FDIC Takes Latest Step in Efforts to Modernize

**Overview:** On February 24, 2020, the FDIC’s office of innovation, called FDiTech, released a new guide for fintech companies to aid them in navigating relationships with banks. The FDIC has called it “the first in a series of new resources from FDiTech to help fintechs and third parties partner with banks.”

The FDIC and Innovation

From the time of her appointment in 2018, FDIC Board Chair Jelena McWilliams has communicated a clear intent to modernize the FDIC’s approach to bank regulation, encourage innovation within the banking industry, and support collaboration between banks, technology companies, and regulators. For example, in a prepared statement given before the House Financial Services Committee, McWilliams discussed the FDIC’s role in overseeing “the Fintech Revolution,” and stated that the FDIC’s goal is to reverse the trend of regulatory agencies playing catch-up with technological advancements and their impact on regulated entities and consumers. She professed that “the FDIC can help increase the velocity of transformation, while ensuring that banks continue to operate in a safe and sound manner and consumers remain protected.”

In a keynote speech given in August, 2019, Chairman McWilliams stated that the FDIC wishes to support “the next chapter of banking by encouraging innovation that meets consumer demand, promotes community banking, reduces compliance burdens, and modernizes our supervision.” She went on to say, “Whether banks choose to develop technology on their own or partner with a fintech, the FDIC will work with them to identify and remove unnecessary regulatory impediments. Through engagement and technical assistance we can help eliminate the regulatory uncertainty that prevents some banks from adopting new technologies.”

In another speech to fellow regulators, McWilliams equated banks that do not innovate with the boom-bust lifecycle of Blockbuster Video. She highlighted her belief that both banks and their regulators must modernize. In particular, she called on banks, fintech firms, and regulators to collaborate.

Enter FDiTech. Initially announced in October 2018, as the creation of a new “Office of Innovation,” FDiTech was created in 2019. FDiTech appears to be the action arm of the
FDIC’s efforts to innovate and collaborate. In addition to a general call for technologists to join the agency, the FDIC has been seeking a technology innovator to fill the role of Chief Innovation Officer. Chairman McWilliams described her ideal candidate for this role as a “disruptor” who is not a regulator but rather someone who has actually created and rolled out technology that relates to banking services.

As part of these modernization efforts, on November 6, 2019, the FDIC published a notice and request for public comment regarding a proposal for “Information Collection for Innovation Pilot Programs.” The FDIC described the notice as a continuation of “its engagement and collaboration with innovators in the financial, non-financial, and technology sectors to, among other things, identify, develop and promote technology-driven innovations among community and other banks.” This innovation pilot program framework appears aimed at testing new and useful technological approaches to banking products and services that would hopefully lead to lower costs, increased access to financial services, and decreases in costs and risks for financial institutions. Additional details were promised in the future, but the FDIC expressed that banks and fintech firms would be invited to propose “time limited pilot programs, which will be collected and considered by the FDIC on a case-by-case basis.”

The Guidance

FDiTech announced the new guidance as the first in a promised series of new resources to help fintech firms and third parties partner with banks. It serves as a sort of primer to help companies that may be unfamiliar with federal financial regulations set expectations regarding banking relationships. The guidance provides an overview of how banks typically evaluate third parties and the risks associated with partnering with them. For example, the FDIC explains that banks create risk management programs that typically assess the risks associated with the activity, conduct due diligence on the third party, structure and review contracts appropriately, and oversee third party relationships on an ongoing basis.

The guidance also aims to prepare fintechs for partnering with banks by describing common due diligence considerations banks will evaluate when contemplating entering an arrangement with a third party. It explains that banks will evaluate whether the third party is acting in compliance with applicable laws and regulations, assess the financial condition of the company, review ownership and management structures, and examine the third party’s internal controls, policies, and procedures. FDiTech also advises fintechs to familiarize themselves with the framework of laws and regulations that apply to financial institutions. In closing, the guidance offers a substantial list of items that a bank’s management may request from any third party as part of the bank’s due diligence and contract management process.

Outlook: With the repetition of its goal to foster innovation and collaboration, the FDIC appears to be making some steps toward facilitating fintech partnerships with banks, and promoting new ideas and approaches to the provision of banking services.
FDIC Seeks to Update Signage and Advertising Rules

Overview: The FDIC’s rules regarding sign and advertising requirements have not been substantively updated since 2006. The agency has recently issued a notice and request for information (“RFI”) in order to gather industry input regarding how to update and modernize these rules. Comments on the RFI are due by March 19, 2020.

Background

Federal regulations require FDIC-insured banks to display at all times the official 7-inch by 3-inch FDIC sign at each station where deposits are received within each branch of the bank and certain other locations. The regulations also require that all advertisements for deposit products and services must contain a statement that the bank is a “Member FDIC.” Because these regulations have not been substantively updated since 2006, the FDIC has determined that they do not account for evolving banking channels and operations, such as online and mobile banking services, electronic kiosks, and third-party prepaid access providers. As stated in the RFI, “Given these banking industry developments, the FDIC is seeking information on its sign and advertising requirements to align with how banks offer products through various deposit-taking channels and how consumers interface with banks.”

The FDIC is also requesting comments from the public regarding consumer confusion and misleading advertisements concerning deposit insurance, as well as information about how technology and other solutions might help consumers differentiate between FDIC-insured institutions and non-bank financial service providers.

The FDIC is encouraging all interested parties to submit comments, including technology companies, consumer groups, researchers, trade associations, and other members of the financial services industry.

Official Sign and Advertising Statement

The RFI requests comments on all aspects of the sign regulation, but in particular lists ten specific questions. Notable questions include:

- Should the rule take into account changes in places where deposits are “usually and normally received” by banks? How?
- Does the rule’s definition of “Remote Service Facility” appropriately reflect current banking practices? For example, should the list of facilities be broadened, and if so what other “facilities” should be included?
- Are FDIC-insured institutions currently displaying a digital representation of the FDIC sign or logo on their websites or mobile apps either at account opening or each time a consumer deposits funds, and, if not, should they do so?
- Are alternative means of displaying an official FDIC sign, beyond a two-dimensional placard, appropriate in places such as cafes and through digital means? How might this be implemented for different delivery channels (e.g., brick-and-mortar, website, app-based)?

Regarding the required advertising statement, the RFI asks several questions that primarily relate to how the rule should accommodate new forms of advertising, promotion of deposit products through non-traditional channels, and arrangements with non-bank entities promoting deposit products.
Consumer Confusion and Misrepresentations

The FDIC is concerned about consumers mistaking non-bank entities for FDIC-insured depository institutions either because the non-bank entities have potentially confusing but legitimate business relationships with banks, or because the non-bank entities make misrepresentations about their services. As an example of the former, some fintech companies may provide various online financial services that include access to FDIC-insured deposit accounts held at banks that partner with the fintech company to provide such services. As an example of the latter, criminal enterprises may create fraudulent websites and claim to be FDIC-insured institutions, often in order to obtain consumers’ personal information or money.

With specific regard to misrepresentations, the RFI asks for examples of potential risks involving false representations of FDIC insurance coverage, and for examples of changes to the regulations that could help prevent or protect against such misrepresentations. The FDIC is also interested in hearing how non-banks should advertise a legitimate business relationship with an FDIC-insured institution.

Technological Solutions

The RFI also identifies consumer risks from scams in which entities pose as banks in order to defraud consumers. The FDIC is exploring the possibility of technological solutions that would enable consumers to validate whether they are interacting with an FDIC-insured institution when visiting websites and using mobile apps. Among other specific questions, the RFI asks:

If the FDIC develops a technological solution to allow consumers to distinguish FDIC-insured banks and savings associations from nonbanks across web and digital channels, what challenges would institutions have in implementing such solutions? How would any solution work with third parties that have established legitimate business relationships with banks or savings associations?

Outlook: The FDIC appears genuinely interested in updating its regulatory approach to emerging technologies and evolving banking channels, and the RFI presents an opportunity for interested parties to influence the FDIC’s approach.

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