WELLS FARGO

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

Re: Regulation Z; Proposed Rule on Truth in Lending
Federal Reserve System Regulation Z; Docket No. R-1286

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates ("Wells Fargo") in response to the proposed rule regarding Truth in Lending, published in the Federal Register on May 19, 2008 at 12 CFR Part 226 (the "May 2008 Proposed Rule"). Wells Fargo appreciates the opportunity to comment and respectfully requests that the members of the Board of Governors of the Federal Reserve System ("Board"), consider adopting the suggestions set forth herein.

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 both the June 2007 proposed revisions to Regulation Z published in the Federal Register June 14, 2007 (the "June 2007 Proposed Rule") and the May 2008 Proposed Rule: engaging in responsible lending practices, encouraging consumers to make responsible and successful financial choices and conducting business with honesty and integrity, are already at the heart of our vision. It is our practice to build our business processes and strategies in compliance with all applicable laws and regulations.

I. Executive Summary

As we initially set forth in our comment letter regarding the June 2007 Proposed Rule, we respect and support the efforts of the Board to make Truth in Lending more meaningful for consumers and to provide guidance to creditors on consumer lending.

This letter will first set forth a general discussion about the need for creditors to have sufficient time to adjust processes, systems and documents prior to any mandatory compliance deadline. Wells Fargo believes because the changes to Regulation Z (as well as Regulation AA and DD) have the potential to greatly impact creditors, it would be appropriate to have at least two years before mandatory compliance is required.

We will then set forth comments with respect to specific proposed changes to Regulation Z, which involve suggestions to help clarify proposed revisions and minimize the burden to creditors in situations where the proposed actions required by creditors would result in minimal or no consumer benefit. For example, we suggest clarifications to the definitions of "promotional rate" and "introductory rate" and revisions to the comment detailing the interplay between the proposed 45 day notice and the revisions to Regulation AA.

Lastly, we will discuss Regulation Z as the appropriate place to address the concerns regarding credit cards that are addressed in the May 2008 proposed changes to Regulation AA. Promulgation of proposed changes in Regulation Z fits more directly into the Board's powers and would help address concerns that classifying a practice as unfair exposes creditors to litigation under state unfair and deceptive practices statutes for previous practices that were common in the industry and legal at the time that the creditors engaged in them. Additionally, using Regulation Z will provide regulations that apply more consistently to all creditors.

We provide the following comments to the May 2008 Proposed Rule in addition to the comments that we provided in response to the June 2007 Proposed Rule.

II. General Comment

A. Timeline for Mandatory Compliance

The May 2008 Proposed Rule supplements the proposed revisions that the Board set forth for comment in June of 2007. In response to the June 2007 Proposed Rule, Wells Fargo urged the Board to maximize the time between publication of a final regulation and mandatory compliance. The proposals set forth in both the May 2008 Proposed Rule and the June 2007 Proposed Rule would require substantial changes to creditors' current systems and disclosure documents. It will take coordinated efforts to bring all facets of open-end credit programs into full compliance with the final revisions. A substantial preparatory time will be needed to make all necessary adjustments. We also note that many creditors may be in the position of needing to alter their practices, systems and documents to accommodate changes to Regulation Z at the same time they will be implementing changes to Regulations AA and DD. Complying with changes to all of these regulations during the same time period would be a massive undertaking. Considering the complexity of the changes, we again suggest that mandatory compliance be required not less than two years from the time the regulation is published.

III. Comments Addressing Specific Proposals in the May 2008 Proposed Changes to Regulation Z

A. 226.6(b)(4)(vii):

The Board proposed to require a "right to reject" disclosure for cards that require the financing of a security deposit or fees for available credit amounting to 25% or more of the minimum credit limit offered. The Board solicited comments on whether limiting the scope of the proposed disclosure to only cards with such security deposits or fees is appropriate. Wells Fargo agrees with the Board that the proposal is appropriately narrow.

B. 226.9(g):

We believe it was the Board's intent to except open-end credit subject to Section 226.5b from Section 226.9(g). To be consistent with the intent of the proposal and other provisions of the proposed changes, the specific exception should be included in the text immediately following the underlined description of Section 226.9(g).

C. Comment to 226.9(g)

In the June 2007 Proposed Rule, the Board proposed to add section 226.9(g), which would require a 45 day notice when the annual percentage rate ("APR") is increased due to the consumer's delinquency or default. Wells Fargo opposed the proposal to add Section 226.9(g) and proposed alternatives in its letter commenting on the June 2007 Proposed Rule. If creditors are prohibited from taking speedy action in anticipation of, or in reaction to, increased risk, they may adopt other approaches to control risk and ensure the safety, soundness and competitive returns of the financial institution, with consequences that the Board may not have anticipated or intended.

That being said, we note that in the proposed comment to 226.9(g), which appears in the May 2008 Proposed Rule, the Board anticipated a 45 day notice would be required. The proposed comment illustrates the interaction between the 45 day notice requirement and the proposed revisions to Regulation AA prohibiting a creditor from raising the APR on an outstanding balance. We also note the Board proposes to require a new 45 day notice be sent if the consumer becomes 30 days delinquent after the effective date of a rate increase impacting only new balances in order for a creditor to apply the rate increase to outstanding balances. Wells Fargo urges the Board to reconsider that requirement. Wells Fargo believes if a creditor has sent a 45 day notice regarding a penalty rate that applies to only new balances and states that if a consumer becomes 30 days delinquent while the increased rate is in effect such rate will also apply to outstanding balances, the creditor should not need to send an additional 45 day notice to the consumer. The consumer would have already been put on notice in both the cardholder agreement and the first 45 day notice of the results of being 30 days delinquent. An additional 45 day notice would cause the creditor to incur further risk even though the consumer has already received notice and has had an opportunity to make an informed decision regarding their payments.

While Wells Fargo strongly prefers that the Board eliminate the additional 45 day notice requirement, alternatively, Wells Fargo asks the Board to state that a second notice would *not* be needed if (i) the consumer has received a 45 day notice in the last year or (ii) the creditor has continued to advise the consumer that the increased rate will apply to outstanding balances if at any time the consumer becomes 30 days delinquent in the consumer's periodic statements.

If the 45 day notice is required, and especially if it is necessary to send more than one 45 day notice on one account, creditors may seek other methods to address the risk posed by such default situations. Potential responses by creditors may include: (1) modifying the agreement with the consumer so that delinquent behaviors trigger default pricing earlier; (2) charging higher rates across the board to all or most cardholders; or (3) reducing credit limits generally. These changes may result in more restrictive and expensive credit for consumers, including those consumers who effectively manage their accounts.

Additionally, to supplement Wells Fargo's comments to the June 2007 Proposed Rule, if the 45 day notice is required, we urge the Board to consider clarifying that a notice under 226.9(g) would not be required in the circumstances where a borrower's rate is a promotional rate with a limited duration (such as 6 months at 0% interest). Creditors often make special offers using promotional rates of limited duration. In the event a customer defaults during the promotional period, the terms of the agreement often specify the normal contract rate would then apply. Consumers already receive full and complete disclosures about promotional rates (and how and when the normal contract rate may apply) at the time they open their account. Requiring an additional 45 day notice before a promotional rate with a limited duration can be increased to the normal contract rate (which is not a higher default rate), causes additional risk to creditors even though the consumer has already received notice and has had an opportunity to make informed decisions regarding their payments.

To further illustrate, many promotional rates may already be offered for only a very short period of time (e.g. 3 months). If a default happened during the promotional rate period and a creditor was forced to give a 45 day notice, the promotional rate period may have expired or be close to expiration before the creditor is able to respond to their increased risk. In other words, a 45 day notice could render the creditors ability to end the promotional rate in the event of default meaningless on short promotions. This increases creditor risk and may mean creditors will not be able to afford to offer as many promotional rate plans.

D. 226.10:

i. Weekend and Holiday Due Dates

The Board proposed that if a due date falls on a weekend or holiday during which the creditor does not accept or process payments, the payment is considered timely if received on the next business day. The Board solicited comments on the burden to creditors associated with system modifications necessary to comply with such a proposal. This proposed rule would not impact current business practices or current systems, because Wells Fargo is already compliant.

ii. Cut-Off Times

The Board proposes to classify any payment cut-off time that is prior to 5 p.m. as "unreasonable". Many creditors currently have cut-off times prior to 5 p.m., and those cut-off times have historically complied with the standards currently set forth in Regulation Z. Classifying cut-off times prior to 5 p.m. as "unreasonable" may expose creditors that have had earlier cut-off times to litigation risk. An argument may be advanced that a cut-off time which is considered unreasonable after the changes to Regulation Z become effective was no more reasonable prior to the effective date of the changes. Therefore, those creditors which had earlier cut-off times could see litigation stemming from what may be alleged was an unreasonable and consequently unfair practice but was acceptable under the existing Regulation Z requirements. Wells Fargo urges the Board to consider drafting the rule to require a 5 p.m. cut-off without classifying earlier cut-offs as "unreasonable".

E. 226.16(e) and 226.16(h):

i. Use of the term "consumer credit card account"

Wells Fargo notes that the term "consumer credit card account" is used in proposed Sections 226.16(e) and 226.16(h). However, it does not appear to be a defined term in Regulation Z or the proposed revisions thereto. Instead, it appears to be defined and used in the distinct proposed revisions to Regulation AA, wherein, the definition has a specific exclusion for home equity lines of credit accessible by credit cards. For clarity and consistency, we suggest that either (i) the phrase "consumer credit card account" be added to the definitions in Regulation Z to specifically exclude home equity lines of credit subject to Section 226.5b for these sections or (ii) the phrase "consumer credit card account" be replaced with the phrase "open-end credit plans not subject to 226.5b" in these subsections (e) and (h).

ii. Radio, Television or Telephone Advertisements:

The Board requests comment on whether the disclosures regarding introductory and promotional rates proposed under Section 226.16(e) and the disclosures regarding deferred interest plans proposed 226.16(h) would be helpful in telephone, radio, or television advertisements. If so, the Board asks what additional guidance would be appropriate to help advertisers comply with these requirements. In telephone, radio and television advertisements, the opportunity for fully compliant disclosure in the same medium is problematic. Wells Fargo agrees with the concerns raised by the Board in the June 2007 Section-by-section Analysis of the proposed revisions to 226.16(f), wherein the Board stated that space and time constraints of radio and television advertisements may cause additional disclosures to go unnoticed by consumers or be difficult for consumers to retain. Disclosures in a radio or television medium do not have the same benefit that they do in a print or electronic format that can be saved and re-read.

These concerns about time constraints in radio, television and telephone advertisements are even more relevant in the context of sales finance and private label credit cards. Revolving sales finance products and private label credit cards are utilized by retailers to assist in selling the retailer's merchandise. Therefore, the focus of advertisements may be the merchandise itself (furniture, for example), with financing intended to promote the ease of purchasing the merchandise. In that context, there is a greater possibility of information overload for the consumer if disclosures are required.

For the above reasons, and the fact that the consumer receives full disclosure about promotional rates and deferred interest plans at the time they open the account, we do not feel it is beneficial to extend the requirements in Sections 226.16(e) and 226.16(h) to radio, television and telephone advertisements. However, if the Board does extend the requirements to these other mediums, Wells Fargo supports having additional compliant disclosure mediums. In connection with the June 2007 Proposed Rule, Wells Fargo supported the Board's proposal to authorize toll-free contact telephone numbers as an "alternative means of disclosure" for Section 226.16 disclosures instead of requiring the disclosures to be made in radio and television advertisements. Wells Fargo also feels an Internet address would be an appropriate alternative means of disclosure. An Internet address does not need constant staffing, so it is less expensive to maintain than a phone line, and the consumer would be able to save or print the disclosures and re-read them. Therefore, it would be easier for the consumer to digest and remember the disclosures. We encourage the Board to consider providing the creditor with the option of establishing either a toll-free telephone number or Internet address for any and all radio, television or telephone advertising requirements that the Board establishes in Section 226.16.

iii. "Promotional Rate" vs. "Introductory Rate"

The Board proposes to add two new defined terms, "Promotional Rate" and "Introductory Rate". Wells Fargo believes the Board should more clearly account for special terms plans offered in connection with revolving sales finance paper and private label credit cards in those definitions. Because retailers use revolving sales finance products and private label credit cards to assist in selling their merchandise, they may advertise a low APR to both existing cardholders and prospective cardholders in the same advertisement. In this context, a reduced APR would often apply to purchases by consumers opening new accounts as well as to purchases made by consumers with existing accounts. Because the reduced APR could be obtained "in connection with the opening of a new account", it could be seen as falling within the proposed definition of "introductory rate". However, the same rate is also applicable for purchases made by existing cardholders, which would make the rate a promotional rate (but not an introductory rate) under the

May 2008 Proposed Rule. Typically, a billboard, sign or print advertisement will advertise the merchandise and will also state that a consumer can get a lower APR if they purchase that merchandise within a certain time period. If the advertisements had to comply with the requirements for an introductory rate (by using the term "intro" or "introductory"), the advertisement would be misleading in that it would imply that a consumer with an existing account could not also receive the reduced rate. Wells Fargo therefore recommends the Board amend the definition of "introductory rate" to clarify that a promotional rate is considered an "introductory rate" only if it applies ***exclusively*** to new accounts in the context of the advertisement. If a promotional rate is offered to both existing cardholders as well as new cardholders (as in the context of many sales finance and private label credit card scenarios) the rate would not be an "introductory rate". However, such advertisement would still need to contain all of the disclosures for a promotional rate. Alternatively, we ask that in the case of an advertisement of a reduced rate that applies to both new and existing accounts, the creditor may choose whether to advertise the rate as an introductory rate or a non-introductory promotional rate.

iv. Exclusions from "Promotional Rate" Definition

Wells Fargo urges the Board to clarify that it does not intend the definition of "promotional rate" to be triggered merely because the creditor contracts with the consumer to end a reduced rate upon default. It appears from the text of the definition of "promotional rate" when read with the Section-by-section analysis that accompanied the June 2007 Proposed Rule, the Board does not intend the promotional rate disclosures to apply in a scenario in which a particular balance (such as a particular purchase) will have the lower APR for the life of the balance (or until that balance is paid in full). Many creditors have contracted with their consumers for the right to end a promotional rate in the event of default. In other words, a promotional rate may be in effect until there is a default, but in the event of default the balance begins to accrue interest at the regular account APR (the rate for purchases that are made without a promotional rate offer). We recommend that the Board clarify that it does not intend for the possibility of such a default event to trigger the definition of "promotional rate". If the definition were triggered by such a default event, it would be difficult for creditors to make the required disclosures because it is impossible to anticipate when a person might default. In connection with this discussion, it should be noted that even if a creditor offers a promotional rate for only a specified time period, thereby triggering the definition of "promotional rate", the creditor may still have a provision in their account agreements allowing them to charge the regular account rate upon default even if the default occurs prior to the expiration of the promotional rate period. Therefore, we suggest the Board clarify that promotional rate disclosures are not needed if the promotional rate is intended to be in effect for the life of the balance regardless of whether it is possible for an event of default to cause the balance to accrue interest at the regular account rate. In addition, we ask the Board to spell out that the disclosures proposed in Section 226.6(e)(4) are not intended to address scenarios in which the creditor may begin charging the regular account APR upon default.

In addition, we believe it is the intent of the Board to exclude deferred interest offers from the definition of "promotional rate", because the Board has drafted an entire subsection (226.16(h)) devoted to disclosures on deferred interest offers with particular formatting and disclosure requirements. We would suggest the Board explicitly exclude deferred interest offers from the definition of "promotional rate", and consequently from the definition of "introductory rate" as well. Not doing so may cause confusion. Deferred interest offers could otherwise be viewed as a promotional rate offer of 0% interest for the deferred interest period. It is important creditors are able to understand exactly which formatting requirements apply to which offers in order to effectively comply.

v. In-Store Advertisements of Deferred Interest Plans

We also believe the proposed deferred interest disclosures might overwhelm in-store advertisements. Currently, a sign may advertise "No Interest for 12 Months" above an item of furniture. Adding the deferred interest disclosures to that sign in accordance with all of the formatting requirements would unnecessarily crowd out a retailer's message and could potentially make the sign confusing for a consumer. Wells Fargo urges the Board to consider an exception for such in-store advertising.

IV. Regulation Z as the Appropriate Place for Concerns Raised in the Proposed Changes to Regulation AA

A. The Purpose of Truth in Lending and Promotion of Uniform Standards

Wells Fargo urges the Board, as well as the Office of Thrift Supervision (the "OTS") and the National Credit Union Administration (the "NCUA"), (collectively, the "Agencies") to reconsider classifying certain acts as unfair in Regulation AA, and instead consider addressing those issues in Regulation Z. The purpose of the Truth in Lending Act as set forth therein is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and *to protect the consumer against inaccurate and unfair credit billing and credit card practices.*" (emphasis added)[1] The NCUA is responsible for enforcing compliance with the Truth in Lending Act by federal credit unions[2] and the Federal Trade Commission (the "FTC") is responsible for enforcing compliance by state-chartered credit unions.[3] The OTS is responsible for enforcing compliance with the Truth in Lending Act by savings associations whose deposits are insured by the Federal Deposit Insurance Corporation.[4]

1[1] 15 U.S.C. §1601(a).
2[2] 15 U.S.C. §1607(a)(3).
3[3] 15 U.S.C. §1607(c).
4[4] 15 U.S.C. §1607(a)(2).

The Board is required to prescribe regulations to carry out the purposes of the Truth in Lending Act.[5] However, Congress made it clear that the Board's authority to issue regulations under the Truth in Lending Act, did not impair the authority of other agencies, including the OTS and NCUA, to make rules in connection with their own procedures to enforce compliance with the Truth in Lending Act.[6] In issuing Regulation Z to implement the Truth in Lending and Fair Credit Billing Acts, the Board referred to the enforcement authority granted to the OTS, NCUA and other agencies under the Truth in Lending Act.[7] The purpose of Regulation Z is, to regulate certain credit card practices in addition to promoting the informed use of consumer credit by requiring disclosure of terms and cost.[8] According to the NCUA, Regulation Z applies to federally-chartered and state-chartered credit unions.[9]

With this in mind, Regulation AA is an inadequate fit for some of the concerns expressed in the May 2008 proposed changes to Regulation AA. Regulation AA has historically been home to prohibitions of egregious practices that are widely believed to be unfair and deceptive. In the past, the FTC has utilized the standards set forth in the FTC Policy Statement on Unfairness from 1980 that was codified by Congress in 1994 in 15 U.S.C. 45(n). Such standards require that a credit card practice meet the following three prongs to be considered unfair: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by the consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. There are practices characterized as unfair in the May 2008 Proposed changes to Regulation AA that are allowable under current law (even explicitly) and for which the three prongs are not met. Please refer to the separate letter by Wells Fargo responding directly to the proposed changes to Regulation AA impacting credit cards for a full discussion of these points. That letter will be submitted to the Agencies prior to the August 4, 2008 deadline for such comments.

Wells Fargo urges the Agencies to reconsider classifying such acts as unfair in Regulation AA, and instead consider addressing those issues in Regulation Z. Doing so, fits more directly into the Board's powers and would help address concerns that classifying a practice as unfair exposes creditors to litigation under state unfair and deceptive practices statutes for previous practices that were common in the industry and legal at the time that the creditors engaged in them. While we recognize that it is the Board that issues rules under Truth in Lending rather than the Agencies together, we note each of the Agencies enforce Regulation Z, and there is nothing preventing the Agencies from collaborating on the content proposed by the Board.

In addition, Wells Fargo notes that promulgating rules in Regulation AA does not promote uniform standards for all creditors. The Board's authority is not plenary as it is

5[5] 15 U.S.C. §1604(a)
6[6] 15 U.S.C. §1607(d).
7[7] 15 U.S.C. 1607(a).
8[8] 12 C.F.R. §226.1(a), (b)
9[9] Statement of The Honorable Joann M. Johnson, Chairman, National Credit Union Administration, *"Regulation Z and Credit Card Disclosure Revisions,"* before the Subcommittee on Financial Institutions and Consumer Credit, U.S. House of Representatives, June 7, 2007.

under Truth in Lending. In order to develop consistent standards in Regulation AA, the Board must act together with the OTS, FTC and the NCUA. In this case, the FTC has not issued the Regulation AA proposal in concert with the other three Agencies. Therefore, there will be some creditors (such as retailers that offer their own financing programs) that will not be subject to Regulation AA requirements. It is important for there to be a level playing field for creditors, but it is also important that consumers not have to deal with inconsistent practices depending upon which creditor they are contracting with. It is better for consumers if they can easily compare credit. If the Regulation AA proposal is implemented in its current form, consumers would need to know what type of creditor they are contracting with in order to understand what types of practices would be allowable. In contrast, if issues are addressed in Regulation Z, all creditors must abide by the same rules.

With this in mind, Wells Fargo urges the Agencies to consider all of Wells Fargo's comments to the proposed changes to Regulation AA, including the separate letter from Wells Fargo responding directly to the proposed revisions to Regulation AA impacting credit cards. However, in cases in which the Agencies decide to proceed with the changes proposed in the May 2008 proposed revisions to Regulation AA, we ask the Agencies to consider addressing those issues in Regulation Z, instead.

V. 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 improved disclosures to promote consumer understanding. We also believe that while the final rules may provide benefit to consumers, it will take a concerted effort and substantial time and resources for creditors 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 as well as the comments in our letter response to the June 2007 Proposed Rule.

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

Sincerely,

Martine T. Olson-Daniel
Senior Counsel