

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

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(2) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of a State savings association, or on behalf of a State savings association. For purposes of this definition, activities on behalf of a State savings association include activities where a person, whether at an office of the State savings association or at another location, sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the State savings association;

(ii) The State savings association refers a consumer to a seller of insurance products and annuities and the State savings association has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the State savings association.

§ 390.182 Prohibited practices.

(a) *Anti-coercion and anti-tying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), is conditional upon either:

(1) The purchase of an insurance product or annuity from a State savings association or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, a State savings association or a subsidiary of a State savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

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(1) The fact that an insurance product or annuity you or any subsidiary of a State savings association sell or offer for sale is not backed by the Federal government or a State savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a State savings association or subsidiary of a State savings association at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the State savings association or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the State savings association or a subsidiary of a State savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 390.183 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, a State savings association or an affiliate of a State savings association;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, a State savings association, or (if applicable) an affiliate of a State savings association; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosures.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that a State savings association may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the State savings association or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures—*

(1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If you conduct an insurance product or annuity sale by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, solicitation, or offer, excluding Sundays and the legal public

holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) You are not required to provide orally any disclosures required by paragraphs (a) or (b) of this section that you provide by electronic media.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE STATE SAVINGS ASSOCIATION
- MAY GO DOWN IN VALUE

(6) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

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(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional material are of

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a general nature describing or listing the services or products offered by a State savings association.

§ 390.184 Where insurance activities may take place.

(a) *General rule.* A State savings association must, to the extent practicable:

(1) Keep the area where the State savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public;

(2) Identify the areas where insurance product or annuity sales activities occur; and

(3) Clearly delineate and distinguish those areas from the areas where the State savings association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in a State savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 390.185 Qualification and licensing requirements for insurance sales personnel.

A State savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of the State savings association's office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

APPENDIX A TO SUBPART I OF PART 390— CONSUMER GRIEVANCE PROCESS

Any consumer who believes that any State savings association or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the State savings association or on behalf of the State savings association has violated the requirements of this subpart

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should contact the FDIC at the following address: Federal Deposit Insurance Corporation, Consumer Response Center, 1100 Walnut St, Box #11, Kansas City, MO 64106, or telephone 1-877-275-3342 (1-877-ASK FDIC), or e-mail <http://www.fdic.gov/consumers/consumer/ccc/contact.html>.

Subpart J—Fiduciary Powers of State Savings Associations

§ 390.190 What regulations govern the fiduciary operations of State savings associations?

A State savings association must conduct its fiduciary operations in accordance with applicable State law, and must exercise its fiduciary powers in a safe and sound manner.

Subpart K [Reserved]

Subpart L—Electronic Operations

§ 390.220 What does this subpart do?

This subpart addresses notification of the FDIC by State savings associations who intend to establish a transactional Web site.

§ 390.221 Must I inform FDIC before I use electronic means or facilities?

(a) *General.* A State savings association (“you”) are not required to inform FDIC before you use electronic means or facilities, except as provided in paragraphs (b) and (c) of this section. However, FDIC encourages you to consult with your appropriate FDIC region before you engage in any activities using electronic means or facilities.

(b) *Activities requiring advance notice.* You must file a written notice as described in § 390.222 before you establish a transactional Web site. A transactional Web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) *Other procedures.* If the appropriate FDIC region informs you of any supervisory or compliance concerns that may affect your use of electronic means or facilities, you must follow any procedures it imposes in writing.

§ 390.222 How do I notify FDIC?

(a) *Notice requirement.* You must file a written notice with the appropriate FDIC region at least 30 days before you establish a transactional Web site. The notice must do three things:

(1) Describe the transactional Web site.

(2) Indicate the date the transactional Web site will become operational.

(3) List a contact familiar with the deployment, operation, and security of the transactional Web site.

(b) [Reserved]

Subpart M—Deposits

§ 390.230 What does this subpart do?

This subpart applies to the deposit activities of State savings associations.

§ 390.231 What records should I maintain on deposit activities?

All State savings associations (“you”) should establish and maintain deposit documentation practices and records that demonstrate that you appropriately administer and monitor deposit-related activities. Your records should adequately evidence ownership, balances, and all transactions involving each account. You may maintain records on deposit activities in any format that is consistent with standard business practices.

Subpart N—Possession by Conservators and Receivers for Federal and State Savings Associations

§ 390.240 Procedure upon taking possession.

(a) The conservator or receiver for a Federal or State savings association shall take possession of the savings association by taking possession of the principal office of the Federal or State savings association in accordance with the terms of the OCC’s or State bank supervisor’s, as appropriate, appointment.

(b) Upon taking possession, the conservator or receiver shall immediately:

(1) Take possession of the savings association’s books, records and assets.