WELLS FARGO

December 23, 2009

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

Re: Docket No. R-1367
Truth in Lending Act (TILA)
Proposed Rule to Amend Regulation Z for Open-End Home-Secured Credit
74 Federal Register 43427-43613 (August 26, 2009)

Dear Ms. Johnson:

Wells Fargo & Company and its affiliates ("Wells Fargo"), including Wells Fargo Bank National Association and Wachovia Bank, National Association, appreciate the opportunity to comment on the proposed amendments (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") to Regulation Z affecting home-secured lines of credit. Wells Fargo is a leading originator of residential mortgage loans and lines of credit and one of the nation's leading financial services companies. Wells Fargo is committed to mortgage lending that helps customers achieve financial success, to fair and responsible lending standards and to offering its customers appropriate products at appropriate prices.

Wells Fargo takes its responsibility as a leading mortgage lender and servicer very seriously and has long followed a number of responsible lending standards and practices in our consumer real estate lending business. We provide consumers with the information they need to make informed decisions about the terms of their credit products. These and other responsible lending principles have been publicly posted for years on our wellsfargo.com web site. It is in this context that we are providing a response to your request for comments.

I. Introduction

Wells Fargo strongly supports the Proposal and believes that, with some modifications and clarifications, it will provide consumers with a clearer understanding of home equity line of credit products. Wells Fargo wants consumers to fully understand their line of credit products and believes that the Board's Proposal will go a long way toward providing consumers with important information in clear and understandable formats. However, before the Proposal can be implemented, there are issues that should be addressed to prevent customer confusion and unintended consequences.

II. "Key Questions to Ask About Home Equity Lines of Credit" Document

Wells Fargo has very few comments on the Key Questions document. In general we believe the document addresses the most common questions that Borrowers have regarding home equity lines of credit ("HELOCs"). We note that in Box 7 the form states that a home equity loan means that the customer can borrow "a fixed amount of money at a fixed interest rate." As many home equity loans may be variable rate loans and many HELOCs offer fixed rate features, fixed and variable rates are not a differentiating feature between loans and lines. Moreover, the statement that the customer should consider a loan if the customer wants "to know the exact amount of your minimum payment" would be misleading if a customer were to select a loan with a variable rate or interest-only feature, which many home equity loans have. As the Board has often reiterated, the defining difference between a loan and a line of credit is the ability to borrow different amounts over time and the ability to pay and re-borrow during the borrowing period. Wells Fargo suggests that Box 7 be rewritten to avoid misleading customers.

III. Early Disclosure

Wells Fargo supports the new Early Disclosure form. We believe that it will provide more meaningful information to consumers earlier in the process. The formatting appears to be clear and easy to follow and the information to be provided generally appears to be the information that consumers should find helpful. However, corrections and clarifications are needed before this disclosure becomes final.

Proposed Regulation

- The "no obligation" statement required by proposed 226.5b(c)(2) is confusing. Instead of leading the applicant to believe that they do not have to enter into the transaction, the proposed language may lead the applicant to believe that they can require the creditor to provide different or better terms. Wells Fargo suggests that the language in the Early Disclosure mirror the language currently in 226.19(a)(4) to the effect that the customer has no obligation to enter into the transaction. Not only is that language clear, but it would be beneficial to have the open- and closed-end provisions be the same where possible.

- Wells Fargo believes that creditors should be able to disclose information about fixed rate programs. The proposal is worded with language proactively prohibiting disclosure of fixed rate features in the table. While we recognize that the Board wants to keep the disclosure forms as streamlined as possible, the disclosure as proposed is likely to mislead consumers.
  - Because loan officers should discuss the fixed-rate features as part of a complete product explanation, if the only disclosed rate is a variable rate, consumers are likely to believe that the fixed rate is the same as the variable rate. Even with today's disclosure regime where all rates are disclosed in the account agreement, consumers have a tendency to fixate on the lowest rate that they recall and believe that it is the rate for all features. As the rates offered under fixed rate options are often higher than the variable rates applicable at that time, this tendency, combined with the Board's prohibition on disclosing information on fixed rate features, is likely to lead to customer confusion.
  - The statement that creditors "must not" disclose is so prohibitory that plaintiffs' attorneys may argue that if a loan officer even talks about such programs or tries to provide supplemental materials describing such programs that such communication conflicts with or overshadows the required disclosures.
  - If the Board does make a final determination that creditors may not specifically disclose fixed rate advance options, Wells Fargo proposes that creditors be allowed to include a statement in the disclosure that "Fixed rates may be different. Ask your [insert title of loan officer] for more information."

- Proposed 226.5b(c)(9)(ii)(B) contemplates disclosure of a maximum of two variable-rate payment plan options offered by the creditor. It is common for there to be multiple payment plan options. For example: (1) variable rate interest only payments during the draw period;

(2) a percentage of the variable-rate balance during the draw period; (3) fully amortizing variable-rate payments during the draw period; (4) fully amortizing variable-rate payments over the repayment period; or (5) fixed rate, fixed term payments, whether interest only, partially amortizing or fully amortizing (as described above). Restricting the payment plan disclosure to a maximum of two payment options may not provide the consumer with sufficient information about the terms relating to the account and providing the consumer with multiple Early Disclosures for the purpose of describing the payment plans may lead to confusing and seemingly contradictory information for the consumer. Wells Fargo requests that the Board carefully consider what payment option examples customers may find most helpful and provide clear direction on what options creditors should disclose.

- The final sentence of 226.5b(c)(9)(ii)(B)(1) on balloon payments contains a triple negative and is difficult to understand. On the other hand, a later section, Section 226.5b(c)(9)(ii)(B)(3) also covers balloon payment disclosures and the latter does so more clearly than (B)(1). It is not clear that the two provisions are actually covering different topics – rather it seems that there may have been a drafting error and two provisions covering the same topic were inadvertently proposed. If so, Wells Fargo suggests deleting Section (B)(1) and retaining Section (B)(3).

- In section 226.5b(c)(10)(i)(6), the definition of the "past 15 years" for the disclosure of the historical index rate should be clarified. Wells Fargo suggests that the Commentary should include a provision similar to current Comment to Paragraph 5b(d)(12)(xi)-1. Thus, the requirement should be to update the disclosure annually as soon as reasonably possible after the new value becomes available. For the disclosure tables in current law, Wells Fargo has found that the disclosures can generally be updated within 90 days.

- Wells Fargo also notes that in the model form, the static language in the left column of the form is "Historical Changes to Prime Rate" although the index may not be Prime. We suggest "Historical Changes to Index."

- The fee disclosure of 226.5b(c)(11) is concerning. Rather than an estimate made in good faith, the estimated fee disclosure must either be exact or the highest fee possible. Having to be exact or extreme will force creditors to the extreme, potentially causing applicants to make inappropriate decisions based on the disclosure of atypical facts. Wells Fargo proposes that all lender origination fees must be exact based on the program chosen, but for third party fees, creditors be allowed to disclose ranges. Wells Fargo suggests that to ensure that range disclosures for third party fees remain accurate, lenders should perform a periodic analysis of fees disclosed versus fees actually incurred to identify ranges that are no longer accurate. We propose that fee ranges for which more than 10% of the population exceeds the disclosed range by more than the higher of $5.00 or 10% of the quoted fee must be updated within 60 days of identification.

- The fixed rate disclosure of 226.5b(c)(18) should be revised to ensure that customers can receive complete and clear information regarding their fixed rate options. Many lenders limit the amount that can be converted to a fixed rate at various times during the life of the account. For example, some programs allow the entire amount to be converted to a fixed rate at origination, but then limit the number or amount of fixed rate advances that can be taken (or be outstanding at any one time) thereafter. The final rule should be clear on what is required by 226.5b(c)(18)(i)(B) so that consumers receive clear and consistent information when the amount that can be converted (1) varies, or (2) has different limits at different times.

Commentary

- The comment in 5(b)(1)(ii)-2 regarding changes in terms of home equity plan conflicts with other sections of the Proposal. This commentary would prohibit a creditor from collecting ordinary items such as foreclosure expenses if they are more in the future than they might have been at loan origination – a common and likely occurrence. The inability to collect foreclosure expenses would have a dramatic economic impact on HELOCs. If it is the Board's intent to effect such a major change, that should be clear. This new comment does not appear to be necessary, but if it is deemed essential it should be a simple cross reference to the pertinent section of 5b.

- Comment 5b-3(i) states that if there are options to convert to a fixed rate, those terms must be disclosed. However, the Proposal specifically prohibits disclosure of the fixed rate options. We suggest that these provisions be reconciled.

- In order to facilitate workout agreements that could assist borrowers to remain in their homes, Wells Fargo requests that clarifying language be added to Comment 5b-3(iii). This provision requires new TILA disclosures if there is a conversion to closed-end and could arguably be read to require re-disclosure even in a workout. Wells Fargo requests that this section be clarified to provide a specific exemption to facilitate workouts of HELOCs in default or imminent default.

- Comment 5b(c)-1 requires a proactive statement that a balloon will not result under certain circumstances, which conflicts with other provisions of the Proposal which prohibit a creditor from disclosing that a balloon payment will not result.

- Comment 5b(f)(3)-3 regarding fees for protection of the lien should be reworded to allow the creditor to charge such fees even absent a borrower default. For example, it is quite common for creditors to incur lien protection expenses in eminent domain proceedings even in the absence of a default by a customer.

- Wells Fargo requests further examples of insignificant changes in Comment 5b(f)(3)(v), particularly for acquisitions. For example, the nuances of fixed rate advance options are among the most difficult to maintain upon acquisition. Creditors should be allowed to revise these features. Moreover, a creditor should be able to change the terms of an access device. There is an inconsistent statement in the Proposal that a creditor may *eliminate* an access device altogether but cannot *change the terms* of the access device. Using this language, if a creditor needed to change the terms of an access device, the creditor could eliminate the access device altogether, then reintroduce it under the new terms as a beneficial change. Thus, the comment should be rewritten to acknowledge changes in access devices as insignificant. In addition, nuances in calculation of interest rates, such as minor adjustments in interest calculations (365/365 to 360/360 or monthly vs. daily periodic interest) should be deemed insignificant.

- The Board added a phrase regarding actual reduction of the credit limits to Comment 5b(f)(3)(vi)-2 regarding reinstatement after a customer requests suspension. The application of this comment to actual reductions is a practical impossibility as "reinstatement" is not a concept that applies in an actual reduction (rather than suspension) environment. If the customer requests a reduction in the credit limit, most creditors release the lien down to the current credit limit – in many instances this partial release is required by state law. As the lien has been reduced as of record, there cannot be a requirement that creditors must simply reinstate the old commitment amount upon request. Reinstatement after an actual reduction would require a new underwriting, title review and documentation process – in other words, a refinance transaction. Wells Fargo requests that the comment remain applicable to customer requested suspensions only.

- In the commentary to Models G-14 and G-15, the Board notes that the model forms were intended to print on legal-size paper. Wells Fargo notes that most state recording offices require letter-size paper for security instruments, thus many lenders use letter-size paper exclusively. Wells Fargo requests that the Board keep this in mind when creating model forms.

IV. Closing Disclosure

Wells Fargo supports the new closing disclosure form and believes that it will, if the Proposal is clarified and corrected, greatly enhance consumer understanding of HELOC products. However, as there are several areas where the Proposal lacks clarity, corrections and clarifications are needed so disclosures will be uniform among creditors.

- Section 226.6(a)(2) still prohibits disclosing the fixed rate advance features. While Wells Fargo understands that it is the Board's desire to keep the tabular disclosures simple, we note that fixed rate advances can have rates that vary dramatically from the adjustable rates offered. Wells Fargo requests that the final rule allow an option for a fixed rate disclosure in both the initial disclosure and the closing disclosure.

- Section 226.6(a)(3) seems to duplicate 226.6(a)(2)(vi)-(xv), and in doing so adds confusion to an already complicated disclosure section.[1] If there is a specific requirement that is not currently covered in 6(a)(2), Wells Fargo suggests that additions be made to that section and that 6(a)(3) be deleted in its entirety. In the alternative, if 6(a)(3) was intended to clarify the disclosure requirements in 6(a)(2), Wells Fargo suggests that these clarifications be moved to the Commentary.

- It would be helpful for the Board to provide examples of the 226.6(a)(2)(vi)(A)(*iv*) requirements relating to changes in the index and resulting changes in payment amount, and how a variable rate formula (after the introductory rate) would be disclosed as required by 226.6(a)(2)(vi)(B).

- The "no obligation to accept the terms disclosed" in the account opening disclosure as required by 226.6(a)(2)(xxiv)(A) may be more confusing in the final disclosure than in the early disclosure. At this point the customer is entering into the transaction and the only way to not accept the terms is either 1) not to sign the documents; or 2) if the right is available, to rescind. A statement that the borrower "has no obligation to enter into the *transaction*" would be less confusing and would be more consistent with the closed-end proposal.

- The statement that the customer should check to be sure that there were no changes from what the customer applied for is likely to leave the impression that the 3-day disclosures are a guaranteed deal or that the customer is entitled to receive exactly what they applied for. 226.6(a)(2)(xxiv)(B) & Comment 6(a)(1)-1(xvi). This conflicts with statement in the early disclosures that the terms may change and is likely to cause considerable confusion as the early disclosures are only an estimate. We suggest: "Please review the terms carefully as

[1] Proposed 226.6(a)(3)(ii)(D) is particularly confusing.

they reflect your account." In addition, because there could be significant terms that are not disclosed in the account opening disclosures, such as fixed rate and payment options, Wells Fargo also suggests that there should be a statement that the disclosure is for reference only and the agreement contains the terms that govern the account.

Commentary

- Commentary 6(a)(3)(ii)-2 will likely add to the complexity of the account opening disclosure and goes beyond required account-opening fees. This Commentary addresses fees that are future fees that, if incurred, would be done so voluntarily by the customer. For example, if a customer later requests an expedited delivery of an access device, if the servicer at that time offers such a service, the fee for that service should be disclosed at that time. Similarly, fees for payment by telephone or internet are purely voluntary on the part of the consumer and may change over time depending on the servicer. To require disclosure of those fees at account opening would be difficult, if not impossible, and as such fees are purely dependent on later voluntary actions by the customer, it would make greater sense to disclose those fees at the time the service is requested. Moreover, with respect to fees for payment through the internet, the deposit or online areas of a financial institution may impose charges for internet bill pay services that are not related to "the plan." If any portion of the comment relating to internet bill payment remains, the comment should clarify that such internet bill pay charges that are unrelated to the HELOC plan are not intended to be included in the HELOC disclosures.

V. Periodic Statement

The periodic disclosure changes pose significant implementation challenges for servicers. Currently, Wells Fargo discloses transactions (including payments, charges, interest and fees) in chronological order. Moreover, currently Wells Fargo discloses each fixed rate advance separately, so the fees, interest and payments applicable to that advance are shown separately. Thus, changing to a grouped disclosure, while possible, will require significant programming changes. Wells Fargo therefore requests at least two years to implement these requirements.

Moreover, while Wells Fargo applauds the simplicity of the disclosure, customers will not be able to see how payments are allocated among interest, fees, and the principal on separate advances. This may cause customer questions and confusion. As there may be different rates and fees on different advances (including different fixed rate advances), it might be difficult for a customer to understand the periodic statement if the rule is adopted as proposed. Wells Fargo requests that the Board carefully weigh simplicity against customer confusion in arriving at a final rule.

Requiring servicers who acquire accounts to report fees and charges assessed by the previous servicer prior to the acquisition as set forth in Comment 7(a)(6)-6 may be a difficult, if not impossible task. The seller and acquirer should be able to split the task, with each being responsible for the portion of the year during which they serviced the loan. For example, it is very common for servicers to each issue a 1098 for the portion of the year that they serviced the loan.

New Comment 7(a)(6)-7 lays out requirements upon "account replacement," but does not define what this term means. If "account replacement" is intended to include a refinance, the comment would be difficult, if not impossible, to comply with as the two accounts are completely separate plans. Moreover, disclosing fees and charges for an earlier plan on the disclosure for the current plan is likely to cause considerable customer confusion. On the other hand, if "account replacement" is intended to cover those instances in which it is the same plan, but the account number is replaced due to systems conversion or fraud, then the requirement would make sense. Wells Fargo requests a clarification that this section is intended to cover only the latter scenarios.

Finally, in Model Form G-24(B) the reference to a fixed rate advance as a "loan" is incorrect and could be misleading.

VI. Line Terminations, Reductions and Restrictions

Wells Fargo applauds the Board's attempt to add clarity to the rules on terminating, restricting and reducing HELOCs. On the whole, the Board's proposals add certainty to an area that has given rise to unnecessary litigation and provide important guidance to creditors. Wells Fargo requests a few additions and clarifications to the Board's Proposal.

Wells Fargo agrees that before terminating *and* accelerating a HELOC for non-payment, the payment default should last for 30 days. However, Wells Fargo requests that the Board make it clear that a creditor may temporarily restrict for non-payment immediately upon payment default. Creditors should not be required to extend additional credit to any customer who is currently in default of their payment obligations. Moreover, creditors should be able to terminate the account for non-payment for repeat offenders without waiting for 30 days, even if the account is not accelerated.

An issue that has arisen often is that servicers need flexibility to act on accounts where there is fraud, but not necessarily fraud by the borrower. An unfortunately common occurrence is that the creditor becomes aware that the borrower may be the victim of a fraud. Unfortunately, criminals will convince victims (often the elderly) to take out, increase or draw down on a HELOC to obtain funds to pay to the criminal. Many of the so-called "Nigerian fraud" scams take advantage of this vulnerability. A servicer may become aware that the borrower is being victimized, or may note unusual activity on an account that warrants investigation. Wells Fargo requests that the Board provide a clear safe harbor for servicers who become aware of or suspect fraud (even with the borrower as victim) to restrict the account to further draws until the issue is resolved. A related issue that is increasingly common is that the servicer becomes aware of unusual or criminal activity in connection with the borrower's other accounts with the institution, such as deposit or credit card accounts, but has not yet found evidence with respect to the HELOC. It is an incongruity when an institution is requesting a borrower to exit all relationships with the institution due to suspicious activity (and may even be legally required to close such accounts), but must hold open the HELOC to further draws. Wells Fargo requests clear authority from the Board to restrict accounts where a borrower appears to be involved in fraudulent or criminal activity with respect to other accounts.

Wells Fargo also requests that the Board grant clear authority to suspend a HELOC when requested by any party in title to the property securing the line. Owners should not have to watch helplessly as a co-owner with a gambling addiction (for example) borrows against their property. While these non-borrowing co-owners did voluntarily sign the security instrument, it often comes as a surprise that once the security instrument is signed, the non-borrowing co-owner cannot limit the damage being done to their equity if they later determine their decision to have been imprudent.

Wells Fargo requests that 226.5b(f)(2)(iii) be clarified to provide that if the plan is unsecured, the creditor should be able to temporarily restrict the HELOC until the issue is corrected, whether or not the lack of security is due to an action or inaction by the borrower.

There are a few technical issues with other proposed language. The language of 226.5b(f)(3)(vi)(A) is circular. To paraphrase, the language now states "the home's value declines below the value." The language should read "the *current* value of the dwelling that secures the plan declines significantly below the dwelling's value *at the time of origination* for purposes of the plan." Moreover, the proposed "federal law" language is too narrow. There should be a clear rule allowing restriction if "applicable law" requires it, both in Section 226.5b(f)(3)(vi)(G) and Comment 5b(f)(3)(vi)-9.

As for the reinstatement requirements, Wells Fargo believes that the Board's proposal generally provides measured clarity for both creditors and consumers. Wells Fargo has no objection to a 30-day limit to consider a reinstatement decision. However, we propose that the time period must begin to run from the date all information needed from the customer has been received. For example, if income documentation is needed the thirty days should not start until the customer has provided the documentation to the servicer.

Wells Fargo does not object to the proposal that the creditor must cover the cost of the initial investigation, except when a new appraisal is required. The current practice at Wells Fargo and many other large servicers is that if a customer believes that the valuation is incorrect, the customer may pay for a valuation; if the valuation supports reinstatement, the creditor will reimburse the customer. Based on current volumes of appraisal requests and the rates at which the appraisals support the reinstatement, shifting the expense of appraisals that do not support reinstatement to the creditor would be approximately $250,000 a month or $4 million per year for Wells Fargo alone. Before the Board imposes such a significant cost on servicers, Wells Fargo requests that the Board consider adopting the current common practice as the general rule – that the creditor must pay for the appraisal only when the appraisal supports reinstatement.

The Board has specifically requested comment on the Proposal that the customer be provided with a copy of "the valuation" including the factors considered to obtain the value. For automated valuations, there is no "documentation" to provide. The creditor is given only the property address, a value and a confidence level for the value. While the property address and value fields could be captured to be fed into a document to be provided to the customer, to provide additional information would require third-party vendor programming changes that are likely to be complex and difficult to achieve.

The Board has also requested comment on whether the final rule should require ongoing monitoring in all cases rather than having the consumer request reinstatement. We believe that an ongoing monitoring requirement would be unnecessarily costly and burdensome. Institutions have an incentive to reinstate accounts where prudent, as they are in the business of lending and want to encourage customer goodwill and line usage for the least risky customers. Moreover, as property values recover, lenders who reimburse customers for valuations that support reinstatement have an incentive to proactively reinstate. Given these incentives to reinstate where warranted, a regulatory mandate is unnecessary.

VII. Change in Terms

It is a hallmark of HELOCs that they are extremely difficult to change after the terms of the account have been agreed upon by the customer. Wells Fargo is not aware of any particular issues that have arisen out of the rare changes in terms that might occur on such accounts. The focus in the Proposal on changes in terms of HELOCs appears to require redisclosure to, and a possible opting-out by, one party from terms that the party has already agreed to as part of a binding contract. Wells Fargo suggests that the Board rethink the change in terms section carefully in light of the limited changes that can occur on such accounts. If the impetus for the Board's Proposal in this area is the imposition of higher interest rates triggered by a payment default (which Wells Fargo believes are uncommon in HELOCs), we request that the Proposal be carefully drafted to specify the Board's concerns and requirements in this area. In addition, Wells Fargo can understand the 45-day notice period in connection with insignificant changes that occur in connection with mergers, but Wells Fargo requests clarity that such changes are what the Board intends to cover with this requirement. As currently proposed, the rule is so broadly worded as to call into question normal and legitimate business practices and to interfere with ordinary contractual relationships.

For example, throughout 226.9, particularly in (c)(1) and (i), it is unclear how rate changes due to pre-agreed non-default events would be handled. For example, it is very common for creditors to offer rate discounts for ACH payments, employment or other relationships with the Bank. These discounts are agreed upon in advance. If the discount will be removed if the condition changes, that must also be agreed to in advance; otherwise, under the strict rules applicable to HELOCs the creditor could not remove the discount. Therefore, a requirement of giving 45 days notice prior to the rate change, or allowing the customer to "opt-out" of the pre-agreed change makes no sense in the context of such discounts – the conditions for which are largely within the customer's control. Wells Fargo requests that the Board revise the Proposal and the Commentary to make it clear that such contractual agreements were not intended to be covered by 226.9 and that creditors may continue to enforce their agreements as written.

In 226.9(c)(iv) Wells Fargo requests specific flexibility for changes as a result of loss mitigation workouts. In addition, in 226.9(i)(5) the first sentence should read "A creditor is not required to provide a notice pursuant to paragraphs **(c) or** (i)(1) of this section . . . ."

VIII. Fee Refund

The Proposal as a whole is clear. However, some of the fee refund requirements are confusing and seem to be contradictory. To ensure clarity for consumers and creditors, the provisions should be aligned for consistency and certainty.

- In 226.5b(c)(4)(i), the creditor must disclose any term that is subject to change, thus putting the consumer on notice that the terms disclosed are not final or guaranteed, but are only estimated at this early stage in the application process.
- In 226.5b(c)(4)(ii), if any term changes (whether an increase or decrease), the applicant is entitled to a refund of any fees paid (which contradicts the idea and disclosure in 226.5b(c)(4)(i) that some terms may change).
- The language of 226.5b(c)(4)(ii) further lacks clarity in that it implies that the consumer may get fees refunded but still enter into the line of credit agreement.
- Since there will often be changes as a result of underwriting and even the most insignificant (or ordinary) change (and not just in fees – in any term) results in a refund, fees will be refundable in virtually every transaction. For example, if the appraisal were to come in low and the creditor were to counter-offer with a reduced commitment amount, the customer could insist on a fee refund. Moreover, if the customer were to request a change (such as

even $1 more in the loan amount), that could result in a required fee refund under the language as proposed.

- If a fee refund upon changed terms is to remain, the language should be clarified to be clear that the "terms" that may not change are fees and the rate (other than a variable rate if the index changes). Moreover, the change must not be in the borrower's favor, must be significant (at least a 10% change in fees overall), and must not be as a result of changed or borrower-requested circumstances. Wells Fargo suggests that rather than the "change-in-terms" trigger, the current requirement that the borrower may receive a fee refund within three days of receiving the early disclosures be the model.

- Section 226.5b(c)(5) provides that the applicant can receive a refund if the applicant notifies the creditor within three days of receiving the early disclosures. This conflicts with other provisions which provide that there must be a change in the terms of the account, but this is the model that Wells Fargo suggests. However, if this is the model that the Board adopts, Wells Fargo requests a clarification of when the early disclosures may be deemed to have been received.

- Section 226.5b(c)(22) provides that the consumer may always get fees refunded simply if they don't want the account. This conflicts with other provisions which provide that there must be a change in the terms of the account or that the refund applies only within a limited time frame.

- Section 226.5b(d) provides that a customer may receive a refund if any term changes (other than a variable rate if the index changes) and the customer elects not to move forward with the account.

- Section 226.5b(e) discusses when non-refundable fees can be charged, but given the broad provisions above, all fees are likely to be refundable.

- Comment 5(c)-3 recognizes that disclosures of fees such as appraisal fees are estimates and that no redisclosure is required if the fees change. This seems to contradict the provisions above that would seem to require 100% accuracy on fees and provide for refunds if any term changes.

- Comment 5b(c)(4)(i)-1 discusses guaranteed terms and that the creditor does not need to guaranty terms, but the fee refund concept does act like a guaranty of terms.

- In Comment 5b(d)-1 there appears to be an inadvertent deletion of "in connection with the application" when describing the fees that must be refunded. Without this important language, the fee refund requirement would be so broad that it could be argued that the creditor must refund all fees paid by the applicant to the creditor ever (mortgage fees, deposit account, safety deposit box etc). Wells Fargo believes that this is not what the Board intended and requests the reinsertion of the deleted language.

- In Comment 6(a)(1)-1(xv) there is a statement that a creditor may not disclose that the fees are subject to refund if the applicant decides not to open the account.

Wells Fargo requests that the Board enact clear, consistent and easy to understand rules regarding fee refunds.

IX. General Issues

In addition, Wells Fargo has some general comments on the Proposal.

Time to Implement

Many of the changes proposed will require complex process and technology changes for Wells Fargo across at least three business lines plus our multiple sales channels for the products impacted by the proposed regulation. Wells Fargo utilizes a disciplined quarterly release cycle for our major technology systems across the enterprise. Typically, work for a specific release begins at least 6-9 months prior for small-medium sized changes, 9-12 months for large changes and 12-18 months for significant changes. The Proposal constitutes a significant change. Moreover, because the Board is also proposing significant changes to closed-end home secured credit to be implemented at the same time, the same resources will be also be tapped to implement those changes.

As part of our review of the proposed regulation, we considered the amount of time required to implement the various changes from the time we receive the final regulation:

- Key Questions Disclosure at Application – 6-9 months
- Early Disclosure – 12-18 months
- Account Opening Disclosure – 12-18 months
- Periodic Statements – 18-24 months
- Any changes to periodic payment statements require significant amounts of time for testing to ensure accuracy for our borrowers on such a critical document.
- Change in Terms Notices and Rate Increases – 12-24 months
- Limitations on Changes in Terms – 6 months
- Account Terminations – 12 months
- Suspensions & Credit Limit Reductions – 6-9 months
- Reinstatement of Accounts – 6-9 months

Need for Tolerances

Wells Fargo asks that the Board take this opportunity to close one of the existing gaps and provide regulatory consistency between HELOCs and closed-end credit: namely tolerances for differences in finance charge and APRs. Currently, closed-end real estate loans are favored with two tolerances in their material disclosures -- the tolerance for overstatement of APR and the special tolerance for finance charge in mortgage transactions. HELOCs have neither tolerance. Thus, if a creditor (1) discloses an interest rate that is higher than accurate; (2) mischaracterizes a fee that is a finance charge; or (3) has even a one dollar ($1) inaccuracy in a fee that is a finance charge, technically, the creditor has violated TILA in such a way that results in rescission implications. The reality is that both closed-end real estate secured credit and HELOCs include the aspects that deserve these tolerances: the extensive real estate closing process and the numerous third party settlement services. Certainly, a HELOC closing involves the same complexities, settlement service requirements and the involvement of third parties as a closed-end real estate loan and should be afforded the same accuracy and tolerance disclosure standards. Therefore, Wells Fargo asks the Board to extend the same overdisclosure of APR tolerance and the finance charge tolerance to HELOC disclosures under 226.6 as afforded closed-end credit, including increased tolerances for rescission purposes.

Rescission

Although Wells Fargo appreciates that the Board intends to tackle rescission at a later date, due to the comprehensive changes to the rest of Regulation Z, the Board must adopt conforming changes to footnote 36 to identify the new material open-end disclosures for rescission purposes. The cross-references in that footnote are to sections that will no longer exist and to disclosures that are not part of the tabular disclosures. Wells Fargo proposes the following language:

> The term material disclosures means the information that must be provided to satisfy the requirements in § 226.6(a)(2)(vi) regarding the interest rate, § 226.6(a)(2)(viii) regarding the amount or method of determining the amount of any fee for the availability of the plan, and the payment information described in §226.6(a)(2)(v)(C)(2).

Business Day Definition

Wells Fargo suggests that the general definition of Business Day be dropped in favor of the more exact definition of "all calendar days except Sundays and the legal public holidays . . . ." The general definition could cause considerable confusion as customers are increasingly able to access banking functions at all times via online, mobile or phone banking systems. In a mobile society, more institutions may have branches in grocery stores or other locations that are open on Sundays and holidays for some functions but not others. With these multiple access points to banking services, the general definition lacks the clarity necessary for consistent and certain compliance. Wells Fargo requests simplification and certainty with respect to this definition and suggests that the more exact definition be used for all purposes.

Applicability of 226.5b and other HELOC provisions to rental properties

Most creditors, and certainly Wells Fargo, look to the purpose of the credit and the rules of 226.3 to determine whether a line of credit secured by rental property is business purpose and thus outside of the scope of TILA. For homes owned by individuals for rental purposes, if the analysis under 226.3 reveals that the HELOC is not business-purpose and should be covered by TILA, then Wells Fargo believes that most creditors apply the rules applicable to home equity lines of credit under 226.5b and the other provisions regarding HELOCs. The suggestion that non-business purpose rental property HELOCs should be subject to an entirely different statutory scheme that was not designed to reflect the complexity or timing of real-estate secured products is daunting. Creditors generally originate and service personal rental property lines of credit on the same systems as ordinary HELOCs and apply the same documents and rules where applicable. The difficulty of differentiating these accounts in origination and servicing systems and building separate requirements for such accounts, as well as the difficulty of attempting to apply rules that simply do not fit the real estate products means that it would be easier for most creditors to simply default to the HELOC requirements if the account is covered by TILA. The suggestion that different consumer rules, particularly the credit card rules of 5a, should apply to investment properties, would be difficult, if not impossible, to implement.

Reverse Mortgages

While significantly improving disclosure for forward open-end mortgages, the new disclosures are not easily applicable to reverse mortgages. Drafted with forward mortgages in mind, the disclosures make frequent reference to "monthly payments" which, of course, do not apply to reverse mortgages. To provide these disclosures to a reverse mortgage borrower will result in confusion. For example, the "Key Questions to Ask About Home Equity Lines of Credit" disclosure refers specifically to possible increases in monthly payments, as well as to increases in monthly payments due to interest rate increases. References to a repayment period are also likely to be confusing in the reverse mortgage context.

We recommend that the Board consider providing a separate set of disclosures that are specific and meaningful to reverse mortgage borrowers. These disclosures should be specifically tailored to the uniqueness of the reverse mortgage program, which, although the basic terms and conditions of a reverse mortgage are the same, can be either an open-end transaction or a closed-end transaction under Regulation Z. It would be beneficial to a reverse mortgage borrower to receive the same or similar disclosures whether or not their reverse mortgage is open-end or a closed-end transaction.

X. Conclusion

Wells Fargo appreciates the opportunity to provide these comments on the Proposal and we respectfully ask that you consider our comments and recommendations. We strongly support the spirit of the Proposal to provide clearer consumer disclosures and to strengthen consumer protections. We have pointed out those aspects of the Proposal that we believe may have unintended consequences or that need further clarification. If you have any questions or would like to discuss our comments, you can contact me at (515) 213-4572.

Sincerely,

David L. Moskowitz
Deputy General Counsel
Wells Fargo & Company