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June 4, 2009

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Regulation Comments, Chief Counsel's Office
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Re: UNFAIR OR DECEPTIVE ACTS OR PRACTICES; CLARIFICATIONS
Federal Reserve System [Regulation AA; Docket No. R-1314]; Department of the Treasury, Office of Thrift Supervision [Docket ID OTS-2009-0006; RIN 1550-AC17]; National Credit Union Administration [RIN 3133-AD62]

Dear Sirs and Madams:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates ("Wells Fargo") in response to the proposed clarifications regarding Unfair or Deceptive Acts or Practices, published in the Federal Register on May 5, 2009 at 74 FR 20803 (the "Proposal").

Wells Fargo appreciates the opportunity to comment and respectfully requests that the members of the Board of Governors of the Federal Reserve System ("Board"), the Office of Thrift Supervision ("OTS") and the National Credit Union Administration ("NCUA") (collectively, the "Agencies") consider the suggestions set forth herein.

Our vision and values include a commitment to consider the customer in everything we do, and to "do what's right for the customer." We take a leadership role in promoting financial literacy. For example, with the help of students and teachers, we designed a curriculum (in English and Spanish) for online financial literacy called "Hands on Banking," which is an interactive program that helps consumers understand financial basics and smart money management through lessons, tools and checklists. We also introduced "Stagecoach Island℠," our multi-player online role playing game that provides financial education for high school and college-age students. We support innovation to provide customer choice and offer a variety of account products and features to help customers succeed financially.

This letter will begin with an executive summary of the key issues and adverse impacts of the Proposal. Following will be general comments about specific provisions of the Proposal and requests for additional clarification and exceptions. Following the general comments, this letter will provide responses to the Agencies' requests for comment on specific provisions of the Proposal.

I. EXECUTIVE SUMMARY

Wells Fargo supports the Agencies' goals of clarifying certain provisions of the Unfair or Deceptive Acts or Practices final rule, published in the Federal Register on January, 29, 2009 at 74 FR 5498 ("January 2009 Rule"). However, Wells Fargo urges the Agencies to forego the Proposal, withdraw the January 2009 Rule and instead consolidate their rulemaking efforts under Regulation Z. Whether the Agencies move forward with the January 2009 Rule, and the Proposal, or instead pursue rulemaking through Regulation Z, Wells Fargo urges the Agencies to provide the following additional clarification and exceptions with respect to several provisions of the Proposal:

- institutions should be allowed to change the terms on acquired accounts based on their own risk analysis and pricing practices because allowing such changes would not result in an institution increasing the cost of credit it previously extended to the consumer.

- the protections of the January 2009 Rule should apply only to a balance that is transferred from one consumer credit card account to another consumer credit card account issued by the same institution, rather than to any *credit account* with that same institution. Additional clarification is also needed as to what constitutes a "balance transfer" for purposes of comment 21(c)-3. If a consumer receives a cash advance on a consumer credit card account, the institution will be unable to determine if a full or partial pay-off of another consumer credit card account with the same institution was made with those funds.

- if a variable rate was in effect prior to a decrease pursuant to the Servicemembers Civil Relief Act ("SCRA"), the Agencies should clarify that the rate to be applied after SCRA protections no longer apply can be determined using the same index and formula that was used prior to the decrease, particularly where the variable rate has increased due to an increase in the applicable index during the SCRA protection period.

- clarification is needed regarding the amount of time within which an institution must implement a rate increase pursuant to Section __.24(b) or lose the right to implement the increase. While proposed comment 24(b)-1 states that rate increases may be delayed until the first day of the following billing cycle, the Agencies also state that the right to increase rates is not retained indefinitely.

- while Wells Fargo supports the Agencies' goal of ensuring that an outstanding balance is protected from rate increases prohibited by section __.24, proposed comment 24-4 is overly broad in applying those protections to future balances on a new account that is considered to be a replacement; particularly where the consumer is affirmatively requesting the new replacement product.

II. GENERAL COMMENTS

A. <u>Consolidation of the January 2009 Rule, and the Proposal, with Regulations Issued Pursuant to the Credit CARD Act of 2009</u>

Wells Fargo notes that after the Proposal was issued, Congress passed the Credit CARD Act of 2009, which was signed by President Obama on May 22, 2009 (the "CARD Act"). Since the CARD Act incorporates the substantive provisions of the January 2009 Rule through revisions to the Truth in Lending Act, Wells Fargo urges the Agencies to forego the Proposal, withdraw the January 2009 Rule and instead consolidate their rulemaking efforts under Regulation Z. Whether the Agencies move forward with the January 2009 Rule, and the Proposal, or instead pursue rulemaking through Regulation Z, Wells Fargo urges the Agencies to consider the recommendations and comments set forth in this letter.

B. <u>Proposed Clarification Regarding the Application of the January 2009 Rule to Closed Accounts, Acquired Accounts and Balance Transfers</u>

The January 2009 Rule defines "consumer credit card account" as an account provided to a consumer primarily for personal, family or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The definition does not include home equity plans subject to the requirements of Regulation Z Section 226.5b that are accessible by a credit or charge card; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; or lines of credit accessed solely by account numbers. The Proposal adds comments 21(c)-1 through 3 to clarify that the protections in the January 2009

Rule continue to apply to an outstanding balance on a closed or acquired account and to an outstanding balance that is transferred to another credit account issued by the same institution.

1. Acquired Accounts

According to the Proposal, if an institution acquires a consumer credit card account with an outstanding balance (for example, through merger or acquisition), the account continues to be the same consumer credit card account for purposes of the January 2009 Rule with respect to that balance.[1]

a. Institution Acquiring a Consumer Credit Card Account With a Balance is not Increasing the Cost of Credit it Previously Extended to the Consumer

In the Proposal's Section-by-Section Analysis, the Agencies explain that balance transfers from one institution to another institution are not the same consumer credit card account for purposes of Subpart C with respect to that balance because "the institution to which the balance is transferred is not increasing the cost of credit it previously extended to the consumer."[2] Similarly, when an institution acquires a consumer credit card account with a balance and prices such account and balance based on prevailing market rates and its own risk analysis, that institution is not increasing the cost of credit it previously extended to that consumer. Accordingly, an account acquired by an institution, through merger or acquisition, should not be considered the same consumer credit card account for purposes of Subpart C with respect to any outstanding balance on that account.

This provision will have a detrimental impact on future acquisition and merger transactions. Institutions will likely price such transactions much lower or may forego such transactions altogether since they will be required to build entirely new pricing strategies to accommodate the acquired balances.

2. Balance Transfers Between Accounts Issued by the Same Institution

According to the Proposal, if a balance is transferred from a consumer credit card account issued by an institution to another *credit account* issued by the same institution or its affiliate or subsidiary, the account continues to be the same consumer credit card account for purposes of the January 2009 Rule with respect to that balance, *unless the account to which the balance is transferred is an open-end credit plan secured by the consumer's dwelling.*[3]

a. Circumstances in Which a Balance is Considered Transferred for Purposes of Proposed Comment 21(c)-3

Wells Fargo urges the Agencies to further define the circumstances under which a balance is considered transferred for purposes of proposed comment 21(c)-3 and specifically, to limit such definition to situations where there is a direct transfer between accounts held by the

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[1] Proposed comment 21(c)-2
[2] 74 FR at 20807
[3] Proposed comment 21(c)-3

same institution. By contrast, a balance should not be considered transferred for purposes of proposed comment 21(c)-3 in circumstances where a consumer receives the proceeds of an advance against a new line of credit and subsequently applies those proceeds to a consumer credit card account held by the same institution. For example, if a consumer uses the proceeds from a close-end loan or obtains a cash advance from a consumer credit card account held by the same institution, the consumer can utilize those funds to make a payment on the outstanding balance on another consumer credit card account held by the same institution. In such case where there is not a direct transfer, it would be impossible for the institution to track the origin of such transactions. Accordingly, comment 21(c)-3 should be revised to state that these types of indirect transfers are not considered to be balances that are transferred for purposes of this comment.

b. Use of the Term "credit account"

Wells Fargo strongly urges the Agencies to replace the term "credit account" with "consumer credit card account" in proposed comment 21(c)-3. When a consumer chooses to transfer a consumer credit card account balance to a credit account that is not a consumer credit card account, that consumer has affirmatively chosen to change the character of that debt. Accordingly, it would be unreasonable to require all of the protections of Reg. AA to apply to that balance for life, where the consumer has caused that balance to be transferred.

The January 2009 Rule prohibits institutions from engaging in certain acts or practices in connection with "consumer credit card accounts" and defines "consumer credit card account" as an account provided to a consumer primarily for personal, family, or household purposes under an open-end credit plan that is accessed by a credit card or charge card. The definition expressly excludes home equity plans subject to the requirements of Reg. Z Section 226.5b that are accessible by a credit or charge card; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and lines of credit accessed solely by account numbers. However, according to the Proposal, if a consumer chooses to transfer a balance from a consumer credit card account issued by an institution to another *credit account* issued by the same institution or its affiliate or subsidiary, the account continues to be the same consumer credit card account for purposes of the January 2009 Rule with respect to that balance, *unless the account to which the balance is transferred is an open-end credit plan secured by the consumer's dwelling*. The Proposal broadens the scope of the January 2009 Rule, without conducting the appropriate unfair or deceptive acts or practices analysis in relation to credit accounts other than "consumer credit card accounts." Under the Proposal, "credit account" would arguably include closed-end credit accounts, business purpose credit accounts, and/or margin accounts. Since the January 2009 Rule expressly applies only to consumer credit card accounts, the Proposal should not attempt to broaden its reach and include additional credit accounts that were not intended to be covered.

Institutions have taken steps to implement the January 2009 Rule based on its application only to consumer credit card accounts. Additional comprehensive changes to systems and procedures will be required if the January 2009 Rule is broadened to apply to credit accounts other than consumer credit card accounts, and it is far from clear whether the systems supporting these other credit products could even support some of the complex requirements in the January 2009 Rule. In addition, consumers may choose to transfer balances from consumer credit card accounts to other types of credit accounts for a variety of reasons, such as for tax purposes and to consolidate and pay down debt faster. Institutions may be unable or unwilling to allow transfers from consumer credit card accounts to other credit accounts if the balance must be segregated in order to comply with the January 2009 Rule. Therefore, proposed comment 21(c)-3 should be revised to apply only to balance transfers from one consumer credit card account to another consumer credit card account issued by the same institution.

Alternatively, Wells Fargo urges the Agencies to define the term "credit account." While the specific exclusion of *open-end* credit plans secured by the consumer's dwelling implies that the term "credit account" refers only to "open-end credit accounts," this fact remains unclear. In fact, at a minimum, closed-end credit accounts should specifically be excluded. In the Proposal's Section-by-Section Analysis, the Agencies indicate that open-end credit plans secured by a consumer's dwelling are excepted because "these plans provide protections that are similar to – and, in some cases, more stringent than – the protections in Subpart C."[4] For similar reasons, closed-end credit accounts should also be excluded from the definition of "credit account." For example, if an annual percentage rate may increase after consummation of a closed-end credit transaction not secured by real estate, the institution must disclose the following *prior to consummation* of the transaction: (i) the circumstances under which the rate may increase, (ii) any limitations on the increase, (iii) the effect of an increase, and (iv) an example of the payment terms that would result from an increase.[5] Regulation Z defines "closed-end credit" as consumer credit other than open-end credit.[6] In general, under a closed-end credit plan, the loan amount, monthly payment amount, and term of repayment are determined and disclosed at the outset, prior to consummation of the transaction. Closed-end credit systems utilized by institutions are not built to support multiple loan terms for a single closed-end credit account, such as the application of different rates to separate balances, different payment due dates for separate balances, and complex payment allocation hierarchies.

c. Additional Exemption Requested for Transfers from One Consumer Credit Card Account to Another Consumer Credit Card Account Issued by the Same Institution

Wells Fargo urges the Agencies to include an additional exception for situations where a joint account is replaced by an individual account, with only one of the borrowers assuming the outstanding balance. In such situations, institutions must maintain the ability to underwrite the new individual account and price it based on risk. For example, in a divorce proceeding, a court may assign the debt on a consumer credit card account to one spouse. The institution may require that the joint account be closed and that the responsible spouse apply for a new account. In processing the new application, the institution will review the responsible spouse's credit

[4] 74 FR at 20806

[5] 12 CFR §226.18(f)(1)

[6] 12 CFR §226.2(a)(10). "Open-end credit" is defined as a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended during the term of the plan is generally made available to the extent any outstanding balance is repaid. 12 CFR §226.2(a)(20).

history and, if credit is granted, price the new account based on its analysis. If the responsible spouse is approved, the balance will be transferred to the new account. According to the Proposal, the institution could not apply a higher rate to the protected balance transferred to the new individual consumer credit card account based on the higher risk. Without such an exception, institutions will no longer be able to accommodate requests by consumers jointly obligated to remove one of the parties from the account.

C. Allocation of Payments (Section __.23)

1. Special Rule for Accounts Subject to Certain Promotional Programs

The Proposal adds new Section __.23(b), which applies to promotional programs under which consumers will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time (i.e., a deferred or waived interest program). If an institution offers such a program, during the two billing cycles immediately preceding expiration of the deferred or waived interest period, the institution must allocate amounts paid by the consumer in excess of the minimum periodic payment first to that promotional program balance and any remaining portion to the other balances according to the permissible allocation method. In addition, the Proposal amends comment 23-6 to require a deferred or waived interest balance be treated as a balance with an annual percentage rate of zero for purposes of the payment allocation provisions, until the last two billing cycles of the promotional period.

a. Request for Clarification

Wells Fargo supports the Agencies' requirement that institutions allocate amounts paid in excess of the minimum periodic payment first to the deferred or waived interest balance during the two billing cycles immediately preceding expiration of the deferred or waived interest period. However, while the Agencies recognize that "this approach is generally beneficial to consumers," the Agencies also acknowledge that treating the rate on deferred or waived interest balances as zero during the promotional period could prevent consumers who wish to pay off that balance in installments over the course of the promotional period from doing so.[7] Given this fact and the CARD Act's requirement that payments in excess of the minimum payment be applied first to the card balance bearing the highest rate of interest, Wells Fargo respectfully requests clarification on whether institutions would ever be permitted to apply amounts paid in excess of the minimum periodic payment in a manner other than the permitted allocation method.

b. Impact of the Credit CARD Act of 2009 on Deferred or Waived Interest Plans

In issuing revisions to Regulation Z and Regulation AA, Wells Fargo urges the Board to take into consideration the colloquy set forth in the Senate Congressional Record for May 19, 2009 under the heading "Deferred Interest" in which Senators Christopher Dodd and Richard Shelby confirm that Congress did not intend to prohibit deferred interest plans by the broad

[7] 74 FR at 20808

language used in Section 102 of the CARD Act. This colloquy, and the fact that Congress included an exception in Section 104 of the CARD Act relating to deferred interest plans, evidences Congress' intent to allow deferred interest plans. Wells Fargo believes these types of offers provide an important benefit to consumers, and we urge the Board to clarify that the broad language in Section 102 of the CARD Act does not prohibit deferred interest plans.

D. Application of Increased Rates to Outstanding Balances (Section __.24)

Section __.24(a) of the January 2009 Rule requires institutions, at account opening, to disclose the annual percentage rate that will apply to each category of transactions. Pursuant to the January 2009 Rule, as modified by the Proposal, institutions may not increase the APR for a category of transactions unless one of the following exceptions in Section __.24(b) applies: (i) account opening disclosure exception, (ii) variable rate exception, (iii) advance notice exception, (iv) delinquency exception, (v) workout and temporary hardship arrangement exception, or (vi) Servicemembers Civil Relief Act exception.

1. Request for Clarification on the Servicemembers Civil Relief Act ("SCRA") Exception

Wells Fargo ardently supports, and thanks the Agencies for, the clarification that an annual percentage rate that has been decreased pursuant to the SCRA may be increased once the provisions of the SCRA no longer apply, provided that the increased rate does not exceed the rate that applied prior to the period of military service. However, Wells Fargo notes that a similar exception was not included in the CARD Act or recent rulemaking under Regulation Z. Wells Fargo respectfully requests that regulations promulgated pursuant to the CARD Act include an SCRA exception, for example, by specifically stating that SCRA protection is deemed to be a "temporary hardship" arrangement. In addition, to account for increases in a variable rate due to changes in the applicable index, Wells Fargo strongly urges the Agencies to include a comment similar to comment 24(b)(5)-2 to clarify that if the annual percentage rate that applied to a category of transactions prior to commencement of SCRA protection varied with an index consistent with Section __.24(b)(2), the rate applied to that category of transactions following an increase pursuant to Section __.24(b)(6) can be determined using the same formula (index and margin).

Wells Fargo also notes that many states have statutory provisions that are similar to the federal SCRA, but that may protect additional parties or offer greater protections. As a result, Wells Fargo urges the Agencies to modify Section __.24(b)(6) to cover these comparable state laws by providing: "An annual percentage rate that has been decreased pursuant to 50 U.S.C. app. 527, *or a similar state law provision,* may be increased once that provision no longer applies, provided that the annual percentage rate applicable to a category of transactions following any such increase does not exceed the rate that applied to that category of transactions prior to the decrease."

2. Request for Clarification on Timing of Increases in Annual Percentage Rates

According to the Proposal's comment 24(b)-1, rate increases in accordance with Section __.24(b) may be delayed until the first day of the following billing cycle without relinquishing the ability to charge the higher rate. However, in the Proposal's Section-by-Section Analysis the Agencies' state that the exceptions in Section __.24(b) do not permit institutions to retain the right to increase a rate indefinitely and at their discretion. In light of the comment and the Agencies' statement, Wells Fargo respectfully requests clarification on whether institutions must implement a rate increase pursuant to Section __.24(b) no later than the first day of the following billing cycle or relinquish the ability to charge such higher rate.

3. Account Opening Disclosure Exception

According to Section __.24(b)(1) of the January 2009 Rule, an annual percentage rate for a category of transactions may be increased to a rate disclosed at account opening upon expiration of a period of time disclosed at account opening.

a. Account Opening versus Replacement or Consolidation

The Proposal adds comment 24-4, which states that when a consumer has a credit card account with an institution and opens a new credit card account with that institution (or its affiliate or subsidiary), the opening of the new account constitutes an "account opening" for purposes of Section __.24 if, more than 15/30 days after the new account is opened, the consumer has the ability to obtain additional extensions of credit on each account. By contrast, there is no "account opening" when a consumer credit card account issued by an institution is replaced or consolidated with another consumer credit card account issued by the same institution (or its affiliate or subsidiary). Comment 24-4(ii)(A) states that the circumstances in which a consumer credit card account has *not* been opened include the following: (1) a retail credit card is replaced with a cobranded general purpose credit card that can be used at a wider number of merchants; (2) a credit card account is replaced with another consumer credit card account offering different features; (3) a credit card account is consolidated or combined with one or more other credit card accounts into a single credit card account; or (4) a credit card account acquired through merger or acquisition is replaced with a credit card account issued by the acquiring institution. According to comment 24-4(ii)(B), an institution that replaces or consolidates a consumer credit card account with another consumer credit card account issued by the institution (or its affiliate or subsidiary) may not increase an annual percentage rate in a manner otherwise prohibited by Section __.24.

Wells Fargo urges the Agencies to clarify that the restrictions on replaced or consolidated accounts are limited to situations where such accounts have been replaced or consolidated by the institution on an unsolicited basis. By contrast, when a consumer has affirmatively applied for and requested a new credit card account, an institution should be permitted to apply the pricing strategies normally associated with such accounts. While Wells Fargo understands and supports the Agencies' goal of ensuring that the original outstanding balance is protected from rate increases prohibited by Section __.24, Wells Fargo believes this can be accomplished via comment 21(c)-3 in that if a balance is transferred from one consumer credit card account to another consumer credit card account issued by the same institution or its affiliate or subsidiary, the account would continue to be the same consumer credit card account for purposes of the January 2009 Rule *with respect to that balance*. The clear intent of Section __.24 is to protect outstanding balances and new transactions when an institution unilaterally changes the terms on an existing account. This is not the case when a consumer applies for a new account based on his or her review of the applicable terms prior to making such decision. There are a variety of reasons why a consumer may open a new type of consumer credit card account with an institution. For example, a consumer may choose to replace an existing credit card with a higher rate credit card product offered by the same institution because it has rewards features. This is particularly a likely scenario for consumers who do not carry a balance and are therefore not rate sensitive, but rather more interested in the rewards features. Unless clarified, the rules as proposed could be interpreted as prohibiting the institution in this scenario from applying the higher rate associated with the rewards card, and requiring the institution to offer the lower rate the consumer had with the old card on the rewards card. In this situation, where the consumer has affirmatively applied for and requested the higher rate card and received all applicable disclosures, the institution should be able to issue the rewards card at the higher rate. This scenario is no different than if the consumer or the institution closed the existing account, and then the consumer independently applied for the new rewards card product. Accordingly, the Agencies should clarify that this restriction only applies to situations where an institution attempts to replace or consolidate an existing account with a new credit card product on an unsolicited basis.

Similarly, as a consumer's relationship with an institution changes, or as new products become available, a consumer may become eligible for a new account with different pricing or may cease to be eligible for certain products. For example, if a consumer maintains a certain amount in deposit balances with an institution, or a specified annual income, the consumer may be eligible for a consumer credit card account with a lower annual percentage rate and additional benefits. Once the consumer ceases to meet the specified requirements, he or she may no longer be eligible for that account. In such case, the consumer could choose an alternative product, which may have a higher rate. In addition, in cases where a joint consumer credit card account is closed and one or more of the consumers applies for an individual account, the new individual account should not be considered to be a replacement for the joint account since the risk presented by an individual will likely differ from the risk presented by having more than one borrower on the account.

In each of the situations described above, the consumer would receive all required disclosures at the time of application and at account opening, enabling the consumer to make an informed decision with respect to the new account. However, according to the Proposal, if any of the situations described above occurred during the first year the original account was open, the institution would be prohibited from applying a higher rate to the outstanding balance *and* to future transactions on the new account. Even if this process occurred after the first year that the original account was open, the institution would have to provide 45-days advance notice before applying the higher rate to new transactions on the new account and would be prohibited from applying the higher rate to new transactions made on the new account during the first seven days (fourteen days pursuant to the CARD Act) after such notice is provided. Providing 45-days notice in connection with a newly opened account is unnecessary, and likely to cause confusion for consumers, in light of the disclosure requirements of Regulation Z.

4. Determining the "Outstanding Balance" Amount

According to the Proposal, an annual percentage rate may be increased for a category of transactions pursuant to a notice under 12 CFR 226.9(b), (c) or (g). However, in the case of a notice under 12 CFR 226.9(b), the increased rate cannot be applied to transactions that occurred prior to provision of the notice. Similarly, in the case of a notice provided under 12 CFR 226.9(c) or (g), the increased rate cannot be applied to transactions that occurred within seven days (fourteen days pursuant to the CARD Act) after provision of the notice. Comment 24(b)(3)-2 to the January 2009 Rule utilizes the date the transactions was "settled" in determining when a transaction occurred. However, the Proposal revises comment 24(b)(3)-2 to indicate that the "date of the transaction" is used to determine when the transaction occurred, without regard to when the transaction is authorized, settled or posted to the consumer's account.[8] Further, if a merchant places a "hold" on an account for an estimated transaction amount, the date of the transaction will be the date on which the merchant determines the actual transaction amount, as opposed to the date the hold was placed through the authorization process. Unfortunately, while network rules and acquirer agreements may require transactions to be submitted by merchants within 30 days, or a shorter period of time, there are situations where submission is delayed. Thus, institutions would be required to monitor accounts indefinitely to determine the "date of the transaction" and make adjustments to accounts after a rate increase was properly implemented, which will likely cause confusion for consumers.

Wells Fargo respectfully requests that the Agencies provide a date certain on which institutions can determine the outstanding balance based on transactions posted to the account. Specifically, Wells Fargo urges the Agencies to specify that institutions must review all transactions posted through the end of the 45-day notice period to determine the outstanding balance. To the extent transactions are posted after the 45-day notice period, the institution will not be required to review them to determine if the "date of the transaction" occurred prior to provision of a notice provided under 12 CFR 226.9(b) or within fourteen days of a notice provided under 12 CFR 226.9(c) or (g).

III. RESPONSES TO SPECIFIC REQUESTS FOR COMMENT

Wells Fargo offers the following responses to the Agencies' specific requests for comment in the Proposal.

A. Section .21 – Definitions.

The Agencies request comment on the extent to which proposed comment 21(c)-3 would affect institutions' ability to make offers to existing cardholders. To the extent institutions create new products, often with additional benefits for consumers, and to the extent a consumer's relationship with an institution changes, allowing the consumer to become eligible

[8] 74 FR at 20810

for additional products, some institutions may decline to offer such products to consumers because of the restrictions in comment 21(c)-3. To the extent limitations apply to credit accounts other than consumer credit card accounts, institutions may cease offering balance transfers and other cash advance transactions to existing cardholders. In addition, since institutions would be unable to track the origin of an indirect transfer, such as when a consumer obtains a cash advance on a consumer credit card account and utilizes that advance to make a payment on another consumer credit card account with that same institution, institutions may be less likely to offer cash advances to existing cardholders. Finally, institutions may cease such offers due to system constraints. For example, institutions may be unable or unwilling to allow transfers from consumer credit card accounts to other credit accounts if the balance must be segregated in order to comply with the January 2009 Rule. However, the impact of proposed comment 24-4 is of much greater concern. While Wells Fargo understands and supports the Agencies' goal of protecting outstanding balances on a consumer credit card account, proposed comment 24-4 goes much farther than that and limits the ability of institutions to apply the terms of a new account relationship to new transactions even though all required disclosures would be provided by the institution to the consumer prior to entering into the new account relationship.

B. Section __.23 – Unfair acts or practices regarding allocation of payments.

The Agencies request comment on whether the provision in proposed Section __.23(b) regarding balances on which interest will not be charged if the balance is paid in full by a specified date should apply during the last two billing cycles of the deferred or waived interest period or during a longer or shorter time period. Wells Fargo supports the Agencies' proposal to require institutions to allocate amounts paid by the consumer in excess of the minimum periodic payment first to the deferred or waived interest balance during the two billing cycles immediately preceding expiration of the promotional period. Wells Fargo believes the Agencies have struck an appropriate balance between consumer protection and merchants. Ultimately, this will benefit consumers who are able to take advantage of these promotions and merchants who are able to offer such promotions.

The Agencies request comment on whether proposed Section __.23(b) should apply to a grace period offered by the institution. In particular, the Agencies request comment on whether institutions offer grace periods that only require consumers to pay certain balances in full each billing cycle (rather than the entire balance) and, if so, whether proposed Section __.23(b) should permit institutions to apply excess payments to those balances first. Wells Fargo does not offer grace periods that only require consumers to pay certain balances in full each billing cycle.

C. Section __.24 – Unfair acts and practices regarding increases in annual percentage rates.

The Agencies request comment on whether the appropriate amount of time for the replacement of one consumer credit card account with another is 15 days, 30 days, or a different period. Wells Fargo recommends the agencies use a 15-day time period for defining what constitutes an "account opening." Implementing a credit card replacement or consolidation of an existing account to a new account can currently take up to 15 days.

The Agencies request comment on whether institutions establish separate categories of transactions based on factors other than APR and, if so, for what reasons and whether proposed comment 24-3 should be revised accordingly. From time to time, Wells Fargo may offer promotions pursuant to which consumers can earn additional rewards points for certain categories of transactions. However, there is no need to revise proposed comment 24-3 based on such promotions.

The Agencies request comment on whether the proposed implementation guidance regarding deferred interest plans provides sufficient protections for consumers and flexibility for institutions. Wells Fargo believes the Agencies have struck an appropriate balance between consumer protection and merchants. Ultimately, this will benefit consumers who are able to take advantage of these promotions and merchants who are able to offer such promotions.

Wells Fargo ardently supports the Agencies' goal of ensuring consumers have the ability to make informed decisions about the use of consumer credit card accounts without being subjected to unfair or deceptive acts or practices and thanks the Agencies for clarifying certain provisions of the January 2009 Rule. However, in light of the Credit CARD Act of 2009, Wells Fargo urges the Agencies to forego the Proposal, withdraw the January 2009 Rule and instead consolidate their rulemaking efforts under Regulation Z and provide additional clarification for certain provisions as stated herein.

Wells Fargo appreciates the opportunity to comment on the Proposal. If you have any questions or would like to discuss any of the issues raised in this letter, please contact me at (612) 667-4025 or dawn.m.mandt@wellsfargo.com.

Sincerely,

/s/ DAWN M. MANDT

Dawn M. Mandt
Senior Counsel