

MEMORANDUM TO: Board of Directors

FROM: Mark Pearce, Director
Division of Depositor and Consumer Protection

SUBJECT: Final Rule on rescission of regulations transferred from the Office of Thrift Supervision contained in 12 CFR part 390, subpart G, and conforming amendments to existing FDIC regulations.

Summary of Recommendation

Staff recommends that the FDIC Board of Directors (Board) approve and authorize for publication in the *Federal Register* a final rule (Final Rule) to rescind and remove 12 CFR part 390, subpart G, entitled *Nondiscrimination Requirements*, and amend the FDIC regulations in 12 CFR part 338 to make them applicable to State savings associations.

The Final Rule also would include technical amendments to section 338.4 of the FDIC's regulations to correct the address of the FDIC's Consumer Response Center (CRC) to be stated on Equal Housing Lender posters. In addition, the Final Rule would include technical amendments to correct references to Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and Regulation C, which implements the Home Mortgage Disclosure Act (HMDA), to reflect their transfer from the authority of the Board of Governors of the Federal Reserve System (FRB) to that of the Bureau of Consumer Financial Protection (CFPB) and their respective recodification.

Upon removal of part 390, subpart G and the conforming amendments, all FDIC-supervised institutions would follow substantially the same regulations and guidance regarding their operation with respect to nondiscrimination requirements.

The Final Rule would finalize, without change, a Notice of Proposed Rulemaking (NPR or proposal) that was published in the *Federal Register* on September 25, 2020 and that received no comments. Staff recommends that the Final Rule be effective 30 days after publication in the *Federal Register*, except staff recommends a one-year transition period before compliance with the provision related to stating the correct address for the FDIC CRC on Equal Housing Lender posters is mandatory.

Concur:

Nicholas J. Podsiadly
General Counsel

Supplementary Information

I. Background

A. OTS Rule Transfer to FDIC

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),¹ the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS) were divided among the FDIC, as to State savings associations, the Office of Comptroller of the Currency (OCC), as to Federal savings associations, and the FRB, as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act² provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively.³ On June 14, 2011, the Board approved for issuance in the *Federal Register* a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Act.”⁴

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁵ granted the OCC rulemaking authority relating to both State and federal savings associations, the Dodd-Frank Act did not generally affect the FDIC’s existing authority to issue regulations under the Federal Deposit Insurance Act⁶ (FDI Act) and other laws as the “appropriate Federal banking agency” or under similar statutory authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act⁷ and designated the FDIC as the “appropriate Federal banking agency” for State savings associations. As a result, except in limited circumstances in which certain rulemaking authority is specifically given to another agency, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar authority) for State savings associations, the FDIC is generally authorized to issue, modify, and rescind regulations involving such institutions.⁸

¹ 12 U.S.C. 5411.

² 12 U.S.C. 5414(b).

³ 12 U.S.C. 5414(c).

⁴ 76 FR 39247 (July 6, 2011).

⁵ 12 U.S.C. 5412(b)(2)(B)(i)(II).

⁶ 12 U.S.C. 1811 *et seq.*

⁷ 12 U.S.C. 1813(q).

⁸ *See, e.g.*, 12 U.S.C. 1819(a)(Tenth) (authorizing the Board to issue rules and regulations to carry out any law that it has the responsibility of administering or enforcing).

On June 14, 2011, operating pursuant to this authority, the Board reissued and re-designated certain transferred regulations of the former OTS as new FDIC regulations.⁹ In the preamble to this interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into existing FDIC regulations, amending them, or rescinding them, as appropriate.

B. *Part 390, Subpart G – Nondiscrimination Requirements*

One of the OTS regulations transferred to the FDIC establishes requirements for State savings associations with respect to nondiscrimination in lending, employment, or services. The OTS rule, formerly found at 12 CFR part 528, was transferred to the FDIC with only technical changes and is now found in the FDIC’s rules at part 390, subpart G, entitled “Nondiscrimination Requirements.” This subpart prohibits State savings associations from discriminating in lending, services, appraisal, underwriting, applications, advertising, and employment. Subpart G also establishes requirements for displaying an Equal Housing Lender poster in each of a State savings association’s offices. In addition, the subpart requires a State savings association that is required to report data pursuant to HMDA to report the reason for denial of a covered application, if applicable. The subpart also specifies the agencies to which complaints alleging discrimination in lending or employment should be referred.

II. **The Proposed Rule**

A. *Proposal to Remove Part 390, Subpart G*

On September 25, 2020, the FDIC published a notice of proposed rulemaking (NPR or proposal) regarding the removal of part 390, subpart G, which generally concerns nondiscrimination requirements for State savings associations. After a careful review of part 390, subpart G, the FDIC determined that the requirements for nondiscrimination in lending and employment that it sets forth are substantially similar to other requirements that a State savings association must satisfy under ECOA and Regulation B,¹⁰ the Fair Housing Act (FHA) and its implementing regulations,¹¹ and the Equal Employment Opportunity Act (EEOA) and its implementing regulations.¹² In addition, the FDIC determined that the requirements for displaying Equal Housing Lender posters in part 390, subpart G are substantially similar to the requirements for displaying Equal Housing Lender posters in 12 CFR part 338, which apply to insured State nonmember banks. The FDIC also determined that the requirement to report the reason for denial of a mortgage loan application in part 390, subpart G is duplicative of a requirement to report reason for denial under HMDA and Regulation C.¹³

Certain provisions of part 390, subpart G could be interpreted as applying in a case where ECOA, FHA, and EEOA would not apply. The OTS had authority under the Home Owners’

⁹ 76 FR 47652 (Aug. 5, 2011).

¹⁰ 15 U.S.C. 1691 *et seq.*; 12 CFR part 1002.

¹¹ 42 U.S.C. 3601 *et seq.*; Prohibitions on discrimination in residential lending are found in 42 U.S.C. 3605 and 24 CFR part 100.

¹² 42 U.S.C. 2000e *et seq.*; 29 CFR part 1600 *et seq.*

¹³ 12 U.S.C. 2801 *et seq.*; 12 CFR part 1003.

Loan Act (HOLA) to adopt regulations that give primary consideration of the best practices of thrift institutions in the United States. It appears OTS used this authority in adopting and maintaining its nondiscrimination requirements. However, this HOLA authority does not extend to the FDIC. Consequently, the FDIC did not propose to revise the nondiscrimination requirements in part 390, subpart G to address acts or practices not addressed by ECOA, FHA, or EEOA. Instead, the FDIC proposed rescinding and removing part 390, subpart G in its entirety. The FDIC also proposed making technical conforming edits to part 338 to encompass State savings associations and update the regulation, as discussed below.

Rather than restate the rationale for rescission and removal of each section of part 390, subpart G, staff has prepared Appendix A to this memorandum, which provides a summary of each such section and a justification for its rescission and removal. In addition, staff has drafted the *Federal Register* notice for the Final Rule to direct the reader to the fulsome explanations provided in the NPR, which staff recommends referencing in the Final Rule as the basis for finalizing the regulations as proposed.

B. *Proposal to Revise Part 338*

As mentioned, the FDIC proposed to make technical conforming edits to part 338 to encompass State savings associations and update the regulation.

1. Section 338.1—Purpose

Section 338.1 states that its purposes are to prohibit insured State nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions and require them to publicly display either the Equal Housing Lender poster of the FDIC's regulations or the Equal Housing Opportunity poster prescribed in HUD's regulations. The FDIC proposed to amend section 338.1 to change references to "insured State nonmember banks" to refer to "FDIC-supervised institutions" so as to reflect that this section applies to all institutions for which the FDIC is the appropriate Federal banking agency. The FDIC proposed similar changes in reference throughout part 338, as noted below.

2. Section 338.2—Definitions applicable to subpart A of this part

Section 338.2 defines terms used in subpart A of part 338. The FDIC proposed adding a new defined term "FDIC-supervised institution" meaning a bank or a State savings association and to add a new defined term "State savings association" having "the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3)." The FDIC proposed to make technical conforming edits to reflect the re-ordering of definitions.

3. Section 338.3—Nondiscriminatory advertising

Section 338.3 provides certain requirements with respect to dwelling-related advertisements to reflect the bank's nondiscriminatory lending and prohibits such advertisements from including certain terms that suggest a discriminatory preference or policy of exclusion in

violation of the FHA or ECOA. The FDIC proposed to change references to “bank” to refer to “FDIC-supervised institution” for the reason stated above.

4. Section 338.4—Fair housing poster

Section 338.4(a) requires insured State nonmember banks engaged in extending dwelling-related loans to conspicuously display either an Equal Housing Lender poster or an Equal Housing Opportunity poster “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.” This requirement is substantially similar to the requirement in section 390.146 for State savings associations to display an Equal Housing Lender poster which is recommended to be removed. The FDIC proposed to amend this section to refer to “FDIC-supervised institutions” for the reason stated above.

Section 338.4(b) sets forth the required text of the FDIC’s Equal Housing Lender Poster, which includes the mailing address of the FDIC’s CRC. Because the CRC mailing address may change again in the future, the FDIC proposed to amend section 338.4(b) to reflect that the mailing address stated on the Equal Housing Lender poster should be the address for the CRC stated on the FDIC’s website at www.fdic.gov.¹⁴ Furthermore, the FDIC proposed setting forth the required text of the Equal Housing Poster in section 338.4(b) as a text statement rather than as a portable document format (PDF) image. To facilitate the transition to the updated poster, the FDIC proposed providing a transition period of one year for FDIC-supervised institutions to change their posters to reflect the current CRC mailing address, if needed.¹⁵

5. Section 338.5—Purpose

Section 338.5 states that its purpose is to notify insured State nonmember banks of their duty both to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B and to maintain, update and report a register of home loan applications in accordance with Regulation C. The FDIC proposed amending section 338.5 to change references to “insured State nonmember banks” to refer to “FDIC-supervised institutions” for the reason stated above. The FDIC also proposed technical amendments to reflect that Regulation B and Regulation C have been re-designated as 12 CFR part 1002 and 12 CFR part 1003, respectively, and are implemented by the CFPB.

6. Section 338.6—Definitions applicable to this subpart B

Section 338.6 defines terms used in subpart B of part 338. The FDIC proposed adding new defined terms “FDIC-supervised institution” meaning a bank or a State savings association

¹⁴ Currently, the mailing address for the Consumer Response Center (1100 Walnut St., Box #11 Kansas City, MO 64106) is provided at <https://www.fdic.gov/consumers/assistance/filecomplaint.html>. Since May 31, 2012, Regulation B has required the use of that address in adverse action notices, as applicable. *See* FRB, Final Rule, Equal Credit Opportunity, 76 FR 31451 (Jun. 1, 2011).

¹⁵ Staff recommends that the effective date of section 338.4(b), as amended, be the date that is one year after a final rule amending the provision is published in the *Federal Register*.

and “State savings association” having “the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).”

7. Section 338.7—Recordkeeping requirements

Section 338.7 requires 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 to request and retain the monitoring information required by Regulation B.¹⁶ The FDIC proposed amending section 338.7 to change references to “bank” to refer to “FDIC-supervised institution” for the reason stated above. The FDIC also proposed making technical amendments to section 338.7 to reflect that Regulation B has been re-designated as 12 CFR part 1002 and is implemented by the CFPB.

8. Section 338.8—Compilation of loan data in register format

Section 338.8 requires banks and other lenders required to file a HMDA LAR with the FDIC to maintain, update and report such LAR in accordance with Regulation C. The FDIC proposed amending section 338.8 to change references to “bank” to refer to “FDIC-supervised institution” for the reason stated above. To reflect amendments made to Regulation C, regarding the responsibilities of a financial institution with respect to HMDA LAR data, the FDIC proposed amending section 338.8 to require banks and other lenders required to file a HMDA LAR with the FDIC to collect, record, and report such LAR in accordance with Regulation C. The FDIC also proposed making technical amendments to reflect that Regulation C has been re-designated as 12 CFR part 1003 and is implemented by the CFPB.

9. Section 338.9—Mortgage lending of a controlled entity

Section 338.9 establishes requirements that apply if a bank refers applicants to a “controlled entity,” as defined in section 338.6, and purchases any home purchase loans or home improvement loans (as defined in Regulation C) that are originated by the controlled entity, as a condition to transacting any business with the controlled entity.¹⁷ Because this proposed rulemaking is intended to rescind and remove former OTS regulations that are duplicative of regulations under ECOA, FHA, or EEOA, the FDIC did not recommend imposing substantive requirements regarding the business transactions between a State savings association and any entity it controls. That is, the FDIC did not recommend replacing the term “bank” with the term “FDIC-supervised institution.” However, the FDIC proposed making technical amendments to reflect that Regulation C has been re-designated as 12 CFR part 1003 and is implemented by the CFPB.

III. Recommendation Regarding Final Rule

¹⁶ This requirement relates to the collection of information for monitoring purposes required by 12 CFR 1002.13.

¹⁷ Pursuant to section 338.6(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.”

The FDIC requested comments on all aspects of the proposal but received no comments on the NPR. Therefore, staff recommends that the Board adopt the proposal as a final rule without change.

Based on the foregoing, staff recommends that the Board approve the attached Resolution to adopt and authorize the publication of the referenced Final Rule in the *Federal Register* with an effective date 30 days from the date of publication, except staff recommends a one-year transition period before compliance with the provision related to stating the correct address for the FDIC CRC on Equal Housing Lender posters is mandatory.

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Attachments

Appendix A
Section-by-Section Analysis of
Part 390, Subpart G—Nondiscrimination Requirements

The following discussion provides a summary of each section of part 390, subpart G and a rationale for its rescission and removal. The FDIC received no comments on the rationales stated in the NPR or on any other aspect of the NPR. For the reasons stated in the NPR and the memorandum to which this Appendix relates, staff recommends that the Board rescind and remove part 390, subpart G as proposed.

A. Section 390.140—Definitions

Section 390.140 defines the terms “application,” “dwelling,” and “State savings association.” In light of the proposal to rescind subpart G of part 390 in its entirety, the FDIC did not propose to retain these definitions.

B. Section 390.141—Supplementary Guidelines

Section 390.141 cross-references a policy statement transferred from OTS regulations to section 390.151, the Department of Housing and Urban Development’s (HUD) fair housing regulations at 24 CFR part 100 et seq., and Regulations B and C. The FDIC proposed to remove this section as the cross-reference to the policy statement would be obsolete if section 390.151 is rescinded as proposed and the cross-references to the regulations would be unnecessary.

C. Section 390.142—Nondiscrimination in Lending and Other Services

Section 390.142 prohibits discrimination on a prohibited basis by State savings associations in lending and other services. The prohibited bases specified are location and age of a dwelling and race, color, religion, sex, handicap, familial status, marital status, or age of an applicant or a joint applicant, among other specified parties. In general, section 390.142(a) prohibits denying a loan or other service, discriminating in the purchase of loans or securities, or discriminating in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or service, on a prohibited basis. Section 390.142(b) provides that “[a] State savings association shall consider without prejudice the combined income of joint applicants for a loan or other service.” Section 390.142(c) prohibits a State savings association from discriminating against an applicant for a loan or other service on any prohibited basis, as defined in Regulation B or HUD’s FHA regulation in 24 CFR part 100.

There is significant overlap between the requirements of section 390.142 and the requirements of ECOA and Regulation B and the FHA and HUD’s FHA regulations (referred to herein as the “general federal fair lending laws”). Moreover, the following are prohibited bases under both Subpart G of part 390 and the general federal fair lending laws: race, color, religion, national origin, and sex.¹⁸ For these reasons, the FDIC proposed to rescind this section.

¹⁸ Prohibited bases for discrimination under ECOA, but not the FHA, are age (of an applicant), marital status, and good faith exercise of a right under the Consumer Credit Protection Act (or any state law upon which the CFPB has

D. Section 390.143—Nondiscriminatory Appraisal and Underwriting

Section 390.143(a) prohibits using or relying upon a dwelling appraisal that a State savings association knows or reasonably should know is “is discriminatory on the basis of the age or location of the dwelling” or is “discriminatory per se or in effect” under the FHA or ECOA. The general federal fair lending laws prohibit appraisal-related discrimination on a prohibited basis.¹⁹ Although the location of a dwelling is not a per se prohibited basis for discrimination under those statutes, ECOA prohibits discrimination because of the race, color, religion, national origin, etc. of residents in the neighborhood where the property offered as collateral is located.²⁰ For these reasons, the FDIC proposed to rescind section 390.143(a).

Section 390.143(b) requires each State savings association to have clearly written, nondiscriminatory loan underwriting standards available to the public upon request at each of its offices. In addition, section 390.143(b) requires each association to review its standards, and business practices that implement them, at least annually to ensure equal opportunity in lending. No such requirements apply to insured State nonmember banks. For these reasons, the FDIC proposed to rescind section 390.143(b).

E. Section 390.144—Nondiscrimination in Applications

Section 390.144(a) prohibits discouraging or refusing to allow, receive, or consider any application, request, or inquiry about a loan or other service on a prohibited basis. Section 390.144(b) requires a State savings association to “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.” This section is substantially similar to, and duplicative of, prohibitions under the general federal fair lending laws.²¹ Therefore, the FDIC proposed to rescind section 390.144(a).

The FDIC concluded that the requirement to post an Equal Housing Lender poster, discussed below in connection with 12 CFR 338.4, serves a substantially similar purpose as the requirement to “inform each inquirer of his or her right to file a written loan application” in 12 CFR 390.144(b). For these reasons, the FDIC proposed to rescind section 390.144(b).

F. Section 390.145—Nondiscriminatory Advertising

Section 390.145 prohibits directly or indirectly engaging in any form of advertising that implies or suggests a policy of discrimination or exclusion in violation of ECOA, the FHA, or Subpart G of part 390. The provision also provides that advertisements for any loan for purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling must include the Equal Housing Lender symbol. The requirement in section 390.145 to include the Equal Housing Lender symbol in dwelling-related advertising is substantially

granted an exception). Prohibited bases for discrimination under the FHA but not ECOA are handicap and familial status. *Compare* 15 U.S.C. 1691(a) *with* 42 U.S.C. 3604, 3605(a).

¹⁹ See 12 CFR 1002.4(a); 24 CFR 100.135(d)(1).

²⁰ See 12 CFR 1002.2(z) and Comment 2(z)-1.

²¹ See, e.g., 15 U.S.C. 1691(a); 12 CFR 1002.4; 24 CFR 100.120.

similar to a requirement in 12 CFR 338.4(a) that applies to insured State nonmember banks. Section 338.4(a) permits, but does not require, an insured State nonmember bank to comply with a requirement that advertisements for dwelling-related loans indicate that the bank makes those loans without regard to specified prohibited bases by including the Equal Housing Lender logotype and legend. Because section 390.145 is substantially similar to section 338.4, the FDIC proposed to rescind section 390.145 and, as discussed above, to amend section 338.4 to cover State savings associations.

G. Section 390.146—Equal Housing Lender Poster

Section 390.146(a) requires each State savings association to post and maintain at least one Equal Housing Lender poster prominently in the lobby of each of its offices, requires the use of specified and legible text, and establishes a minimum poster size. Also, section 390.146(a) states that “[i]t is recommended that savings associations post a Spanish language version of the poster in offices serving areas with a substantial Spanish-speaking population.” Section 390.146(b) sets forth the required poster text and the Equal Housing Lender logotype.

The requirements of section 390.146 are substantially similar to the requirements applicable to insured State nonmember banks under 12 CFR 338.4. Although the FDIC’s Equal Housing Lender poster provisions do not include the Spanish-language recommendation included in section 390.146, the FDIC makes a Spanish-language poster available to the institutions it supervises. For these reasons, the FDIC proposed to rescind section 390.146 and, as discussed above, amending section 338.4 to also apply to State savings associations.

H. Section 390.147—Loan Application Register

Section 390.147 requires that State savings associations and other lenders required to file HMDA LARs with the FDIC to enter the reason for denial with respect to all loan denials. Regulation C, which implements HMDA, now requires a covered financial institution to report “[t]he principal reason or reasons the financial institution denied the application, if applicable.”²² As stated in the NPR, section 390.147 is duplicative now that reporting reason for denial is required rather than optional under Regulation C. Furthermore, pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act, Regulation C provides a partial exemption from reporting reason for denial and certain other data points for financial institutions that meet specified conditions. Banks eligible for the partial exemption need not report reason for denial, but State savings associations supervised by the FDIC must report reason for denial pursuant to section 390.147.²³ For the foregoing reasons, the FDIC proposed to rescind this section.

I. Section 390.148—Nondiscrimination in Employment

Section 390.148 prohibits discrimination on a prohibited basis by State savings associations in employment. The specified prohibited bases are race, color, religion, sex, and

²² See 12 CFR 1003.4(a)(16).

²³ Financial institutions regulated by the OCC are required to report reasons for denial on their HMDA LARs pursuant to 12 CFR sections 27.3(a)(1)(i) and 128.6.

national origin. Section 390.148(a) prohibits discrimination in the hiring, firing, promoting, compensating, or training of an individual or similar discriminatory treatment during employment or with regard to training. Section 390.148(b) prohibits segregation or classification of employees in a way that would adversely affect their status as an employee on a prohibited basis. Section 390.148(c) prohibits State savings associations from retaliating against an employee for opposing an unlawful employment practice. Section 390.148(d) prohibits discrimination by State savings associations in advertisements for employment. Section 390.148(e) states the regulation does not apply in any case in which certain exemptions and exceptions under the EEOA apply. Section 390.148(f) states that any violation of specified laws or regulations, such as the EEOA and the Age Discrimination in Employment Act, shall be deemed a violation of this regulation. Staff believes that the provisions of section 390.148(a)-(d) are duplicative of the prohibitions under the EEOA, and therefore are unnecessary, and recommends rescission of these provisions. Section 390.148(e) cross-references the EEOA. Such cross-reference would be obsolete if section 390.148 is rescinded as proposed. Section 390.148(f) cross-references multiple employment laws, including the EEOA. As stated in the NPR, such cross-references are duplicative and unnecessary. Therefore, the FDIC proposed to rescind section 390.148(e) and (f).

J. Section 390.149—Complaints

Section 390.149 provides that complaints about discrimination in lending by a State savings association “shall be referred” to the Secretary of HUD for processing under the FHA and the Director of FDIC for processing under FDIC regulations. In addition, section 390.149 provides that complaints about discrimination in employment by a State savings association “shall be referred” to the Equal Employment Opportunity Commission (“EEOC”) (with a copy to the FDIC).

No equivalent requirement to the provisions in section 390.149 regarding referring complaints to the EEOC regarding employment discrimination by FDIC- supervised institutions has been found. However, as stated in the NPR, it would be burdensome and unnecessary to retain this additional provision given that no equivalent provision seems to apply with respect to insured State nonmember banks. For this reason, the FDIC proposed to rescind this section.

K. Section 390.150—Guidelines Relating to Nondiscrimination in Lending

Section 390.150 “provides supplementary guidelines to aid savings associations in developing and implementing nondiscriminatory lending policies.” In general, section 390.150 states actions that State savings associations “should” take to ensure that their services are available without discrimination and actions that “can” or “may” constitute illegal discrimination. As stated in the NPR, the guidelines largely have counterparts in the general federal fair lending laws, for example, with respect to discrimination on the basis of marital status, discounting or excluding spousal income or supplementary income, and inquiring about child bearing or childrearing. Therefore, the FDIC proposed to rescind section 390.150 as duplicative or unnecessary.