

From: Office of Thrift Supervision, Richard Bennett  
Subject: Regulation Z - Truth in Lending

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Comments:

OTS offers the following comment on the wording of comment 52(b)-1 of the Board's March 15, 2010 proposal (75 FR 12334, 12371). As proposed, paragraph (ii)(D) of that comment provides that the following is an example of a fee to which the restrictions on penalty fees in sec. 226.52(b) does not apply:  
"Annual fees and other fees for the issuance or availability of credit described in sec. 226.52a(b)(2), except to the extent that such fees are based on account inactivity."

As drafted, the comment could be read to mean that even to the extent that a fee for the issuance or availability of credit such as an annual fee may be based on an act or omission of the consumer that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, that fee would still not be subject to the limitations in sec. 226.52(b)(2). We assume that is not the Board's intent and believe such an approach could result in an unintended loophole.

Accordingly, we recommend clarifying the language of comment 52(b)-1(ii)(D) in the final rule to read along the following lines: "Annual fees and other fees for the issuance or availability of credit described in sec. 226.52(b)(2), except to the extent that such fees are based on account inactivity or an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account."

Thank you for your consideration.

Richard Bennett  
Senior Compliance Counsel  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552