

determines that a NGEF has willfully failed to comply in a material way with §§ 533.6 or 533.7 of this part, OTS will notify the NGEF in writing of that determination and provide the NGEF a period of 90 days (or such longer period as OTS finds to be reasonable under the circumstances) to comply.

(2) If the NGEF does not comply within the time period established by OTS, the agreement shall thereafter be unenforceable by that NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) OTS may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEF's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, OTS may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, OTS will provide written notice and an opportunity to present information to OTS concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with OTS under §§ 533.6 or 533.7 of this part will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing OTS to enforce the provisions of any covered agreement.

#### § 533.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEF and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 533.6 of this part until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEF that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 533.6 of this part until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 533.6(d)(1)(i) of this part; or

(B) The information described in § 533.6(d)(1)(ii) of this part for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEF, insured depository institution or affiliate has any information to report under § 533.7 of this part for a fiscal that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided, no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEF, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 533.7(f)(2) of this part.

#### § 533.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* Affiliate means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered

agreement under § 533.2, an *affiliate* includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEF that is a party to the agreement makes a CRA communication, as described in § 533.3 of this part.

(b) *Control*. *Control* is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate*. A *CRA affiliate* of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEF that is a party to the agreement of such designation.

(d) *CRA public file*. *CRA public file* means the public file maintained by an insured depository institution and described in § 563.43 of this chapter.

(e) *Executive officer*. The term *executive officer* has the same meaning as in § 215.2(e)(1) of the Board of Governors of the Federal Reserve's Regulation O (12 CFR 215.2(e)(1)). In applying this definition under this part, the term *savings association* shall be used in place of the term *bank*.

(f) *Federal banking agency; appropriate Federal banking agency*. The terms *Federal banking agency* and *appropriate Federal banking agency* have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year*. (1) The fiscal year for a NGEF that does not have a fiscal year shall be the calendar year.

(2) Any NGEF, insured depository institution, or affiliate that has a fiscal 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 NGEF*—(1) *General*. A *nongovernmental entity or person or NGEF* 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 NGEF 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

(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

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.

#### § 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 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: