WELLS FARGO

Wells Fargo & Company
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November 10, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Regulation Z; Proposed Rule; Request for Public Comment
Federal Reserve System Regulation Z; Docket No. R-1370

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates ("Wells Fargo") in response to the Proposed Rule implementing provisions of the Truth in Lending Act, including provisions added by the Credit CARD Act of 2009, published in the Federal Register on October 21, 2009 at 12 CFR Part 226 (the "Proposed Rules"). Wells Fargo appreciates the opportunity to comment and respectfully requests the members of the Board of Governors of the Federal Reserve System ("Board") consider adopting the suggestions set forth herein. Because Wells Fargo is aware of the time constraints involved in this comment process, we are submitting our comments in multiple letters in an effort to ensure that the Board is given as much time as possible to review our comments.

The Wells Fargo vision to satisfy all of our customers' financial needs, to help them succeed financially, and to be known as one of America's great companies is a driving force in the way we do business. Engaging in responsible lending practices, encouraging consumers to make responsible and successful financial choices and conducting business with honesty and integrity, are already at the heart of our vision. It is our practice to build our business processes and strategies in compliance with all applicable laws and regulations.

This letter provides Wells Fargo's comments to the Proposed Rules relating to the effective date of provisions, ability to repay standards, 45 day notice, limitations on fees and finance charges and due dates, as well as further requests for additional clarification based upon the Proposed Rules.

Summary of Comments:

Effective Date:

- Given the volume and complexity of the changes, the Board should retain the original July 2010 effective date for any provisions that are not specifically required by the Credit Card Accountability Responsibility and Disclosure ("CARD") Act of 2009.

Ability to Repay:

- The final rules should clarify that, with respect to joint accounts, the ability to repay test set forth in Section 226.51, may satisfy the ability to repay standard for the account (rather than for each "consumer").
- Section 226.51 should permit card issuers to use various underwriting tools that indicate a consumer's risk and ability to pay as long as they are statistically sound.
- Section 226.51(b) should be clarified to specify that creditors should be able to utilize telephonic and other technological channels for accepting applications without violating the written application requirement.
- For purposes of satisfying the Section 226.51(a) safe harbor, the Board should clarify that an issuer may use the regular minimum payment formula rather than any special payment terms a consumer may choose at point of sale.
- Section 226.51(a) should be clarified to establish that when looking at an applicant's current obligations, the creditor need not assume that a person will "max out" all credit limits shown on a credit report.

45 Day Notice:

- The rules should allow for anticipatory notice of penalty rate increases.

Limitations on Fees:

- The Board should reconsider what constitutes a fee for purposes of this Section and exclude any fees related to consumer-initiated transactions.
- The Commentary to 226.52 should be altered to allow a creditor to credit any fee (and associated interest) by the end of the next cycle.

Limitations on the Imposition of Finance Charges:

- The Board should clarify that forgiveness of trailing interest does not create a grace period under Section 226.54.

Due Dates for Credit Card Accounts:

- An exception should be included to allow issuers to disclose the next business day as the due date (if the due date would otherwise fall on a weekend or holiday).

Effective Dates:

The Board solicits comment on whether to retain the original July effective date for certain tabular or other formatting requirements in provisions 226.6(b), 226.7(b), 226.9(b)(3), 226.9(c)(2), and 226.9(g). Wells Fargo strongly urges the Board to retain the original July effective date for these provisions. Even with the original effective date, it will take extraordinary coordinated efforts to bring all facets of open-end credit programs into full compliance with the final revisions. Substantial preparatory time is needed to make all necessary adjustments. Wells Fargo and other creditors will be in the position of needing to alter many, if not most, of their practices, systems and documents to accommodate the significant changes. Complying with additional changes to all of these regulations during the same time period would be a massive undertaking. Many creditors have already created detailed compliance plans and system programming schedules that involve complex interactions between systems of record, third party vendors and internal resources based on the effective dates originally disclosed. Given the very large number of consumers that have credit cards, pressuring issuers to make changes of this magnitude with reduced time for coding and testing may negatively impact cardholders while threatening the safety and stability of one of the most sophisticated payment systems in the world. Considering the significant number and complexity of the changes, Wells Fargo strongly suggests the original mandatory compliance date be retained for the requirements listed above as well as other provisions that have specifications that are not explicitly required by the CARD Act (such as new requirements set forth in 226.5a and 226.16).

Ability to Repay (226.51):

Generally, with respect to the ability to repay standard, Wells Fargo believes the rules should not attempt to dictate the specifics of how card issuers underwrite or assess risk. Rather, the rules should permit card issuers to use the many established underwriting tools that have proven to be accurate indicators of a consumer's risk and ability to pay. Additionally, as the industry's ability to predict risk and ability to pay advances, the rules should allow for flexibility and further adaptation to additional changes in methods and criteria used.

Joint Accounts:

In Section 226.51(a), the proposed rules discuss the ability of "the consumer" to repay, and in Section 226.2(a)(11), the proposed rules define consumer as "a cardholder or natural person to whom consumer credit is offered or extended…" Some accounts are issued to <u>a</u> consumer, but many are issued to more than one consumer jointly. When consumers apply jointly for an account, one consumer often has a greater ability to repay than the other. Although the rule of construction in 226.2(b)(1) provides that, *where appropriate*, the singular form of a word includes the plural form and plural, the proposed rules do not expressly allow for flexibility with respect to considering the ability to repay on joint accounts.

If, as the language of the proposed rules could be interpreted to indicate, ability to repay must be separately analyzed at the level of each individual applicant rather than at the account level, there may be unintended negative consequences. For example, Regulation B allows non-income-earning spouses to build credit by establishing joint accounts with their income-earning spouses. If the ability to repay standard must be applied at the individual consumer level on a joint account in a non-community property state, a joint account may not qualify if one spouse lacks ability to repay because they are not the income-earning spouse, negating the Regulation B benefits. While an income-earning spouse could apply for a separate account with the non-income-earning spouse designated as an authorized user, that would deny the non-income-earning spouse full participation in the account, even when the non-income earning spouse is the one who manages the household finances.

Wells Fargo urges review of this issue, in part because we do not believe the Board intended to narrowly define "consumer." Wells Fargo believes the absence of the word "independent" in section 226.51(a) when that word is used in 226.51(b)(1)(B)(ii) is likely an indicator of the Board's true intention: to allow an aggregated account level review of accounts that are not subject to 226.51(b). Therefore, Wells Fargo suggests the Board clarify that when an account is evaluated under 226.51(a), the ability to repay test can be conducted in a manner determined by the creditor to satisfy the ability to repay standard for the account (rather than each "consumer") even if one consumer has stronger credit attributes than the other.

Additionally, Wells Fargo urges the Board to extend a similar flexible analysis when considering young consumer accounts. Section 226.51(b) could be interpreted to contemplate only two scenarios: (1) a scenario in which a young consumer would like an individual account and has an independent ability to repay; and (2) a case in which a young consumer wants to apply jointly with a person who has an ability to repay and is over 21. Section 226.51(b)(1)(i)(B) could be interpreted to indicate the joint applicant (applying with the person who is under 21) must be viewed on their own for purposes of meeting the ability to repay standard in 226.51(a). However, the regulation is arguably unclear with respect to a scenario in which a young consumer applies for a joint account with a person over 21 who does not meet the ability to repay individually but with whom they would qualify for an account if their individual attributes were considered jointly.

Wells Fargo requests the Board clarify that it is appropriate in a young consumer context to make an ability to repay determination at the account level on a joint account. For example, if a young consumer is applying with a spouse who is over 21 for a joint account and neither person would have ability to repay on their own, creditors should be able to aggregate their attributes to determine whether at an account level they have the ability to repay. Wells Fargo believes many people utilize joint accounts to take advantage of building credit by having two incomes to make payments, and we urge the Board to continue to allow consumers to take advantage of this joint account benefit.

Written Applications:

Section 226.51(b)(1) provides that a consumer under 21 must submit "a written application." Wells Fargo urges the Board to consider adding commentary allowing for flexibility in this requirement to meet the needs of consumers. For example, consistent with the rules of other regulations (such as Regulation B), the rules for credit cards should allow creditors to continue to take applications over the telephone or via other technology. If creditors must stop taking applications over the telephone or other channels (in order to meet a written requirement) it will be burdensome both to creditors and to consumers, who appreciate the convenience of being able to transact business using telephone or other technology rather than driving to a bank to fill out a paper application.

Safe Harbor:

Minimum Payments on the Account:

Wells Fargo requests that the Board also clarify that when the Board references "minimum payment formula employed by the issuer for the product the issuer is considering offering" in Section 226.51(a), it is referring to the regular minimum payment calculation that would generally apply to the account and not to any special payment terms that may be available. For example, there may be instances, especially in the private label credit card context, where a creditor allows a customer to choose to make a purchase subject to equal payments. Rather than calculating the purchase pursuant to the normal minimum payment calculation, the payments would instead be calculated for that purchase by dividing the purchase price equally over a specified period of time. Such an approach could result in larger payments on a particular purchase than might otherwise apply to regular purchases on the account. This is an option customers may choose after clear disclosure (equal payments are not a required term but rather a special feature that consumers may choose). An issuer may not know when a customer will choose to make a purchase subject to these special terms or what the amount of such a purchase would be when they are underwriting the account. Therefore, Wells Fargo urges the Board to clarify that an issuer may use the regular minimum payment calculation that would apply to the account if the customer did not choose to use special payment terms.

Additionally, Wells Fargo is aware that some commenters may advocate that because, in compliance with the safe harbor, creditors should calculate the minimum payment on the account they are underwriting by assuming that the full credit line will be utilized, creditors should also assume every credit limit reflected on a credit report is also fully utilized. While Wells Fargo believes it is reasonable to assume the credit line the person is applying for will be fully utilized for purposes of determining ability to repay, Wells Fargo urges the Board not to adopt the overly restrictive position that creditors must assume all lines disclosed on the credit report are full utilized. The proposed rule requires that creditors look at current obligations. Many people do not fully utilize all of their credit lines. Current obligations should reflect the credit the applicant is actually using. People may not fully use credit lines because they believe it improves their credit score to have available credit or prefer to maintain available credit in case of an emergency. Additionally, many creditors can show that the majority of people do not use their full lines. For example, over the last five years, Wells Fargo Bank, N.A. has consistently had a significant number of customers with over half of their available credit line still open to them.

If a creditor has to assume that people will always fully utilize every line, two issues will arise. First, it will be difficult to determine exactly what the minimum payment would be on each fully utilized line without having a copy of the terms and conditions associated with an account (which are not available on a credit report), so the calculations will be burdensome and potentially inaccurate. Additionally, people who manage credit very well, but happen to have several cards with open lines (maybe because they like different rewards features provided by different cards or maybe as a tool to track spending in different areas of their life) will be penalized and will find it harder to obtain credit. Furthermore, if a person is assumed to fully utilize every line, then many evaluations of ability to repay may come back negative just because people have open credit lines that they have forgotten to close or do not fully utilize. This will result in more consumers being turned down for credit. Wells Fargo believes people should be evaluated based on how they actually use their credit, and should not be penalized by a rule that would assume that they will "max out" all of their accounts.

Evaluating Income and Assets:

Wells Fargo supports any rules that will help creditors better understand the ability of consumers to repay accounts. However, many creditors have been working with statistical models to determine what characteristics are predictive of a consumer's ability to repay for quite some time. For example, Wells Fargo has used statistical models for years in order to meet its own internal policies. We make our goal clear by specifying in the Wells Fargo & Co. Responsible Lending Principals for Consumer Credit, that we *"only approve applications where we believe the borrower has the ability to repay the credit according to its terms, using a method of assessment appropriate to the type of credit transaction."* Through this historical knowledge, Wells Fargo, and we believe other creditors, have a sense of what variables are predictive of ability to repay. Creditors also have models ascertaining ability to repay from variables other than income and assets. Therefore, Wells Fargo appreciates that the proposed rules allow creditors to look at other variables in addition to income or assets and current obligations. Wells Fargo urges the Board to ensure that any final rule is adequately flexible to adapt for future technological advances in predicting a consumer's ability to repay.

Additionally, Wells Fargo urges the Board to clarify that certain models for determining income could be used if they can be shown to be statistically sound and meet all fair lending standards. Many creditors have invested in learning to accurately determine income or have utilized information provided by third parties (such as income data derived from tax returns). The use of models and external data has allowed creditors to provide customers with the benefits of credit or line increases. Therefore, Wells Fargo believes it is important that the final rules allow creditors to use statically sound and empirically derived models or external data to meet the requirements of 226.51.

That being said, in response to the request for comments on this issue, Wells Fargo believes the proposed rules strike the appropriate balance between the costs and benefits of verifying information provided in credit card applications. In addition to information provided by consumers in an application, card issuers utilize a number of other resources for accurately assessing a consumer's risk profile and ability to repay. Accordingly, requiring verification of all information would be unnecessary, would not improve an issuer's ability to underwrite the account, and could result in a cumbersome experience for the consumer.

Credit Line Increases for Young Consumers:

Section 226.51(b)(2) states that no credit line increase may be given on a joint account where one person is a young consumer unless the account holder over-21 consents in writing to assume liability for the increase. However, in Comment 226.51(b)(2)-1 there is clarification stating the signature requirement does not apply in situations where the over-21 account holder requests the line increase. Therefore, it would seem that if a young consumer called a creditor to request a line increase on such an account, rather than obtaining written signature of the over-21 account holder, the creditor could ask the young consumer to put the older account holder on the phone (and after proper authentication) they could agree to or request the increase. Alternatively, it would seem the creditor may direct the young consumer have the older consumer call in and request the increase. Such approaches would, in many cases, be less burdensome for creditors and consumers alike. Mailing or otherwise arranging a written consent may delay the effective date of the credit limit, in a situation where the increase could have been processed immediately had the request initially been made by the over-21 account holder. Creditors and consumers should have the option to accomplish the consent process telephonically. Wells Fargo urges the Board to add clarification explicitly allowing such practices.

45 Day Notice Provision (226.9):

Early Notice:

Wells Fargo urges the Board to amend the Proposed Rules when issuing final rules to clearly allow for anticipatory notice for penalty rate increases. Such a provision would ensure that if a consumer is delinquent (regardless of how many days delinquent) creditors could send out the 45 day notice letting them know that if they become 60 days delinquent, their rate will be increased to the penalty rate at that time. Creditors should be able to give this anticipatory notice regardless of whether they are using two different effective dates for rate increases with respect to outstanding and new balances, respectively, or whether they are anticipating just one date on which the APR for both outstanding and new balances will change. Many consumers may benefit from the early warning and reform their behavior thereby avoiding the penalty altogether. Wells Fargo notes that such anticipatory notice was contemplated in the Commentary to section 226.9(g) of Regulation Z to the Final Rules that were issued by the Board in December of 2008. The reasons for permitting early warning were valid when the Board issued their Final Rules last year and they remain valid and unaltered by any terms of the CARD Act.

Although Wells Fargo prefers to be able to send one anticipatory notice at the time the customer becomes one day late, we understand the Board has concerns about ensuring that the penalty disclosures in the notice be given in a “teachable” moment in close temporal proximity to the actual rate increase. Therefore, alternatively, Wells Fargo urges the Board to allow creditors to send one notice when the person becomes one day delinquent advising that if they become 60 days late their rate will increase and then send a second notice at the time of the rate increase (at or right after the person becomes 60 days delinquent) that reiterates the rate disclosures.

Limitations on Fees (226.52):

In Section 226.52, the proposed rules indicate that fees (with limited exceptions) must be tracked during the first year an account is open. If the total of such fees exceed 25% of the original credit limit, the creditor must cease charging fees for the remainder of that year.

Wells Fargo urges the Board to reconsider what constitutes a fee for purposes of this Section and to exclude from the definition of "fees" any fees related to consumer-initiated transactions. Wells Fargo believes that Congress intended to stop "fee harvesting," a practice whereby creditors would make the opening of an account contingent on large fees charged to the account amounting to a high percentage of the credit limit. Such fees were often large annual fees, "program fees", monthly servicing fees, "account set-up" fees and large one-time "processing fees" on accounts with credit limits as low as a few hundred dollars. These cards often leave people with less than one hundred dollars of usable credit, and we agree that they need to be regulated more stringently. However, the proposed rule's broad definition of fees includes fees associated with consumer-initiated transactions, such as cash advance fees and balance transfer fees, goes beyond the concept of "fee harvesting," and creates a burdensome tracking process for issuers of all accounts (even those accounts that do not have unusually high initial fees and do afford the customer hundreds, if not thousands, of dollars in available credit). This shift in focus away from the original Congressional intent means that a creditor's charges to initiate an account will no longer be as significant as a consumer's pattern of usage on the account.

Under the proposed rules, creditors will be forced to create complex systems for tracking fees and will have to stop charging fees in some situations, not because the person did not have adequate available credit at the time the account was opened but because the consumer chose to engage in an unusual amount of transactions resulting in fees. In addition, creditors may be forced to limit certain card features during the first year of the account or decline to authorize certain transactions if they are not able to charge a fee for the risk associated with the transactions. Ultimately, this proposed rule may stop "fee harvesting" but could also have detrimental impacts to many creditors that did not engage in the type of activities that drove the rules and the consumers those creditors serve. As proposed, the rule will impose a cost burden upon all creditors and the consumers they serve to establish and maintain elaborate monitoring systems.

Wells Fargo understands the Board may be interpreting fees broadly to prevent traditional "fee harvesters" from switching to using transaction based fees rather than the account set up, maintenance and periodic fees they currently use. Wells Fargo stresses that most general purpose credit card issuers do not charge transaction based fees on the core use of a credit card (purchase transactions). Most general purpose credit card issuers only charge transaction based fees on non-core features that generally present additional risk and/or administrative burden to the issuers and that are offered as a convenience to consumers (like cash advance transactions and foreign currency conversions). As an alternative approach to requiring that all transaction fees be counted toward the 25% threshold, Wells Fargo proposes that transaction fees on core uses of the card (purchases) be counted rather than transaction fees on features that are not core to the product but that are offered as optional fee based features (like cash advances). If the proposal could be revised in a more targeted manner it may more effectively deter fee harvester behavior without impeding a customer's choice to engage in other non-core transactions.

Alternatively, because the intent of Congress seemed to be on allowing consumers to have access and use of a majority (75%) of their credit line for items other than fees, the rule could focus on whether the consumer has had use of 75% of the credit limit for non-fee items over the first year of the account. In the case of many cards, consumers will not reach the 25% threshold unless they charge and pay down amounts equal to the full limit more than one time throughout the year. For example, if a cash advance rate is 5% of the advance, assuming no other transactions, the person could make five cash advances equal to the full line on the account before hitting that threshold. In that case, it is clear that the person had access to their the majority of their line of credit (95%) for non-fee transactions five times, and it seems odd to then limit the ability of a creditor to charge a fee for the next cash advance transaction or to incent the creditor to reduce the cash advance limit until the next year in order to avoid the risk of allowing such additional transactions without charging fees.

The proposed focus (and potential prohibition) on fees associated with a customer's pattern of using an account potentially disturbs the equilibrium between risk and cost. If a consumer repeatedly engages in riskier transactions, e.g., cash advances, it is illogical to reward him or her for reaching such a high threshold of risky behavior that all costs related to that riskier activity are eliminated. That could encourage irresponsible use of the credit card.

Additionally, Wells Fargo urges the Board to clarify that reference to "fees that the consumer is not required to pay with respect to the account" in Section 226.52(a)(2)(ii) does not include any feature of the account that the consumer chooses to add and/or use at their option. Neither any cost associated with adding the feature nor any cost associated with using the feature should be considered a fee for purposes of this section. Optional features fitting under this exception would include features such as overdraft protection; voluntary (not required) credit insurance, debt cancellation or debt suspension coverage; rewards programs; and enhanced purchase or warranty protection services.

Furthermore, Wells Fargo urges the Board to consider the administrative burden associated with crediting any fee exceeding the 25% (and associated interest) "at the end of the billing cycle during which the fee was charged" as stated in Comment 226.52(a)(1)(i)-2. Because most systems of record will not be able to determine that a fee has exceeded a threshold until after the account cycles, it is extremely difficult to credit the account as of the last day of the billing cycle. Instead, it would be possible to credit the fee (and associated interest, if any) by the end of the next cycle. The net effect for the consumer would be no different, but it would significantly reduce the administrative burden for the creditor.

Lastly, Wells Fargo strongly advocates that the Board consider making this rule effective for new accounts originating on or after February 22, 2010. Creditors are building complex tracking tools to comply with this rule but do not have mechanisms for singling out applicable fees charged on accounts opened before the effective date and aggregating those fees. Additionally, because consumers were not aware of the rule, they may have engaged in optional fee bearing transactions without realizing that if they trigger 25% creditors may be forced to restrict their credit or reduce the availability of certain features for the remainder of their first year.

Limitations on the Imposition of Finance Charges (226.54):

Wells Fargo's primary concern with Section 226.54, as proposed, is that the concept of "grace period" not be interpreted too broadly.

It is our understanding that the Board intends "grace period" as it is used in Section 226.54 as well as in 226.5, 226.5a. and 226.6, to encompass the continuous time period beginning on the date of a transaction and expiring on the last day the consumer may repay that transaction without incurring any periodic interest charge.

The above described interpretation covers the common grace period provided for purchases whereby card issuers will permit a cardholder who qualifies for the grace period to repay purchase transactions without interest charge on or before the payment due date listed on the periodic statement where the purchase first appears. As applied, this common grace period may extend from a low of 25 days (if a purchase occurs on the last day of a billing cycle) to a high of 55 days (if a purchase occurs on the first day of a billing cycle).

Wells Fargo's understanding of the new rule articulated in 226.54(a)(1)(ii) is that when such a grace period is provided, it cannot be conditioned upon payment of the entire balance on or before the due date listed on the periodic statement where the purchase first appears. Rather, the interest-free grace period will apply to any partial payment on or before the due date applied to that purchase transaction.

Wells Fargo's concern is that without additional clarification, it might be possible to misinterpret the term "grace period" too expansively and misapply the partial grace period concept to an unrelated time period occurring later in the life of the account.

For example, many card issuers will either contractually or by custom and practice waive interest that accrues during a billing cycle in which payment in full is received on an account that has been revolving. In other words, even if an account has been accruing interest every month for years, when the consumer finally pays the last new balance on the periodic statement in full by the related due date, the creditor will accept that amount as payment in full without calculating interest on the days in the cycle before the full payment was received. Essentially, by waiving the accrued interest, the creditor gives the consumer favorable treatment by applying the payment as of the first day of the cycle rather than on the date payment was actually received. This foregone interest is commonly referred to as "trailing interest." Wells Fargo urges confirmation from the Board that 226.54(a)(1)(ii) is not intended to end this customer-friendly practice for creditors who waive such trailing interest, whether the creditor has included the waiver as a contractual term or whether the interest is waived solely as a customer service.

Wells Fargo believes the language already proposed for various sections of the Regulation supports the interpretation that waiving trailing interest is not a grace period. Section 226.54 specifically refers back to 226.5(b)(2)(ii) where the definition of grace period contemplates a consumer receiving an extension of credit and then having an opportunity to repay it without ever incurring a finance charge due to periodic interest. The grace period permits the consumer to pay promptly and thereby avoid all interest on the purchase transaction.

This grace period is also discussed in 226.5a(b)(5), 226.6(b)(2)(v), and 226.7(b)(8). All of these sections speak to the same concept of repaying the credit extended without *ever* incurring any interest on the transaction. Section 226.5(a)(2)(i) indicates that the terminology used within the subpart should be consistent, thus 226.7 relates the periodic statement grace period disclosure back to the account opening disclosure from 226.6 and 226.54 relates the partial grace period rules back to the 226.5 general requirements. All of these grace period requirements relate to the consistent concept of one continuous time, from the transaction date through a payment due date, during which the consumer may avoid paying any interest whatsoever in connection with the transaction.

The consistent application of these grace period requirements does not contemplate an additional grace period springing to life at some future date. The grace period does not refer to a way to avoid paying additional interest charges; it refers only to a way to avoid paying any interest charges. This distinction is consistent with the label applied in the account opening disclosures: How to Avoid Paying Interest.

In contrast to the grace period, forgiveness of trailing interest when an account which had formerly been carrying a balance month-to-month is simply a waiver of additional interest that would otherwise accrue on a balance that has already been paying interest. Since this waiver is not a grace period, the partial grace period embodied in 226.54 does not apply. To hold otherwise would cause a partial interest refund on every payment received by a card issuer (because it would have been theoretically possible to repay the account in full and avoid additional interest). We do not believe that either Congress or the Board intended such a result.

In further support of this interpretation, the Board has already clarified that a deferred interest plan is not a grace period [comment 53(b)-2 and comment 5(b)(2)(ii)-4] and that a courtesy period following a due date is not a grace period [comment 5(b)(2)(ii)-4]. We believe it is both appropriate and important for the Board to similarly clarify that the forgiveness of trailing interest does not create a grace period. We suggest that this may best be accomplished by adding an additional sentence to proposed comment 5(b)(2)(ii)-4 indicating "Similarly, the waiver of trailing interest, whether by contract or practice, or the waiver of any interest in addition to interest already accrued in prior billing periods, is not a grace period for purposes of Section 226.54." It might also be appropriate to add an additional example in the Commentary to Section 226.54 to further illustrate the proper scope of a grace period.

Clarifying that forgiveness of trailing interest does not create a grace period will benefit consumers by encouraging creditors to continue the customer-friendly practice of waiving interest that would otherwise accrue in months during which consumers who have been revolving a balance find themselves able to pay the new balance in full. The certainty that a precise payment of $X will be treated as payment in full is a far superior consumer experience compared to wondering how much the bill for trailing interest might be the following month.

If the Board fails to clarify that forgiveness of trailing interest does not create a grace period, it seems likely that some, perhaps many, creditors will modify their practices or agreements to avoid that forgiveness because of the adverse financial impact of treating each and every billing cycle as a grace period. This would in turn lead to more consumer dissatisfaction, lack of certainty in their financial affairs, and cost them more out of pocket in interest charges.

Therefore we urge the Board to adopt the proposed Commentary modification set out above.

Due Dates for Credit Card Accounts (226.7(b)):

Currently, some credit card issuers allow consumers to choose the date on which they would like their payment to be due. The actual numerical date on which the payment is due may vary by one to three days per month depending on the number of business days in the billing period. Thus, credit card issuers currently have some flexibility in granting due date requests. Under the proposed rule, however, the payment due date must be the same numerical date each month. As a result, it is likely that consumers will choose among very few numerical dates, which would cause credit card issuers to decline some consumer requests since the processing volumes on those dates would prevent issuers from meeting other regulatory requirements (for example, mailing statements at least 21 days prior to the due date). This would result in a negative consumer experience.

In addition, some credit card issuers do not currently impose weekend and holiday due dates. In the event a due date would otherwise fall on a Saturday, Sunday or holiday, that particular due date would be voluntarily changed to the next business day by the creditor. For example, if a consumer's credit card account cycled such that the July statement would have a due date of Monday, July 4th, the credit card issuer would change the due date to Tuesday, July 5th and disclose July 5th as the due date on the periodic statement. Under the proposed rule, the credit card issuer would be required to disclose July 4th as the due date even though the consumer would actually have until July 5th to make his or her payment. Since July 4th would be disclosed as the due date, the consumer is likely to be confused and believe that his or her payment must be received by July 3rd, or even Saturday, July 2nd or Friday, July 1st, in order to avoid late fees and other penalties due to late payment when, in fact, the consumer would have additional days within which to make his or her payment. Accordingly, Wells Fargo respectfully requests that an additional exception be included for situations in which the payment due date falls on a weekend or holiday, which would allow issuers to disclose the next business day as the due date for that particular periodic statement.

Conclusion

Wells Fargo strives to provide our consumers with flexible, wide-ranging and competitive credit products, superior service and education while fully complying with all applicable laws and regulations. We strongly support the improved disclosures to promote consumer understanding. We respectfully urge the Board to consider all of the comments and suggestions herein.

If you have any questions or would like to discuss any of the issues herein, please do not hesitate to contact me at (515) 557-6289 or martineolson-daniel@wellsfargo.com.

Sincerely,

/s/ MARTINE T. OLSON-DANIEL

Martine T. Olson-Daniel
Senior Counsel