December 16, 2005

Jennifer J. Johnson, Secretary
Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551.

Docket Number R -1217

Dear Ms Johnson:

This comment letter is submitted on behalf of Wells Fargo & Company ("Wells Fargo") in response to the Federal Reserve Board's ("FRB") second advance notice of proposed rulemaking (ANPR) regarding the open-end revolving credit rules of Regulation Z, as required by the amendments to the Truth in Lending Act (TILA) contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act"). Wells Fargo is a diversified financial services company providing consumer finance, insurance, investments, mortgage, and banking services to over 23 million customers throughout North America, including all 50 states. Wells Fargo has assets of over $453 billion and over 150,000 employees. It is among the forty largest private employers in the United States.

Wells Fargo appreciates this opportunity to comment and strongly supports the FRB's decision to implement the Bankruptcy Act amendments as part of the agency's broader Regulation Z review, which will help reduce the regulatory burden that would otherwise arise and contribute to the overall goal of simplifying the open-end credit disclosures to make them more meaningful to the public.

One of the most significant changes to TILA, mandated by the Bankruptcy Act amendments, involves the new minimum payment disclosures for consumer open-end credit accounts. Although the policy reason underlying the change – to make consumers aware of how long it takes to pay off their account balances – is laudable and endorsed by Wells Fargo, great care must be taken in fashioning amendments to Reg. Z that will serve the dual purposes of providing useful, easily-understood information to consumers while allowing creditors to achieve compliance in a cost-effective manner. This is an extremely challenging proposition, as noted by the fact that the FRB's request for public comment posits 26 separate questions to help the agency sort through the complexities involved in making minimum payment disclosures due to the wide array of open-end credit products now available in the marketplace.

For ease of reference, this letter will re-print each of the FRB's questions and set forth Wells Fargo's comments immediately thereafter.

Q59: Are there certain types of transactions or accounts for which the minimum payment disclosures are not appropriate? For example, should the Board consider a complete exemption from the minimum payment disclosures for open-end accounts or extensions of credit under an open-end plan if there is a fixed repayment period, such as with certain types of HELOCs? Alternatively, for these products, should the Board provide an exemption from disclosing the hypothetical example and the toll-free telephone number on periodic statements, but still require a standardized warning indicating that making only the minimum payment will increase the interest the consumer pays?

Wells Fargo supports an exemption from the "estimated/hypothetical" and "actual" minimum payment disclosure requirements for home equity lines of credit (which already have fixed repayment periods that are fully disclosed at the time the accounts are opened), as well as other products that combine an open-end line of credit with closed-end features for certain types of purchases. As to these types of accounts, we believe a simple, standardized warning is more appropriate – alerting customers that making only minimum payments will result in their incurring increased interest costs and will prolong the amount of time it takes to repay. Accounts that have been closed due to delinquency and have had the required monthly payments reduced or the balance decreased to accommodate a fixed payment plan should be completely exempted from the disclosures.

Q60: Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the type of account; for example, an exemption for consumers who typically (1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum?

Although we agree that the minimum payment disclosures should be targeted at customers who are most in need of the information, many creditors do not have processing systems sophisticated enough to allow them to selectively print the disclosures from month-to-month based on a customer's prior payment patterns. In the event the FRB determines that this sort of exemption should be granted, it is imperative that the Board define precisely what payment history qualifies as "typically" paying in full or "regularly" exceeding the minimum. Alternatively, we would suggest giving creditors the option of analyzing similar groups of their accounts (a co-brand portfolio, for example) and determining whether the majority of customers within that portfolio historically pay more than the minimum payments due. If so, the creditor would only be required to print the type of simple, standardized message referenced above (in response to question 59) on these customers' billing statements.

Q61: Some credit unions and retailers offer open-end credit plans that also allow extensions of credit that are structured like closed-end loans with fixed repayment periods and payments amounts, such as loans to finance the purchase of motor vehicles or other "big-ticket items." How should the minimum payment disclosures be implemented for such credit plans?

Please see our response to question 59 above. Wells Fargo believes if an account is structured like a closed-end loan (consumers may use the account periodically, but once they incur a balance, the line is frozen until the repayment period is over and all payments have been made), the minimum payment disclosures are unnecessary, and would, in fact, be likely to cause more confusion than clarity. For accounts that combine an open-end revolving feature, with closed-end-like options for certain purchases, we believe the type of minimum payment disclosure that should be given will depend on how the customers' payments are structured. If, for example, part of the balance in a sub-account is subject to a specific repayment period, but only a single minimum monthly payment is calculated for the account as a whole, these accounts could be subject to the standard minimum payment disclosures that the FRB's rules will develop.

Hypothetical examples for periodic statements.

Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1000 balance at an interest rate of 17 percent if the consumer makes a "typical" 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a "typical" 5 percent minimum monthly payment (but the creditor may opt instead to disclose the statutory example for making 2 percent minimum payments). The example of a 5 percent minimum payment must be disclosed by creditors that are subject to FTC enforcement with respect to TILA, regardless of the creditor's actual minimum payment requirement. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent.

Q62: The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Currently, the repayment periods for the statutory examples are based on a 17 percent APR. Nonetheless, according to data collected by the Board, the average APR charged by commercial banks on credit card plans in May 2005 was 12.76 percent. If only accounts that were assessed interest are considered, the average APR rises to 14.81 percent. See Board of Governors of the Federal Reserve Board, Statistical Release G. 19, (July 2005). Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

The Bankruptcy Act permits the Board, by rule, to "periodically recalculate, as necessary, the interest rate and repayment period" for the statutory minimum payment estimate mandated by the amendment. Wells Fargo believes the statutory estimate should be subject to recalculation on a go-forward basis pursuant to a formula adopted by the FRB as part of its Reg. Z rulemaking process. One approach, which Wells Fargo endorses, would be to have the Board (i) review on an annual basis the data it collects regarding the typical interest rates charged by the largest 175 credit card issuers, (ii) determine the average interest rate charged based on such data, and (iii) publish the rate with sufficient advance notice to allow creditors who choose to make the "estimated/hypothetical" disclosure to update their disclosures accordingly. We would not support recalculating the numbers more often than annually. We would also note that if the Board establishes a recalculated rate that is lower than the statutory 17% but a creditor actually uses an APR that is 17% or greater, the "estimated/hypothetical" disclosure using the recalculated rate could confuse customers. We suggest that if the Board does establish a recalculated rate that is less than 17%, creditors should be given the option of using the statutory 17% rate if they use an actual APR of 17% or greater.

Q63: The hypothetical examples in the Bankruptcy Act may be more appropriate for credit card accounts than other types of open-end credit accounts. Should the Board consider revising the account balance, APR, or "typical" minimum payment percentage used in examples for open-end accounts other than credit cards accounts, such as HELOCs and other types of credit lines? If revisions were made, what account balance, APR, and "typical" minimum payment percentage should be used?

Wells Fargo would maintain that the hypothetical examples in the Bankruptcy Act are just that, and no more. They give consumers a basic idea as to how long it would take to pay an imaginary balance (assuming very simplified criteria), and leave it up to the consumer to evaluate his or her own circumstances or call a toll-free number for more information. Given the many types of credit card accounts now in circulation, we do not believe the hypothetical examples are any more appropriate for all credit card accounts than for HELOCs and would assert that devising additional hypothetical examples for non-credit card accounts will only exacerbate the situation.

Q64: The statutory examples refer to the stated minimum payment percentages of 2 percent or 5 percent, as being "typical." The term "typical" could convey to some consumers that the percentage used is merely an example, and is not based on the consumer's actual account terms. But the term "typical" might be perceived by other consumers as indicting that the stated percentage is an industry norm that they should use to compare the terms of their account to other accounts. Should the hypothetical example refer to the minimum payment percentage as "typical," and if not, how should the disclosure convey to consumers that the example does not represent their actual account terms?

Using the word "typical" in the hypothetical disclosure, we fear, is more likely to confuse the reader into thinking that the stated percentage is, in fact, the actual percentage *applicable to his or her account or that his or her account is disadvantaged if the actual percentage differs from what is stated in the example. We believe the best way to resolve the issue is to simply delete the words "the typical" from the hypothetical example.*

What assumptions should be used in calculating the estimated repayment period?

The Bankruptcy Act requires open-end creditors to provide a toll-free telephone number on periodic statements that consumers can use to obtain an estimate of the time it will take to repay the consumer's outstanding balance, assuming the consumer makes only minimum payments on the account and the consumer does not make any more draws on the line. The Act requires creditors to provide estimates that are based on tables created by the Board that estimate repayment periods for different outstanding balances, payment amounts, and interest rates. The Board plans to develop formulas that can be used to generate the required tables. The formulas also can be used by creditors, the FTC, and the Board to calculate the repayment period for a particular account; the use of a formula instead of a table facilitates the use of automated systems to provide the required disclosures. Copies of the tables that can be generated using the repayment calculation formulas would also be made available by the Board upon request.

In establishing formulas and tables that estimate repayment periods, the Act directs the Board to assume a significant number of different APRs, account balances, and minimum payment amounts. A number of other assumptions can also affect the calculation of a repayment period. For example, the hypothetical examples that must be disclosed on periodic statements incorporate the following assumptions, in addition to the statutory assumptions listed above:

1. Balance Calculation Method. The previous-balance method is used; finance charges are based on the beginning balance for the cycle.

2. Grace Period. No grace period applies to any portion of the balance.

3. Residual Finance Charge. When the account balance becomes less than the required minimum payment, the receipt of the final amount in full completely pays off the account. In other words, there is no residual finance charge that accrues in the month when the final bill is paid in full.

4. Interest Rate and Outstanding Balance. There is a single periodic rate (17%) applied to a single balance.

5. Minimum Payment Amount. The minimum payment requirement in the $1,000 balance example is assumed to be 2 percent of the outstanding balance or $20, whichever is greater. For the $300 balance example, the minimum payment requirement is assumed to be 5 percent of the outstanding balance or $15, whichever is greater.

In developing a formula for calculating a consumer's estimated repayment period, the Board could use some of the same assumptions that were used in creating the statute's hypothetical examples.

Balance Calculation Method. The statutory examples use a previous-balance method which calculates the finance charge based on the entire account balance as of the first day in the billing cycle. The average daily balance method is more commonly used by creditors; however, that method requires additional assumptions. For example, an assumption would need to be made about the length of each billing cycle, and the date during each cycle that a consumer's payment is made. The Board does not have data on when consumers typically make their payments each month. In using the previous-balance method, the estimated repayment periods are similar to those that would result from using the average daily balance method, assuming that all months are of equal length and that payments are credited on the last day of the billing cycle.

Grace Period. The required disclosures about the effect of making minimum payments are based on the assumption that the consumer will be "revolving" or carrying a balance. Thus, it seems reasonable to assume that the account is already in a revolving condition at the time the consumer calls to obtain the estimate, and that no grace period applies.

Residual Interest. When the consumer's account balance at the end of a billing cycle is less than the required minimum payment, the statutory examples assume that no additional transactions occurred after the end of the billing cycle, that the account balance will be paid in full, and that no additional finance charges will be applied to the account between the date the statement was issued and the date of the final payment. This assumption is necessary to have a finite solution to the repayment period calculation. Without this assumption, the repayment period could be infinite.

Q65: In developing the formulas used to estimate repayment periods, should the Board use the three assumptions stated above concerning the balance calculation method, grace period, and residual interest? If not, what assumptions should be used, and why?

In calculating estimated repayment periods, numerous assumptions need to be made, not the least of which are the balance calculation method, grace period and no residual interest after the final payment date. The information sought to be conveyed to consumers in this instance is especially ephemeral in that it can only approach "accuracy" as of a point in time, and will become immediately "inaccurate" if any one of dozens of variables happens to change, e.g., the consumer continues to use the account after receiving the estimate. Wells Fargo has no objection to the Board's use of the three assumptions cited above as long as creditors are permitted to communicate with their customers that any estimated repayment periods were necessarily calculated based upon a variety of assumptions, some or all of which might not be applicable to a customer's specific circumstances.

How should the minimum payment requirement and APR information be used in estimating the repayment period?

The Bankruptcy Act directs the Board in estimating repayment periods to allow for a significant number of different outstanding balances, minimum payment amounts, and interest rates. These variables could have a significant impact on the repayment period. With respect to the toll-free numbers set up by the Board and the FTC, information about the consumers' account terms must come from consumers because the information is not available to the Board or the FTC. Consumers would need easy access to this information to request an estimated repayment period. Because consumers' outstanding account balances appear on their monthly statements, consumers can provide that amount when requesting an estimate of the repayment period. Issues arise, however, with respect to the minimum payment requirement and interest rate information.

Periodic statements do not disclose the fixed percentage or formula used to determine the minimum dollar amount that must be paid each month. The statements only disclose the minimum dollar amount that must be paid for the current statement period, which would vary each month as the account balance declines. Furthermore, while periodic statements must disclose all APRs applicable to the account, the statements may, but do not necessarily, indicate the portion of the account balance subject to each APR. This information is also needed to estimate the repayment period.

Below, the Board seeks commenters' views regarding three basic approaches for developing a system to calculate estimated repayment periods for consumers who call the toll-free telephone number. The three approaches discussed are:

(1) Prompting consumers to provide an account balance, a minimum payment amount, and APRs in order to obtain an estimated repayment period. For information about minimum payments and APRs that is not currently disclosed on periodic statements, the Board could require additional disclosures on those statements. But the Board also could develop a formula that makes assumptions about these variables for a "typical" account.

(2) Prompting consumers to input information, or using assumptions based on a "typical" account to calculate an estimated repayment period—but also giving creditors the option to input information from their own systems regarding consumers' account terms, to provide more accurate estimates. Estimates provided by creditors that elect this option would differ somewhat from the estimates provided by other creditors, the Board, and the FTC.

(3) Prompting consumers to provide their account balance, but requiring creditors to input information from their own systems regarding the account's minimum payment requirement and the portion of the balance subject to each APR. These estimates would be more

accurate, but would impose additional compliance burdens, and would not necessarily reflect consumers' actual repayment periods because of the use of several other assumptions.

Minimum Payment Amount. The Board solicits comment on how the creditor's minimum payment requirement should be factored into the formula used to calculate repayment periods. Most creditors calculate the minimum payment each month based on a formula. Although minimum payment formulas typically calculate the payment as a percentage of the outstanding balance, the exact formulas that creditors use can vary among creditors and accounts. Some credit card issuers may calculate the minimum payment amount as a percentage of the outstanding balance; others may calculate the minimum payment as a percentage of the outstanding balance plus any finance charges, late fees, or other fees. Some creditors may use minimum payment formulas that vary based on the APR; for example, higher minimum payment percentages might apply to accounts with higher APRs. Open-end credit plans with multiple credit features may apply different minimum payment formulas to different account features. For HELOCs, the minimum payment formula used during the draw period may differ from the formula used during the repayment period.

Although the dollar amount of the minimum payment due for the month is disclosed on periodic statements, the formula used by the creditor to calculate this amount currently is not included on the periodic statement. Even if the creditor's minimum payment formula were disclosed on periodic statements, the formula might be sufficiently complex that it would not be reasonable to expect this information to be used by consumers in using the toll-free telephone system.

The Board seeks comment on alternative approaches to address how minimum payment requirements should be factored into the formula used to estimate repayment periods. As discussed above, most minimum payment formulas, at least in part, calculate the minimum payment as a percentage of the outstanding balance. As the outstanding balance declines each month, the minimum payment amount declines until it reaches a certain floor amount (such as $20). Using the dollar amount of the minimum payment for a particular billing cycle would overstate the minimum payment amount in the succeeding months when the account balance declines and, therefore, would underestimate the consumer's repayment period. The potential error produced by using the current month's minimum payment amount would be compounded if that amount also includes fees assessed in the current cycle, such as late payment fees or over-the-credit-limit fees which, according to the statutory assumptions, will not be recurring each month.

One alternative is for the Board to select a "typical" minimum payment formula for particular types of open-end accounts (e.g., general-purpose credit cards, retail credit cards, HELOCs, and other lines of credit), and use "typical" formulas for calculating the repayment estimates. For example, although there is no absolute industry standard for minimum payments for general-purpose credit cards, in recent months several major credit card issuers have moved toward using similar minimum payment formulas. These minimum payment formulas generally prevent prolonged negative amortization for customers who keep their payments current and are under the credit limit by requiring minimum payments never be less than all finance charges plus one percent of the outstanding balance. These creditors have different ways of treating late fees and over-the-credit limit fees, but generally the formulas are designed to prevent prolonged negative amortization either by including the fees in the minimum payment or capping the fees. The Board could use some variation of these minimum payment formulas, as an approximation of the minimum payment formulas that apply to general-purpose credit cards.

Unlike the Board and the FTC which must use consumer-input systems, a creditor that establishes its own toll-free telephone number could estimate repayment periods based on information in the creditor's database, including the creditor's minimum payment formula. A system based on the creditor's information might be easier for consumers to use and give them more accurate estimates. Accordingly, the Board could grant creditors the flexibility to either (1) use the same assumptions about minimum payment formulas and interest rates as the Board and FTC, or (2) use the creditor's actual minimum payment formula and interest rates to calculate the repayment estimate. One consequence of giving the creditor an option in this regard would be that consumers with identical account terms and balances could obtain different repayment estimates depending on whether the estimate was prepared using the Board's assumptions or the 14 actual account terms. Alternatively, the Board could require all creditors to use their actual minimum payment formulas and interest rates to calculate the repayment estimate. But the Board and FTC would still be providing estimates using the Board's assumptions.

Q66: Comment is specifically solicited on whether the Board should select "typical" minimum payment formulas for various types of accounts. If so, how should the Board determine the formula for each type of account? Are there other approaches the Board should consider?

It is Wells Fargo's view that the Bankruptcy Act amendments contemplated two distinct approaches to minimum repayment disclosures. Under the first approach, the creditor may print a hypothetical example on its billing statements and provide a toll free number for customers to call to receive more specific estimates about their own accounts. This particularized estimate, in turn, is to be based only upon the information in the tables which the Board is obligated to promulgate pursuant to its rule making authority. The Act itself notes that the information in the table can, at best, contain only "approximate" numbers. Under the second approach, creditors are permitted to disclose an abbreviated minimum payment warning on their billing statements (and omit the hypothetical example), but in turn, they must provide their customers with the "actual" number of months it will take to repay an outstanding balance.

Since the goal of the first alternative is to provide consumers with approximate figures, it makes sense for the Board to select "typical" minimum payment formulas rather than designing formulae based on the creditor's own information. To do otherwise would blur the distinction made in the legislation and possibly create the false impression that the "estimated" repayment *period information is more accurate than it can possibly be. The Board should exercise care to clearly define the types of accounts that are appropriate for each "typical" minimum payment formula so that creditors will be able to clearly determine which formula to use.*

Q67: If the Board selects a "typical" minimum payment formula for general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges? What are typical minimum payment formulas for open-end products other than general-purpose credit cards (such as retail credit cards, HELOCs, and other lines of credit)?

Wells Fargo agrees that using one percent of the outstanding balance plus finance charges is a reasonable assumption to make when designing a typical minimum payment formula.

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

Although Wells Fargo generally supports the notion of having as many disclosure options as are reasonably available, we believe that the costs involved in a creditor's using actual minimum payment information, instead of the Board's "typical" formula will prohibit, as a practical matter, the utility of such an option. In <u>no</u> case, however, should creditors be <u>required</u> to do so. We would like to re-emphasize that the key information customers need to know is that making only minimum payments will result in long periods of repayment. Creditors should give estimates to customers (based on some good faith assumptions), but should not portray these estimates as being anything close to the true amount of time it may take customers to pay off their balances. As the Board noted in its first ANPR seeking comments on substantial revisions to Reg. Z's open-end credit rules, we have reached the point of information overload and need to take whatever steps as are prudent to re-invent a regulatory scheme that favors simplicity. This is especially the case with a disclosure like the minimum repayment period, which by its very nature involves inherently "unknowable" factors.

Q69: Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle. As discussed above, several major credit card issuers have moved toward minimum payment requirements that prevent prolonged negative amortization. But some creditors may use a minimum payment formula that allows negative amortization (such as by requiring a payment of 2% of the outstanding balance, regardless of the finance charges or fees incurred). Should the Board use a formula for calculating repayment periods that assumes a "typical" minimum payment that does not result in negative amortization? If so, should the Board permit or require creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?

As referenced above, Wells Fargo favors the FRB's use of a typical minimum payment formula, based on a set of assumptions that are prevalent in the industry. Most major credit card issuers now employ minimum payment calculations that result in positive amortization, and the Board's formula should do likewise. Using such a formula to provide consumers with their estimated repayment periods, we believe, is the simplest and most useful approach because it acknowledges the reality that no matter how much specificity we attempt to inject into the calculation, it cannot truly predict the number of months it will take a particular person to pay off his or her balance. Variable interest rates, special promotional rate reductions, and re-pricing, to name a few examples, can all dramatically affect an account holder's repayment period even if he or she were to completely stop using the account on the same day the estimated repayment information was given. We do not support, in the context of this rulemaking effort, the Board's requiring creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization. This is a matter, we believe, that is more appropriately left to each creditor's functional regulator.

<u>APR information</u>. The statute's hypothetical repayment examples assume that a single APR applies to a single account balance. But open-end credit accounts, particularly credit card accounts, can have multiple APRs. The APR may differ for purchases, cash advances, and balance transfers. A card issuer may have a promotional APR that applies to the initial balance transfer and a separate APR for other balance transfers. Although all the APRs for accounts are disclosed on periodic statements, calculating the repayment period requires information about what percentage or amount of the total ending balance is subject to each APR. 15 U.S.C. 1637(b)(5); 12 CFR § 226.7(d). Currently, the total ending balance is required to be disclosed, but not the portion of the cycle's ending balance that is subject to each APR. 15 U.S.C. 1637(b)(8); 12 CFR § 226.7(i). (Some creditors may voluntarily disclose such information on periodic statements.) For example, assuming a $1,000 outstanding balance on an account with a 12 percent APR for purchases and a 19.5 percent APR on cash advances, the consumer will know from his or her periodic statement the amount of the total outstanding balance ($1,000), but may not know the percentage or amount of the ending balance subject to the 12 percent rate and the ending balance subject to the 19.5 percent rate. Creditors know the portion of the cycle's ending balance that is subject to each APR, and could develop automated systems that incorporate this information as part of their calculation. But again, the toll-free telephone systems developed by the Board and FTC would have to depend solely on data provided by the consumer.

If multiple APRs apply to the outstanding balance, using the lowest APR to calculate the repayment period would estimate repayment periods that are consistently too short; using the highest APR would estimate repayment periods that are consistently too long. How much the repayment periods are underestimated or overestimated in each of these cases would depend on how the outstanding balance is distributed among the multiple rates. Using an average of the multiple rates may either overestimate or underestimate the repayment period depending on how the outstanding balance is distributed among the rates. It is unclear whether detailed transaction data about how consumers use their credit card accounts would support a finding that there is a "typical" approach that would provide the best estimate of the repayment periods in most cases.

Q70: What proportion of credit card accounts accrue finance charges at more than one periodic rate? Are account balances typically distributed in a particular manner, for example, with the greater proportion of the balance accruing finance charges at the higher rate or the lower rate?

The majority of Wells Fargo's credit card accounts, as to which customers revolve the balances, have finance charges based on more than one periodic rate. Account balances can shift as customers change their usage patterns so it is impractical to try to analyze each account's "typical" distribution patterns.

More precise repayment periods could be calculated if balances subject to different rates are treated separately. This raises practical issues if consumers must provide information about the multiple rates and the balances subject to each rate. Periodic statements would need to disclose the portion of the outstanding balance to which each APR applies. Although creditors commonly disclose an average daily balance for each periodic rate applied in a billing cycle, in many cases, the average daily balances applicable to the rates may not be good approximations of the portion of the ending balances applicable to the rates. The Board solicits comments on the best approach for applying APR information to estimate the repayment period.

Q71: The statute's hypothetical examples assume that a single APR applies to a single balance. For accounts that have multiple APRs, would it be appropriate to calculate an estimated repayment period using a single APR? If so, which APR for the account should be used in calculating the estimate?

Wells Fargo believes that the best approach in handling the estimated repayment period disclosure is to keep it as simple as possible. Even if an account has interest accruing at multiple periodic rates, a single APR should be used in determining the formula for providing the estimate. We also must recognize that any estimate cannot possibly approach true accuracy because open-end credit, by definition, does not lend itself to this type of calculation. We would support the Board's use of the highest APR then-applicable to the account's balance, with disclosures to the customer of the key assumptions made in arriving at the estimate. Use of the highest applicable APR could result in overstating the "actual" repayment period, but we believe this is a lesser evil than trying to concoct a complicated process to approximate accuracy when the by-product will not result in improved information for the customer.

Q72: Instead of using a single APR, should the Board adopt a formula that uses multiple APRs but incorporates assumptions about how those APRs should be weighted? Should consumers receive an estimated repayment period using the assumption that the lowest APR applies to the entire balance and a second estimate based on application of the highest APR; this would provide consumers with a range for the estimated repayment period instead of a single answer. Are there other ways to account for multiple APRs in estimating the repayment period?

As noted in our reply to question 71, Wells Fargo would advocate using a single APR, with appropriate disclosures to customers as to which rate was assumed to apply, but if the Board determines that accounts with multiple APRs must receive additional information, we would support the giving of two estimated numbers, based on the use of the lowest and the highest rates applicable to the account on the date the estimates are given.

Q73: One approach to considering multiple APRs could be to require creditors to disclose on periodic statements the portion of the ending balance that is subject to each APR for the account. Consumers could provide this information when using the toll-free telephone number to request an estimated repayment period that incorporates all the APRs that apply. What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

The cost to Wells Fargo in changing the systems we use for calculating a customer's monthly account information and producing monthly billing statements in order to be able to disclose the portion of the account's ending balance subject to each interest rate is nearly incalculable, but it would surely exceed $1 million.

Q74: As an alternative to disclosing more complete APR information on periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

Again, this question does not seem appropriate in the context of trying to find the right solution for giving customers <u>estimated</u> repayment period information. If creditors choose the second statutory alternative, and want to make the investments necessary to provide "actual" repayment information to their customers, it <u>must</u> be at their option.

Q75: If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments always are allocated first to the balance carrying the lowest APR?

In keeping with our belief that the simpler the better, we support the Board's use of a typical minimum payment formula that employs a single APR. If the Board decides to adopt formulae using multiple APRs, we believe the Board may correctly assume that payments are typically allocated to balances incurring interest at the lowest rate then-applicable to the account.

<u>What disclosures do consumers need about the assumptions made in estimating their repayment period</u>?

Consumers may need to be aware of some of the assumptions underlying the estimate of their repayment period to properly comprehend the significance of the estimate. Accordingly, certain assumptions may need to be disclosed. For example, consumers might be informed that the estimated repayment period is based on the assumption that there will be no new transactions, no late payments, no changes in the APRs, and that only minimum payments are made. Consumers might also need to be aware of any assumptions about the creditor's minimum payment requirement.

Q76: What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

We strongly support informing customers that any repayment period estimates they obtain regarding their Wells Fargo open-end credit accounts were based on certain assumptions, which may not reflect the exact terms applicable to their accounts. What we need to avoid, however, is a requirement mandating the disclosure of a laundry list of assumptions. The "key" assumptions will depend, of course, on what formula is used to calculate the estimates. We believe disclosure of the assumptions must be kept as simple as possible and should include something to the following effect: because the terms of the account can change, the interest rates and minimum payment amounts may vary in the future, and the account may be used for future transactions, the information we are providing is only an estimate; the actual number of months it could take for you to pay the current balance on your account could vary significantly from this estimate.

<u>Option to provide the actual number of months to repay the outstanding balance</u>.

The Bankruptcy Act allows creditors to forego using the toll-free number to provide an estimated repayment period if the creditor instead provides through the toll-free number the "actual number of months" to repay the consumer's account.

Q77: What standards should be used in determining whether a creditor has accurately provided the "actual number of months" to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an "actual" repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

The option to provide an "actual number of months to repay" disclosure in lieu of the "estimated" repayment period information described in questions 65 – 76 above will only be workable if the FRB grants certain safe harbors to creditors electing to use this option. These safe harbors should be based on the creditor's use of a calculation method acceptable to the Board. Acceptable calculation methods, in turn, need to be based on factors currently available to creditors and not ones that would require extensive and expensive system enhancements in order to take advantage of such methods.

There is a certain fiction in using "actual number of months" terminology here because any repayment period number that might be given to a customer may have a less-than-one-day-old shelf life, especially if the account is open and the customer is actively using it. We believe, nevertheless, that an acceptable calculation method would allow the creditor to use commonly available spreadsheet software, enter basic account information that is readily available to the creditor, such as the average interest rate, current balance and the current monthly minimum payment amount, to yield a payoff period that is directionally accurate. In addition, creditors using this option should disclose to consumers that the information being provided will vary if there are any future changes to the account, such as changes in the finance charge rates, or if there are any future charges to the account (other than interest).

Q78: Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

Tolerances should be developed that provide creditors with flexibility, but we doubt that tolerances measured by the number of months a disclosure may be "off" would be productive. Assuming that a creditor used a calculation method previously deemed acceptable to the Board, there would seem to be no need for the Board to adopt a tolerance for error in the number of months disclosed as the repayment period (other than the standard "tolerance" set forth in the TILA for bona fide errors that occur notwithstanding the maintenance of procedures reasonably adapted to avoid such error).

Q79: Is information about the "actual number of months" to repay readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of developing new systems to provide the "actual number of months" to repay?

A major obstacle to a creditor's ability to calculate the "actual number of months to repay" lies in the fact that most creditors' processing systems base their finance charge calculations on the average daily balance method and do not track what portions of an account's ending balance are comprised of balances being assessed finance charges at different periodic rates. The cost of developing new systems to make this functionality readily available could easily exceed $1 million, but the benefit in terms of having better information available to customers is negligible at best.

Are there alternative approaches the Board should consider?

Above, the Board solicits comments on three approaches for disclosing estimated repayment periods if only minimum payments are made. In developing a system, the Board will consider the complexity of each approach and the resulting compliance burden, as well as the accuracy and usefulness of the estimates that would be produced.

Q80: Are there alternative frameworks to the three approaches discussed above that the Board should consider in developing the repayment calculation formula? If suggesting alternative frameworks, please be specific. Given the variety of account structures, what calculation formula should the Board use in implementing the toll-free telephone system?

Given the statutory mandate for the Board to develop detailed tables using a "significant number" of different assumptions, which are then to be employed in providing consumers with their estimated repayment periods, the three approaches outlined by the Board appear to be exhaustive. Wells Fargo would encourage the Board to develop a formula using assumptions based on a "typical" account, namely, assumptions regarding minimum payment calculations and payment allocation methods that are standard industry practices, as well as uniform billing periods and the timely receipt of all payments.

Q81: Are any creditors currently offering web-based calculation tools that permit consumers to obtain estimates of repayment periods? If so, how are these calculation tools typically structured; what information is typically requested from consumers, and what assumptions are made in estimating the repayment period?

Wells Fargo does not currently offer this type of tool to our open-end credit account customers.

Q82: Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. This would simplify the process for consumers and possibly for creditors as well. What difficulties would creditors have in disclosing the repayment estimate or actual repayment period on the periodic statement?

As noted above, we are concerned that any disclosure relating to minimum payments and repayment periods, whether it be an estimated or an "actual" number of months, must include additional caveats so as not to mislead consumers. The amount of such supplementary information is likely to be extensive and could cause unacceptable "clutter" on customers' billing statements. In addition to the information-overload problem, expenses associated with re-programming systems in order to include the disclosure on billing statements could cost hundreds of thousands of dollars.

<u>What guidance should the Board provide on making the minimum payment disclosures "clear and conspicuous?"</u>

The Bankruptcy Act provides that the minimum payment disclosures must be on the front of the periodic statement in a prominent location, and must be clear and conspicuous. The Board is directed to issue model disclosures and to promulgate rules to provide guidance on the clear and conspicuous requirement. The Act requires the Board to consult with the other Federal banking agencies, the National Credit Union Administration, and the FTC. In promulgating clear and conspicuous regulations, the Board is directed to ensure that the required standard "can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice."

Q83: What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

Reg. Z already requires that required billing statement disclosures be made clearly and conspicuously. Wells Fargo opposes any additional rule that would dictate special location or format requirements for the minimum payment disclosure.

Q84: What model forms or clauses should the Board consider?

We would urge the Board to consider model clauses (along with a safe harbor for creditors electing to use the model language) for disclosing the assumptions underlying the estimated repayment period formula (see question 76 above).

B. Introductory Rate Disclosures

The Bankruptcy Act amends section 127(c) of TILA to require additional disclosures for credit card applications and solicitations sent by direct mail or provided over the Internet that offer a "temporary" APR. The Act defines a "temporary" APR as any credit card interest rate that applies "for an introductory period of less than 1 year, if that rate is less than an APR that was in effect within 60 days before the date of mailing the application or solicitation."

Currently, creditors offering a temporary APR may promote the introductory rate in their marketing materials, as long as the permanent rate is provided in the required disclosure table (commonly known as the "Schumer box") that is included on or with the solicitation. The Schumer box must contain any APR that may be applied to an outstanding balance. Although creditors are not required to include temporary introductory rates in the Schumer box, when a temporary rate is included, the expiration date must also appear in the box. If the initial APR may increase upon the occurrence of one or more specific events, such as a late payment, the issuer must disclose in the Schumer box both the initial rate and the increased penalty rate. The specific event or events that may trigger the penalty rate must be disclosed outside of the Schumer box, with an asterisk or other means to direct the consumer to this additional information. 15 U.S.C. 1637(c)(1)(A)(i); 12 CFR § 226.5a(b)(1); comments 5a(b)(1)-5, -7.

The Bankruptcy Act requires credit card issuers to use the term "introductory" clearly and conspicuously in immediate proximity to each mention of the temporary APR in applications, solicitations, and all accompanying promotional materials. Credit card issuers also must disclose, in a prominent location closely proximate to the first mention of the introductory APR, the time period when the introductory APR expires and the APR that will apply after the introductory rate expires (popularly known as the "go-to" APR). If the go-to APR is a variable rate, then the disclosure must be based on an APR that was in effect within 60 days before the application or solicitation was mailed.

The Bankruptcy Act also requires credit card issuers to disclose clearly and conspicuously in offers with temporary APRs, a general description of the circumstances that may result in revocation of the introductory rate (other than expiration of the introductory period), and the APR that will apply if the introductory APR is revoked. For variable-rate programs, the disclosed APR must be one that was in effect within 60 days before the date of mailing the application or solicitation. These disclosures also must be located prominently on or with the application or solicitation.

Q85: The Bankruptcy Act requires the Board to issue model disclosures and rules that provide guidance on satisfying the clear and conspicuous requirement for introductory rate disclosures. The Board is directed to adopt standards that can be implemented in a manner that results in disclosures that are "reasonably understandable and designed to call attention to the nature and significance of the information." What guidance should the Board provide on satisfying the clear and conspicuous requirement? Should the Board impose format requirements, such as a minimum font size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

Last year, the Office of the Comptroller of the Currency issued Advisory Letter 2004-10 to national banks regarding credit card marketing practices. The Advisory Letter included specific directives on disclosing "promotional/introductory rate" information. After the issuance of the letter, the OCC requested national bank credit card issuers to submit copies of their solicitations to the OCC for the agency's review and critique. Subsequently, the OCC provided further guidance on this topic in the form of written directives by the local examiners. Wells Fargo believes that such guidance has adequately addressed any abusive practices which certain credit card lenders may have used in the past and would urge the Board to consult with the OCC to be sure that whatever guidance may be issued as part of the instant proceeding is consistent with that which has already been given by the OCC.

Q86: Credit card issuers must use the term "introductory" in immediate proximity to <u>each</u> mention of the introductory APR. What guidance, if any, should the Board provide in interpreting the "immediate proximity" requirement? Is it sufficient for the term "introductory" to immediately precede or follow the APR (such as "Introductory APR 3.9%" or "3.9% APR introductory rate")?

Wells Fargo agrees with the examples above, but suggests that the Board specifically permit the use of "intro" in lieu of "introductory" since that term has been in common use by the industry and is well-understood by the public to mean the same thing as "introductory." In addition, the Board should clarify that the word "introductory" need not be immediately adjacent to "APR" as long as the text clearly communicates that the rate is temporary.

Q87: The expiration date and go-to APR must be closely proximate to the "first mention" of the temporary introductory APR. The introductory APR might, however, appear several times on the first page of a solicitation letter. What standards should the Board use to identify one APR in particular as the "first mention" (such as the APR using the largest font size, or the one located highest on the page)?

Based on the prior guidance provided by the OCC (referenced in question 85 above), that agency has required card issuers to disclose any significant limitations applicable to an advertised introductory rate in the body of the text of the solicitation piece and within the same paragraph that promotes the introductory rate. Frequently, these solicitations contain a banner or heading that mentions the introductory APR and advises the reader to "see below" for additional information. Requiring the disclosure of the introductory time period and go-to APR information within such banners or headings would not, in our view, be as helpful to consumers as an approach which discloses all important information regarding the reduced introductory rate in the body of the offer.

Q88: Direct-mail offers often include several documents sent in a single envelope. Should the Board seek to identify one document as the "first mention" of the temporary APR? Or should each document be considered a separate solicitation, so that all documents mentioning the introductory APR contain the required disclosures?

Most credit card direct mail packages that include several documents within the same envelope have a primary piece designed to capture the reader's attention and set forth the key terms of the offer. We believe that if this document promotes an introductory rate, it should be considered the "first mention" of the rate, and the required disclosures should not apply to each document in the package.

Q89: The expiration date for the temporary APR and the go-to APR also must be in a "prominent location" that is "closely proximate" to the temporary APR. What guidance, if any, should the Board provide on this requirement?

We believe it is appropriate for the introductory time period as well as information regarding the go-to APR to be disclosed within the same paragraph of the principal page of the solicitation that mentions the introductory APR, and in the same size type. The Board should also allow creditors the option of disclosing either a specific "expiration date" or a time period, such as "six months from the date of account opening."

Q90: Some credit card issuers' offers list several possible permanent APRs, and consumer qualifications for any particular rate is subsequently determined by information gathered as part of the application process. What guidance should the Board provide on how to disclose the "go-to" APR in the solicitation when the permanent APR is set using risk-based pricing? Should all the possible rates be listed, or should a range of rates be permissible, indicating the rate will be determined based on creditworthiness?

If a go-to APR will depend on the applicant's creditworthiness and can fall within a range of possible APRs, we suggest permitting creditors to direct the reader to see the Schumer Box disclosures for that information, rather than try to include all of this information in the text of the solicitation letter. The Schumer Box disclosures contain key information pertinent to the card being offered, and calling the reader's attention to those disclosures should facilitate a more complete understanding of the different rates that could apply, as well as other fees and charges.

Q91: Regulation Z currently provides that if the initial APR may increase upon the occurrence of one or more specific events, such as a late payment, the issuer must disclose in the Schumer box both the initial rate and the increased penalty rate. The specific event or events that may trigger the penalty rate must be disclosed outside of the Schumer box, with an asterisk or other means used to direct the consumer to this additional information. The Bankruptcy Act requires that a general description of the circumstances that may result in revocation of the temporary rate must be disclosed "in a prominent manner" on the application or solicitation. What additional rules should be considered by the Board to ensure that creditors' disclosures comply with the Bankruptcy Act amendments? Is additional guidance needed on what constitutes a "general description" of the circumstances that may result in revocation of the temporary APR? If so, what should that guidance say?

This is an area that the OCC has already addressed in its guidance to national banks (Advisory Letter 2004-10) who offer promotional rates as part of their credit card solicitations. Any additional rules by the FRB should be consistent with that guidance.

Q92: The introductory rate disclosures required by the Bankruptcy Act apply to applications and solicitations whether sent by direct mail or provided electronically. To what extent should the guidance for applications and solicitations provided by direct mail differ from the guidance for those provided electronically?

In our opinion, the guidance should be same for both communication channels.

C. Internet Based Credit Card Solicitations

The Bankruptcy Act further amends Section 127(c) of TILA to require that the same disclosures made for applications or solicitations sent by direct mail also be made for solicitations to open a credit card account using the Internet or other interactive computer service. A "solicitation" is an offer to open an account without requiring an application. 15 U.S.C. 1637(c); 12 CFR § 226.5a(a)(1). The Act specifies that disclosures provided using the Internet must be "readily accessible to consumers in close proximity to the solicitation," and also must be "updated regularly to reflect the current policies, terms, and fee amounts."

In June 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) became law. The E-Sign Act seeks to encourage the continued expansion of electronic commerce, and establishes the legal validity and enforceability of electronic signatures, contracts, and other records (including disclosures) in interstate and foreign commerce transactions. The E-Sign Act does not affect any requirement imposed by law or regulation, other than a requirement that documents or signatures be "non-electronic" or in paper form. The E-Sign Act also does not affect the content or timing of any consumer disclosure. The E-Sign Act became effective on October 1, 2000.

In March 2001, the Board issued interim final rules authorizing the use of electronic disclosures under Regulation Z, consistent with the requirements of the E-Sign Act. 66 FR 17329 (Mar. 30, 2001). The interim rules, which are not mandatory, also contained standards for the electronic delivery of disclosures, including the need to update periodically the disclosures made available on a creditor's Internet web site. For example, the interim rules stated that variable-rate disclosures made available at a credit card issuer's Internet web site should be based on an APR that was in effect within the last 30 days.

Q93: Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations (where no application is required), this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

We see no basis for treating them differently.

Q94: What guidance should the Board provide on how solicitation (and application) disclosures may be made clearly and conspicuously using the Internet? What model disclosures, if any, should the Board provide?

Wells Fargo has no suggestions in response to this question.

Q95: What guidance should the Board provide regarding when disclosures are "readily accessible to consumers in close proximity" to a solicitation that is made on the Internet? The 2001 interim final rules stated that a consumer must be able to access the disclosures at the time the application or solicitation reply form is made available electronically. The interim rules provided flexibility in satisfying this requirement. For example, a card issuer could provide on the application (or reply form) a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application or reply form. Alternatively, if a link to the disclosures was not used, the electronic application or reply form could clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the electronic application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. Is additional or different guidance needed from the guidance in the 2001 interim final rules?

We believe the existing rules and commentary on this point are adequate.

Q96: What guidance should the Board provide regarding what it means for the disclosures to be "updated regularly to reflect the current policies, terms, and fee amounts?" Is the guidance in the 2001 interim rules, suggesting a 30-day standard, appropriate?

Wells Fargo supports retaining the 30-day standard for Internet-based credit card solicitations, with added flexibility in the event Internet solicitations are made available after-the-fact to customers who also received direct mail solicitations. For example, a direct mail offer could include a variable APR, based on a margin plus the Prime Rate, that was accurate as of the date the mailing was sent. Sixty days later, however, the creditor may want to send electronic messages to customers who did not respond to the mailed offers, but the Prime Rate may have changed more than 30 days previously. If the creditor updates the variable APR in order to meet the 30 day rule, the Internet solicitation disclosure will not match the disclosure given at the time of the mailing. The Board should clarify that in this situation, the creditor may use either APR in its Internet solicitation.

D. Disclosures Related to Payment Deadlines and Late Payment Penalties

Under the Bankruptcy Act, Section 127(b) of TILA is amended to require creditors offering open-end plans to provide additional disclosures on periodic statements if a late payment fee will be imposed for failure to make a payment on or before the required due date.

The periodic statement must disclose clearly and conspicuously, the date on which the payment is due or, if different, the earliest date on which a late payment fee may be charged, as well as the amount of the late payment fee that may be imposed if payment is made after that date.

Q97: Under what circumstances, if any, would the "date on which the payment is due" be different from the "earliest date on which a late payment fee may be charged?"

Typically, creditors disclose to customers that their payments are due 25 days after the closing date of the cycle covered by the billing statement. (For example, a billing statement bearing January 1 as the date of the close of the billing cycle might show January 26 as the payment due date.) Some creditors, however, may provide customers, with an undisclosed grace period of one or more additional days before they will actually impose a late fee for nonpayment, so the "earliest date on which a late payment fee may be charged" could be January 28. The Board should clarify that in this situation, a creditor is not required to disclose the January 28th date and that the only time a late fee date needs to be separately disclosed on a billing statement is if the "earliest date on which late fee may be charged" is earlier than the "payment due date" printed on the statement. If creditors are required to disclose a later date on the billing statement (because they have a policy of giving the customer a few extra days before imposing a late fee), we believe many creditors will abandon this salutary practice to avoid the expense involved in re-programming their billing statements. This would be an unfortunate result for consumers.

Q98: Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different)? What model disclosures, if any, should the Board provide with respect to these disclosures?

Wells Fargo does not believe additional guidance is needed on how to make these late fee disclosures clear and conspicuous. The creation and production of billing statements are complicated processes, and changes to the information required to be shown on those statements can entail extensive re-programming and hundreds of thousands of dollars. Creditors should be given as much flexibility as possible in designing their billing statements as they constitute an extremely important means of communicating with customers.

Q99: The December 2004 ANPR requested comment on whether the Board should issue a rule requiring creditors to credit payments as of the date they are received, regardless of what time during the day they are received. Currently, under Regulation Z, creditors may establish reasonable cut-off hours; if the creditor receives a payment after that time (such as 2:00 pm), then the creditor is not required to credit the payment as of that date. If the Board continues to allow creditors to establish reasonable cut-off hours, should the cut-off hour be disclosed on each periodic statement in close proximity to the payment due date?

Periodic statements already contain vast amounts of required information, to the point that there is very little free space available. The more information that must be disclosed on the front side of the statement, the more difficult it will be to keep these billing statements clear and "user-friendly." It is highly doubtful that knowing the creditor's payment cut-off time would be of much benefit to consumers who mail their payments to the designated payment address since the consumer has no control over how long it will take the postal service to deliver the payment to its destination. We oppose any requirement that the cut-off hour be disclosed in close proximity to the payment due date.

Q100: Failure to make a payment on or before the required due date commonly triggers an increased APR in addition to a late payment fee. As a part of the Regulation Z review, should the Board consider requiring that any increased rate that would apply to outstanding balances accompany the late payment fee disclosure?

Our answer to this question is an emphatic "No". These disclosures are already required to be given as part of the Schumer Box information, as well as in the initial disclosures consumers receive at the time their accounts are opened. The increased rates that could apply to account holders who fail to make timely payments might be different for different types of accounts, which could necessitate the creation of new statement types to accommodate all of the different rates. If such rates happen to be variable, the accuracy of the disclosure becomes a challenge, which could delay the mailing of the statements. The development costs that would be needed to alter the systems used for producing billing statements to include this sort of rate information would be extremely high.

Q101: The late payment disclosure is required for all open-end credit products. Are there any special issues applicable to open-end accounts other than credit cards that the Board should consider?

Wells Fargo has no comments in response to this question.

E. Disclosures for Home-Secured Loans that May Exceed the Dwelling's Fair-Market Value.

Under the Bankruptcy Act, creditors extending home-secured credit (both open-end and closed-end) must provide additional disclosures for home-secured loans that exceed or may exceed the fair-market value of the dwelling. Section 144 and 147(b) of TILA are amended to require that each advertisement relating to an extension of credit that may exceed the fair-market value of the dwelling must include a clear and conspicuous statement that: (1) the interest on the portion of the credit extension that is greater than the fair-market value of the dwelling is not tax deductible for Federal income tax purposes; and (2) the consumer should consult a tax adviser for further information about the deductibility of interest and charges. This requirement only applies to advertisements that are disseminated in paper form to the public or through the Internet, as opposed to radio or television.

In addition, Sections 127(A) and 128 of TILA are amended to require creditors extending home-secured credit to make the above disclosures at the time of application in cases where the extension of credit exceeds or may exceed the fair-market value of the dwelling. Currently, open-end creditors extending home-secured credit already are required to disclose at the time of application that the consumer should consult a tax adviser for further information about the deductibility of interest and charges. See 15 U.S.C. 1637a(a)(13); 12 CFR 226.5b(d)(11).

Q102: What guidance should the Board provide in interpreting when an "extension of credit may exceed the fair-market value of the dwelling?" For example, should the disclosures be required only when the new credit extension may exceed the dwelling's fair-market value, or should disclosures also be required if the new extension of credit combined with existing mortgages may exceed the dwelling's fair-market value?

Lenders will not know at the time of application whether the credit product to be provided will exceed the fair-market value of the dwelling regardless of whether or not the lender is to include existing debt. Without an appraisal and a credit report, insufficient information will be available at the time of application. From a practical perspective lenders will need to provide the new high loan to value (LTV) Truth-in-Lending disclosure in all cases. For purposes of advertising, however, lenders should only be required to provide the disclosure if the product being advertised allows a mortgage that exceeds the dwelling's fair market value.

Q103: In determining whether the debt "may exceed" a dwelling's fair-market value, should only the initial amount of the loan or credit line and the current property value be considered? Or should other circumstances be considered, such as the potential for a future increase in the total amount of the indebtedness when negative amortization is possible?

Only the initial amount of the loan or credit line and current property value should be considered because information about existing debt will not be known. From a practical perspective, due to the lack of sufficient information at application, lenders will need to provide the high LTV Truth-in-Lending disclosure in all cases anyway. However, for purposes of the advertising disclosure, lenders should only be required to provide the disclosure if the product being advertised allows a mortgage that exceeds the dwelling's fair market value.

Q104: What guidance should the Board provide on how to make these disclosures clear and conspicuous? Should the Board provide model clauses or forms with respect to these disclosures?

We believe that the Board should provide model language for the high LTV disclosure so that it is consistent from product to product and lender to lender. Since the Board has already provided a sample home equity line of credit application disclosure the Board should provide for the option to use a sample revised home equity line of credit application disclosure illustrating a manner of where to display the disclosure. Use of this disclosure would provide a safe harbor *but would not be required. For the closed end high LTV disclosure, it is recommended that the disclosure be provided as a statement on the Truth-in-Lending disclosure which would be consistent with the other existing disclosures required by this section of Truth-in-Lending. It is recommended that the Board provide a model clause to be used for closed end loans if the Board determines the clause may be placed on the TIL and given within three days of application. (See response to question 105 below.)*

Q105: With the exception of certain variable-rate disclosures (12 CFR §§ 226.17(b) and 226.19(a)), disclosures for closed-end mortgage transactions generally are provided within three days of application for home-purchase loans and before consummation for all other home-secured loans. 15 USC 1638(b). Is additional compliance guidance needed for the Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

It is strongly recommended that the Board clarify that time of application, for purposes of providing this high LTV disclosure, allows for providing the disclosure within three days of application for closed-end mortgage transactions. This still provides timely notice to the consumer in the same package of other disclosures. Requiring the disclosure exactly at the time of application will be difficult for lenders to implement.

If the notice must be provided separately at the exact time of application, we feel that it is not necessary to have the Board establish another closed-end disclosure form for this purpose. It is sufficient to have the requirement to provide disclosure coupled with sample language and to allow the lender to customize where to place the disclosure to fit the manner of its product distribution.

F. Prohibition on Terminating Accounts for Failure to Incur Finance Charges

The Bankruptcy Act amends Section 127 of TILA to prohibit an open-end creditor from terminating an account under an open-end consumer credit plan before its expiration date solely because the consumer has not incurred finance charges on the account. Under the Bankruptcy Act, this prohibition would not prevent a creditor from terminating an account for inactivity in three or more consecutive months.

Q106: What issues should the Board consider in providing guidance on when an account "expires?" For example, card issuers typically place an expiration date on the credit card. Should this date be considered the expiration date for the account?

Q107: The prohibition on terminating accounts for failure to incur finance charges applies to all open-end credit products. Are there any issues applicable to open-end accounts other than credit card accounts that the Board should consider?

Q108: The prohibition on terminating accounts does not prevent creditors from terminating an account for inactivity in three or more consecutive months (assuming the termination complies with other applicable laws and regulations, such as the rules in Regulation Z governing the termination of HELOCS, 12 CFR 226.5b(f)(2)). Should the Board provide guidance on this aspect of the statute, and what constitutes “inactivity?”

Wells Fargo does not terminate any open-end credit accounts based solely on the consumer's failure to incur finance charges. We do not believe any further guidance from the Board is needed in this area.

Thank you for the opportunity to comment on these important questions. If you would like to discuss any of the comments we have made, please call me at (515) 222-8220.

Sincerely,

Susan Barnes
Senior Counsel
Wells Fargo & Company