



Wells Fargo & Company
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November 5, 2009

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

**Re: Regulation Z; Proposed Rule on Truth in Lending
Federal Reserve System Regulation Z; Docket No. R-1370**

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates (“Wells Fargo”) in response to the proposed rule amending Regulation Z relative to the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“Credit CARD Act”) and the Truth in Lending Act, published in the Federal Register on October 21, 2009 at 74 F.R. 54124 (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”) consider adopting the suggestions set forth herein. In the interest of ensuring that the Board has ample time to consider Wells Fargo’s comments, Wells Fargo has elected to submit its comments in stages via several distinct and separate letters focusing on different aspects of the Proposal. This is Wells Fargo’s first comment letter on the Proposal.

Wells Fargo is a diversified financial services company providing banking, insurance, investments, mortgage and consumer finance through more than 10,000 banking offices, 12,000 ATMs, the internet, and other distribution channels across North America, and internationally. Wells Fargo has \$1.3 trillion in assets and 282,000 employees and is one of the United States’ largest private employers. Wells Fargo ranked fourth in assets and second in market value of its stock among its peers as of June 30, 2009.

Wells Fargo’s corporate vision is to satisfy all of our customers’ financial needs, help them succeed financially, be the premier provider of financial services in every one of our markets, and to be known as one of America’s great companies. Wells Fargo supports financial innovation, customer choice, and offering a variety of financial products and features to help customers succeed financially.

Wells Fargo's first comment letter is limited to a discussion of the Board's proposed definition of "Credit card account under an open-end (not home-secured) consumer credit plan." This new definition will be referred to herein as the "Credit Card Account" definition.

SUMMARY OF COMMENTS

- Wells Fargo commends the Board for excluding home-equity lines accessible by a credit/charge card and overdraft lines accessible by a debit card from the definition of Credit Card Account, and supports the Board's recognition that lines of credit only incidentally accessible via a card should not be considered a Credit Card Account.
- By the same logic, the Board should also exclude lines of credit that can be directly accessed with a debit card only at an ATM ("Personal Lines with ATM access") from the definition of Credit Card Account for the following reasons:
 - A Personal Lines with ATM access exception is consistent with the legislative history of the Credit CARD Act.
 - A Personal Lines with ATM access exception is consistent with the Board's historical treatment of such accounts.
 - Applying the Credit Card Account disclosure requirements to Personal Lines with ATM access provides little, if any, meaningful benefit to consumers. Furthermore, any small benefit conferred would clearly be outweighed by operational and compliance costs, and the potential for negative consumer impacts.

DISCUSSION OF COMMENTS ON THE SCOPE OF PROPOSED "CREDIT CARD ACCOUNT" DEFINITION

The Board proposed the following new definition of Credit Card Account in § 226.2(a)(12)(ii):

"Credit card account under an open-end (not home-secured) consumer credit plan means any credit account accessed by a credit card, except:

- (A) A credit card that accesses a home-equity plan subject to the requirements of § 226.5b; or
- (B) An overdraft line of credit accessed by a debit card."

Wells Fargo commends the Board for excluding home-equity lines accessible by a credit/charge card and overdraft lines accessible by a debit card from the Credit Card Account definition. Wells Fargo, however, strongly urges the Board to use its authority under Section 105(a) of the Truth-in-Lending Act and Section 2 of the Credit CARD Act to add a third exception, so that the Credit Card Account definition reads as follows:

"Credit card account under an open-end (not home-secured) consumer credit plan means any credit account accessed by a credit card, except:

- (A) A credit card that accesses a home-equity plan subject to the requirements of § 226.5b;
- (B) An overdraft line of credit accessed by a debit card; or
- (C) A line of credit accessed by a debit card that can be used only at automated teller machines."

Wells Fargo's proposed exception in subsection (C) above, will be referred to herein as the "Personal Lines with ATM access" exception. There are numerous factors supporting the addition of this specific exception language.

First, the Personal Lines with ATM access exception is consistent with the legislative history, intent and spirit of the Credit CARD Act and its specific statutory language. The Credit CARD Act is the culmination of a multi-year effort to reform traditional credit card practices. Its stated purpose is to end what has been characterized as the "unfair, deceptive, and abusive practices" of the traditional credit card industry. The legislative process has witnessed numerous hearings¹, reports², press-releases, articles and commentary which have focused exclusively on traditional credit card practices and the traditional credit card industry. "Traditional" credit card products are ubiquitous in today's society, and are generally understood as revolving lines of credit accessible by plastic cards with magnetic stripes that can be used to buy goods/services from merchants via point-of-sale ("POS") transactions. In contrast, Personal Lines with ATM access products cannot be accessed directly at POS. The legislative debate surrounding the Credit CARD Act did not focus on non-traditional products like Personal Lines with ATM access that merely utilize a card for account access via an ATM. There is, therefore, no evidence of the need to expand the scope of the Credit CARD Act to address such products. For this reason, Wells Fargo believes the Board should implement the Credit CARD Act in a manner that focuses solely on traditional credit card accounts. This approach is consistent with the clear intent of Congress.

In addition, the Credit Card Account definition is based on the Credit CARD Act's "*credit card accounts under open-end consumer credit plans*" statutory terminology. Nearly identical statutory language ("*credit card account for any person under an open end consumer credit plan*") was used in the Fair Credit And Charge Card Disclosure Act of 1988 (now codified in the Truth in Lending Act at 15 U.S.C. § 1637). It was this statutory language that was the basis for the Board's decision in 1989 to exclude "home equity plans accessible by a credit card that are of the type subject to the requirements of section 226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines." 12 C.F.R. § 226.5a(a)(3) (emphasis added). It was this statutory language that led

¹ Including: (1) EXECUTIVE SESSION to MARK-UP and VOTE on S. 414, Credit Card Accountability Responsibility and Disclosure Act of 2009 in the Senate Committee on Banking, Housing & Urban Affairs on March 31, 2009; (2) H.R. 627, the Credit Cardholders' Bill of Rights Act of 2009; and H.R. 1456, the Consumer Overdraft Protection Fair Practices Act of 2009 in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on March 19, 2009; (3) Modernizing Consumer Protection in the Financial Regulatory System: Strengthening Credit Card Protections in the Senate Committee on Banking, Housing & Urban Affairs on February 12, 2009; (4) Problem Credit Card Practices Affecting Students: The Need for Legislative Action in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on June 26, 2008; (5) The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on April 17, 2008; (6) The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on March 13, 2008; (7) Credit Cards and Older Americans in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on August 7, 2007; (8) Improving Credit Card Consumer Protection: Recent Industry and Regulatory Initiatives in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on June 7, 2007; and (9) Credit Card Practices: Current Consumer and Regulatory Issues in the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Hearing on April 26, 2007.

² Including, United States Government Accountability Office, Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate. "CREDIT CARDS - Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers" - September 2006.

the Board to explicitly recognize and differentiate between “traditional” credit card accounts and “non-traditional” card accounts, and the disclosure requirements that should apply to each. As the Board indicated:

“The disclosure requirements of § 226.5a apply generally to applications and solicitations to open ‘traditional’ credit or charge accounts that are used primarily to purchase goods and services. Therefore, for example, applications or solicitations to open overdraft lines of credit tied to asset accounts accessible by use of a debit card are not subject to the disclosure requirements of § 226.5a. Similarly, open-end lines of credit accessed solely by account numbers are not subject to the requirements of § 226.5a. In addition, home equity lines of credit that may be accessed by the use of a credit or charge card and are subject to the Home Equity Loan Consumer Protection Act of 1988 amendments to the TILA are not subject to § 226.5a.” 54 F.R. 13855.

It is a basic canon of statutory construction that the same terms should bear the same meaning and be interpreted consistently. As a result, the Board should define Credit Card Account to exclude Personal Lines with ATM access, just like it did in § 226.5a.

Second, excluding Personal Lines with ATM access from the definition of Credit Card Account is consistent with the Board’s historical treatment of such accounts. As noted above, since at least 1989 the Board has differentiated between traditional credit card accounts and non-traditional accounts accessed via a card, and as a result, consistently excluded home-equity lines accessible by credit/charge cards, overdraft lines accessible by debit card, and Personal Lines with ATM access from the Regulation Z provisions generally applicable to traditional credit cards. *See*, 12 C.F.R. §§ 226.5a(a)(3), 226.9(e), and 226.9(f).

In its January 2009 Regulation Z Rule, the Board followed this historical approach in implementing the minimum payment disclosure requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“Bankruptcy Act”). The Board specifically excluded Personal Lines with ATM access, along with home equity lines accessible by credit/charge cards and overdraft lines accessible by debit card, from the periodic statement disclosure requirements found in 12 C.F.R. § 226.7(b)(12). *See*, 12 C.F.R. § 226.7(b)(12)(v) at 74 F.R. 5411. In making this decision the Board reviewed the legislative debate over the Bankruptcy Act and recognized that the intent relative to the minimum payment disclosure requirements was that they apply to “credit card accounts,” and by excluding Personal Lines with ATM access from coverage, the Board expressly recognized that such accounts are not “credit card accounts”. 74 F.R. 5330-5331, 5335. In addition, in the January 2009 Reg. AA Rule, the Board, along with the Office of Thrift Supervision and the National Credit Union Administration (the “Agencies”) again followed this established approach. The Agencies affirmatively excluded Personal Lines with ATM access, along with home equity lines accessible by credit/charge cards and overdraft lines accessible by debit cards, from the definition of “consumer credit card account” and hence from the restrictions found in the Consumer Credit Card Account Practices Rule. *See*, 12 C.F.R. § 227.21(c) 74 F.R. 5560.

Creditors have developed programs, processes and products in reliance upon the Board’s consistent application of this historical approach. With the currently proposed Credit Card Account definition, the Board is proposing to fundamentally change what has been its approach for twenty plus years. Moreover, this change by the Board would add unnecessary complexity to Regulation Z, and needlessly heighten compliance burden and risk. If Personal Lines with ATM

access are excluded from the requirements of Sections §§ 226.5a(a)(3), 226.9(e), and 226.9(f) of Regulation Z because they are not “traditional” credit card products, they should also be excluded from the definition of Credit Card Account and the related requirements in the Credit CARD Act . . . just like home equity lines accessible by credit/charge cards and overdraft lines accessible by debit cards.

In addition, the operational costs associated with complying with all of the Credit CARD Act’s provisions will be excessive, and not warranted by any minimal benefit that such disclosures may provide for these particular products/consumers. Given this, should the Board decide not to exclude Personal Lines with ATM access from the definition of Credit Card Account, it is much more likely that creditors will simply choose to strip ATM access from existing personal lines. Such an action will reduce the functionality and utility of these products for consumers and create potential risk issues for creditors³. The Board specifically cited historical treatment, operational risk and consumer detriment as factors for excluding home equity lines accessible by credit/charge cards and overdraft lines accessible by debit cards from the definition of Credit Card Account in the Proposal and in its January 2009 Reg. AA Rule. See, 74 F.R. 54129-54130, 54137 and 74 F.R. 5508. For all of these reasons, a Personal Lines with ATM access exception should be added to the definition of Credit Card Account.

Third, applying the Credit CARD Act’s requirements for Credit Card Accounts to Personal Lines with ATM access will not provide a meaningful benefit to consumers. Personal Lines with ATM access are relatively uncomplicated, relationship banking products. These accounts tend to be simpler than traditional credit card accounts, and typically do not have many of the features that the Credit CARD Act is focused on. For example, because creditors do not generally apply different rates to different balances or provide grace periods with respect to Personal Lines with ATM access, the provisions in proposed §§ 226.53 and 226.54 would not provide meaningful protection. See, 74 F.R. 54130.

Furthermore, Personal Lines with ATM access are not in wide use. The 2007 Survey of Consumer Finances⁴ data indicates that few families had established (3.8 percent) or had balances (1.7 percent) on lines of credit other than home equity lines or traditional credit cards⁵ at the time of the interview. Given the small number of customers holding Personal Lines with ATM access and the fact that these accounts are not mass-marketed, the internet posting requirements in § 226.58 will also provide little or no benefit to these customers or the public at large.

³ Potential creditor risk issues associated with stripping ATM access from existing Personal Lines with ATM access, include: (1) reputational risks associated with an action that will be positioned as anti-consumer in the current financial marketplace; (2) operational and systematic risks associated with removing functionality that is currently integral to this relationship product; and (3) legal and compliance risks associated with making such a change given the compressed timeline of Credit CARD Act.

⁴ Brian Bucks, *et al.*, Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin (February 2009).

⁵ In the article, “credit card balances consist of balances on bank-type cards (such as Visa, Mastercard, and Discover as well as Optima and other American Express cards that routinely allow carrying a balance), store cards or charge accounts, gasoline company cards, so-called travel and entertainment cards (such as American Express cards that do not routinely allow carrying a balance and Diners Club), other credit cards, and revolving store accounts that are not tied to a credit card.” *Id.* at footnote 51. This definition is again clearly referring to “traditional” credit cards, and not Personal Lines with ATM access.

While these accounts are not in wide use, Personal Accounts with ATM access do provide customers with financial convenience and functionality not typically found in other credit products. They are often combined with overdraft access or linked to deposit accounts. They enable institutions to treat customers holistically and facilitate a customer's ability to withdraw funds or to transfer funds between accounts held at the same institution. If the Personal Lines with ATM access exception is not implemented, it is possible that some creditors may close these accounts, leaving customers with fewer and more expensive options, including fee based, bounce protection programs, at a time when the banking industry is being encouraged to offer lower-cost, consumer credit alternatives. Also, because the cards on Personal Lines with ATM access cannot be used for POS transactions, the impulse buying and overutilization critics often associate with traditional credit cards does not exist. Rather these accounts tend to be used to equalize cash flow or to make larger and more thoughtful expenditures. Unlike some traditional credit cards, Personal Lines with ATM access also tend not to be heavily promoted or marketed.

Finally, like home-equity lines accessible by a credit/charge card and overdraft lines accessible by a debit card, Personal Lines with ATM access merely provide incidental card access. For Personal Lines with ATM access, the debit card is not the primary access mechanism, and the debit card's utility is limited (*i.e.*, no POS access). In addition, the debit card is customarily issued in conjunction with the opening of a checking account, not a credit account. By including Personal Lines with ATM access in the scope of the proposed Credit Card Account definition, the Board appears to be placing too much emphasis on the debit *card* itself, as opposed to the character of the underlying account and transaction. When a consumer accesses a personal line at an ATM, the only function of the debit card is to provide one element of a multi-factor authentication process to gain access to the customer's accounts.⁶ Once authentication is complete, the consumer may access their deposit accounts, initiate funds transfers, make a balance inquiry, change their PIN, reorder checks, request an interim statement, buy stamps, and/or initiate cash advances from their personal line. It is, therefore, incorrect to view the debit *card* as integral to the personal line – it is simply one limited means of accessing a line of credit that cannot be used at POS.⁷ The Credit Card Act is not focused on lines of credit that provide for incidental card access, nor is it focused on customer authentication. As a result, the Proposal should not focus on them either.

Because Personal Lines with ATM access merely provide incidental card access, and typically do not have the features upon which the Credit CARD Act is focused, applying the Credit CARD Act to these accounts provides little meaningful benefit, and any benefit is clearly outweighed by

⁶ The use of a debit or ATM card as one element of a true multi-factor authentication process at an ATM is discussed in the FFIEC's *Authentication in an Internet Banking Environment*, issued October 15, 2005, *See, A Authentication in an Internet Banking Environment*, pg. 7.

⁷ To the extent a customer uses a debit card at POS, the funds accessed are those of the deposit account, and if the personal line provides overdraft protection for the deposit account, then an advance from the personal line will be made to the deposit account. If the personal line does not provide such overdraft protection, the customer will have to manually transfer funds from the personal line to the deposit account to insure sufficient funds are available in the deposit account. The fact that the personal line does or does not provide overdraft protection does not fundamentally alter its character as a personal line. Therefore, the definition of Credit Card Account should encompass both overdraft lines and personal lines that do not provide overdraft protection, but are similarly accessed by a debit card, provided the debit card can only directly access the personal line at ATMs.

the operational and compliance costs. Therefore, as noted above, creditors are more likely to close these accounts or strip ATM access from them, and to thereby reduce if not eliminate the uniquely appealing aspects of this comprehensive financial solution. The Board specifically cited to minimal promotion, low usage, minimal benefit and consumer detriment as factors for excluding overdraft lines accessible by debit cards from the definition of Credit Card Account in the Proposal and in its January 2009 Regulation Z Rule. *See*, 74 F.R. 54129, 54130, 54137 and 74 F.R. 5331. For these reasons, a Personal Lines with ATM access exception should be added to the definition of Credit Card Account.

In conclusion, for all of the reasons noted above, Wells Fargo strongly urges the Board to add the following additional exception to the Credit Card Account definition.

“(C) A line of credit accessed by a debit card that can be used only at automated teller machines.”

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 (704) 383-9764 or marc.iverson@wachovia.com.

Sincerely,

/s/ MARC IVERSON

Marc Iverson
Senior Counsel