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year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution.* *Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *Nongovernmental entity or person or NGEP—(1) General.* A *nongovernmental entity or person or NGEP* is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (i)(2)(i), (i)(2)(ii), or (i)(2)(iii) of this section.

(j) *Party.* The term *party* with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(k) *Relevant supervisory agency.* The *relevant supervisory agency* for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

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(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(l) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

PART 535—PROHIBITED CONSUMER CREDIT PRACTICES (Eff. until 7-1-2010)

Sec.

535.1 Definitions.

535.2 Unfair credit practices.

535.3 Unfair or deceptive cosigner practices.

535.4 Late charges.

535.5 State exemptions.

AUTHORITY: Sec. 18, as added by sec. 202, 88 Stat. 2193, as amended (15 U.S.C. 57a).

SOURCE: 54 FR 49479, Nov. 30, 1989, unless otherwise noted.

EFFECTIVE DATE NOTE: At 74 FR 5567, Jan. 29, 2009, part 535 was revised, effective July 1, 2010. The revised text follows this part.

§ 535.1 Definitions.

(a) *Act.* For the purposes of this part, “Act” means the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

(b) *Consumer.* The term “consumer” means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended “consumer credit” as defined in § 561.12 of this chapter.

(c) *Cosigner.* The term “cosigner” means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account. The term shall include any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer’s obligation that is in default. The term shall not include a

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spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

(d) *Creditor.* The term "creditor" means a savings association.

(e) *Debt.* The term "debt" means money that is due or alleged to be due from one to another.

(f) *Earnings.* The term "earnings" means compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(g) *Household goods.* The term "household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Antiques, i.e., any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character, and

(4) Jewelry (other than wedding rings).

(h) *Savings association.* For purposes of this part, the term "savings association" includes any savings association, and any service corporation that is wholly owned by one or more savings association, that engages in the business of providing credit to consumers.

(i) *Obligation.* The term "obligation" means an agreement between a consumer and a creditor.

(j) *Person.* The term "person" means an individual, corporation, or other business organization.

§ 535.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers after January 1, 1986, it is an unfair act or practice within the meaning of section 5 of the

Act for a savings association directly or indirectly to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation purchased by a savings association, any of the following provisions:

(1) A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon;

(2) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation;

(3) An assignment of wages or other earnings, unless:

(i) The assignment by its terms is revocable at the will of the debtor,

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) A nonpossessory security interest in household goods other than a purchase-money security interest.

§ 535.3 Unfair or deceptive cosigner practices.

(a) *General.* In connection with the extension of credit to consumers after January 1, 1986, it is:

(1) A deceptive act or practice within the meaning of section 5 of the Act for a savings association, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of section 5 of the Act for a savings association, directly or indirectly, to obligate a cosigner unless the cosigner is informed, prior to becoming obligated, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) A clear and conspicuous document that shall

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contain the following statement or one which is substantially equivalent, shall be given to the cosigner prior to becoming obligated (which, in the case of open-end credit, shall mean prior to the time that the cosigner becomes obligated for any fees or transaction on the account):

NOTICE OF COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) Compliance with the disclosure requirement under paragraph (b)(1) of this section shall constitute compliance with the consumer information requirement of paragraph (a)(2) of this section.

(3) If the notice is a separate document, nothing other than the following times may appear with the notice:

- (i) The name and address of the savings association;
- (ii) An identification of the debt to be cosigned (e.g., a loan identification number);
- (iii) The date; and
- (iv) The statement, "This notice is not the contract that makes you liable for the debt."

§ 535.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer after January 1, 1986, it is an unfair act or practice within the meaning of section 5 of the Act for a savings association, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or

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delinquency charge(s) assessed on earlier installment(s).

(b) For the purposes of this part, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 535.5 State exemptions.

(a) Upon application to the Office by an appropriate state agency, the Office shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule.

(b) If the Office makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Office in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Office.

(c) The Director of Consumer Affairs in consultation with the Chief Counsel shall have delegated authority to make such determinations as are required under this part 535.

EFFECTIVE DATE NOTE: At 74 FR 5567, Jan. 29, 2009, part 535 was revised, effective July 1, 2010. For the convenience of the user, the revised text is set forth as follows:

PART 535—UNFAIR OR DECEPTIVE ACTS OR PRACTICES (Eff. 7-1-2010)

Subpart A—General Provisions

Sec.

535.1 Authority, purpose, and scope.

Subpart B—Consumer Credit Practices

535.11 Definitions.

535.12 Unfair credit contract provisions.

535.13 Unfair or deceptive cosigner practices.

535.14 Unfair late charges.

Subpart C—Consumer Credit Card Account Practices

535.21 Definitions.

535.22 Unfair time to make payment.

535.23 Unfair allocation of payments.

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- 535.24 Unfair increases in annual percentage rates.
535.25 Unfair balance computation method.
535.26 Unfair charging of security deposits and fees for the issuance or availability of credit to consumer credit card accounts.

APPENDIX A TO PART 535—OFFICIAL STAFF COMMENTARY

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 57a.

Subpart A—General Provisions

§ 535.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by OTS under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 98-637) and the Home Owners’ Loan Act, 12 U.S.C. 1461 *et seq.*

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Subparts B and C define and contain requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of savings associations. The prohibitions in subparts B and C do not limit OTS’s authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices. The purpose of this part is also to prohibit unsafe and unsound practices and protect consumers under the Home Owners’ Loan Act, 12 U.S.C. 1461 *et seq.*

(c) *Scope.* This part applies to savings associations and subsidiaries owned in whole or in part by a savings association (“you”).

Subpart B—Consumer Credit Practices

§ 535.11 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Consumer* means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property, and who applies for or is extended *consumer credit*.

(b) *Consumer credit* means credit extended to a natural person for personal, family, or household purposes. It includes consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; overdraft loans; and credit cards. It also includes loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security but only if you rely substantially upon other factors, such as the general credit standing of the

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borrower, guarantees, or security other than the real estate or mobile home, as the primary security for the loan.

(c) *Earnings* means compensation paid or payable to an individual or for the individual’s account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) *Obligation* means an agreement between you and a consumer.

(e) *Person* means an individual, corporation, or other business organization.

§ 535.12 Unfair credit contract provisions.

It is an unfair act or practice for you, directly or indirectly, to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation you purchased, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest. For purposes of this paragraph, *household goods*:

(1) Means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer’s dependents.

(2) Does not include:

(i) Works of art;

(ii) Electronic entertainment equipment (except one television and one radio);

(iii) Antiques (any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character); or

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(iv) Jewelry (other than wedding rings).

§ 535.13 Unfair or deceptive cosigner practices.

(a) *Prohibited deception.* It is a deceptive act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to misrepresent the nature or extent of cosigner liability to any person.

(b) *Prohibited unfairness.* It is an unfair act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to obligate a cosigner unless the cosigner is informed, before becoming obligated, of the nature of the cosigner's liability.

(c) *Disclosure requirement—(1) Disclosure statement.* A clear and conspicuous statement must be given in writing to the cosigner before becoming obligated. In the case of open-end credit, the disclosure statement must be given to the cosigner before the time that the cosigner becomes obligated for any fees or transactions on the account. The disclosure statement must contain the following statement or one that is substantially similar:

NOTICE OF COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) *Compliance.* Compliance with paragraph (d)(1) of this section constitutes compliance with the consumer disclosure requirement in paragraph (b) of this section.

(3) *Additional content limitations.* If the notice is a separate document, nothing other than the following items may appear with the notice:

- (i) Your name and address;
 - (ii) An identification of the debt to be cosigned (*e.g.*, a loan identification number);
 - (iii) The date (of the transaction); and
 - (iv) The statement, "This notice is not the contract that makes you liable for the debt."
- (d) *Cosigner defined—(1) Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end

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credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a *cosigner*, whether or not the person is designated as such on a credit obligation.

§ 535.14 Unfair late charges.

(a) *Prohibition.* In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for you, directly or indirectly, to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) *Collecting a debt defined—* *Collecting a debt* means, for the purposes of this section, any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

Subpart C—Consumer Credit Card Account Practices**§ 535.21 Definitions.**

For purposes of this subpart, the following definitions apply:

(a) *Annual percentage rate* means the product of multiplying each periodic rate for a balance or transaction on a consumer credit card account by the number of periods in a year. The term "periodic rate" has the same meaning as in 12 CFR 226.2.

(b) *Consumer* means a natural person to whom credit is extended under a consumer credit card account or a natural person who is a co-obligor or guarantor of a consumer credit card account.

(c) *Consumer credit card account* means an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The terms *open-end credit*, *credit card*, and *charge card* have the same meanings as in 12 CFR 226.2. The following are not consumer credit card accounts for purposes of this subpart:

(1) Home equity plans subject to the requirements of 12 CFR 226.5b that are accessible by a credit or charge card;

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(2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and

(4) Lines of credit accessed solely by account numbers.

§ 535.22 Unfair time to make payment.

(a) *General rule.* Except as provided in paragraph (c) of this section, you must not treat a payment on a consumer credit card account as late for any purpose unless you have provided the consumer a reasonable amount of time to make the payment.

(b) *Compliance with general rule—(1) Establishing compliance.* You must be able to establish that you have complied with paragraph (a) of this section.

(2) *Safe harbor.* You comply with paragraph (a) of this section if you have adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

(c) *Exception for grace periods.* Paragraph (a) of this section does not apply to any time period you provided within which the consumer may repay any portion of the credit extended without incurring an additional finance charge.

§ 535.23 Unfair allocation of payments.

When different annual percentage rates apply to different balances on a consumer credit card account, you must allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances using one of the following methods:

(a) *High-to-low method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Pro rata method.* The amount paid by the consumer in excess of the required minimum periodic payment is allocated among the balances in the same proportion as each balance bears to the total balance.

§ 535.24 Unfair increases in annual percentage rates.

(a) *General rule.* At account opening, you must disclose the annual percentage rates that will apply to each category of transactions on the consumer credit card account. You must not increase the annual percentage rate for a category of transactions on any consumer credit card account except as provided in paragraph (b) of this section.

(b) *Exceptions.* The prohibition in paragraph (a) of this section on increasing annual

percentage rates does not apply where an annual percentage rate may be increased pursuant to one of the exceptions in this paragraph.

(1) *Account opening disclosure exception.* An annual percentage rate for a category of transactions may be increased to a rate disclosed at account opening upon expiration of a period of time disclosed at account opening.

(2) *Variable rate exception.* An annual percentage rate for a category of transactions that varies according to an index that is not under your control and is available to the general public may be increased due to an increase in the index.

(3) *Advance notice exception.* An annual percentage rate for a category of transactions may be increased pursuant to a notice under 12 CFR 226.9(c) or (g) for transactions that occur more than seven days after provision of the notice. This exception does not permit an increase in any annual percentage rate during the first year after the account is opened.

(4) *Delinquency exception.* An annual percentage rate may be increased due to your not receiving the consumer's required minimum periodic payment within 30 days after the due date for that payment.

(5) *Workout arrangement exception.* An annual percentage rate may be increased due to the consumer's failure to comply with the terms of a workout arrangement between you and the consumer, provided that the annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to commencement of the workout arrangement.

(c) *Treatment of protected balances.* For purposes of this paragraph, "protected balance" means the amount owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(1) *Repayment.* You must provide the consumer with one of the following methods of repaying a protected balance or a method that is no less beneficial to the consumer than one of the following methods:

(i) An amortization period of no less than five years, starting from the date on which the increased rate becomes effective for the category of transactions; or

(ii) A required minimum periodic payment that includes a percentage of the protected balance that is no more than twice the percentage required before the date on which the increased rate became effective for the category of transactions.

(2) *Fees and charges.* You must not assess any fee or charge based solely on a protected balance.

Pt. 535, App. A**§ 535.25 Unfair balance computation method.**

(a) *General rule.* Except as provided in paragraph (b) of this section, you must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of any time period you provided within which the consumer may repay any portion of the credit extended without incurring a finance charge.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under 12 CFR 226.12 or 12 CFR 226.13; or

(2) Adjustments to finance charges as a result of the return of a payment for insufficient funds.

§ 535.26 Unfair charging of security deposits and fees for the issuance or availability of credit to consumer credit card accounts.

(a) *Limitation for first year.* During the first year, you must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute a majority of the initial credit limit for the account.

(b) *Limitations for first billing cycle and subsequent billing cycles.*—(1) *First billing cycle.* During the first billing cycle, you must not charge to a consumer credit card account security deposits and fees for the issuance or availability of credit that in total constitute more than 25 percent of the initial credit limit for the account.

(2) *Subsequent billing cycles.* Any additional security deposits and fees for the issuance or availability of credit permitted by paragraph (a) of this section must be charged to the account in equal portions in no fewer than the five billing cycles immediately following the first billing cycle.

(c) *Evasion prohibited.* You must not evade the requirements of this section by providing the consumer with additional credit to fund the payment of security deposits and fees for the issuance or availability of credit that exceed the total amounts permitted by paragraphs (a) and (b) of this section.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Fees for the issuance or availability of credit* means:

(i) Any annual or other periodic fee that may be imposed for the issuance or availability of a consumer credit card account, including any fee based on account activity or inactivity; and

(ii) Any non-periodic fee that relates to opening an account.

(2) *First billing cycle* means the first billing cycle after a consumer credit card account is opened.

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(3) *First year* means the period beginning with the date on which a consumer credit card account is opened and ending twelve months from that date.

(4) *Initial credit limit* means the credit limit in effect when a consumer credit card account is opened.

APPENDIX A TO PART 535—OFFICIAL STAFF COMMENTARY**SUBPART A—GENERAL PROVISIONS FOR CONSUMER PROTECTION RULES***Section 535.1—Authority, Purpose, and Scope***1(c) Scope**

1. *Penalties for noncompliance.* Administrative enforcement of the rule for savings associations may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. *Application to subsidiaries.* The term “savings association” as used in this Appendix also includes subsidiaries owned in whole or in part by a savings association.

SUBPART C—CONSUMER CREDIT CARD ACCOUNT PRACTICES*Section 535.22—Unfair Time To Make Payment***22(a) General Rule**

1. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within the amount of time provided to make that payment under this section.

2. *Reasonable amount of time to make payment.* Whether an amount of time is reasonable for purposes of making a payment is determined from the perspective of the consumer, not the savings association. Under § 535.22(b)(2), a savings association provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

22(b) Compliance with General Rule

1. *Reasonable procedures.* A savings association is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A savings association provides a reasonable amount of time to make a payment if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no

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later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day period in §535.24(b)(2) when determining the payment due date. For example, if a savings association has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date on the periodic statement must be no less than 24 days after the closing date of the billing cycle.

2. *Payment due date.* For purposes of §535.22(b)(2), "payment due date" means the date by which the savings association requires the consumer to make the required minimum periodic payment in order to avoid being treated as late for any purpose, except as provided in §535.22(c).

3. *Example of alternative method of compliance.* Assume that, for a particular type of consumer credit card account, a savings association only provides periodic statements electronically and only accepts payments electronically (consistent with applicable law and regulatory guidance). Under these circumstances, the savings association could comply with §535.22(a) even if it does not provide periodic statements 21 days before the payment due date consistent with §535.22(b)(2).

Section 535.23—Unfair Allocation of Payments

1. *Minimum periodic payment.* Section 535.23 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the savings association. Section 535.23 does not limit or otherwise address the savings association's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A savings association may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in §535.23 to the extent consistent with other applicable law or regulatory guidance.

2. *Adjustments of one dollar or less permitted.* When allocating payments, the savings association may adjust amounts by one dollar or less. For example, if a savings association is allocating \$100 pursuant to §535.23(b) among balances of \$1,000, \$2,000, and \$4,000, the savings association may apply \$14 to the \$1,000 balance, \$29 to the \$2,000 balance, and \$57 to the \$4,000 balance.

3. *Applicable balances and annual percentage rates.* Section 535.23 permits a savings association to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the balances and annual percentage rates on the date the preceding billing cycle ends, on the date the payment is credited to the account, or on any day in between those two dates. For ex-

ample, assume that the billing cycles for a consumer credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends (March 31), the account has a purchase balance of \$500 at a variable annual percentage rate of 14% and a cash advance balance of \$200 at a variable annual percentage rate of 18%. On April 1, the rate for purchases increases to 16% and the rate for cash advances increases to 20% consistent with §535.24(b)(2). On April 15, the purchase balance increases to \$700. On April 25, the savings association credits to the account \$400 paid by the consumer in excess of the required minimum periodic payment. Under §535.23, the savings association may allocate the \$400 based on the balances in existence and rates in effect on any day from March 31 through April 25.

4. *Use of permissible allocation methods.* A savings association is not prohibited from changing the allocation method for a consumer credit card account or from using different allocation methods for different consumer credit card accounts, so long as the methods used are consistent with §535.23. For example, a savings association may change from allocating to the highest rate balance first pursuant to §535.23(a) to allocating pro rata pursuant to §535.23(b) or vice versa. Similarly, a savings association may allocate to the highest rate balance first pursuant to §535.23(a) on some of its accounts and allocate pro rata pursuant to §535.23(b) on other accounts.

5. *Claims or defenses under Regulation Z, 12 CFR 226.12(c).* When a consumer has asserted a claim or defense against the card issuer pursuant to 12 CFR 226.12(c), the savings association must allocate consistent with 12 CFR 226.12 comment 226.12(c)-4.

6. *Balances with the same annual percentage rate.* When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, §535.23 does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a savings association may treat the balances with the same rate as a single balance or separate balances. See comments 23(a)-1.iv and 23(b)-2.iv.

23(a) High-to-Low Method

1. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated).

i. Assume that a consumer's account has a cash advance balance of \$500 at an annual percentage rate of 20% and a purchase balance of \$1,500 at an annual percentage rate of

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15% and that the consumer pays \$800 in excess of the required minimum periodic payment. A savings association using this method would allocate \$500 to pay off the cash advance balance and then allocate the remaining \$300 to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of \$500 at an annual percentage rate of 20% and a purchase balance of \$1,500 at an annual percentage rate of 15% and that the consumer pays \$400 in excess of the required minimum periodic payment. A savings association using this method would allocate the entire \$400 to the cash advance balance.

iii. Assume that a consumer's account has a cash advance balance of \$100 at an annual percentage rate of 20%, a purchase balance of \$300 at an annual percentage rate of 18%, and a \$600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to §535.24. If the consumer pays \$500 in excess of the required minimum periodic payment, a savings association using this method would allocate \$100 to pay off the cash advance balance, \$300 to pay off the purchase balance, and \$100 to the protected balance.

iv. Assume that a consumer's account has a cash advance balance of \$500 at an annual percentage rate of 20%, a purchase balance of \$1,000 at an annual percentage rate of 15%, and a transferred balance of \$2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays \$800 in excess of the required minimum periodic payment. A savings association using this method would allocate \$500 to pay off the cash advance balance and allocate the remaining \$300 among the purchase balance and the transferred balance in the manner the savings association deems appropriate.

23(b) Pro Rata Method

1. *Total balance.* A savings association may, but is not required to, deduct amounts paid by the consumer's required minimum periodic payment when calculating the total balance for purposes of §535.23(b)(3). See comment 23(b)-2.iii.

2. *Examples.* For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated) and that the amounts allocated to each balance are rounded to the nearest dollar.

i. Assume that a consumer's account has a cash advance balance of \$500 at an annual percentage rate of 20% and a purchase balance of \$1,500 at an annual percentage rate of 15% and that the consumer pays \$555 in excess of the required minimum periodic payment. A savings association using this method would allocate 25% of the amount (\$139) to

the cash advance balance and 75% of the amount (\$416) to the purchase balance.

ii. Assume that a consumer's account has a cash advance balance of \$100 at an annual percentage rate of 20%, a purchase balance of \$300 at an annual percentage rate of 18%, and a \$600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to §535.24. If the consumer pays \$130 in excess of the required minimum periodic payment, a savings association using this method would allocate 10% of the amount (\$13) to the cash advance balance, 30% of the amount (\$39) to the purchase balance, and 60% of the amount (\$78) to the protected balance.

iii. Assume that a consumer's account has a cash advance balance of \$300 at an annual percentage rate of 20% and a purchase balance of \$600 at an annual percentage rate of 15%. Assume also that the required minimum periodic payment is \$50 and that the savings association allocates this payment first to the balance with the lowest annual percentage rate (the \$600 purchase balance). If the consumer pays \$300 in excess of the \$50 minimum payment, a savings association using this method could allocate based on a total balance of \$850 (consisting of the \$300 cash advance balance plus the \$550 purchase balance after application of the \$50 minimum payment). In this case, the savings association would apply 35% of the \$300 (\$105) to the cash advance balance and 65% of that amount (\$195) to the purchase balance. In the alternative, the savings association could allocate based on a total balance of \$900 (which does not reflect the \$50 minimum payment). In that case, the savings association would apply one third of the \$300 excess payment (\$100) to the cash advance balance and two thirds (\$200) to the purchase balance.

iv. Assume that a consumer's account has a cash advance balance of \$500 at an annual percentage rate of 20%, a purchase balance of \$1,000 at an annual percentage rate of 15%, and a transferred balance of \$2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays \$800 in excess of the required minimum periodic payment. A savings association using this method would allocate 14% of the excess payment (\$112) to the cash advance balance and allocate the remaining 86% (\$688) among the purchase balance and the transferred balance in the manner the savings association deems appropriate.

Section 535.24—Unfair Increases in Annual Percentage Rates

1. *Relationship to Regulation Z, 12 CFR part 226.* A savings association that complies with the applicable disclosure requirements in Regulation Z, 12 CFR part 226, has complied with the disclosure requirements in §535.24. See 12 CFR 226.5a, 226.6, 226.9. For example, a

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savings association may comply with the requirement in §535.24(a) to disclose at account opening the annual percentage rates that will apply to each category of transactions by complying with the disclosure requirements in 12 CFR 226.5a regarding applications and solicitations and the requirements in 12 CFR 226.6 regarding account-opening disclosures. Similarly, in order to increase an annual percentage rate on new transactions pursuant to §535.24(b)(3), a savings association must comply with the disclosure requirements in 12 CFR 226.9(c) or (g). However, nothing in §535.24 alters the requirements in 12 CFR 226.9(c) and (g) that creditors provide consumers with written notice at least 45 days prior to the effective date of certain increases in the annual percentage rates on open-end (not home-secured) credit plans.

24(a) General Rule

1. *Rates that will apply to each category of transactions.* Section 535.24(a) requires savings associations to disclose, at account opening, the annual percentage rates that will apply to each category of transactions on the account. A savings association cannot satisfy this requirement by disclosing at account opening only a range of rates or that a rate will be "up to" a particular amount.

2. *Application of prohibition on increasing rates.* Section 535.24(a) prohibits savings associations from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in §535.24(b). The following examples illustrate the application of the rule:

i. Assume that, at account opening on January 1 of year one, a savings association discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The savings association also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly available index not under the savings association's control. Finally, the savings association discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. On January 15, the consumer uses the account to make a \$2,000 purchase and a \$500 cash advance. No other transactions are made on the account. At the start of each quarter, the savings association adjusts the variable rate that applies to the \$500 cash advance consistent with changes in the index

(pursuant to §535.24(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the savings association on May 28. The savings association is prohibited by §535.24 from increasing the rates that apply to the \$2,000 purchase, the \$500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the savings association begins accruing interest on the \$2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to §535.24(b)(1)). Because no other increases in rate were disclosed at account opening, the savings association may not subsequently increase the variable rate that applies to the \$2,000 purchase and the \$500 cash advance (except due to increases in the index pursuant to §535.24(b)(2)). On November 16, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On January 1 of year two, the savings association increases the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to §535.24(b)(3)). On January 15 of year two, the consumer makes a \$300 purchase. The savings association applies the variable rate determined using the 12-point margin to the \$300 purchase but not the \$2,000 purchase.

B. Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the savings association until June 30 of year one. Because the savings association received the required minimum periodic payment more than 30 days after the payment due date, §535.24(b)(4) permits the savings association to increase the annual percentage rate applicable to the \$2,000 purchase, the \$500 cash advance, and future purchases and cash advances. However, the savings association must first comply with the notice requirements in 12 CFR 226.9(g). Thus, if the savings association provided a 12 CFR 226.9(g) notice on June 25 stating that all rates on the account would be increased to a non-variable penalty rate of 30%, the savings association could apply that 30% rate beginning on August 9 to all balances and future transactions.

ii. Assume that, at account opening on January 1 of year one, a savings association discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly available index not under the

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savings association's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15, the consumer uses the account to make a \$1,500 purchase. Six months after account opening (July 1), the savings association begins accruing interest on the \$1,500 purchase at the previously disclosed 10% non-variable rate (pursuant to § 535.24(b)(1)). On September 15, the consumer uses the account for a \$700 purchase. On November 16, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the savings association begins accruing interest on the \$2,200 purchase balance at the previously disclosed variable rate determined using a 5-point margin (pursuant to § 535.24(b)(1)). Because the variable rate determined using the 8-point margin was not disclosed at account opening, the savings association may not apply that rate to the \$2,200 purchase balance. Furthermore, because no other increases in rate were disclosed at account opening, the savings association may not subsequently increase the variable rate that applies to the \$2,200 purchase balance (except due to increases in the index pursuant to § 535.24(b)(2)). The savings association may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 535.24(b)(3)).

iii. Assume that, at account opening on January 1 of year one, a savings association discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly available index outside of the savings association's control. The savings association also discloses that, to the extent consistent with § 535.24 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of \$1,000. On May 31, the creditor provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 8 (calculated by using the same index and an increased margin of 8 percentage points). On June 7, the consumer makes a \$500 purchase. On June 8, the consumer makes a \$200 purchase. On June 25, the savings association has not received the payment due on June 15 and provides the consumer with a notice pursuant to 12 CFR 226.9(g) stating that the penalty rate of 28%

will apply as of August 9 to all transactions made on or after July 3. On July 4, the consumer makes a \$300 purchase.

A. The payment due on June 15 of year two is received on June 26. On July 16, § 535.24(b)(3) permits the savings association to apply the variable rate determined using the 8-point margin to the \$200 purchase made on June 8 but does not permit the savings association to apply this rate to the \$1,500 purchase balance. On August 9, § 535.24(b)(3) permits the savings association to apply the 28% penalty rate to the \$300 purchase made on July 4 but does not permit the savings association to apply this rate to the \$1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the \$200 purchase (which remains at the variable rate determined using the 8-point margin).

B. Same facts as above except the payment due on September 15 of year two is received on October 20. Section 535.24(b)(4) permits the savings association to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. However, in order to apply the 28% penalty rate to the entire \$2,000 purchase balance, the savings association must provide an additional notice pursuant to 12 CFR 226.9(g). This notice must be sent no earlier than October 16, which is the first day the account became more than 30 days' delinquent.

C. Same facts as paragraph A. above except the payment due on June 15 of year two is received on July 20. Section 535.24(b)(4) permits the savings association to apply the 28% penalty rate to all balances on the account and to future transactions because it has not received payment within 30 days after the due date. Because the savings association provided a 12 CFR 226.9(g) notice on June 24 stating the 28% penalty rate, the savings association may apply the 28% penalty rate to all balances on the account as well as any future transactions on August 9 without providing an additional notice pursuant to 12 CFR 226.9(g).

24(b) Exceptions**24(b)(1) Account Opening Disclosure Exception**

1. *Prohibited increases in rate.* Section 535.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Section 535.24(b)(1) does not permit application of increased rates that are disclosed at account opening but are contingent on a particular event or occurrence or may be applied at the savings association's discretion.

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The following examples illustrate rate increases that are not permitted by §535.24(a):

i. Assume that a savings association discloses at account opening on January 1 of year one that a non-variable rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a \$2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 535.24 does not permit the savings association to apply the 30% penalty rate to the \$2,000 purchase balance. However, pursuant to §535.24(b)(3), the savings association could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a savings association discloses at account opening on January 1 of year one that a non-variable rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least \$200 in purchases each billing cycle. On July 1, the consumer transfers a balance of \$4,000 to the account. During the October billing cycle, the consumer uses the account for \$150 in purchases. Section 535.24 does not permit the savings association to apply the 18% rate to the \$4,000 transferred balance. However, pursuant to §535.24(b)(3), the savings association could provide a 12 CFR 226.9(c) or (g) notice on November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

iii. Assume that a savings association discloses at account opening on January 1 of year one that interest on purchases will be deferred for one year, although interest will accrue on purchases during that year at a non-variable rate of 20%. The savings association further discloses that, if all purchases made during year one are not paid in full by the end of that year, the savings association will begin charging interest on the purchase balance and new purchases at 20% and will retroactively charge interest on the purchase balance at a rate of 20% starting on the date of each purchase made during year one. On January 1 of year one, the consumer makes a purchase of \$1,500. No other transactions are made on the account. On January 1 of year two, \$500 of the \$1,500 purchase remains unpaid. Section 535.24 does not permit the savings association to reach back to charge interest on the \$1,500 purchase from January 1 through December 31 of year one. However, the savings association may apply the previously disclosed 20% rate to the \$500 purchase balance beginning on January 1 of year two (pursuant to §535.24(b)(1)).

2. *Loss of grace period.* Nothing in §535.24 prohibits a savings association from assessing interest due to the loss of a grace period to the extent consistent with §535.25.

3. *Application of rate that is lower than disclosed rate.* Section §535.24(b)(1) permits an increase in the annual percentage rate for a category of transactions to a rate disclosed at account opening upon expiration of a period of time that was also disclosed at account opening. Nothing in §535.24 prohibits a savings association from applying a rate that is lower than the disclosed rate upon expiration of the period. However, if a lower rate is applied to an existing balance, the savings association cannot subsequently increase the rate on that balance unless it has provided the consumer with advance notice of the increase pursuant to 12 CFR 226.9(c). Furthermore, the savings association cannot increase the rate on that existing balance to a rate that is higher than the increased rate disclosed at account opening. The following example illustrates the application of this rule:

i. Assume that, at account opening on January 1 of year one, a savings association discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the savings association will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly available index not under the savings association's control. On December 31 of year one, the account has a purchase balance of \$3,000.

A. On November 16 of year one, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and a reduced margin of 8 percentage points). The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, the savings association increases the margin used to determine the variable rate that applies to new purchases to 10 percentage points and applies that rate to any remaining portion of the \$3,000 purchase balance (pursuant to §535.24(b)(1)).

B. Same facts as above except that the savings association does not send a notice on November 16 of year one. Instead, on January 1 of year two, the savings association lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the \$3,000 purchase balance and to new purchases. 12 CFR 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 30 days' delinquent, the

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savings association may not subsequently increase the rate that applies to the \$3,000 purchase balance except due to increases in the index (pursuant to § 535.24(b)(2)).

24(b)(2) Variable Rate Exception

1. *Increases due to increase in index.* Section 535.24(b)(2) provides that an annual percentage rate for a category of transactions that varies according to an index that is not under the savings association's control and is available to the general public may be increased due to an increase in the index. This section does not permit a savings association to increase the annual percentage rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase.

2. *External index.* A savings association may increase the annual percentage rate if the increase is based on an index or indices outside the savings association's control. A savings association may not increase the rate based on its own prime rate or cost of funds. A savings association is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal*, even if the savings association's own prime rate is one of several rates used to establish the published rate.

3. *Publicly available.* The index or indices must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the rate applied to the outstanding balance.

4. *Changing a non-variable rate to a variable rate.* Section 535.24 generally prohibits a savings association from changing a non-variable annual percentage rate to a variable rate because such a change can result in an increase in rate. However, § 535.24(b)(1) permits a savings association to change a non-variable rate to a variable rate if the change was disclosed at account opening. Furthermore, following the first year after the account is opened, § 535.24(b)(3) permits a savings association to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in 12 CFR 226.9(c) or (g)). Finally, § 535.24(b)(4) permits a savings association to change a non-variable rate to a variable rate if the required minimum periodic payment is not received within 30 days of the payment due date (after complying with the notice requirements in 12 CFR 226.9(g)).

5. *Changing a variable annual percentage rate to a non-variable annual percentage rate.* Nothing in § 535.24 prohibits a savings association from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is

determined at the time the savings association provides the notice required by 12 CFR 226.9(c). For example, assume that on March 1 a variable rate that is currently 15% applies to a balance of \$2,000 and the savings association sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 17. On April 17, the savings association may apply the 14% non-variable rate to the \$2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. *Substitution of index.* A savings association may change the index and margin used to determine the annual percentage rate under § 535.24(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

24(b)(3) Advance Notice Exception

1. *First year after the account is opened.* A savings association may not increase an annual percentage rate pursuant to § 535.24(b)(3) during the first year after the account is opened. This limitation does not apply to accounts opened prior to July 1, 2010.

2. *Transactions that occur more than seven days after notice provided.* Section 535.24(b)(3) generally prohibits a savings association from applying an increased rate to transactions that occur within seven days after provision of the 12 CFR 226.9(c) or (g) notice. This prohibition does not, however, apply to transactions that are authorized within seven days after provision of the 12 CFR 226.9(c) or (g) notice but are settled more than seven days after the notice was provided.

3. Examples.

i. Assume that a consumer credit card account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of \$2,000 at a non-variable annual percentage rate of 15%. On March 15, the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and states that thereafter the savings association will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under

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the savings association's control. The seventh day after provision of the notice is March 22 and, on that date, the consumer makes a \$200 purchase. On March 24, the consumer makes a \$1,000 purchase. On May 1, §535.24(b)(3) permits the savings association to begin accruing interest at 18% on the \$1,000 purchase made on March 24. The savings association is not permitted to apply the 18% rate to the \$2,200 purchase balance as of March 22. After six months (November 2), the savings association may begin accruing interest on any remaining portion of the \$1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin.

ii. Same facts as above except that the \$200 purchase is authorized by the savings association on March 22 but is not settled until March 23. On May 1, §535.24(b)(3) permits the savings association to start charging interest at 18% on both the \$200 purchase and the \$1,000 purchase. The savings association is not permitted to apply the 18% rate to the \$2,000 purchase balance as of March 22.

iii. Same facts as in paragraph i. above except that on September 17 of year two (which is 45 days before expiration of the 18% non-variable rate), the savings association provides a notice pursuant to 12 CFR 226.9(c) informing the consumer that, on November 2, a new variable rate will apply to new purchases and any remaining portion of the \$1,000 balance (calculated by using the same index and a reduced margin of 10 percentage points). The notice further states that, on May 1 of year three, the margin will increase to the margin disclosed at account opening (12 percentage points). On May 1 of year three, §535.24(b)(3) permits the savings association to increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points and to apply that rate to any remaining portion of the \$1,000 purchase as well as to new purchases. *See comment 24(b)(1)-3.* The savings association is not permitted to apply this rate to any remaining portion of the \$2,200 purchase balance as of March 22.

24(b)(5) Workout Arrangement Exception

1. *Scope of exception.* Nothing in §535.24(b)(5) permits a savings association to alter the requirements of §535.24 pursuant to a workout arrangement between a consumer and the savings association. For example, a savings association cannot increase an annual percentage rate pursuant to a workout arrangement unless otherwise permitted by §535.24. In addition, a savings association cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under §535.24(c).

2. *Variable annual percentage rates.* If the annual percentage rate that applied to a category of transactions prior to commence-

ment of the workout arrangement varied with an index consistent with §535.24(b)(2), the rate applied to that category of transactions following an increase pursuant to §535.24(b)(5) must be determined using the same formula (index and margin).

3. *Example.* Assume that, consistent with §535.24(b)(4), the margin used to determine a variable annual percentage rate that applies to a \$5,000 balance is increased from 5 percentage points to 15 percentage points. Assume also that the savings association and the consumer subsequently agree to a workout arrangement that reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, the savings association may increase the margin for the variable rate that applies to the \$5,000 balance up to 15 percentage points. 12 CFR 226.9 does not require advance notice of this type of increase.

24(c) Treatment of Protected Balances

1. *Protected balances.* Because rates cannot be increased pursuant to §535.24(b)(3) during the first year after account opening, §535.24(c) does not apply to balances during the first year. Instead, the requirements in §535.24(c) apply only to "protected balances," which are amounts owed for a category of transactions to which an increased annual percentage rate cannot be applied after the rate for that category of transactions has been increased pursuant to §535.24(b)(3). For example, assume that, on March 15 of year two, an account has a purchase balance of \$1,000 at a non-variable rate of 12% and that, on March 16, the savings association sends a notice pursuant to 12 CFR 226.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 15% on May 2. On March 20, the consumer makes a \$100 purchase. On March 24, the consumer makes a \$150 purchase. On May 2, §535.24(b)(3) permits the savings association to start charging interest at 15% on the \$150 purchase made on March 24 but does not permit the savings association to apply that 15% rate to the \$1,100 purchase balance as of March 23. Accordingly, §535.24(c) applies to the \$1,100 purchase balance as of March 23 but not the \$150 purchase made on March 24.

24(c)(1) Repayment

1. *No less beneficial to the consumer.* A savings association may provide a method of repaying the protected balance that is different from the methods listed in §535.24(c)(1) so long as the method used is no less beneficial to the consumer than one of

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the listed methods. A method is no less beneficial to the consumer if the method amortizes the protected balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 535.24(c)(1)(ii). For example, a savings association could increase the percentage of the protected balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the protected balance in less than five years. Alternatively, a savings association could require a consumer to make a minimum payment that amortizes the protected balance in less than five years so long as the payment does not include a percentage of the balance that is more than twice the percentage included in the minimum payment before the effective date of the increased rate. For example, a savings association could require the consumer to make a minimum payment that amortizes the protected balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the effective date of the increased rate.

2. Lower limit for required minimum periodic payment. If the required minimum periodic payment under § 535.24(c)(1)(i) or (c)(1)(ii) is less than the lower dollar limit for minimum payments established in the cardholder agreement before the effective date of the rate increase, the savings association may set the minimum payment consistent with that limit. For example, if at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or \$20 (whichever is greater), the savings association may require the consumer to make a minimum payment of \$20 even if doing so would pay off the protected balance in less than five years or constitute more than 2% of the protected balance plus fees and interest charges.

Paragraph 24(c)(1)(i)

1. Amortization period starting from date on which increased rate becomes effective. Section 535.24(c)(1)(i) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate becomes effective. A savings association is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of amounts paid by the consumer in excess of the minimum payment consistent with § 535.23 or any other practice permitted by these rules and other applicable law.

2. Amortization when applicable annual percentage rate is variable. If the annual percentage rate that applies to the protected balance varies with an index consistent with § 535.24(b)(2), the savings association may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the outstanding balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the savings association may increase the required minimum periodic payment to include the additional interest charges.

Paragraph 24(c)(1)(ii)

1. Required minimum periodic payment on other balances. Section 535.24(c)(1)(ii) addresses the required minimum periodic payment on the protected balance. Section 535.24(c)(1)(ii) does not limit or otherwise address the savings association's ability to determine the amount of the required minimum periodic payment for other balances.

2. Example. Assume that the method used by a savings association to calculate the required minimum periodic payment for a consumer credit card account requires the consumer to pay either the total of fees and interest charges plus 1% of the total amount owed or \$20, whichever is greater. Assume also that the account has a purchase balance of \$2,000 at an annual percentage rate of 15% and a cash advance balance of \$500 at an annual percentage rate of 20% and that the savings association increases the rate for purchases to 18% but does not increase the rate for cash advances. Under § 535.24(c)(1)(ii), the savings association may require the consumer to pay fees and interest plus 2% of the \$2,000 purchase balance. Section 535.24(c)(1)(ii) does not prohibit the savings association from increasing the required minimum periodic payment for the cash advance balance.

24(c)(2) Fees and Charges

1. Fee or charge based solely on the protected balance. A savings association is prohibited from assessing a fee or charge based solely on balances to which § 535.24(c) applies. For example, a savings association is prohibited from assessing a monthly maintenance fee that would not be charged if the account did not have a protected balance. A savings association is not, however, prohibited from assessing fees such as late payment fees or fees for exceeding the credit limit even if such fees are based in part on the protected balance.

Office of Thrift Supervision, Treasury

Section 535.25—Unfair Balance Computation Method

25(a) General Rule

1. *Two-cycle method prohibited.* When a consumer ceases to be eligible for a time period provided by the savings association within which the consumer may repay any portion of the credit extended without incurring a finance charge (a grace period), the savings association is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

2. Examples.

i. Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. The payment due date for the account is the twenty-fifth day of the month. Under the terms of the account, the consumer will not be charged interest on purchases if the balance at the end of a billing cycle is paid in full by the following payment due date. The consumer uses the credit card to make a \$500 purchase on March 15. The consumer pays the balance for the February billing cycle in full on March 25. At the end of the March billing cycle (March 31), the consumer's balance consists only of the \$500 purchase and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25). The consumer pays \$400 on April 25, leaving a \$100 balance. The savings association may charge interest on the \$500 purchase from the start of the April billing cycle (April 1) through April 24 and interest on the remaining \$100 from April 25 through the end of the April billing cycle (April 30). The savings association is prohibited, however, from reaching back and charging interest on the \$500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

ii. Assume the same circumstances as in the previous example except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore, under the terms of the account, is not eligible for a time period within which to repay the \$500 purchase without incurring a finance charge. With respect to the \$500 purchase, the savings association may charge interest from the date of purchase (March 15) through April 24 and interest on the remain-

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ing \$100 from April 25 through the end of the April billing cycle (April 30).

Section 535.26—Unfair Charging of Security Deposits and Fees for the Issuance or Availability of Credit to Consumer Credit Card Accounts

26(a) Limitation for First Year

1. *Majority of the credit limit.* The total amount of security deposits and fees for the issuance or availability of credit constitutes a majority of the initial credit limit if that total is greater than half of the limit. For example, assume that a consumer credit card account has an initial credit limit of \$500. Under § 535.26(a), a savings association may charge to the account security deposits and fees for the issuance or availability of credit totaling no more than \$250 during the first year (consistent with § 535.26(b)).

26(b) Limitations for First Billing Cycle and Subsequent Billing Cycles

1. *Adjustments of one dollar or less permitted.* When dividing amounts pursuant to § 535.26(b)(2), a savings association may adjust amounts by one dollar or less. For example, if a savings association is dividing \$87 over five billing cycles, the savings association may charge \$18 for two months and \$17 for the remaining three months.

2. Examples.

i. Assume that a consumer credit card account opened on January 1 has an initial credit limit of \$500. Assume also that the billing cycles for this account begin on the first day of the month and end on the last day of the month. Under § 535.26(a), the savings association may charge to the account no more than \$250 in security deposits and fees for the issuance or availability of credit during the first year after the account is opened. If it charges \$250, the savings association may charge up to \$125 during the first billing cycle. If it charges \$125 during the first billing cycle, it may then charge no more than \$25 in each of the next five billing cycles. If it chooses, the savings association may spread the additional security deposits and fees over a longer period, such as by charging \$12.50 in each of the ten billing cycles following the first billing cycle.

ii. Same facts as above except that on July 1 the savings association increases the credit limit on the account from \$500 to \$750. Because the prohibition in § 535.26(a) is based on the initial credit limit of \$500, the increase in credit limit does not permit the savings association to charge to the account additional security deposits and fees for the issuance or availability of credit (such as a fee for increasing the credit limit).

Pt. 536**12 CFR Ch. V (1-1-10 Edition)****26(c) Evasion Prohibited**

1. *Evasion.* Section 535.26(c) prohibits a savings association from evading the requirements of this section by providing the consumer with additional credit to fund the consumer's payment of security deposits and fees that exceed the total amounts permitted by §535.26(a) and (b). For example, assume that on January 1 a consumer opens a consumer credit card account with an initial credit limit of \$400 and the savings association charges to that account \$100 in fees for the issuance or availability of credit. Assume also that the billing cycles for the account coincide with the days of the month and that the savings association will charge \$20 in fees for the issuance or availability of credit in the February, March, April, May, and June billing cycles. The savings association violates §535.26(c) if it provides the consumer with a separate credit product to fund additional security deposits or fees for the issuance or availability of credit.

2. *Payment with funds not obtained from the savings association.* A savings association does not violate §535.26(c) if it requires the consumer to pay security deposits or fees for the issuance or availability of credit using funds that are not obtained, directly or indirectly, from the savings association. For example, a savings association does not violate §535.26(c) if a \$400 security deposit paid by a consumer to obtain a consumer credit card account with a credit line of \$400 is not charged to a credit account provided by the savings association or its affiliate.

26(d) Definitions

1. *Membership fees.* Membership fees for opening an account are fees for the issuance or availability of credit. A membership fee to join an organization that provides a credit or charge card as a privilege of membership is a fee for the issuance or availability of credit only if the card is issued automatically upon membership. If membership results merely in eligibility to apply for an account, then such a fee is not a fee for the issuance or availability of credit.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) are not fees for the issuance or availability of credit if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, are fees for the issuance or availability of credit. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) is a fee for the issuance or availability of credit even if the fee is optional; that is,

if the fee is charged only if the cardholder requests one or more additional cards.

3. *One-time fees.* Non-periodic fees related to opening an account (such as application fees or one-time membership or participation fees) are fees for the issuance or availability of credit. Fees for reissuing a lost or stolen card, statement reproduction fees, and fees for late payment or other violations of the account terms are examples of fees that are not fees for the issuance or availability of credit.

PART 536—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

- 536.10 Purpose and scope.
- 536.20 Definitions.
- 536.30 Prohibited practices.
- 536.40 What you must disclose.
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- 536.60 Qualification and licensing requirements for insurance sales personnel.

APPENDIX A TO PART 536—CONSUMER GRIEVANCE PROCESS.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831x.

SOURCE: 65 FR 75845, Dec. 4, 2000, unless otherwise noted.

§ 536.10 Purpose and scope.

(a) *General rule.* This part 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 savings association; or
- (2) Any other person that is engaged in such activities at an office of a savings association or on behalf of a savings association.

(b) *Application to operating subsidiaries.* For purposes of §559.3(h) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a savings association or on behalf of a savings association.

§ 536.20 Definitions.

As used in this part:

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