

Federal Deposit Insurance Corporation

§ 337.2

are not exclusive, and a senior examiner who violates the restrictions in § 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

Sec.

337.1 Scope.

337.2 Standby letters of credit.

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

337.4 [Reserved]

337.5 Exemption.

337.6 Brokered deposits.

337.7 Interest rate restrictions.

337.8-337.9 [Reserved]

337.10 Waiver.

337.11 Effect on other banking practices.

337.12 Frequency of examination.

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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

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.

beneficiary to draw upon the issuer, which do not "guaranty" payment of a money obligation of the account party and which do not 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

Federal Deposit Insurance Corporation

§ 337.6

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 §§ 337.6 and 337.7, 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, this section and § 337.7, 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

EDITORIAL NOTE: At 86 FR 6789, Jan. 22, 2021, § 337.6 was amended in part by revising paragraph (a)(3)(i). Language to the referenced footnotes 11 and 12 was not provided.

(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 section and § 337.7.

(iii) An insured depository institution shall be deemed to be within a given capital category for purposes of this section and § 337.7 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.

(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 of third parties with insured depository institutions;

(B) Any person engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions;

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

(D) 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) *Engaged in the business of placing deposits.* A person is engaged in the business of placing deposits of third parties if that person receives third party funds and deposits those funds at more than one insured depository institution.

(iii) *Engaged in the business of facilitating the placement of deposits.* A person is engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions, by, while engaged in business, with respect to deposits placed at more than one insured depository institution, engaging in one or more of the following activities:

(A) The person has legal authority, contractual or otherwise, to close the

account or move the third party's funds to another insured depository institution;

(B) The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account; or

(C) The person engages in match-making activities.

(1) A person is engaged in match-making activities if the person proposes deposit allocations at, or between, more than one bank based upon both the particular deposit objectives of a specific depositor or depositor's agent, and the particular deposit objectives of specific banks, except in the case of deposits placed by a depositor's agent with a bank affiliated with the depositor's agent. A proposed deposit allocation is based on the particular objectives of:

(i) A depositor or depositor's agent when the person has access to specific financial information of the depositor or depositor's agent and the proposed deposit allocation is based upon such information; and

(ii) A bank when the person has access to the target deposit-balance objectives of specific banks and the proposed deposit allocation is based upon such information.

(2) *Anti-evasion.* Any attempt by a person to structure a deposit placement arrangement in a way that evades meeting the matchmaking definition in this section, while still playing an ongoing role in providing any function related to matchmaking may, upon a finding by and with written notice from the FDIC, result in the person meeting the matchmaking definition.

(iv) *Engaged in the business*—A person is engaged in the business of placing, or facilitating the placement of, deposits as described in paragraph (a)(5)(ii) or (iii) of this section, respectively, when that person has a business relationship with third parties, and as part of that relationship, places, or facilitates the placement of, deposits with insured depository institutions on behalf of the third parties.

(v) 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

(1) *Designated business exceptions that meet the primary purpose exception.* Business relationships are designated as meeting the primary purpose exception, subject to §303.243(b)(3) of this chapter, where, with respect to a particular business line:

(i) Less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions;

(ii) 100 percent of depositors' funds that the agent or nominee places, or assists in placing, at depository institutions are placed into transactional accounts that do not pay any fees, interest, or other remuneration to the depositor;

(iii) A property management firm places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing property management services;

(iv) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing cross-border clearing services to its customers;

(v) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing mortgage servicing;

(vi) A title company places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating real estate transactions;

(vii) A qualified intermediary places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating exchanges of properties under section 1031 of the Internal Revenue Code;

(viii) A broker dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with 17 CFR 240.15c3-3(e) or 17 CFR 1.20(a);

(ix) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of posting collateral for customers to secure credit-card loans;

(x) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code;

(xi) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code;

(xii) The agent or nominee places, or assists in placing, customer funds into deposit accounts to enable participation in the following tax-advantaged programs: Individual retirement accounts under section 408(a) of the Internal Revenue Code, Simple individual retirement accounts under section 408(p) of the Internal Revenue Code, or Roth individual retirement accounts under section 408A of the Internal Revenue Code;

(xiii) A Federal, State, or local agency places, or assists in placing, customer funds into deposit accounts to deliver funds to the beneficiaries of government programs; and

(xiv) The agent or nominee places, or assists in placing, customer funds into deposit accounts pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the primary purpose exception.

(2) *Approval required for business relationships not designated in paragraph (a)(5)(v)(I)(I).* An agent or nominee that does not rely on a designated business exception described in this section must receive an approval under the application process in §303.243(b) of this chapter in order to qualify for the primary purpose exception.

(3) *Brokered CD placements not eligible for primary purpose exception.* An agent's or nominee's placement of brokered certificates of deposit as described in 12 U.S.C. 1831f(g)(1)(A) shall be considered a discrete and independent business line from other deposit placement businesses in which the agent or nominee may be engaged.

(4) *Brokered CD* means a deposit placement arrangement in which a master certificate of deposit is issued by an insured depository institution in the name of the third party that has organized the funding of the certificate of deposit, or in the name of a custodian or a sub-custodian of the third party, and the certificate is funded by individual investors through the third party, with each individual investor receiving an ownership interest in the certificate of deposit, or a similar deposit placement arrangement that the FDIC determines is arranged for a similar purpose.

(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.

(vi) Notwithstanding paragraph (a)(5)(v) 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

§ 337.6

12 CFR Ch. III (1–1–26 Edition)

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) 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.

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

(4) *Acceptance of nonmaturity brokered deposits.* (i) A nonmaturity brokered deposit is accepted by an institution that is less than well capitalized—

(A) At the time a new nonmaturity account is opened by or through any deposit broker; or

(B) In the case of an existing nonmaturity brokered account, or accounts, that had been opened by or through a particular deposit broker:

(1) When the aggregate account balance increases above the amount(s) in the account(s) at the time the institution falls to adequately capitalized; or,

(2) For agency or nominee accounts, when funds for a new depositor are

credited to the nonmaturity account or accounts.

(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.

(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.

[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; 86 FR 6789, Jan. 22, 2021]

§ 337.7 Interest rate restrictions.

(a) *Definitions*—(1) *National rate*. The weighted average of rates paid by all insured depository institutions and credit unions on a given deposit product, for which data are available, where the weights are each institution's market share of domestic deposits.

(2) *National rate cap*. The higher of:

(i) National rate plus 75 basis points, or

(ii) 120 percent of the current yield on similar maturity U.S. Treasury obligations plus 75 basis points or, in the case of any nonmaturity deposit, the federal funds rate plus 75 basis points.

(3) *Local market rate cap*. Ninety (90) percent of the highest interest rate paid on a particular deposit product in the institution's local market area. An institution's local market rate cap shall be based upon the rate offered on a particular product type and maturity period by an insured depository institution or credit union that is accepting deposits at a physical location within the institution's local market area.

(4) *Local market area*. An institution's local market area is any readily defined geographical market area in which the insured depository institution accepts or solicits deposits, which may include the State, county or metropolitan statistical area, in which the insured depository institution accepts or solicits deposits.

(5) *On-tenor and off-tenor maturities*. On-tenor maturities include the following term periods: 1-month, 3-months, 6-months, 12-months, 24-months, 36-months, 48-months, and 60-months. All other term periods are considered off-tenor maturities for purposes of this section.

(b) *Computation and publication of national rate cap*—(1) *Computation*. The Corporation will compute the national rate cap for different deposit products and maturities, as determined by the Corporation based on available and reported data.

(2) *Publication*. The Corporation will publish the national rate cap monthly, but reserves the discretion to publish more or less frequently, if needed, on the Corporation's website. Except as provided in paragraph (f) of this section, for institutions that are less than

well capitalized at the time of publication, a national rate cap that is lower than the previously published national rate cap will take effect 3 days after publication. The previously published national rate cap will remain in effect during this 3-day period.

(c) *Application*—(1) *Well-capitalized institutions*. A well-capitalized institution may pay interest without restriction by this section.

(2) *Institutions that are not well capitalized*. An institution that is not well capitalized may not: Solicit deposits by offering a rate of interest that exceeds the applicable rate cap; or, where an institution has accepted brokered deposits pursuant to a waiver described in § 337.6(c), pay a rate of interest that, at the time such deposit is accepted, exceeds the applicable rate cap. For purposes of this section, the applicable rate cap is the national rate cap or, if the institution has provided the notice and evidence described in subsection (d) of this section, the local market rate cap for deposits gathered in the institution's local market area. If an institution gathers deposits from more than one local area, it may seek to pay a rate of interest up to its local market rate cap for deposits gathered in each respective local market area.

(d) *Notice related to local market rate cap applicability*. An insured depository institution that seeks to pay a rate of interest up to its local market rate cap shall provide notice and evidence of the highest rate paid on a particular deposit product in the institution's local market area to the appropriate FDIC regional director. The institution shall update its evidence and calculations for existing and new accounts monthly unless otherwise instructed by the appropriate FDIC regional director, and retain such information available for at least the two most recent examination cycles and, upon the FDIC's request, provide the documentation to the appropriate FDIC regional office and to examination staff during any subsequent examinations.

(e) *Offering products with off-tenor maturities*. If an institution seeks to offer a product with an off-tenor maturity for which the FDIC does not publish the national rate cap or that is not offered by another institution within its

local market area, then the institution will be required to use the rate offered on the next lower on-tenor maturity for that product when determining its applicable national or local rate cap, respectively. For example, an institution seeking to offer a 26-month certificate of deposit must use the rate offered for a 24-month certificate of deposit to determine the institution's applicable national or local rate cap. There is no off-tenor maturity for nonmaturity products such as an interest checking account, savings account, or money market deposit account.

(f) *Discretion to delay effect of published national rate cap*. In the event of a substantial decrease in the published national rate cap from one month to the next, the Corporation may, in its discretion, delay the date on which the published national rate cap takes effect. The previously published national rate cap will remain in effect until the effective date, as determined by the Corporation, of the subsequent published national rate cap.

(g) *Treatment of nonmaturity deposits for purposes of this section*. For purposes of this section, the following definitions apply.

(1) *Solicitation of nonmaturity deposits*.

(i) An institution solicits a nonmaturity deposit when—

(A) A nonmaturity account is opened;

(B) The institution raises the rate being paid on a nonmaturity account existing at the time when the institution was last well capitalized; or,

(C) Funds for a new depositor are credited to a nonmaturity account existing at the time when the institution was last well capitalized.

(2) *Acceptance of nonmaturity brokered deposits subject to a waiver*. A less than well capitalized institution that accepts nonmaturity brokered deposits subject to waiver, with respect to a particular deposit broker, may not pay interest in excess of the applicable rate cap on:

(i) Any new nonmaturity accounts opened by or through that particular deposit broker;

(ii) An amount of funds that exceeds the amount(s) in the account(s) that, at the time the institution fell to less than well capitalized, had been opened

Federal Deposit Insurance Corporation

§ 337.12

by or through the particular deposit broker; or

(iii) For agency or nominee accounts, any funds for a new depositor credited to a nonmaturity account or accounts.

[86 FR 6791, Jan. 22, 2021]

§§ 337.8–337.9 [Reserved]

§ 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 bank-

ing 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.

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.