

Federal Deposit Insurance Corporation

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§ 336.12 may also be subject to other administrative, civil, or criminal remedies or penalties as provided by law.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

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AUTHORITY: 12 U.S.C. 375a(4), 375b, 1463, 1464, 1468, 1816, 1818(a), 1818(b), 1819, 1820(d), 1821(f), 1828(j)(2), 1831, 1831f, 1831g, 5412.

SOURCE: 39 FR 29179, Aug. 14, 1974, unless otherwise noted.

§ 337.1 Scope.

The provisions of this part apply to certain banking practices which are likely to have adverse effects on the safety and soundness of insured State nonmember banks or which are likely to result in violations of law, rule, or regulation.

§ 337.2 Standby letters of credit.

(a) *Definition.* As used in this section, the term *standby letter of credit* means any letter of credit, or similar arrangement however named or described, which represents an obligation to the beneficiary on the part of the issuer: (1) To repay money borrowed by or advanced to or for the account of the account party, or (2) to make payment on account of any indebtedness undertaken by the account party, or (3) to make payment on account of any default (including any statement of default) by the account party in the performance of an obligation.¹ The term

¹As defined in this paragraph (a), the term *standby letter of credit* would not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guaranty" payment of a money obligation of the account party and which do not

similar arrangement includes the creation of an acceptance or similar undertaking.

(b) *Restriction.* A standby letter of credit issued by an insured State nonmember bank shall be combined with all other standby letters of credit and all loans for purposes of applying any legal limitation on loans of the bank (including limitations on loans to any one borrower, on loans to affiliates of the bank, or on aggregate loans); *Provided, however,* That if such standby letter of credit is subject to separate limitation under applicable State or federal law, then the separate limitation shall apply in lieu of the loan limitation.²

(c) *Exceptions.* All standby letters of credit shall be subject to the provisions of paragraph (b) of this section except where:

(1) Prior to or at the time of issuance, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or,

(2) Prior to or at the time of issuance, the issuing bank has set aside sufficient funds in a segregated deposit account, clearly earmarked for that purpose, to cover the bank's maximum liability under the standby letter of credit.

(d) *Disclosure.* Each insured State nonmember bank must maintain adequate control and subsidiary records of its standby letters of credit comparable to the records maintained in connection with the bank's direct loans so that at all times the bank's potential liability thereunder and the bank's compliance with this section may be readily determined. In addition, all such standby letters of credit must be adequately reflected on the bank's published financial statements.

provide that payment is occasioned by default on the part of the account party.

²Where the standby letter of credit is subject to a non-recourse participation agreement with another bank or other banks, this section shall apply to the issuer and each participant in the same manner as in the case of a participated loan.

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of FDIC-supervised institutions.

(a) With the exception of 12 CFR 215.5(b) and (c)(3) and (4), FDIC-supervised institutions are subject to the restrictions contained in Federal Reserve Board Regulation O (12 CFR part 215) to the same extent and to the same manner as though they were member banks.

(b) For the purposes of compliance with § 215.4(b) of Federal Reserve Board Regulation O, no FDIC-supervised institution may extend credit or grant a line of credit to any of its executive officers, directors, or principal shareholders or to any related interest of any such person in an amount that, when aggregated with the amount of all other extensions of credit and lines of credit by the FDIC-supervised institution to that person and to all related interests of that person, exceeds the greater of \$25,000 or five percent of the FDIC-supervised institution's unimpaired capital and unimpaired surplus,¹ or \$500,000 unless:

(1) The extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of that FDIC-supervised institution and

(2) The interested party has abstained from participating directly or indirectly in the voting.

(c)(1) No FDIC-supervised institution may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(2) of this section to a partnership in which one or more of the FDIC-supervised institution's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(2) of this section, the total amount of credit extended by an FDIC-supervised institution to such partnership is considered to be extended to each executive officer of the FDIC-supervised institution who is a member of the partnership.

¹For the purposes of section 337.3, an FDIC-supervised institution's unimpaired capital and unimpaired surplus shall have the same meaning as found in section 215.2(i) of Federal Reserve Board Regulation O (12 CFR 215.2(i)).

(2) An FDIC-supervised institution is authorized to extend credit to any executive officer of the bank for any other purpose not specified in § 215.5(c)(1) and (2) of Federal Reserve Board Regulation O (12 CFR 215.5(c)(1) and (2)) if the aggregate amount of such other extensions of credit does not exceed at any one time the higher of 2.5 percent of the FDIC-supervised institution's unimpaired capital and unimpaired surplus or \$25,000 but in no event more than \$100,000, provided, however, that no such extension of credit shall be subject to this limit if the extension of credit is secured by:

(i) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) A perfected security interest in a segregated deposit account in the lending FDIC-supervised institution.

(3) For the purposes of this paragraph (c), the definitions of the terms used in Federal Reserve Board Regulation O shall apply including the exclusion of executive officers of an FDIC-supervised institution's parent bank or savings and loan holding company and executive officers of any other subsidiary of that bank or savings and loan holding company from the definition of executive officer for the purposes of complying with the loan restrictions contained in section 22(g) of the Federal Reserve Act. For the purposes of complying with § 215.5(d) of Federal Reserve Board Regulation O, the reference to "the amount specified for a category of credit in paragraph (c) of this section" shall be understood to refer to the amount specified in paragraph (c)(2) of this § 337.3.

(d) *Definition.* For purposes of this section, *FDIC-supervised institution* means an entity for which the FDIC is

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the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

[85 FR 3246, Jan. 21, 2020]

§ 337.4 [Reserved]

§ 337.5 Exemption.

Check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers are exempted from § 337.2: *Provided, however*, That the bank establishes the creditworthiness of the individual before undertaking to guarantee his/her obligations and that any such arrangement to which a bank's principal shareholders, directors, or executive officers are a party be in compliance with applicable provisions of Federal Reserve Regulation O (12 CFR part 215).

[50 FR 10495, Mar. 15, 1985]

§ 337.6 Brokered deposits.

(a) *Definitions.* For the purposes of this § 337.6, the following definitions apply:

(1) *Appropriate Federal banking agency* has the same meaning as provided under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(2) *Brokered deposit* means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

(3) *Capital categories.* (i) For purposes of section 29 of the Federal Deposit Insurance Act and this § 337.6, the terms *well capitalized*, *adequately capitalized*, and *undercapitalized*,¹¹ shall have the same meaning as to each insured depository institution as provided under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.¹²

¹¹ The term *undercapitalized* includes any institution that is *significantly undercapitalized* or *critically undercapitalized* under regulations implementing section 38 of the Federal Deposit Insurance Act and issued by the appropriate federal banking agency for that institution.

¹² For the most part, the capital measure terms are defined in the following regula-

(ii) If the appropriate federal banking agency reclassifies a well capitalized insured depository institution as adequately capitalized pursuant to section 38 of the Federal Deposit Insurance Act, the institution so reclassified shall be subject to the provisions applicable to such lower capital category under this § 337.6.

(iii) An insured depository institution shall be deemed to be within a given capital category for purposes of this § 337.6 as of the date the institution is notified of, or is deemed to have notice of, its capital category, under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.¹³

(4) *Deposit* has the same meaning as provided under section 3(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(1)).

(5) *Deposit broker.* (i) The term *deposit broker* means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

tions: FDIC—12 CFR part 324, subpart H; Board of Governors of the Federal Reserve System—12 CFR part 208; and Office of the Comptroller of the Currency—12 CFR part 6.

¹³ The regulations implementing section 38 of the Federal Deposit Insurance Act and issued by the federal banking agencies generally provide that an insured depository institution is deemed to have been notified of its capital levels and its capital category as of the most recent date: (1) A Consolidated Report of Condition and Income is required to be filed with the appropriate federal banking agency; (2) A final report of examination is delivered to the institution; or (3) Written notice is provided by the appropriate federal banking agency to the institution of its capital category for purposes of section 38 of the Federal Deposit Insurance Act and implementing regulations or that the institution's capital category has changed. Provisions specifying the effective date of determination of capital category are generally published in the following regulations: FDIC—12 CFR 324.402; Board of Governors of the Federal Reserve System—12 CFR part 208, subpart D; and Office of the Comptroller of the Currency—12 CFR 6.3.

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(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a pre-arranged loan.

(ii) The term *deposit broker* does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust or other fiduciary relationship in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(5)(i)(B) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d) or 403(a));

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions; or

(J) An insured depository institution acting as an intermediary or agent of a U.S. government department or agency for a government sponsored minority or women-owned depository institution deposit program.

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution that is not well-capitalized, and any employee of any such insured depository institution, which

engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

(6) *Employee* means any employee: (i) Who is employed exclusively by the insured depository institution;

(ii) Whose compensation is primarily in the form of a salary;

(iii) Who does not share such employee's compensation with a deposit broker; and

(iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(7) *FDIC* means the Federal Deposit Insurance Corporation.

(8) *Insured depository institution* means any bank, savings association, or branch of a foreign bank insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Solicitation and acceptance of brokered deposits by insured depository institutions.* (1) A well capitalized insured depository institution may solicit and accept, renew or roll over any brokered deposit without restriction by this section.

(2)(i) An adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the FDIC in accordance with the provisions of this section.

(ii) Any adequately capitalized insured depository institution that has been granted a waiver to accept, renew or roll over a brokered deposit, or is an agent institution that receives a reciprocal deposit (under §337.6(e)(2)(i)(C)), may not pay an effective yield on any such deposit which, at the time that such deposit is accepted, renewed or rolled over, exceeds by more than 75 basis points:

(A) The effective yield paid on deposits of comparable size and maturity in such institution's normal market area for deposits accepted from within its normal market area; or

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(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.

(3)(i) An undercapitalized insured depository institution may not accept, renew or roll over any brokered deposit.

(ii) An undercapitalized insured depository institution may not solicit deposits by offering an effective yield that exceeds by more than 75 basis points the prevailing effective yields on insured deposits of comparable maturity in such institution's normal market area or in the market area in which such deposits are being solicited.

(c) *Waiver.* The FDIC may, on a case-by-case basis and upon application by an adequately capitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to such institution. The FDIC may conclude that it is not unsafe or unsound and may grant a waiver when the acceptance, renewal or rollover of brokered deposits is determined to pose no undue risk to the institution. Any waiver granted may be revoked at any time by written notice to the institution. For filing requirements, consult 12 CFR 303.243.

(d) *Exclusion for institutions in FDIC conservatorship.* No insured depository institution for which the FDIC has been appointed conservator shall be subject to the prohibition on the acceptance, renewal or rollover of brokered deposits contained in this §337.6 or section 29 of the Federal Deposit Insurance Act for 90 days after the date on which the institution was placed in conservatorship. During this 90-day period, the institution shall, nevertheless, be subject to the restriction on the payment of interest contained in paragraph (b)(2)(ii) of the section. After such 90-day period, the institution may

not accept, renew or roll over any brokered deposit.

(e) *Limited exception for reciprocal deposits—(1) Limited exception.* Reciprocal deposits of an agent institution shall not be considered to be funds obtained, directly or indirectly, by or through a deposit broker to the extent that the total amount of such reciprocal deposits does not exceed the lesser of:

(i) \$5,000,000,000; or

(ii) An amount equal to 20 percent of the total liabilities of the agent institution.

(2) *Additional definitions that apply to the limited exception for reciprocal deposits—(i) Agent institution* means an insured depository institution that places a covered deposit through a deposit placement network at other insured depository institutions in amounts that are less than or equal to the standard maximum deposit insurance amount, specifying the interest rate to be paid for such amounts, if the insured depository institution:

(A)(1) When most recently examined under section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) was found to have a composite condition of outstanding or good; and

(2) Is well capitalized;

(B) Has obtained a waiver pursuant to paragraph (c) of this section; or

(C) Does not receive an amount of reciprocal deposits that causes the total amount of reciprocal deposits held by the agent institution to be greater than the average of the total amount of reciprocal deposits held by the agent institution on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized.

(ii) *Covered deposit* means a deposit that:

(A) Is submitted for placement through a deposit placement network by an agent institution; and

(B) Does not consist of funds that were obtained for the agent institution, directly or indirectly, by or through a deposit broker before submission for placement through a deposit placement network.

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(iii) *Deposit placement network* means a network in which an insured depository institution participates, together with other insured depository institutions, for the processing and receipt of reciprocal deposits.

(iv) *Network member bank* means an insured depository institution that is a member of a deposit placement network.

(v) *Reciprocal deposits* means deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks.

(f) A market is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area. The effective yield on a deposit with an odd maturity shall be determined by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market. For purposes of this §337.6, a presumption shall exist that the prevailing rate or effective yield in the relevant market is the national rate as defined in paragraph (b)(2)(ii)(B) of this section unless the FDIC determines, in its sole discretion based on available evidence, that the effective yield in that market differs from the national rate. Evidence of the effective yield in a particular market may include (but is not limited to) the following:

(1) Evidence as to the rates paid by other insured depository institutions in the same State, county or metropolitan statistical area (though the FDIC shall not be obligated to recognize each State, county or metropolitan statistical area as a separate market area);

(2) Evidence as to the rates paid by credit unions in the same market area if the FDIC determines that the insured depository institution competes directly with these credit unions; and

(3) Evidence as to the different rates paid on different deposit products in the same market area (though the FDIC shall not be obligated to recog-

nize all alleged distinctions among various deposit products). (*Example:* For a particular market, evidence exists that the rates on money market deposit accounts (MMDAs) differ from the rates on negotiable order of withdrawal (NOW) accounts. MMDAs are distinguishable from NOW accounts in that the two types of accounts are subject to different legal requirements. Under these circumstances, for this market, the FDIC could recognize that the prevailing rate on MMDAs is different than the prevailing rate on NOW accounts.)

[57 FR 23941, June 5, 1992, as amended at 58 FR 54935, Oct. 25, 1993; 60 FR 31384, June 15, 1995; 63 FR 44750, Aug. 20, 1998; 66 FR 17622, Apr. 3, 2001; 74 FR 27683, June 11, 2009; 78 FR 55595, Sept. 10, 2013; 83 FR 17740, Apr. 24, 2018; 84 FR 1353, Feb. 4, 2019]

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§337.10 Waiver.

An insured State nonmember bank has the right to petition the Board of Directors of the Corporation for a waiver of this part or any subpart thereof with respect to any particular transaction or series of similar transactions. A waiver may be granted at the discretion of the Board upon a showing of good cause. All such petitions should be filed with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

[39 FR 29179, Aug. 14, 1974, as amended at 67 FR 71071, Nov. 29, 2002]

§337.11 Effect on other banking practices.

(a) Nothing in this part shall be construed as restricting in any manner the Corporation's authority to deal with any banking practice which is deemed to be unsafe or unsound or otherwise not in accordance with law, rule, or regulation; or which violates any condition imposed in writing by the Corporation in connection with the granting of any application or other request by an FDIC-Supervised institution, or any written agreement entered into by such institution with the Corporation. Compliance with the provisions of this

part shall not relieve an FDIC-supervised institution from its duty to conduct its operations in a safe and sound manner nor prevent the Corporation from taking whatever action it deems necessary and desirable to deal with specific acts or practices which, although they do not violate the provisions of this part, are considered detrimental to the safety and sound operation of the institution engaged therein.

(b) *Definition.* *FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

[85 FR 3247, Jan. 21, 2020]

§ 337.12 Frequency of examination.

(a) *General.* The Federal Deposit Insurance Corporation examines insured state nonmember banks pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) and examines insured State savings associations pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) and section 4 of the Home Owners' Loan Act (12 U.S.C. 1463). The FDIC is required to conduct a full-scope, on-site examination of every insured state nonmember bank and insured State savings association at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The FDIC may conduct a full-scope, on-site examination of an insured state nonmember bank or insured State savings association at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The institution has total assets of less than \$3 billion;

(2) The institution is well capitalized as defined in §324.403(b)(1) of this chapter;

(3) At the most recent FDIC or applicable State agency examination, the FDIC:

(i) Assigned the institution a rating of 1 or 2 for management as part of the institution's composite rating under the Uniform Financial Institutions

Rating System (commonly referred to as CAMELS); and

(ii) Assigned the institution a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies of which are available at the addresses specified in §309.4 of this chapter);

(4) The institution currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or the Board of Governors of the Federal Reserve System; and

(5) No person acquired control of the institution during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the FDIC to examine any insured state nonmember bank or insured State savings association as frequently as the agency deems necessary.

(d) From December 2, 2020, through December 31, 2021, for purposes of determining eligibility for the extended examination cycle described in paragraph (b) of this section, the total assets of an institution shall be determined based on the lesser of:

(1) The assets of the institution as of December 31, 2019; and

(2) The assets of the institution as of the end of the most recent calendar quarter.

[81 FR 10069, Feb. 29, 2016, as amended at 83 FR 43965, Aug. 29, 2018; 85 FR 77364, Dec. 2, 2020]

PART 338—FAIR HOUSING

Subpart A—Advertising

Sec.

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Subpart B—Recordkeeping

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338.6 Definitions applicable to this subpart B.

338.7 Recordkeeping requirements.

338.8 Compilation of loan data in register format.