WELLS FARGO

Wells Fargo & Company
420 Montgomery Street
San Francisco, CA 94104

October 12, 2007

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: 12 CFR Part 226: Truth-in-Lending; Proposed Rule
Regulation Z
Federal Reserve System Docket No. R-1286: June 14, 2007

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates ("Wells Fargo") in response to the Federal Reserve's proposed amendments to Regulation Z (the "Regulation"), published in the Federal Register on June 14, 2007 at page 32948 (the "Proposed Rule" or "Rule"). Wells Fargo appreciates the opportunity to comment and respectfully requests that the members of the Federal Reserve Board of Governors (the "Board") consider adopting the suggestions set forth herein.

We will address specific provisions of the Proposed Rule, but first would like to provide the background upon which our comments are based.

The Wells Fargo vision to satisfy all of our customers' financial needs, help them succeed financially, and be known as one of America's great companies is a driving force in the way we do business. The types of issues outlined by the Board in the Commentary accompanying the Proposed Rule: engaging in responsible lending practices, encouraging customers 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.

We infuse these principles into new product development, advertising and marketing, pricing, underwriting, servicing and third party relationships. More than just a vision or set of rules, it is fundamental to our culture for our team members to conduct business in a manner consistent with these policies.

We respect and support the efforts of the Board to make Truth-in-Lending more meaningful for consumers and to provide guidance to financial institutions on consumer lending. We provide the following specific comments to the Proposed Rule.

General: Timeline for Mandatory Compliance

Wells Fargo urges the Board to maximize the time between publication of a final regulation and mandatory compliance. Recognizing that the proposed changes, particularly with many specific format requirements, represent a massive disruption to the way creditors currently conduct business, it will take concerted efforts to bring all facets of open-end credit programs into full compliance with the final revisions. Accordingly, in light of the significant changes that will be required, a substantial preparatory time will be needed. We suggest that two years would be an appropriate implementation period considering the complexity of the changes.

Complete revision to application/solicitation disclosures and a brand new account opening disclosure will require significant expenditure of time, effort and resources: human, systems and monetary, to achieve the Board's compliance vision. The new forms must be created and programmed to populate correctly and added to application and loan packages through multiple distribution networks. Extensive testing will be required to ensure accuracy and effectiveness of all the changes. Team members must be adequately trained to familiarize them with new forms and procedures and taught how to explain the changes to current and prospective customers. Open- end plan account agreements will have to be reviewed to ensure that their terms are optimally consistent with all substantive revisions adopted in the final Regulation as well as with new procedures; it is entirely likely that one or more agreements will need to be rewritten either because of the Board's substantive changes or because of the elimination of previously integrated initial disclosures and their replacement by the new account opening disclosures.

Periodic statement changes alone will require a massive effort. For many creditors this complete reformatting and content revision must be coordinated with third party vendors who service multiple creditors. At least one systems vendor has anecdotally indicated that preparation time to accomplish all the proposed changes should be measured in multiple years rather than months. Some creditors have in-house systems that will require updating to accomplish the statement changes which may overwhelm limited private facilities. The Board may want to consider the potential anti-competitive effect of requiring such extensive development that smaller creditors or systems operators may not be in a position to accomplish. A short implementation period may push the industry to a more limited set of providers. All creditors will sacrifice resources that would otherwise go to product and service improvement.

General: Penalties

As Truth-in-Lending (and particularly the implementing Regulation) becomes more complex, it can be difficult to directly relate regulatory requirements with the associated statutory provisions. When it comes to an asserted error, this can create confusion about the applicable remedy or penalty if a disclosure violation has indeed occurred. Wells Fargo suggests that the Board prepare and publish a table reference displaying the statutory mandate for each regulatory subsection. This would benefit consumers, creditors and their respective advocates. A reference table would assist in understanding the full ramifications of any disclosure shortfall. This would help reduce litigation costs by eliminating the necessity for research and counsel time to invent or respond to spurious arguments about potential damages for alleged violations.

§226.2(a)(4) Billing Cycles

Wells Fargo agrees with the Board's proposal to provide for an irregular first billing cycle for open-end credit. This is especially important for home equity secured open-end credit given the complexity of real estate closings involving numerous third parties, closing agent control of the process, extensive paper documentation and all of the inherent contingencies of real estate closings.

§226.2(a)(20) Definition of Open-End Credit

Under the current Regulation and Commentary, to qualify as open-end the maximum credit amount on the account must be fully self-replenishing. While fully meeting that requirement, many creditors use multiple features or sub-accounts in connection with open-end credit in order to provide the consumer with flexibility and choices regarding the terms applicable to certain portions of the open-end credit balance. Commonly, such features may relate to credit extensions for distinct purposes, and also to repayment terms that often may be more favorable to the consumer, including lower margins, fixed rates, and distinct amortization periods. One of the most common examples is fixed rate advances on home equity lines of credit. As these featured favorable terms may present the creditor with new or additional risk exposure, creditors may choose to reasonably manage their risks by contractually limiting the availability of these features from a temporal and/or maximum amount aspect, all of which are subject to disclosure to the consumer, which disclosure is enhanced by the Board's various current proposals, *e.g.* Introductory Rates.

Wells Fargo believes that the Board's proposal to require the full replenishment of each and every feature in a multi-featured open-end credit plan will result in the severely limited availability of these favorable features, thereby leaving consumers with fewer financing options. To preserve consumer flexibility in the marketplace, we support retaining the full self-replenishment requirement at the overarching account level rather than the sub-account or individual feature level. Accordingly, we oppose that portion of the proposed Commentary that would require sub-account replenishment.

With respect to the Board's stated intention to avoid impacting home equity secured open-end plans with repayment periods, we encourage the Board to consider that even home equity secured open-end credit plans without repayment periods, *per se*, may have amortization of principal and have similarly distinct consumer favorable features/sub-account offerings as to rate, term and purpose. In light of this, Wells Fargo agrees with the Board that implications of this proposed change as it affects home equity secured plans deserve further consideration and that until the Board's forthcoming review of home-secured credit, particularly the disclosures in connection with home-secured credit under Regulation Z, this proposed change should not be applicable to home equity secured open-end credit, even if adopted for not home-secured plans.

§226.3(g) 401(k) Exemption

Wells Fargo endorses the proposal to clarify that loans of vested funds in employer-sponsored retirement plans to plan participants are exempt from the Regulation. As the Board is well aware, this has been a source of some debate and discussion, which can leave the issue unsettled. The certainty provided by this amendment is welcome. Wells Fargo believes that following the precise Internal Revenue Service rules related to such loans should supersede any more general disclosure requirements for this very specific set of credit extensions. We also recommend to the Board that it extend the same exemption to government employees restricted to participating in similar retirement plans known as IRS Code 457(b) plans (26 U.S.C. 457(b)) for all of the same good reasons and in order to level the playing field for federal and local public employees who are statutorily exempted from participation in the private employer-sponsored 401(k) retirement plans.

§226.4(a) Definition of Finance Charge: Transaction Fee

To the extent that the Board decides to eliminate the Effective Annual Percentage Rate disclosure requirement from §226.9, Wells Fargo believes the proposed Commentary at §226.4(a) paragraph 4 has considerable merit. Suggesting that all transaction fees be treated as finance charges without having to distinguish portions of a charge that may be similar to charges for non-credit transactions will bring uniformity to the treatment of costs related to the use of an account to obtain credit. Assuming that there is no change in the types of charges to be considered as "transaction fees" associated with obtaining extensions of credit, Wells Fargo has no objection to this clarifying Commentary revision, although we do note that it will take time to implement and will cause institutions to incur costs simply because it changes the current legal treatment of such charges. If for any reason the Board does not eliminate the Effective Annual Percentage Rate disclosure, then Wells Fargo would oppose modifying the definition of Finance Charge, which ultimately would further inflate an unhelpful Effective Annual Percentage Rate disclosure.

§226.4(b)(10) Comment 1: Definition of Debt Suspension versus Debt Cancellation

The Board's proposal with respect to distinguishing between suspension of debt payments and cancellation of debt in consumer materials is significant. Some very well-accepted products in the marketplace, however, have features of both debt cancellation and debt suspension, meaning a portion of the debt may be cancelled and a portion of the payment obligation may be only suspended. As such, Wells Fargo suggests that the proposed definitions focus on features rather than product definitions, and provide safe harbor for the term "debt cancellation" if any portion of the debt obligation is subject to cancellation. It is important to accommodate current and future products in the marketplace which may contain both characteristics.

§226.5(a)(1)(ii) Electronic Disclosure Formatting

Wells Fargo believes that it would be helpful to have an express acknowledgment that required formatting with respect to electronic disclosures is intended solely to cover the creditor's creation and delivery of those disclosures as they would be received on equipment ordinarily used in a consumer's home and at typical settings and resolutions. This clarification is needed, because a creditor has no possible control over how a consumer might configure his or her equipment or receive disclosures. For example, the consumer might view information over a personal digital assistant or cellular telephone. The device or consumer settings might render ineffective a creditor's efforts to place particular items adjacent to each other or even in view at the same time.

To promote the continued evolving consumer demand for electronic delivery systems and convenience, Wells Fargo encourages the Board to validate the electronic marketplace. We believe that §226.5(a)(1)(iii), or the Commentary related thereto, would be an appropriate location for such a statement.

§226.5(a)(2) Non-Bypassable Hyperlinks

Wells Fargo suggests that the Board revise its proposed Commentary related to when electronic disclosures are considered to be provided on or with applications or solicitations at §226.5a(a)(2) paragraph 8. The issue arises from the example of a link that consumers "cannot bypass".

This proposed Commentary discussion is susceptible to multiple interpretations and creates the potential for anomalous treatment of disclosures. For example, if an extended disclosure is presented in a scroll box behind a hyperlink, and the borrower is required to click on the hyperlink and view the scroll box window, but is not required to scroll completely from top to bottom of the disclosure before continuing, is the disclosure "bypassable"? As another example, the proposal suggests that if the same disclosure is placed on the initial webpage presented to the borrower, it may be treated differently. If the disclosure appears "below the fold," it may be bypassed by the consumer so long as the information presented "above the fold" contains a clear and conspicuous reference to the fact that the additional disclosures are available "below the fold". The disparate treatment of hyperlinked disclosures and those appearing "below the fold" seems an odd distinction, made even more so by the acknowledgment that a card issuer is not required to assure that the consumer reads the disclosures at all.

The assertion that a hyperlinked disclosure must not be "bypassable" directly conflicts with the Electronic Signatures In Global and National Commerce Act ("ESIGN"), which prohibits regulatory requirements for electronic disclosures that add to the requirements of ESIGN. In addition, the provision in ESIGN permitting regulators to exempt certain disclosures from the ESIGN consumer consent process expressly states that any exemption must be granted "without condition." See 15 U.S.C. 7004(d)(1). Adding a "no bypass" requirement as a condition for waiver of the ESIGN consumer consent process appears to conflict with that prohibition.

Finally, we note that the "no bypass" rule would not apply if the lender proceeds under ESIGN, first obtaining the borrower's ESIGN consumer consent and then presenting the disclosure using appropriately labeled and conspicuous hyperlinks.

Wells Fargo recommends that the Board remove the references to "non-bypassable" hyperlinks from all Commentary sections. The appropriate standard for evaluating hyperlinked disclosures should be whether, on a case by case basis, the link or accompanying text clearly and conspicuously provides accurate notice of the disclosures that may be viewed behind the link. The consumer may then decide, just as with paper disclosures, whether and to what extent the disclosures should be read and reviewed.

§226.5(b)(1)(iii) Telephone Purchases

Wells Fargo endorses the Board's proposal to allow account opening disclosures to be made "as soon as reasonably practicable after the first transaction" in situations where a consumer has contacted a merchant to purchase goods by telephone and wishes to accept an offer to finance that purchase at the same time. This more flexible approach will benefit consumers who do not wish to delay the shipment of goods and who wish to take full advantage of promotional payment plans or other special terms made available to them if they accept the offer to finance the purchase. We believe that the proposal provides adequate protection for consumers that may later reject their financing terms by stating that merchants must then permit the consumer to return any goods financed under the plan free of cost if the customer rejects the plan after receipt of the disclosures. The proposal increases consumer benefit without increasing consumer risk.

Wells Fargo urges the Board to clarify in the Commentary that in §226.5(b)(1)(iii)(A) when the words "with the merchant" are used such a phrase is also meant to include scenarios in which a merchant is offering a private label or co-branded card that is ultimately issued or administered by a creditor such as a bank. Many merchants may offer cards that are branded with their name and which may include promotional payment plans or other special terms, but which are issued by a creditor other than the merchant. The consumer benefits and protections anticipated by the proposal would apply in that situation, and it is important that it is clear that the Regulation addresses that scenario so that there is not confusion about the phrase "with the merchant."

Additionally, we ask the Board to consider expanding the proposal to cover any telephone transaction for purchase, including those where a customer is contacted by a merchant and decides to make a purchase. In those situations a customer may choose to buy a product and wish to take advantage of the same type of promotional payment plans or special terms financing options. Allowing such a customer to take advantage of those terms and also receive immediate delivery while still giving that customer the option to return the goods at no cost if the credit terms are unacceptable would appear to be advantageous to the customer regardless of whether first contact is made by the customer or the merchant.

§226.5(b)(2)(i) General Disclosure Requirements; Periodic Statements

Wells Fargo believes additional guidance regarding when a creditor may stop sending periodic statements because an account is deemed to be "uncollectible" would be helpful. Wells Fargo also supports the Board's proposal to clarify the Regulation regarding when creditors entering into workout agreements for delinquent open-end plans are deemed to have converted the debt to a closed-end transaction, thereby triggering a requirement to provide a set of closed-end disclosures prior to consummation of the transaction. Wells Fargo believes that creation of a safe harbor, specifying when a workout agreement would be deemed to satisfy an open-end plan and replace it with a new closed-end obligation, would help reduce burden and uncertainty on the part of creditors, and promote their ability to be flexible and efficient when negotiating workout arrangements with consumers.

§226.5(b)(2)(ii) "Grace Period" or "Free-Ride Period"

Wells Fargo does not believe it is necessary to provide a longer mailing time for payment notification before a grace period expires. In practice, many creditors routinely send the statement immediately following cycle closing and thus provide more than 14 days actual notice.

Even if mailing is delayed, as a practical matter, a consumer would normally have a full week advance notice of the exact payment amount and due date before the payment would need to be mailed to arrive on time. Plus, as pointed out in the Proposed Rule, a higher percentage of payments are being made online, thereby further reducing any need for earlier notice. Finally, most payments are being made on existing credit lines, so consumers should be familiar with the timing of their payment obligations and able to anticipate the amount and due date of their payment and when it should be mailed or otherwise delivered. Increasing the lead time would place more stress on creditors to avoid missing deadlines, potentially leading to the implementation of costly backup arrangements, without any equivalent corresponding consumer benefit.

§226.5a(b)(17) Reference to Board Web Site for Additional Information

Wells Fargo supports the Board's proposal to provide consumer educational information on a website. Promoting the informed use of credit benefits consumers and furthers the purposes of Truth-in-Lending.

Among topics that could be considered for coverage would be information on managing spending and anticipating recurring expenses, reading statements to extract critical information such as required payment amounts and dates, the need for consistency in making monthly payments and anticipating mail delays to ensure payments are received on time, and understanding billing rights. The need to contact creditors in case of problems or unexpected circumstances is also a key education point so that consumers and creditors have an opportunity to work out solutions before problems reach a critical stage.

§226.7 Elimination of Effective APR

Wells Fargo strongly supports the proposal to eliminate disclosure of an effective annual percentage rate on the periodic statement for all forms of open-end credit.

The effective, or historical, APR is a meaningless number, which bears no direct relation to a consumer's obligation, does not assist in understanding the terms of a credit account or transaction, and does not assist the consumer in shopping for credit by comparing similar features of different creditors' products.

All items deemed to be finance charges are combined into an artificial percentage calculated in the month the charge is assessed without regard to the fact that the charges may be paid over time. Therefore the artificial "effective" percentage does not accurately reflect the borrower's contractual obligation and does not reflect the effect of those charges on what the borrower actually pays as the cost of using the open-end plan.

The corresponding annual percentage rate is more meaningful, because it provides an accurate picture of the consumer's contractual obligation and the way interest will accrue on an outstanding balance. Also useful is the listing of actual dollar amounts of other non-interest finance charges assessed during the billing cycle. Together, disclosure of the rate of interest and the dollar amount of other charges provide a clear picture of the cost of credit and would enable a consumer to compare the relative merits of competing offerings from multiple lenders. This combination represents a superior disclosure scheme.

Because the effective APR is, at best, a distraction to consumers and, more typically, actively misleading, Wells Fargo encourages the Board to eliminate this disclosure from the Regulation.

§226.7(b)(4) Periodic Rates and Rates that "May Be Used"

Wells Fargo agrees with the proposal to eliminate the required billing statement disclosure of promotional rates that were available to the consumer but were not actually applied to the account during the period covered by the current billing statement. This is consistent with our position above to eliminate insignificant and distracting information. We believe this approach will increase the meaningfulness and usefulness of the billing statement information for consumers.

In addition, Wells Fargo would extend this change to consumers under home equity secured plans with promotional offerings so that they would thereby equally benefit from the improved billing statements resulting from this proposed change.

§226.7 Periodic Statement Format

The Board is undoubtedly cognizant of the major disruption that will be caused by proposed changes in the formatting of the periodic statement. Elsewhere in this comment letter we strongly suggest an extended lead time necessary to bring forms and processes into compliance with new requirements. To limit the disruption, we request that the Board expressly indicate that multiple formatting options are still available to creditors seeking to fully comply with the revised Regulation.

The proposals in §226.7 require creditors to restructure periodic statements by grouping types of transactions together, grouping credits together, grouping interest charges together and grouping fees together. The proposal also contains additional formatting requirements. Model forms illustrate one way this could be accomplished. We believe that additional forms of statement could meet the standards set out in the Proposed Rule. Because of the great deference accorded the Board's model forms, it is sometimes asserted that using a model is the sole way to comply with the Regulation. To preserve flexibility and help keep reprogramming costs down, we suggest the Board expressly acknowledge that the model forms do not represent exclusive compliant formats. To accomplish this we suggest that instead of using the phrase "in a form substantially similar to that shown in Sample G-18(A) in appendix G" which appears in multiple subsections of proposed §226.7(b), the Board consider using "A form substantially similar to that shown in Sample G-18(A) in appendix G illustrates one way to meet this requirement."

If for some reason the Board disagrees that flexibility is a desirable option and intends to mandate a specific format, then we reiterate that imposition of one fixed framework will be expensive for creditors of all sizes and will require significantly greater lead time to effect the changes, such that we again suggest the Board provide not less than two years before mandatory compliance with any revision is required.

§226.7(b)(12)(ii) Minimum Payment/Term Disclosure on Periodic Statements

Wells Fargo urges the Board to provide for maximum flexibility in disclosing the effect of making minimum payments. The ability to display precise terms for the multiple types of accounts on a creditor's books is extremely difficult to achieve, particularly for creditors who have varied open-end credit programs that may have presented different repayment terms over the many years, creditors with a diverse assortment of portfolios, creditors who have actively purchased portfolios from a variety of sources and particularly over a wide span of time, and creditors who have been involved in multiple bank mergers. The problem is aggravated for those creditors who have been most accommodating to consumers in the past by offering everyone an opportunity to opt out of any changes in terms. This consumer friendly practice multiplies exponentially the potential variables in portfolios. In addition, in the absence of further clarification regarding when periodic statements must be provided in workout situations, the proposed changes may limit a creditor's ability to provide creative and appropriate customer assistance or workout resolutions. There may simply not be enough possible inputs for a periodic statement to allow creditors to be uniform for all accounts.

Wells Fargo encourages the Board to adopt requirements as general as possible to permit compliance in a variety of ways. If the Board wants to achieve a uniform method of presentation to consumers, we would urge the Board itself to establish a telephone line or website that consumers could consult directly for appropriate repayment time estimates.

§226.7(b)(12)(iii) Minimum Payment Disclosure Exemptions

Wells Fargo supports the suggestion to add an exception to the minimum payment disclosure requirements on periodic statements for recently purchased accounts. The intricacies involved in mapping a selling creditor's systems handling of accounts and converting those accounts can be a massive undertaking without the additional burden of projecting payment eventualities into the future. Conversions may necessitate a change in terms to bring purchased accounts in line with the purchasing creditor's systems capability. Offering consumers an opportunity to opt out of changes further complicates providing disclosures about future payments. In addition, a purchaser may be overwhelmed simply with the customer service issues created by the conversion and responding to consumer inquiries. Sometimes it may not be possible to continue servicing accounts on the selling creditor's system. For example, the cost may be prohibitive, the seller may be defunct, the seller may be revising its systems, there may be an intervening event (for example, Y2K warnings) that would mitigate against such servicing. A reasonable conversion period to permit boarding and testing of accounts generated on another creditor's system before requiring the minimum payment periodic statement disclosures would be prudent. We suggest this exception apply for one year after the purchase or other acquisition of open-end accounts.

§226.9(b)(3) Convenience Check Disclosures

Wells Fargo believes the addition of a tabular disclosure requirement to the distribution of convenience checks is unnecessary.

There is no basis for a 30 day dividing line where the terms that apply to use of checks are identical to the disclosed terms the consumer has already received. If there are no changes to the terms of the account, it should be permissible for checks to be sent without additional, repetitive disclosure tables. Revising check printing and mailing operations will be an expensive undertaking that does not provide any additional information that a consumer does not already have in connection with the account. For example, some creditors attach a convenience check to periodic statements; the proposal may make such a process completely impractical because of space and formatting concerns and, even if not impractical, there is no good reason to add to the costs of reconfiguring forms and processes, considering the marginal benefit to consumers.

If the Board is determined to add such a disclosure, we suggest that the Board consider at least three exceptions: (1) whenever the checks have been requested by the consumer; (2) whenever they are sent within a given period of time after full disclosures have been made; for example, some creditors currently send full disclosures upon automatic card renewal; and (3) whenever convenience checks with the disclosure have been sent previously within a specified time frame. In these instances it would be particularly unnecessary and unproductive to require duplicative and repetitive disclosures.

If the checks are part of a promotional solicitation, reflected by an introductory rate or other special term, then it makes sense to highlight those special terms or features. It would not make sense to reiterate terms that are identical those earlier disclosed. Wells Fargo, however, would support a shortened disclosure if the terms that apply to check usage are different from the regular account terms.

§226.9(c)(2) Change in Terms 45 Day Notice

Wells Fargo suggests that the Board reconsider the proposal to triple the time required to effect a change in terms under §226.9(c)(2). The ability to change terms in response to market conditions and competitive environment is an important tool that allows creditors to use complex algorithms to manage their portfolios to offer an array of competitive features and rates to consumers while at the same time providing a suitable return consistent with safety and soundness of the lending institution.

If creditors are prohibited from taking speedy action in anticipation of, or reaction to, an altered lending environment, they may adopt other approaches to control risk and ensure the safety, soundness and competitive returns of the financial institution. Potential approaches include higher rates or fees in the first place, lower credit lines, more frequent account reviews, shorter terms before accounts expire or must be renewed via application and complete underwriting.

As a practical matter, with many creditors currently opting to provide notice of changes on or with a periodic statement, the general notice delay time for a change is 30 days or even longer. Internally, preparing a notice, adjusting systems and forms to accommodate a change, and arranging customer service training, all delay the actual effect of changes well beyond the time the institution makes the decision that a change is warranted. To add additional delay would further hamstring portfolio management efforts.

A 45 day requirement would tend to create a 60-90 day actual change delay period in many instances due to billing cycles and efforts to coordinate implementation. The Board should not risk the safety and soundness of creditors by forcing them to continue to lend money on terms they have already decided are not acceptable for such a prolonged time.

If the Board decides to lengthen the change delay period, we ask that the Board consider a one billing cycle requirement instead of a 45 day requirement. This would at least preserve some ability to act quickly. It would also tie the notice requirement to the timing mechanism that is most directly related to the ongoing consumer/creditor account relationship.

§226.9(g) 45 Day Notice - Penalty APR

Wells Fargo opposes the proposal to add §226.9(g), which would require 45 days notice before enforcing a contractual provision increasing the rate after a consumer's default or delinquency or other breach of contract. The ability to contract for a higher rate to address the increased risk related to an account in default is a valuable tool that permits creditors to manage their portfolios while making credit available to non-defaulting borrowers at more favorable terms. Substantively prohibiting the timely enforcement of a valid contract term is far removed from the disclosure purposes originally embraced by Truth-in-Lending.

The customer has adequate advance notice of the possible application of a penalty rate from the account agreement and the disclosure tables provided in connection with application/solicitation and account opening. To mandate a delay in the enforcement of any penalty provisions would be to diminish the impact of their disclosure, essentially lulling consumers into a misplaced belief that they do not really need to pay close attention to the disclosures in the first place.

If creditors are prohibited from contracting for self-executing default interest rates, and thereby managing the shifting risks in their portfolios on a real time basis, it is only logical to suppose that creditors will seek other methods to address the risk posed by such default situations. Potential responses may include: (1) modifying the contract so that delinquent behaviors trigger default pricing earlier to minimize the delay's impact upon risk resulting in more consumers being subject to default pricing; (2) charging higher rates across the board to all or most cardholders; or (3) reducing credit limits generally or for all but the top tier borrowers. As the Board can appreciate, a broader segment of consumers may face more restrictive or more expensive credit to the extent that card issuers are prevented from managing their accounts or if an artificial delay is built into their account management capabilities.

If the Board decides to make a substantive revision to the parties' ability to contract for mutually agreeable terms, Wells Fargo suggests adding a limited exception to the 45 day notice requirement that would permit credit risk to be effectively managed without any adverse impact to the consumer. If a default rate is clearly contracted for in the cardholder agreement, clearly disclosed in the account opening disclosure as required by §226.6, and involves behavior by the consumer that must extend for two or more billing cycles before the default rate is triggered, then a creditor should be able to provide notice to the customer on or with the periodic statement for the cycle before a default rate is charged that warns the consumer of the impending default and advises the action needing to be taken to avoid the default rate. For example, if an agreement calls for a default rate if the consumer fails to make two consecutive minimum payments on time, that fact is disclosed in the account opening disclosures table, and the periodic statement after the first missed payment warns "If your next payment is not received by the due date your account will be subject to the penalty APR", then the consumer will have received notice in time to modify his or her behavior to avoid the increased rate. If the consumer does not act in response to the notice, then the creditor could have the flexibility to increase the rate immediately to protect its portfolio.

This alternative warning notice could be implemented by modifying proposed §226.9(g) by adding a new subsection (4) to read:

"(4) Exception. Notice pursuant to (g)(1) is not required if all of the following conditions are met:

(i) the increased rate is provided for in the plan agreement;

(ii) the penalty rate was disclosed in the account opening disclosure or as part of a subsequent change in terms; and

(iii) the periodic statement for the billing cycle prior to the application of an increased rate contains a warning that (A) a penalty rate may apply, and (B) the action that must be taken by the consumer to avoid application of the penalty rate."

Although Wells Fargo does not favor restrictions upon the parties' ability to contract for and enforce appropriate terms, we believe that an alternative warning option would permit the parties to give effect to the intent of their agreement, permit consumers to adapt their behavior in time to avoid penalty rates, and permit creditors to effectively manage risk without adversely impacting all non-defaulting cardholders. Wells Fargo urges the Board to favorably consider this alternative.

§226.13 Billing Dispute Finality

Wells Fargo strenuously objects to the proposed additional comment inserted at §226.13(c)(2) as number "2. Finality of error resolution procedure." Neither Truth-in-Lending nor the Regulation compels this interpretation. It is unreasonable to require that all error investigations must be complete within two cycles without possibility of ever being reopened.

While the vast majority of all disputes can be and are resolved expeditiously, there are some that depend upon the cooperation of third parties, such as merchants or suppliers, whose records and procedures may on occasion be lacking. Particularly if a large amount is involved and a question of fair consideration is at issue, it may take some time to achieve a full understanding of the circumstances surrounding the alleged error.

If new evidence is presented, it should be fairly considered, whether it supports the consumer's asserted error, or the creditor's position. If the error resolution procedure has been concluded within the two billing cycles with a finding that no error occurred, the creditor should not be prohibited from ever considering any later information that the consumer or anyone else may develop that shows an error did in fact occur simply because the matter has already been "conclusively determined." For example, if the consumer (or merchant possessing relevant information) is hospitalized, traveling abroad, or otherwise not in reliable communication or without access to necessary records—the parties should not be punished by an arbitrary timing rule that prevents them from reaching the underlying truth.

Wells Fargo supports the goal of ensuring that billing error investigations are complete within a reasonable amount of time, but does not believe a lack of flexibility advances the interests of either consumers or creditors. In the current environment there are many more transactions than when the rule was first written, thus correspondingly, there are many more disputes to investigate and resolve. Additionally, the expansion in types of transactions (*e.g.* telephone, automated teller, internet, etc.) as well as the increased use of mixed media to conduct or to document transactions, have added to the complexity of investigations, supporting either a longer time frame or increased flexibility. We would support greater time when justified to achieve a more reliable resolution.

The proposed Commentary could have the unintended effect of encouraging creditors to slow down their dispute investigations and to fail to provisionally credit a consumer's account. For example, a creditor could argue that if it failed to resolve the dispute, failed to even provisionally credit an account, then it is subject to the potential penalty of inability to collect the first $50, but is not estopped from making a later determination that the dispute was unfounded because there was no previous credit that it is prevented from reversing. Certainly this would be an unintended consequence.

We believe the disadvantages far outweigh any positive effects of the proposed Commentary and ask that the Board reconsider.

§226.13(d) Billing Disputes/Auto Payment

Wells Fargo agrees that there is a need to evaluate the interplay between billing error procedures and the evolving payments environment. The Board's proposal relating automated payment plans offered by a card issuer to asserted billing errors reflects a reasonable balance. We caution that it would create a problem to consider shortening the three business day cutoff time; this time is critical to make certain that automated payments are processed accurately and in synchronization with billing cycles.

§226.16(e) Introductory Rates, Proposed Comment 16(e)-5

Wells Fargo agrees with the Board that the disclosure of rates that will apply when an introductory rate ends is important. In response to the Board's question, Wells Fargo agrees that, where post-introductory rates are dependent on a determination of a consumer's creditworthiness at a later date, for example, at the end of an introductory rate period, creditors should be able to comply with the post-introductory rate disclosure requirement, at their option, by either providing the highest possible post-introductory rate or providing a range of possible post-introductory rates.

Many creditors in today's market offer temporary rate reductions at various times during the term of open-end accounts. Therefore, Wells Fargo also suggests that the Board reconsider mandatory use of the word "introductory" or "intro". Creditors often make special offers to their existing customers using promotional rates of limited duration, in addition to making such offers when accounts are initially opened. Advertising these promotional rates with the term "introductory" could be confusing to customers who already have open accounts. We suggest that the Board consider allowing creditors to choose from a list of approved adjectives (*e.g.* "introductory", "promotional", or "special" to name a few) when describing such rates.

§226.16(f) Radio and Television Advertisements

When radio and television advertisements include trigger terms, the opportunity for fully compliant disclosure, beyond interest rate and APR, in the same medium is problematic. Wells Fargo supports the Board's proposal to authorize toll-free contact telephone numbers as an additional compliant disclosure medium for the complete disclosures beyond APR.

§226.16(g) Misleading Terms – "Fixed"

Wells Fargo agrees that advertising of product terms and features to consumers should be accurate and meaningful. However, we discourage the Board from designating the word "Fixed" as absolutely misleading, regardless of context in the advertising overall and the product. In light of the many existing state and federal laws, that address unfair and deceptive practices in, *inter alia*, advertising, the proposed regulation is unnecessary and overly broad in its apparent creation of a presumption of misuse of the word “Fixed” without due consideration of context of its use, delivery and receipt.

For example, many diverse financial institutions provide for contractual interest rate discounts on open-end credit when a customer uses other products or services (*e.g.* interest discount based upon electronic or automatic collection of periodic payments, or interest discounts based upon other account or service relationships). The consumer may elect to discontinue these services or relationships, resulting in loss of the interest rate discount. We believe use of the word “fixed” to describe the interest rates in such circumstances is both appropriate and accurate, provided the nature of the discount is also adequately referenced in the promotional material.

Furthermore, given the forthcoming review of home-secured credit, particularly the disclosures in connection with home-secured credit under Regulation Z, this proposed change should not be applicable to home equity secured open-end credit, even if adopted for non home-secured plans.

Appendix G Open-End Model Forms

Wells Fargo believes that the Board should reconsider the statements in the introductory material and the Commentary which suggest unnecessary rigidity in the formatting of disclosures. The Board proposes to delete the statement that disclosures may be arranged either vertically or horizontally and require that all tabular application/solicitation disclosures as well as account opening disclosures must appear only in a vertical or portrait orientation. Further, the Board strongly suggests that such disclosures should appear on 8 x 14 paper.

The purpose of the Regulation is to provide useful information to consumers. The Regulation covers a vast multitude of different open-end credit plans having different terms and features. It is entirely likely that disclosures for some plans may be equally, or more, effective when presented to consumers in a horizontal or landscape orientation or when made on larger or smaller paper stock. We encourage the Board to promote flexibility so that creditors may produce meaningful disclosures for their particular credit plans. Neither paper size nor orientation automatically promote understanding. By preserving flexibility on the part of open-end creditors to work within their production systems to provide meaningful disclosures to consumers, the Board would be advancing the purposes of Truth-in-Lending.

Conclusion

Wells Fargo strives to provide our customers 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 consumer education initiatives that the proposed changes embrace as well as the improved disclosures to promote consumer understanding. Wells Fargo does not, however, support the changes to the definition of “open-end credit”, the inability to effectively contract for default rates in consumer open-end credit agreements as well as a variety of other proposed changes as outlined here. We also believe that while reformatting application disclosures, initial disclosures, and periodic statements may provide some benefit to consumers, an extended lead time is necessary to comply with the changes as they are currently structured. Therefore, we respectfully urge the Board to consider all of the comments and suggestions herein, and promulgate a final rule that is flexible, risk-aware and consistent with the requirements of Truth-in-Lending.

If you have any questions or would like to discuss any of the issues herein, please do not hesitate to contact me at (515)557-6321 or jamescrowell@wellsfargo.com.

Sincerely,

James Douglas Crowell
Senior Counsel