Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-33-2012
July 9, 2012

Caution Regarding Passing Deposit Insurance Assessment Fees on to Customers

Summary: The FDIC has become aware that certain insured depository institutions (IDIs) are charging customers an "FDIC fee" or similarly described fee, apparently to compensate the IDI for some or all of its FDIC deposit insurance assessment costs. This Financial Institution Letter (FIL) communicates the FDIC's concerns and expectations when IDIs assess these types of fees.

Statement of Applicability to Institutions Under $1 Billion in Total Assets: This FIL applies to all insured financial institutions, including those with under $1 billion in assets.

Distribution:
All FDIC-Insured Institutions

Suggested Routing:
Chief Executive Officer
Chief Operations Officer
Chief Compliance Officer

Related Topics:
FDIC Operational Regulations Governing Disclosure of Information, 12 C.F.R. Part 309

FDIC Operational Regulations Governing the Assessment Process, 12 C.F.R. Part 327

Contacts:
Martin Becker, Senior Consumer Affairs Specialist, Division of Depositor and Consumer Protection, (703) 254-2233; Christopher Bellotto, Counsel, Legal Division, (202) 898-3801; Jeffrey L. Owens, Manager, Assessment Policy Section, Division of Finance, 703-562-6163; or Christine Bradley, Senior Policy Analyst, Division of Insurance and Research, (202) 898-8951

Note:
FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at http://www.fdic.gov/news/news/financial/2012/index.html.

To receive FILs electronically, visit http://www.fdic.gov/about/subscriptions/fil.html

Paper copies may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200).

Highlights:

- The FDIC has received a number of complaints from depositors stating that IDIs are charging them an "FDIC Fee," "FDIC Assessment," "FDIC Insurance Premium," "FDIC Insurance Charge," or similarly described fee for deposit insurance.
- While IDIs are not prohibited from passing the costs of deposit insurance on to customers, the FDIC discourages institutions from specifically designating that a customer fee is for deposit insurance or from stating or implying that the FDIC is charging such a fee.
- Institutions that characterize fees in this manner may (1) reveal information that could be used to determine an institution's confidential supervisory ratings, (2) mislead customers into believing that the FDIC charges IDI customers or requires IDIs to charge customers for deposit insurance, or both.
- Institutions should review their designation and identification of fees and ensure that those fees do not reveal confidential supervisory information or mislead customers.

Financial Institution Letter
FIL-33-2012
July 9, 2012

CAUTION REGARDING PASSING DEPOSIT INSURANCE ASSESSMENT FEES ON TO CUSTOMERS

The FDIC has become aware that certain IDIs are charging customers an “FDIC fee” or similarly described fee, apparently to compensate the IDI for some or all of its FDIC deposit insurance assessment costs. In some cases, IDIs have advised customers to contact the FDIC if they have questions about these fees.

In the past, the FDIC has advised IDIs in published advisory opinions that the FDIC does not preclude them from passing deposit insurance costs to depositors with notice that the cost is for that purpose, as long as the cost is calculated accurately and the charge does not exceed the actual cost of insurance for a customer’s deposits. These advisory opinions pre-date risk-based pricing and are obsolete; they are withdrawn and superseded by this FIL.

Under Parts 309 and 327 of the FDIC’s Rules and Regulations, a depository institution is prohibited from disclosing supervisory or confidential information in connection with the examination and evaluation of the depository institution or the institution’s assessment risk assignment. See 12 C.F.R. §§ 309.5(g)(8) and 327.4(d) & (e). IDIs that pass FDIC assessment fees to customers, and identify the fees as such, could indirectly violate this prohibition. In addition, fees labeled as “deposit insurance fees” when they are not reasonably related to the proportional cost of deposit insurance allocable to a particular customer may also mislead customers.

The FDIC also is concerned that labeling a fee as “FDIC” or “deposit insurance” or referring customers to the FDIC for an explanation of the fee may create the impression that the FDIC is requiring institutions to charge its customers the fee. The FDIC does not charge IDI customers for deposit insurance. Thus, it is inaccurate, and therefore misleading, for an IDI to state or imply that a particular fee charged to a customer is required by the FDIC or to refer customers to the FDIC for an explanation of the fee.

Under the Federal Deposit Insurance Act, the FDIC charges IDIs risk-based assessments to cover the costs of providing deposit insurance. How an institution decides to cover these costs, either from general revenues or by passing the costs on to customers through fees, is a business decision of the depository institution. Any fees charged, however, must not reveal confidential supervisory information (e.g., charging a fee that would allow someone to calculate the IDI’s supervisory rating or deposit insurance assessment risk assignment) or otherwise mislead or misinform customers regarding the nature of the fee or the IDI’s deposit insurance assessment.

For these reasons, the FDIC encourages institutions to review fees charged to customers and to refrain from identifying specific fees as “deposit insurance fees,” “FDIC fees,” or other similarly described fees and from referring customers to the FDIC for an explanation of the fee. To the extent the institution chooses to charge fees to recoup deposit insurance assessment costs, it should take actions to ensure it adequately addresses the concerns set out in this FIL.

Prior guidance on this subject, including FDIC Advisory Opinions 91-30 (April 17, 1991) and 90-78 (Dec. 24, 1990), is withdrawn and superseded by this FIL.

Mark Pearce
Director
Division of Depositor and Consumer Protection

Richard J. Osterman, Jr.
Acting General Counsel