

§ 390.133 How long is the FDIC review period?

(a) *General.* The applicable FDIC review period is 60 calendar days after the date that your application is deemed complete, unless an applicable FDIC regulation specifies a different review period.

(b) *Multiple applications.* If you submit more than one application in connection with a proposed action or if two or more applicants submit related applications, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

(c) *Extensions.* (1) The FDIC may extend the review period for up to 30 calendar days beyond the period described in paragraph (a) or (b) of this section. The FDIC must notify you in writing of the extension and the duration of the extension. The FDIC must issue the written extension before the end of the review period.

(2) The FDIC may also extend the review period as needed until it acts on the application, if the application presents a significant issue of law or policy that requires additional time to resolve. The FDIC must notify you in writing of the extension and the general reasons for the extension. The FDIC must issue the written extension before the end of the review period, including any extension of that period under paragraph (c)(1) of this section.

§ 390.134 How will I know if my application has been approved?

(a) *FDIC approval or denial.* (1) The FDIC will approve or deny your application before the expiration of the applicable review period, including any extensions of the review period.

(2) The FDIC will promptly notify you in writing of its decision to approve or deny your application.

(b) *No FDIC action.* If the FDIC fails to act under paragraph (a)(1) of this section, your application is approved.

§ 390.135 What will happen if the FDIC does not approve or disapprove my application within two calendar years after the filing date?

(a) *Withdrawal.* If the FDIC has not approved or denied your pending appli-

cation within two calendar years after the filing date under § 390.109, the FDIC will notify you, in writing, that your application is deemed withdrawn unless the FDIC determines that you are actively pursuing a final FDIC determination on your application. You are not actively pursuing a final FDIC determination if you have failed to timely take an action required under this part, including filing required additional information, or the FDIC has suspended processing of your application under § 390.132 based on circumstances that are, in whole or in part, within your control and you have failed to take reasonable steps to resolve these circumstances.

(b) [Reserved]

Subpart G—Nondiscrimination Requirements**§ 390.140 Definitions.**

As used in this subpart—

Application. For purposes of this part, an application for a loan or other service is as defined in Regulation C, 12 CFR 203.2(b).

Dwelling. The term “dwelling” means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

State savings association. The term “State savings association” means any State savings association as defined in 12 U.S.C. 1813(b).

§ 390.141 Supplementary guidelines.

The FDIC’s policy statement found at 12 CFR 390.150 supplements this subpart and should be read together with this subpart. Refer also to the HUD Fair Housing regulations at 24 CFR parts 100 *et seq.*, Federal Reserve Regulation B at 12 CFR part 202, and Federal Reserve Regulation C at 12 CFR part 203.

§ 390.142 Nondiscrimination in lending and other services.

(a) No State savings association may deny a loan or other service, or discriminate in the purchase of loans or

§ 390.143

securities or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract) or national origin of:

- (1) An applicant or joint applicant;
 - (2) Any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;
 - (3) The present or prospective owners, lessees, tenants, or occupants of the dwelling(s) for which such loan or other service is to be made or given;
 - (4) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given.
- (b) A State savings association shall consider without prejudice the combined income of joint applicants for a loan or other service.

(c) No State savings association may discriminate against an applicant for a loan or other service on any prohibited basis (as defined in 12 CFR 202.2(z) and 24 CFR part 100).

§ 390.143 Nondiscriminatory appraisal and underwriting.

(a) *Appraisal.* No State savings association may use or rely upon an appraisal of a dwelling which the State savings association knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) *Underwriting.* Each State savings association shall have clearly written, non-discriminatory loan underwriting standards, available to the public upon

12 CFR Ch. III (1-1-15 Edition)

request, at each of its offices. Each association shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending.

§ 390.144 Nondiscrimination in applications.

(a) No State savings association may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a loan or other service, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), national origin, or other characteristics prohibited from consideration in § 390.142(c), of the prospective borrower or other person, who:

- (1) Makes application for any such loan or other service;
- (2) Requests forms or papers to be used to make application for any such loan or other service; or
- (3) Inquires about the availability of such loan or other service.

(b) A State savings association shall inform each inquirer of his or her right to file a written loan application, and to receive a copy of the association's underwriting standards.

§ 390.145 Nondiscriminatory advertising.

No State savings association may directly or indirectly engage in any form of advertising that implies or suggests a policy of discrimination or exclusion in violation of title VIII of the Civil Rights Acts of 1968, the Equal Credit Opportunity Act, or this subpart. Advertisements for any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall include a facsimile of the following logotype and legend:



§ 390.146 Equal Housing Lender Poster.

(a) Each State savings association shall post and maintain one or more Equal Housing Lender Posters, the text of which is prescribed in paragraph (b) of this section, in the lobby of each of its offices in a prominent place or places readily apparent to all persons

seeking loans. The poster shall be at least 11 by 14 inches in size, and the text shall be easily legible. It is recommended that savings associations post a Spanish language version of the poster in offices serving areas with a substantial Spanish-speaking population.

(b) The text of the Equal Housing Lender Poster shall be as follows:



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, Consumer Response Center, 1100 Walnut St, Box #11, Kansas City, MO 64106

For processing under 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, Consumer Response Center, 1100 Walnut St, Box #11, Kansas City, MO 64106

§ 390.147 Loan application register.

State savings associations and other lenders required to file Home Mortgage

§ 390.148

Disclosure Act Loan Application Registers with the FDIC in accordance with 12 CFR part 203 must enter the reason for denial, using the codes provided in 12 CFR part 203, with respect to all loan denials.

§ 390.148 Nondiscrimination in employment.

(a) No State savings association shall, because of an individual's race, color, religion, sex, or national origin:

(1) Fail or refuse to hire such individual;

(2) Discharge such individual;

(3) Otherwise discriminate against such individual with respect to such individual's compensation, promotion, or the terms, conditions, or privileges of such individual's employment; or

(4) Discriminate in admission to, or employment in, any program of apprenticeship, training, or retraining, including on-the-job training.

(b) No State savings association shall limit, segregate, or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, or national origin.

(c) No State savings association shall discriminate against any employee or applicant for employment because such employee or applicant has opposed any employment practice made unlawful by Federal, State, or local law or regulation or because he has in good faith made a charge of such practice or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of such practice by any lawfully constituted authority.

(d) No State savings association shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such savings association indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin.

(e) This regulation shall not apply in any case in which the Federal Equal Employment Opportunities law is made inapplicable by the provisions of section 2000e-1 or sections 2000e-2 (e)

12 CFR Ch. III (1-1-15 Edition)

through (j) of title 42, United States Code.

(f) Any violation of the following laws or regulations by a State savings association shall be deemed to be a violation of this subpart:

(1) The Equal Employment Opportunity Act, as amended, 42 U.S.C. 2000e-2000h-2, and Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR part 1600;

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621-633, and EEOC and Department of Labor regulations;

(3) Department of the Treasury regulations at 31 CFR part 12 and Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60;

(4) The Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2011-2012, and the Vietnam Era Veterans Readjustment Adjustment Assistance Act of 1974, 38 U.S.C. 2021-2026;

(5) The Rehabilitation Act of 1973, 29 U.S.C. 701 *et al.*; and

(6) The Immigration and Nationality Act, 8 U.S.C. 1324b, and INS regulations at 8 CFR part 274a.

§ 390.149 Complaints.

Complaints regarding discrimination in lending by a State savings association shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, DC 20410 for processing under the Fair Housing Act, and to the Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20249 for processing under FDIC regulations. Complaints regarding discrimination in employment by a State savings association should be referred to the Equal Employment Opportunity Commission, Washington, DC 20506 and a copy, for information only, sent to the Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20249.

§ 390.150 Guidelines relating to non-discrimination in lending.

(a) *General.* Fair housing and equal opportunity in home financing is a policy of the United States established by Federal statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the FDIC, the FDIC has adopted, in this subpart, nondiscrimination regulations that, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling, and prohibit discrimination based on race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), or national origin in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. Such discrimination is also prohibited in the purchase of loans and securities. This section provides supplementary guidelines to aid savings associations in developing and implementing nondiscriminatory lending policies. Each State savings association should reexamine its underwriting standards at least annually in order to ensure equal opportunity.

(b) *Loan underwriting standards.* The basic purpose of the FDIC's nondiscrimination regulations is to require that every applicant be given an equal opportunity to obtain a loan. Each loan applicant's creditworthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate. However, a standard which has a discriminatory effect is not necessarily improper if its use achieves a genuine business need which cannot be achieved by means which are not discriminatory in effect or less discriminatory in effect.

(c) *Discriminatory practices—* (1) *Discrimination on the basis of sex or marital status.* The Civil Rights Act of 1968 and

the National Housing Act prohibit discrimination in lending on the basis of sex. The Equal Credit Opportunity Act, in addition to this prohibition, forbids discrimination on the basis of marital status. Refusing to lend to, requiring higher standards of creditworthiness of, or imposing different requirements on, members of one sex or individuals of one marital status, is discrimination based on sex or marital status. Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.

(2) *Discrimination on the basis of language.* Requiring fluency in the English language as a prerequisite for obtaining a loan may be a discriminatory practice based on national origin.

(3) *Income of husbands and wives.* A practice of discounting all or part of either spouse's income where spouses apply jointly is a violation of section 527 of the National Housing Act. As with other income, when spouses apply jointly for a loan, the determination as to whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances. Information relating to child-bearing intentions of a couple or an individual may not be requested.

(4) *Supplementary income.* Lending standards which consider as effective only the non-overtime income of the primary wage-earner may result in discrimination because they do not take account of variations in employment patterns among individuals and families. The FDIC favors loan underwriting which reasonably evaluates the credit worthiness of each applicant based on a realistic appraisal of his or her own past, present, and foreseeable economic circumstances. The determination as to whether primary income or additional income qualifies as effective for credit purposes should depend upon whether such income may reasonably be expected to continue

through the early period of the mortgage risk. Automatically discounting other income from bonuses, overtime, or part-time employment, will cause some applicants to be denied financing without a realistic analysis of their credit worthiness. Since statistics show that minority group members and low- and moderate-income families rely more often on such supplemental income, the practice may be racially discriminatory in effect, as well as artificially restrictive of opportunities for home financing.

(5) *Applicant's prior history.* Loan decisions should be based upon a realistic evaluation of all pertinent factors respecting an individual's creditworthiness, without giving undue weight to any one factor. The State savings association should, among other things, take into consideration that:

(i) In some instances, past credit difficulties may have resulted from discriminatory practices;

(ii) A policy favoring applicants who previously owned homes may perpetuate prior discrimination;

(iii) A current, stable earnings record may be the most reliable indicator of credit-worthiness, and entitled to more weight than factors such as educational level attained;

(iv) Job or residential changes may indicate upward mobility; and

(v) Preferring applicants who have done business with the lender can perpetuate previous discriminatory policies.

(6) *Income level or racial composition of area.* Refusing to lend or lending on less favorable terms in particular areas because of their racial composition is unlawful. Refusing to lend, or offering less favorable terms (such as interest rate, downpayment, or maturity) to applicants because of the income level in an area can discriminate against minority group persons.

(7) *Age and location factors.* Sections 390.142-390.144 prohibit loan denials based upon the age or location of a dwelling. These restrictions are intended to prohibit use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Loan decisions should be based on the present

market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan. Specific factors which may negatively affect its short-range future value (up to 3-5 years) should be clearly documented. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market value of a property because of rehabilitation programs or affirmative lending programs, or because the cause of abandonment is unrelated to high risk. Proper underwriting considerations include the condition and utility of the improvements, and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults. However, arbitrary decisions based on age or location are prohibited, since many older, soundly constructed homes provide housing opportunities which may be precluded by an arbitrary lending policy.

(8) *Fair Housing Act (title VIII, Civil Rights Act of 1968, as amended).* State savings associations, must comply with all regulations promulgated by the Department of Housing and Urban Development to implement the Fair Housing Act, found at 24 CFR part 100 *et seq.*, except that they shall use the Equal Housing Lender logo and poster prescribed by FDIC regulations at §§390.145 and 390.146 rather than the Equal Housing Opportunity logo and poster required by 24 CFR parts 109 and 110.

(d) *Marketing practices.* State savings associations should review their advertising and marketing practices to ensure that their services are available without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; a State savings association does not meet its

obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community. A review of marketing practices could begin with an examination of an association's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory basis. The FDIC will systematically review marketing practices where evidence of discrimination in lending is discovered.

Subpart H [Reserved]

Subpart I—Consumer Protection in Sales of Insurance

§ 390.180 Purpose and scope.

(a) *General rule.* This subpart establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(1) Any State savings association, as defined in section 3 of the Federal Deposit Insurance Act (FDIA), (12 U.S.C. 1813(b)); or

(2) Any other person that is engaged in such activities at an office of a State savings association or on behalf of a State savings association.

(b) *Application to subsidiaries.* A subsidiary is subject to this subpart only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a State savings association or on behalf of a State savings association.

§ 390.181 Definitions.

As used in this subpart:

Affiliate means a company that controls, is controlled by, or is under common control with another company.

Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one

years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

Consumer means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

Control of a company has the same meaning as in section 3(w)(5) of the FDIA, (12 U.S.C. 1813(w)(5)).

Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

Electronic media includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

Office means the premises of a State savings association where retail deposits are accepted from the public.

Subsidiary has the same meaning as in section 3(w)(4) of the FDIA, (12 U.S.C. 1813(w)(4)).

You means:

(1) A State savings association, as defined in § 390.308; or