

Federal Deposit Insurance Corporation

§ 338.2

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.

- 338.1 Purpose.
- 338.2 Definitions applicable to this subpart.
- 338.3 Nondiscriminatory advertising.
- 338.4 Fair housing poster.

Subpart B—Recordkeeping

- 338.5 Purpose.
- 338.6 Definitions applicable to this subpart.
- 338.7 Recordkeeping requirements.
- 338.8 Compilation of loan data in register format.
- 338.9 Mortgage lending of a controlled entity.

AUTHORITY: 12 U.S.C. 1817, 1818, 1819, 1820(b), 2801 *et seq.*; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3605, 3608; 12 CFR parts 1002, 1003; 24 CFR part 110.

SOURCE: 86 FR 8088, Feb. 3, 2021, unless otherwise noted.

Subpart A—Advertising

§ 338.1 Purpose.

The purpose of this subpart is to prohibit FDIC-supervised institutions from engaging in discriminatory advertising with regard to residential real estate-related transactions. This subpart also requires FDIC-supervised institutions to publicly display either

the Equal Housing Lender poster set forth in § 338.4(b) or the Equal Housing Opportunity poster prescribed by 24 CFR part 110 of the United States Department of Housing and Urban Development's regulations. This subpart enforces section 805 of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619 (Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988.

§ 338.2 Definitions applicable to this subpart.

For purposes of this subpart:

(a) *Bank* means an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *FDIC-supervised institution* means either a bank or a State savings association.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(e) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person; and

(3) The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 338.3

(f) *State savings association* has the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

§ 338.3 Nondiscriminatory advertising.

(a) Any FDIC-supervised institution which directly or through third parties engages in any form of advertising of any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the FDIC-supervised institutions makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

(1) With respect to written and visual advertisements, this paragraph (a) may be satisfied by including in the advertisement a copy of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender poster prescribed in § 338.4(b) or a copy of the logotype with the Equal Housing Opportunity legend contained in the Equal Housing Opportunity poster prescribed in 24 CFR 110.25(a) of the United States Department of Housing and Urban Development's regulations.

(2) With respect to oral advertisements, this paragraph (a) may be satisfied by a statement, in the spoken text of the advertisement, that the FDIC-supervised institution is an "Equal Housing Lender" or an "Equal Opportunity Lender."

(3) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in paragraphs (a)(1) and (2) of this section will satisfy the requirements of this paragraph (a).

(b) No advertisement shall contain any words, symbols, models, or other forms of communication which express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the Fair Housing Act or the Equal Credit Opportunity Act.

§ 338.4 Fair housing poster.

(a) Each FDIC-supervised institution engaged in extending loans for the purpose of purchasing, constructing, im-

12 CFR Ch. III (1-1-23 Edition)

proving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall conspicuously display either the Equal Housing Lender poster set forth in paragraph (b) of this section or the Equal Housing Opportunity poster prescribed by 24 CFR 110.25(a) of the United States Department of Housing and Urban Development's regulations, in a central location within the FDIC-supervised institution where deposits are received or where such loans are made, in a manner clearly visible to the general public entering the area, where the poster is displayed.

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and have the following text:

We Do Business in Accordance with Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

For processing under the Federal Fair Housing Act

AND TO:

Federal Deposit Insurance Corporation, National Center for Consumer and Depositor Assistance, <https://ask.fdic.gov/fdicinformationandsupportcenter>.

For processing under the FDIC Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age;
- Because income is from public assistance; or
- Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Federal Deposit Insurance Corporation, National Center for Consumer and Depositor

Federal Deposit Insurance Corporation

§ 338.9

Assistance, <https://ask.fdic.gov/fdicinformationandsupportcenter>.

(c) The Equal Housing Lender Poster specified in this section was adopted under 24 CFR 110.25(b) of the United States Department of Housing and Urban Development's rules and regulations as an authorized substitution for the poster required in §110.25(a) of those rules and regulations.

[86 FR 8088, Feb. 3, 2021, as amended at 87 FR 48079, Aug. 8, 2022; 87 FR 49767, Aug. 12, 2022]

Subpart B—Recordkeeping

§ 338.5 Purpose.

The purpose of this subpart is two-fold. First, this subpart notifies all FDIC-supervised institutions of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with 12 CFR part 1002 (Regulation B of the Bureau of Consumer Financial Protection) in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691 *et seq.*). Second, this subpart notifies certain FDIC-supervised institutions of their duty to maintain, update, and report a register of home loan applications in accordance with 12 CFR part 1003 (Regulation C of the Bureau of Consumer Financial Protection), which implements the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

§ 338.6 Definitions applicable to this subpart.

For purposes of this subpart—

(a) *Bank* means an insured State non-member bank as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

(b) *Controlled entity* means a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.

(c) *FDIC-supervised institution* means either a bank or a State savings association.

(d) *State savings association* has the same meaning as in section 3(b)(3) of

the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

§ 338.7 Recordkeeping requirements.

All FDIC-supervised institutions that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence where the extension of credit will be secured by the dwelling shall request and retain the monitoring information required by Regulation B of the Bureau of Consumer Financial Protection (12 CFR part 1002).

§ 338.8 Compilation of loan data in register format.

FDIC-supervised institutions and other lenders required to file a Home Mortgage Disclosure Act loan/application register (LAR) with the Federal Deposit Insurance Corporation shall collect, record and report such LAR in accordance with Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003).

§ 338.9 Mortgage lending of a controlled entity.

Any bank which refers any applicants to a controlled entity and which purchases any covered loan as defined in Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003) originated by the controlled entity, as a condition to transacting any business with the controlled entity, shall require the controlled entity to enter into a written agreement with the bank. The written agreement shall provide that the entity shall:

(a) Comply with the requirements of §§338.3, 338.4, and 338.7, and, if otherwise subject to Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003), §338.8;

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation; and

(c) Comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.