89 FR 3505

Who

All FDIC-insured banks are subject to Subpart A's

- Use of the official FDIC sign,
- New FDIC official digital sign for bank websites, apps, and ATMs, and

FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*

- Non-deposit signage

Today, there are about 4,654 FDIC IDI in the United States.

Call Reports as of June 30, 2023.

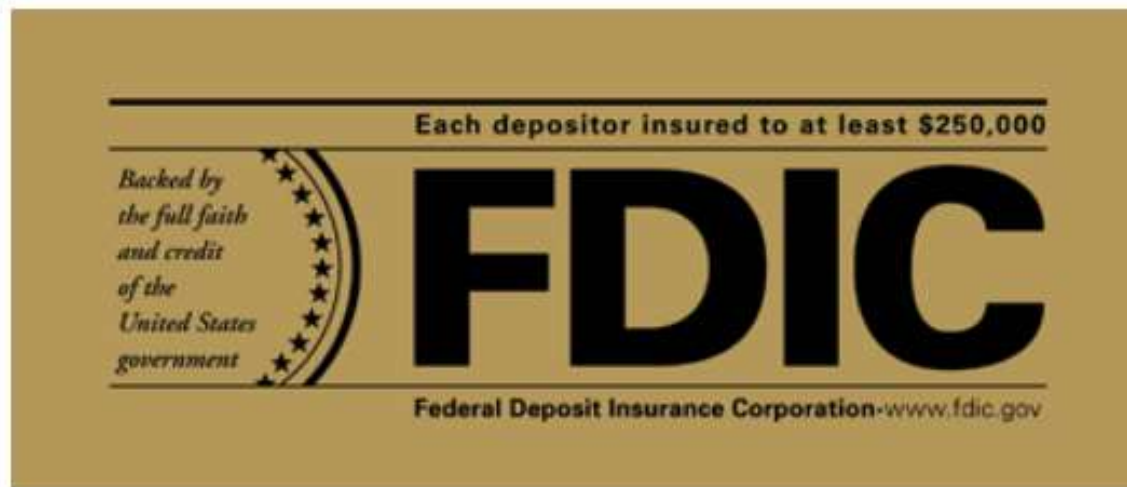
Definitions

- **Digital deposit-taking channel:** websites, banking applications, and any other electronic communications method through which an insured depository institution accepts deposits. *Hybrid product* means a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product
- **Non-deposit product:** any product that is not a “deposit”, including, but not limited to: insurance products, annuities, mutual funds, securities and crypto-assets. For purposes of this definition, credit products and safe deposit boxes are not non-deposit products.

§328.1 Definitions

Official Physical Sign

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



§328.2 Official sign

Official Digital Sign

Shall be displayed with a wordmark size of 37.36 × 15.74px, **in navy blue** (hexadecimal color code #003256), and the “FDIC-Insured - Backed by the full faith and credit of the U.S. Government” shall be displayed in regular 400 italic (12.8px) and with black (hexadecimal color code #000000) lettering. The entire FDIC official digital sign shall be displayed in Source Sans Pro Web. If the FDIC official digital sign in these colors would be illegible in a digital-taking channel, due to the color of the background, the entire FDIC official digital sign shall be displayed in white (hexadecimal color code #FFFFFF).

FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*

§328.5 Signs for digital deposit-taking channels.

Clear, Conspicuous, & Continuous

- Considers proximity, placement, and prominence.
- Clear and conspicuous is difficult to miss, easily noticeable, and easily understandable by ordinary consumers.
- Continuous is just that. A rotating display of the official sign would not be continuous.

The rule notes that FTC guidance on effective disclosures provides helpful principles.

On Premise and No NDIP Offered

IDIs who receive deposits at teller windows or stations are generally required to display the official sign at each teller window or station. This not new, but there are new options*:

- *If Nondeposit Investment Products (NDIPs) are not offered in branch, IDIs have new flexibility to:
 1. Place the official sign next to each teller window; OR
 2. Display official signs visible from teller windows that are large enough to be legible from anywhere in the deposit-taking area.
- *New flexibility to utilize electronic media (e.g., TV screen or tablet) to satisfy sign requirements on an IDI's premises, but it must be clear, continuous and conspicuous (a "rotating display" of the official sign would not be continuous).

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

NDIP Also Offered on Premise

- Must keep the current teller signs next to each teller window (no flexibility to replace each teller sign with fewer, or larger official signs).
- Where both insured deposits and NDIPs are offered, rule requires the use of a non-deposit sign indicating *non-deposit products are not insured by the FDIC, are not deposits, and may lose value.*
 - At each location within premises where NDIPs are offered
- Must segregate NDIP areas from areas where deposits are usually and normally accepted.

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

ATMs or other remote electronic facilities that receive deposits (w/ **No** NDIP access)

Comply by:

- Displaying the FDIC official digital sign on the home page or screen, and each transaction or screen relating to deposits.
- *For ATMs put into service before January 1, 2025, may display the physical official sign.*

§328.4 Signs for automated teller machines and like devices.

ATMs or other remote electronic facilities that receive deposits (& allow NDIP access)

Comply by:

- Displaying the FDIC official digital sign on the home page or screen, and each transaction or screen relating to deposits.
- Indicate, on each transaction page or screen relating to non-deposit products, that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.
 - *Such signage may not be displayed in close proximity to the FDIC official digital sign.*

§328.4 Signs for automated teller machines and like devices.

Digital Deposit-taking Channels

This section governs signage for digital deposit-taking channels, including IDIs' websites and web-based or mobile applications that offer the ability to make deposits electronically and provide access to deposits.

- Must display the FDIC official digital sign within digital deposit-taking channels on the following pages or screens:
 1. *Initial or homepage of the website or application;*
 2. *Landing or login pages; and*
 3. *Pages where the customer may transact with deposits.*

§328.5 Signs for digital deposit-taking channels.

Digital Deposit-taking Channels, cont.

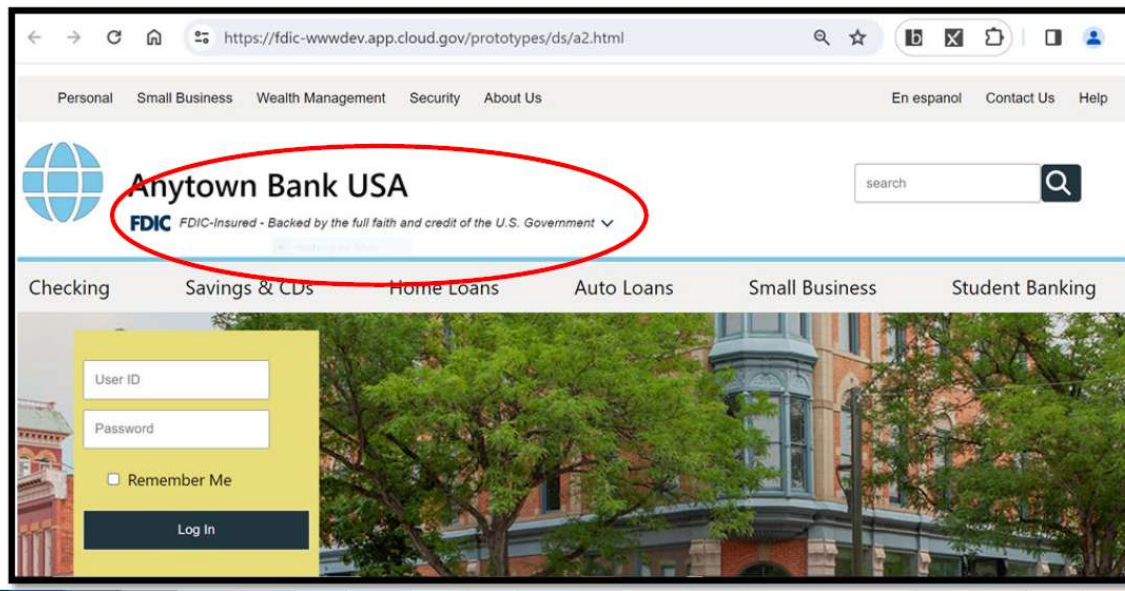
When displaying the FDIC official digital sign

- **Legibility.** Must be clearly legible across all IDI deposit-taking channels.
- **Clear and conspicuous placement.** An official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the IDIs name.

§328.5 Signs for digital deposit-taking channels.

Digital Deposit-taking Channels, cont.

An example: New FDIC Official Digital Sign for Bank Websites and Apps



<https://www.fdic.gov/resources/deposit-insurance/banker-webinar/index.html>

Digital Deposit-taking Channels, cont.

New advertising statement flexibilities:

- If a page on a bank's website/app has the new FDIC official digital sign and could be considered an “advertisement,” the banks can, if they choose, but are not required to, remove the “Member FDIC” or “Member of FDIC” logo.
- IDI’s may opt to use the new “FDIC-insured” language to satisfy advertisement statement requirement instead of “Member FDIC” or “Member of FDIC”

IDIs still need the advertising statement on pages where the official digital sign is not required, but still might be an ‘advertisement’ under §328.6.

§328.6 Official advertising statement requirements.

Digital Deposit-taking Channels, cont.

If a digital deposit-taking channel offers both access to deposits and NDIPs, must:

- Display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.
 - *This signage must be displayed continuously on each page relating to non-deposit products.*

§328.5 Signs for digital deposit-taking channels.

Digital Deposit-taking Channels, cont.

Non-deposit sign requirements for Bank digital deposit-taking channels

Static Sign on a bank's website.

- On each page relating to non-deposit products, display a non-deposit sign clearly, conspicuously, and continuously indicating that:

Non-deposit products:
Are not FDIC insured;
Are not deposits;
May lose value.

- There is no size or design requirement for how this statement is displayed, provided the message is displayed clearly, continuously, and conspicuously.

<https://www.fdic.gov/resources/deposit-insurance/banker-webinar/index.html>

Notification for Bank Customers Related to Third-Party Non-deposit Products

- Applies when a logged-in bank customer accesses non-deposit products from a non-bank third party's website via an IDI's digital deposit-taking channel (e.g., through a hyperlink).
- Must be dismissed by an action of the bank customer before initially accessing the third party's online platform.
- Must clearly and conspicuously indicate that the third party's non-deposit products: are not insured by the FDIC; are not deposits; and may lose value.

Example: *The one-time notification could be a “pop-up” or “speedbump” that the customer must dismiss before accessing the third party's website. Does not limit an IDI's ability to include additional disclosures in the notification that may help prevent consumer confusion (i.e., leaving the Bank's website).*

§328.5(g)(2) Signs for digital deposit-taking channels.

Policy & Procedures Requirement

Must establish and maintain written policies and procedures to achieve compliance:

- Commensurate with the nature, size, complexity, scope, and potential risk of deposit-taking activities.
- Include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties.

§328.8 *Policies and procedures.*

Resources

- **The Rule Itself:** <https://www.govinfo.gov/content/pkg/FR-2024-01-18/pdf/2023-28629.pdf>
- **FDIC Financial Institution Letter:** <https://www.fdic.gov/news/financial-institution-letters/2023/fil23065.html#>
- **The Regulation:** <https://www.ecfr.gov/current/title-12/chapter-III/subchapter-B/part-328>



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