

Fair Housing Overview

The examination procedures in this section are primarily for the review of technical compliance with the FDIC's 12 CFR part 338, a regulation to implement certain fair housing requirements. Although the fair lending procedures are addressed under a separate section of the Consumer Compliance Examination Manual, findings from the technical review may aid the review for fair lending. These procedures should be conducted to ensure compliance with 12 CFR part 338.

Background and Introduction

The Fair Housing Act (FHA) prohibits discrimination in all aspects of "residential real-estate related transactions," including but not limited to:

- Making loans to buy, build, repair or improve a dwelling;
- Purchasing real estate loans;
- Selling, brokering, or appraising residential real estate; and
- Selling or renting a dwelling.

The FHA prohibits discrimination based on:

- Race or color;
- National origin;
- Religion;
- Sex;
- Familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18); or
- Handicap.

The Department of Housing and Urban Development's (HUD) regulations implementing the FHA provisions related to fair housing posters are found at 24 CFR Part 110. The FDIC's Part 338, Fair Housing, implements this provision and nondiscriminatory advertising provisions adopted by HUD.¹ Part 338 applies to insured state nonmember banks and state savings associations (financial institutions).

¹ See Final Rule, Fair Housing, 62 FR 36201 (Jul. 7, 1997) (discussing amendments to the FDIC's 12 CFR part 338 related to amendments to HUD's former advertising regulation).

Examination Procedures

- Examiners must review compliance with these procedures in all compliance examinations that include review of files, and they may elect to do so as part of a regular, scheduled supervisory activity that includes a review of fair lending risk.
- Examiners must determine whether the financial institution's policies, procedures, and internal controls are adequate for compliance with the FDIC's regulation under the FHA.

Technical Compliance Checklist

Recordkeeping Requirements

In conjunction with review of a financial institution's compliance with the provisions of 12 CFR 1002.13,² determine whether the financial institution receives applications for credit primarily for the purchase or refinancing of an owner-occupied principal residence. If so, determine whether the financial institution retains the monitoring information required by the Consumer Financial Protection Bureau's (CFPB's) Regulation B, 12 CFR part 1002. (§ 338.7)

The monitoring information relates to:

- Race and ethnicity
- Sex
- Marital status
- Age

Disclosure

In conjunction with review of a financial institution's compliance with the provisions of 12 CFR 1002.13, determine that the institution informs the applicant(s) that the data regarding race and ethnicity, marital status, sex and age is being requested by the Federal government for the purposes of monitoring compliance with the Federal statutes that prohibit discrimination on those bases. Also determine whether the institution informs the applicant(s) that the institution is required to note the race, ethnicity and sex based on visual observation or surname should the applicant(s) choose not to provide the information.

² Procedures for the review are provided in [Section V-7.1](#), Equal Credit Opportunity Act (ECOA).

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Compilation of Loan Data

If the institution, or any affiliate, is required to file a Home Mortgage Disclosure Act loan application register (LAR) with the FDIC, determine whether the institution collected, recorded, and reported the LAR in accordance with CFPB's Regulation C, 12 CFR part 1003 (§ 338.8).³

Record Retention

In conjunction with review of a financial institution's compliance with Regulation B, 12 CFR part 1002, determine whether the institution retains the monitoring information requested from applicants as required by 12 CFR 1002.12. (§ 338,7)

Mortgage Lending of a Controlled Entity

If the financial institution is an insured state nonmember bank (not a state savings association), determine through interviews with financial institution's staff and review of the loan files, whether the institution:

- Refers any applicants to a controlled entity, and
- Purchases any covered loan (as defined by Regulation C) originated by the controlled entity as a condition to transacting any business with the controlled entity.

If this arrangement exists, the financial institution is required to enter into a written agreement with that entity. The written agreement shall provide that the entity will:

- Comply with § 338.3, § 338.4, and § 338.7 and, if otherwise subject to Regulation C, § 338.8 (§ 338.9(a));
- Provide its books and records for examination by the FDIC (§ 338.9(b)); and
- Comply with all instructions and orders issued by the FDIC with respect to its home loan practices (§ 338.9(c)).

Advertisements and Public Notices

1. If a written or visual advertisement of a loan for the purpose of purchasing, constructing, improving, repairing, or

maintaining a dwelling or any loan secured by a dwelling is used, determine whether the Equal Housing Lender or Equal Housing Opportunity logotype and legend are appropriately used.

NOTE: The Equal Housing Lender (symbol of house) with legend (the phrase "Equal Housing Lender") or the Equal Housing Opportunity (symbol of house) with the legend (the phrase "Equal Housing Opportunity") must be used together, respectively. (§ 338.3)

NOTE: This section may be satisfied in an oral advertisement by stating "Equal Housing Lender" or "Equal Opportunity Lender."

2. Determine whether any advertisement contains any words, symbols, models, or other forms of communication that express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provision of the FHAAct or ECOA. (§ 338.3(b))
3. Determine whether the required Fair Housing Poster, either the Equal Housing Lender poster or HUD's Equal Housing Opportunity poster:
 - Is at least 11 x 14 inches in size;
 - Is conspicuously displayed in a central location within the institution where deposits are received or residential real estate-related transactions are made; and
 - Contains the correct text in the proper format of § 338.4(b) for the FDIC's Equal Housing Lending poster or 24 CFR Part 110.25(a) for HUD's Equal Housing Opportunity poster. (§ 338.4)

References

- [Fair Housing Act](#), 42 USC 3601
- [24 CFR Part 110](#)
- [12 CFR Part 338](#)
- [12 CFR Part 1002](#)

³ Procedures for the review are provided in [Section V-9.1](#), Home Mortgage Disclosure Act.