

## 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

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## 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