

Federal Deposit Insurance Corporation

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(5) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank 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 as frequently as the agency deems necessary.

[63 FR 16381, Apr. 2, 1998]

PART 338—FAIR HOUSING

Subpart A—Advertising

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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 202, 203; 24 CFR part 110.

Subpart A—Advertising

§ 338.1 Purpose.

The purpose of this subpart A is to prohibit insured state nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions. This subpart A also requires insured state nonmember banks to publicly display either the Equal Housing Lender poster set forth in § 338.4(b) of the FDIC's regulations or the Equal Housing Opportunity poster prescribed by part 110 of the regulations of the United States Department of Housing and Urban Development (24 CFR part 110). This subpart A 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.

[62 FR 36204, July 7, 1997]

§ 338.2 Definitions applicable to subpart A of this part.

For purposes of subpart A of this part:

(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, portion thereof.

(c) *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 addition to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(d) *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.

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.

[56 FR 50039, Oct. 3, 1991]

§ 338.3 Nondiscriminatory advertising.

(a) Any bank which directly or through third parties engages in any form of advertising of any loan for the purpose of purchasing, constructing,

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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 bank 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 requirement 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) of the FDIC's regulations or a copy of the logotype with the Equal Housing Opportunity legend contained in the Equal Housing Opportunity poster prescribed in § 110.25(a) of the United States Department of Housing and Urban Development's regulations (24 CFR 110.25(a)).

(2) With respect to oral advertisements, this requirement may be satisfied by a statement, in the spoken text of the advertisement, that the bank 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.

[43 FR 11563, Mar. 20, 1978, as amended at 54 FR 52930, Dec. 26, 1989. Redesignated and amended at 56 FR 50039, Oct. 3, 1991; 62 FR 36204, July 7, 1997]

§ 338.4 Fair housing poster.

(a) Each bank engaged in extending loans for the purpose of purchasing, constructing, improving, 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 § 110.25(a) of the United States Department of Housing and Urban Development's regulations (24 CFR 110.25(a)), in a central location within the bank 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 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 & Urban Development
Washington, DC 20410*

For processing under the Federal Fair Housing Act
and to:

*Division of Compliance and Consumer Affairs
Federal Deposit Insurance Corporation
Washington, DC 20429-9990*

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 was exercised under the Consumer Credit Protection Act.

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

*Division of Compliance and Consumer Affairs
Federal Deposit Insurance Corporation
Washington, DC 20429-9990*

(c) The Equal Housing Lender Poster specified in this section was adopted under §110.25(b) of the United States Department of Housing and Urban De-

velopment's rules and regulations as an authorized substitution for the poster

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required in §110.25(a) of those rules and regulations.

[54 FR 52930, Dec. 26, 1989. Redesignated at 56 FR 50039, Oct. 3, 1991, as amended by 59 FR 52667, Oct. 19, 1994; 62 FR 36204, July 7, 1997]

Subpart B—Recordkeeping

§ 338.5 Purpose.

The purpose of this subpart B is twofold. First, this subpart B notifies all insured state nonmember banks of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B of the Board of Governors of the Federal Reserve System (12 CFR part 202) 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 B notifies certain insured state nonmember banks of their duty to maintain, update and report a register of home loan applications in accordance with Regulation C of the Board of Governors of the Federal Reserve System (12 CFR part 203), which implements the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

[62 FR 36204, July 7, 1997]

§ 338.6 Definitions applicable to this subpart B.

For purposes of this subpart B—

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

(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.

[62 FR 36204, July 7, 1997]

§ 338.7 Recordkeeping requirements.

All banks 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

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of the Board of Governors of the Federal Reserve System (12 CFR part 202).

[62 FR 36204, July 7, 1997]

§ 338.8 Compilation of loan data in register format.

Banks and other lenders required to file a Home Mortgage Disclosure Act loan application register (LAR) with the Federal Deposit Insurance Corporation shall maintain, update and report such LAR in accordance with Regulation C of the Board of Governors of the Federal Reserve System (12 CFR part 203).

[62 FR 36204, July 7, 1997]

§ 338.9 Mortgage lending of a controlled entity.

Any bank which refers any applicants to a controlled entity and which purchases any home purchase loans or home improvement loans as defined in Regulation C of the Board of Governors of the Federal Reserve Board (12 CFR part 203) 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 Board of Governors of the Federal Reserve System (12 CFR part 203), § 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.

[49 FR 35764, Sept. 12, 1984. Redesignated and amended at 56 FR 50039, Oct. 3, 1991; 62 FR 36204, July 7, 1997]

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

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