WELLS FARGO

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

November 17, 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; Request for Public Comment
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 implementing provisions of the Truth in Lending Act, including provisions added by the Credit CARD Act of 2009, published in the Federal Register on October 21, 2009 at 12 CFR Part 226 (the "Proposed Rules"). Wells Fargo appreciates the opportunity to comment and respectfully requests the members of the Board of Governors of the Federal Reserve System ("Board") consider adopting the suggestions set forth herein. Because Wells Fargo is aware of the time constraints involved in this comment process, we are submitting our comments in multiple letters in an effort to ensure that the Board is given as much time as possible to review our comments. This letter is our third such letter.

The Wells Fargo vision to satisfy all of our customers' financial needs, to help them succeed financially, and to be known as one of America's great companies is a driving force in the way we do business. 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.

This letter provides Wells Fargo's comments to the Proposed Rules as well as further requests for additional clarification based upon the Proposed Rules.

Summary of Key Comments:

- **Mailing Periodic Statements**: Wells Fargo urges the Board to modify Section 226.5(b)(2)(ii) to conform with the Credit CARD Technical Corrections Act of 2009 (the "Corrections Act").
- **Payoff Timing Disclosures**: A Clarification is needed regarding the "minimum payment repayment estimate" in Appendix M1. Additionally, Wells Fargo requests clarification that issuers may provide the toll-free number for the NFCC and/or the AICCCA and for those entities to refer consumers to approved organizations. Finally, Wells Fargo urges the Board to provide an exemption from certain disclosure requirements in connection with accounts of consumers in bankruptcy
- **Deferred Interest Statement Disclosures**: Wells Fargo urges the Board to clarify that promotional rates are not "similar plans".
- **Disclosures upon Renewal of Credit or Charge Card**: Wells Fargo requests the Board to permit issuers to follow an informal notice process for positive changes.
- **Crediting Payments**: Wells Fargo recommends that a Comment be added as follows: "226.10(d)-2. The next business day. If a creditor receives mail multiple times during the day, with respect to payments received by mail, the rule in 226.10(d) only applies to the first mail pickup or delivery on the next business day."
- **Timely Settlement of Estates**: Wells Fargo believes a creditor's timeframe for providing the amount of the balance on an account should not begin to run until the administrator or executor has provided written documentation evidencing that they have been properly named as the administrator or executor of the estate.
- **Advertising**: We urge the Board to amend the definition of "introductory rate" to clarify that a rate is considered an "introductory rate" only if it applies *exclusively* to new accounts in the context of the advertisement. Additionally, Wells Fargo urges the Board to consider expanding those exceptions for such in-store advertising.
- **Credit Limits:** Wells Fargo urges the Board to clarify that when a limit is negotiated in a private label credit card context in the very short time frame following approval of an application, the requirements of 226.51(b)(2) will not apply
- **Limits on Increasing APRs, Fees and Charges**: Wells Fargo recommends a transition rule that governs notices sent after February 22, 2010. Additionally, we urge the Board to add an exception to the protected balances and substitution rules for when a consumer elects one complete set of account terms over another complete set. Finally, Wells Fargo recommends clarification be added to indicate that a creditor may add any accrued interest to the balance at the time the 45 day notice informing the consumer that they triggered the 60 day delinquency exception becomes effective.
- **Marketing Open-End Credit to College Students**: Wells Fargo urges the Board to limit the prohibitions on inducements to traditional credit card accounts. Additionally, we seek clarification that issuers may provide an inducement if a credit card is an optional product offered as part of a combination package. Wells Fargo also believes an exception to proposed section 226.57(c) to exclude licensed bank locations and the area immediately surrounding them is needed. Furthermore, Wells Fargo requests the

Board to exclude mailings from the prohibited inducement requirement. Finally, Wells Fargo requests that the Board exclude affinity credit cards from the definition of college student credit card and limit the definitions of "college student" and "institution of higher education" to students under the age of 21.

- **Internet Posting of Credit Card Agreements**: Wells Fargo requests that the Board exclude credit limit from the definition of credit card agreement. Wells Fargo also respectfully requests that the Board amend the first submission date for agreements. Additionally, Wells Fargo requests the Board to exclude temporary offers from the pricing information provided under 226.58(f)(2). Wells Fargo also urges the Board to allow issuers at least 30 business days to respond to customer-initiated requests.

Comments:

Section 226.5(b)(2)(ii): Mailing Periodic Statements

Pursuant to Section 226.5(b)(2)(ii), creditors must adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires. In light of the Credit CARD Technical Corrections Act of 2009 (the "Corrections Act") and the Congressional intent to exclude home-secured lines of credit from the 21-day requirement, Wells Fargo urges the Board to modify Section 226.5(b)(2)(ii) to conform with the Corrections Act and thereby limit the application of the 21-day requirement to credit card accounts under open-end (not home-secured) consumer credit plans.

Section 226.7(b)(12): Payoff Timing Disclosures

Wells Fargo strongly supports the Board's proposal to limit the repayment disclosures to credit card accounts under open-end (not home-secured) consumer credit plans, as defined in Section 226.2(a)(15)(ii).

Minimum Payment Repayment Estimate

According to proposed Appendix M1 to Part 226, a minimum payment repayment estimate would be considered accurate if it is no more than 2 months above or below the "minimum payment repayment estimate" determined in accordance with the guidance in Appendix M1 (prior to rounding). In calculating the "minimum payment repayment estimate", a credit card issuer may choose to make assumptions about terms as specified in paragraph (b)(4) of the Appendix or may use the account terms that apply to the consumer's account. Since use of the specified assumptions in paragraph (b)(4) is optional, and creditors may choose to use actual account terms, the "minimum payment repayment estimate" could be different depending upon whether the creditor uses actual data or the paragraph (b)(4) assumptions. Accordingly, because the two month tolerance is based upon the "minimum payment repayment estimate", the "minimum payment repayment estimate" should be calculated consistently with the method the creditor chooses in paragraph (b)(4) (actual terms or assumptions). Wells Fargo strongly urges the Board to revise Appendix M1 to clarify that the 2-month tolerance will not be in relation to a "minimum payment repayment estimate" based on listed assumptions in the event the credit card issuer chooses to use the account terms that apply to the consumer's account in calculating the minimum payment repayment estimate. Specifically, Wells Fargo recommends that the first sentence of paragraph (b)(5) of Appendix M1 be revised as follows: "A minimum payment repayment estimate shall be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in this Appendix (prior to rounding described in § 226.7(b)(12)(i)(B) *and without use of the assumptions listed in paragraph (b)(4) of this Appendix to the extent a credit card issuer chooses instead to use the account terms that apply to a consumer's account).*"

Tolerances

The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the estimated monthly payment for repayment in 36 months, and if so, what those tolerances should be. In calculating the estimated monthly payment for repayment in 36 months, Appendix M1 requires issuers to use a weighted annual percentage rate that is based on the annual percentage rates that apply to a cardholder's account and the portion of the balance to which the rate applies. In calculating the weighted annual percentage rate, if promotional annual percentage rates apply to an account, the issuer must calculate a weighted average of the promotional rate and the rate that will apply after the promotional rate expires based on the percentage of 36 months each rate will apply (the "Weighted Average"). However, use of the Weighted Average does not seem to provide the most accurate calculation in all circumstances and other methods of calculating the estimated monthly payment for repayment in 36 months, which do not use the Weighted Average, provide less variance and are arguably more accurate. Wells Fargo urges the Board to allow issuers to utilize other methods of calculating the estimated monthly payment for repayment in 36 months, so long as the calculation results in the same payment amount each month and so long as the total of the payments would pay off the outstanding balance shown on the statement within 36 months. To the extent that the Board adopts specific tolerance for calculation and disclosure of the estimated monthly payment for repayment in 36 months, Wells Fargo urges the Board to adopt a specific tolerance of 10%. Thus, the estimated monthly payment for repayment in 36 months would be considered accurate if it is not more than 10% above or below the estimated monthly payment for repayment in 36 months determined in accordance with the guidance in Appendix M1.

The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the total cost estimate for repayment in 36 months, and if so, what those tolerances should be. Rather than indicating a specific tolerance for calculation and disclosure of the total cost estimate for repayment in 36 months, Wells Fargo recommends the following sentence be added to Appendix M1, paragraph (e): "The total cost estimate for repayment in 36 months is deemed to be accurate if it is based on the estimated monthly payment for repayment in 36 months that is calculated in accordance with paragraph (d) of this Appendix."

The Board requests comment on whether the Board should adopt specific tolerances for calculation and disclosure of the savings estimate for repayment in 36 months, and if so, what those tolerances should be. Rather than indicating a specific tolerance for calculation and disclosure of the savings estimate for repayment in 36 months, Wells Fargo recommends the following sentence be added to Appendix M1, paragraph (f): "The savings estimate for repayment in 36 months is deemed to be accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this Appendix and the minimum payment total cost estimate calculated under paragraph (c) of this Appendix."

Information on Credit Counseling Organizations

Proposed Section 226.7(b)(12)(iv)(A) requires credit card issuers to provide, through a toll-free telephone number, the name, street address, telephone number, and web site address for at least 3 organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in the state in which the billing address for the account is located or, at the creditor's option, the state specified by the consumer. According to proposed Comment 7(b)(12)(iv)-5, issuers may, at their option, use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the required information. For ease of administration, issuers are likely to refer consumers to a small number of approved organizations that operate in all 50 states and appear to have the capacity to handle additional consumer inquiries. If that is the case, even such organizations can become overloaded and may be unable to handle additional referrals due to substantially increased volume. Wells Fargo notes that the National Foundation for Credit Counseling (the "NFCC") and the Association of Independent Consumer Credit Counseling Agencies (the "AICCCA") each maintain information on their member agencies. Wells Fargo requests clarification that issuers may provide the toll-free telephone number for the NFCC and/or the AICCCA and allow those entities to refer consumers to at least three approved organizations.

The Board indicates that it believes providing information regarding at least 3 approved organizations will enable consumers to make a choice about the organization that best suits their needs. However, the Board requests comment on whether card issuers should provide information regarding a different number of approved organizations. Wells Fargo agrees that providing information on at least three approved agencies will enable consumers to make an informed choice. The Board also requests comment on whether card issuers should be required to verify and update the credit counseling information they provide to consumers more or less frequently than annually. Wells Fargo agrees that updating the information on an annual basis is sufficient, especially in light of the fact that consumers are provided with multiple approved organizations to choose from.

Additional Exemptions Requested for Accounts in Bankruptcy

As a general rule, the automatic stay imposed by Section 362 of the United States Bankruptcy Code (the "Code") and the permanent discharge injunction imposed under Section 524 of the Code require creditors to stop sending monthly billing statements to customers who file bankruptcy. However, there are two exceptions to this general rule. First, the local rules of some bankruptcy court districts (i.e. Kansas and Vermont) require creditors with secured claims to continue sending a monthly account statement to the customer. Second, there is precedent in existing case law that permits a creditor to send a monthly "informational statement" to a bankrupt customer if the customer makes such a request.

It is also important to note that in the bankruptcy arena, creditors refer to monthly billing statements as "informational statements" or "information only statements". Creditors that send monthly informational statements to bankrupt customers have generally removed terms like "due date" and "delinquent amount" from the face of the statement and the statement backer because these words carry a connotation associated with continuing to collect on debt that may be discharged through the bankruptcy case.

Wells Fargo urges the Board to provide an exemption from the following disclosure requirements in connection with sending monthly periodic statements or informational statements to customers who have filed bankruptcy: (1) minimum payment warning, (2) minimum payment repayment estimate, (3) minimum payment total cost estimate, (4) statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement and the assumption that only minimum payments are made and no other amounts are added to the balance, and (5) additional disclosures required if the minimum payment repayment estimate is more than three years (i.e., the estimated monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, the total cost to the consumer of paying in full if the balance is paid over 36 months, a statement that the card issuer estimates that the consumer will repay the outstanding balance in three years if the consumer pays the estimated monthly payment each month for three years, and the savings estimate for repayment in 36 months).

With respect to the minimum payment warning, it is possible that a debtor's attorney could argue that including the warning on a monthly bankruptcy informational statement amounts to an attempt to collect a debt in violation of the automatic stay imposed by Section 362 of the Bankruptcy Code or the permanent discharge injunction imposed under Section 524 of the Bankruptcy Code. This could place creditors in an awkward position of choosing whether to comply with Regulation Z or exclude the warning and reduce the litigation risk and possible customer confusion associated with including the warning when a consumer is in bankruptcy. Therefore, Wells Fargo urges the Board to clarify that this warning need not be placed on a monthly bankruptcy informational statement.

With respect to the other disclosures listed above, there are three reasons why Wells Fargo believes that these disclosures should not be required on monthly bankruptcy informational statements. First, similar to the minimum payment warning, it is possible that a debtor's attorney could argue that including the disclosures, such as the minimum payment repayment estimate, on a monthly bankruptcy informational statement amounts to an attempt to collect a debt in violation of the automatic stay or the permanent discharge injunction.

Second, in Chapter 7 cases, customers who do not reaffirm their debt will receive a discharge from the bankruptcy court which will relieve them from any further legal liability for repaying the debt. Some of these customers may request the creditor to continue sending monthly bankruptcy informational statements on their accounts because they want to continue making voluntary payments. However, creditors cannot legally collect on these accounts and these voluntary payments tend to be sporadic in nature. In fact, most customers in this situation will never voluntary pay the remaining balance on the account in full. Therefore, given the sporadic nature of these voluntary payments and the inability to legally collect from these customers, these disclosures are unnecessary, may cause customer confusion and may increase litigation risk.

Third, in Chapter 13 cases, the customer will repay his or her debt to the creditor during the term of his or her Chapter 13 plan. The terms of Chapter 13 plans can vary. Most plans have terms in the range of 36 - 60 months, but the most frequently used term is 60, months. The above disclosures are not needed on bankruptcy informational statements because it is likely that the customer will only repay a portion of the outstanding balance to the creditor through the Chapter 13 case. Rarely, if ever, would the creditor be paid the entire outstanding balance in a Chapter 13 case. Therefore, in these cases, adding these disclosures to bankruptcy informational statements could cause customer confusion and conflict with the Chapter 13 plan.

Section 226.7(b)(14): Deferred Interest of Similar Transactions

Wells Fargo notes that the disclosures in 226.7(b)(14) apply to deferred interest "or similar plans". We urge the Board to clarify that promotional rates are not "similar plans". The intent of this disclosure is to disclose to consumers how they can avoid paying accrued interest charges (as evidenced by the Model language in Sample G-18(H)). In the context of a promotional rate, there are no accrued interest charges, so there is no need for such a disclosure.

Section 226.9(e): Disclosures Upon Renewal of Credit or Charge Card

Proposed section 226.9(e)(1) creates an obligation for card issuers that have changed or amended a term of an account required to be disclosed under section 226.6(b)(1) and (2), but that have not previously disclosed the change, to provide cardholders with a notice of renewal. Wells Fargo urges the Board to provide clarification to permit issuers to rely on periodic statements and other similar channels to establish that a favorable change was previously disclosed pursuant to proposed section 226.9(e)(1). While issuers should already have procedures in place to provide advance notice of the changes that may adversely affect a cardholder, issuers may not have a formalized process in place to communicate changes that positively impact a cardholder. Requiring issuers to provide a formal favorable-change notice (or, in the alternative, a renewal notice) could be unreasonably burdensome and costly for issuers, and may discourage issuers from making favorable changes to cardholder accounts. Wells Fargo therefore respectfully requests the Board to permit issuers to follow a more informal notice process for positive changes, such as relying on the periodic statement disclosures.

Section 226.10(d): Crediting Payments

The Proposed Rules provide that where a due date falls on a day where the creditor for any reason does not accept or process payments received by mail, then any payment received by mail the next business day must be applied as of the due date. Wells Fargo believes that in the context of mailed payments, this rule for applying payments is unduly restrictive.

Many creditors typically receive mail multiple times during the course of a processing day. Whether the postal service makes delivery, a creditor employee runs back and forth, or a delivery service is engaged, creditors want to spread out the workload and ensure that all mail that arrives at the local post office by five p.m. is captured and processed. In this context, it is quite easy to determine which payments by mail were at the post office the day before; it would be those in the first mail pickup or delivery of the day. Since all payments that arrived at the post office timely on the actual due date (when no mail was processed) must be included in the first batch on the next business day, it only makes sense to limit the next day processing rule to those payments that might have been received by the due date. Of course not all the contents of the first pickup or delivery will be mail that actually arrived the day before, some will be the earliest items from that very day, but this will come closest to identifying the actual transactions that need to receive prior day credit.

Accordingly, Wells Fargo recommends that a Comment be added as follows: "226.10(d)-2. The next business day. If a creditor receives mail multiple times during the day, with respect to payments received by mail, the rule in 226.10(d) only applies to the first mail pickup or delivery on the next business day."

Section 226.11: Timely Settlement of Estates

The Board has solicited comment on proposed Section 226.11(c)(2)(i), which would prohibit creditors from imposing fees and charges on a deceased consumer's account upon receiving a request for the amount of any balance from an administrator or executor of an estate. In particular, the Board seeks feedback on whether a creditor should be permitted to resume imposing fees and charges if the administrator or executor of an estate has not paid the account balance within a specified period of time.

Wells Fargo urges the Board to allow creditors to resume the imposition of fees and charges if the account balance is not paid within a specified period of time. The Board has aptly noted that a creditor's role in timely settling estates is to provide the amount of the balance on a deceased consumer's account in a timely manner. There are numerous reasons an estate may take an extended period of time to settle unrelated to a creditor providing timely account information (e.g., litigation regarding the terms of the will). Creditors should not be prohibited from continuing to charge fees and interest that would otherwise accrue under the terms of the contract where the settlement of the estate is substantially delayed for other reasons. Accordingly, Wells Fargo urges the Board to adopt a reasonable timeframe for payment by the administrator or executor of the estate, such as a 30 or 60 day period, after which creditors may continue to accrue interest and fees. Any concerns about preserving the purpose of the rule regarding providing certainty can be achieved by requiring creditors to provide a timely updated statement of amounts owing upon subsequent request by the administrator or executor of the estate.

Wells Fargo also urges the Board to make an additional change to this rule for purposes of protecting customers' financial privacy. Specifically, we request that Section 226.11(c)(3) be revised to provide that a creditor's timeframe for providing the amount of the balance on an account does not begin to run until (1) an administrator or executor of an estate makes a request for the balance of the account and *(2) the administrator or executor has provided written documentation evidencing that they have been properly named as the administrator or executor of the estate*. This type of documentation is not always promptly forthcoming and creditors should not be placed in the predicament of choosing between complying with this Section and privacy laws.

Section 226.16: Advertising

The Board has added two new defined terms, "Promotional Rate" and "Introductory Rate" to Regulation Z. Wells Fargo believes the Board should more clearly account for special terms plans offered in connection with revolving sales finance programs 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 may 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 and 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.

This clarification would also help creditors determine how to comply with other sections of Regulation Z that refer to these defined terms. For example, 226.6(b)(2)(i)(F) provides that creditors must disclose "introductory rates" in the account opening table. Clarifying that special terms offered on private label credit cards are not introductory rates would mean that such rates need not be placed in the account opening table. Wells Fargo notes that private label issuers usually offer a wide variety of promotional terms promotions through retailers and retailers may choose particular promotions for particular sales or sale items. The offer—whether it be deferred interest, no interest, or a particular reduced interest rate—may therefore differ depending on when the consumer is shopping or what the consumer purchases. Requiring a reduced rate to be disclosed in the account opening table itself (which is often a preprinted, "take one" form) could impose significant operational, printing, and distribution costs on the creditor without added benefit to the consumer. Creditors may have to provide retailers with many account opening forms (all with different introductory rates disclosed), which would create compliance and administrative burdens for creditors and retailers alike. Such increased costs could have the unintended consequence of reducing the number of promotional offers available to consumers.

Alternatively, if the Board chooses not to clarify the definitions to exclude private label promotions from the definition of "introductory rate", Wells Fargo urges the Board to clarify that retailers that offer reduced rate promotional plans to all consumers (whether the account is opened at the time the purchase subject to that reduced rate is made or was opened earlier) may satisfy 226.6 (b)(2)(i)(F) by disclosing the terms of such offers via an insert or on the invoice at the time of the purchase. Creditors could disclose any reduced rate promotions on a separate sheet of paper (e.g. a receipt that prints from a Omni terminal for the first purchase) accompanying the account opening disclosures while also providing the necessary disclosures for the 226.9(c) and 226.55 exceptions for promotional rates. Currently, possible promotional terms that may apply are described generally in the account agreement, but the specific promotional terms applicable to a purchase are described on an invoice or receipt provided at the time or purchase. Wells Fargo respectfully requests that the Board clarify that, despite the language in 226.6(b)(2)(i)(F), Regulation Z still provides this flexibility to issuers. These clarifications would reduce the burdens on creditors and retailers while still providing consumers with all disclosures about the terms of their account and their purchase.

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.

Wells Fargo believes the Board intended 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 therefore 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.

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 deferred interest terms 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. While Wells Fargo supports the exceptions for envelopes and "banner advertisements or pop-up advertisements linked to an application or solicitation provided electronically" set forth in 226.6(h)(5), we urge the Board to consider expanding those exceptions for such in-store advertising. It would be preferable for retailers to add a disclosure indicating that the consumer may inquire within the store or ask a sales person for additional information.

<u>Section 226.51(b)(2): Credit Limit Increases</u>

Wells Fargo urges the Board to clarify that when a limit is negotiated in a private label credit card context in the very short time frame following approval of an application, the requirements of 226.51(b)(2) will not apply. Specifically, in a private label credit card context the limit may be "negotiated" between the creditor and the applicant at the time the request for credit is made based on what items the applicant desires to purchase. Private label credit cards are most often applied for in a store of a third party merchant at the time the consumer applicant is contemplating a purchase. The applicant may request a $2000 limit on the card originally, for example, thinking that amount will cover the purchase price of the dining room set they intend to purchase. Although the creditor may determine with initial analysis that the consumer qualifies for a greater limit (e.g., $5000), they may respect the request of the consumer and return an initial limit on the account of $2000 or $2500. However, the consumer could then decide while they are shopping that they also want to buy a sofa. The applicant then asks for a higher limit (via the retailer) to pay for the sofa as well. Because these limit negotiations happen in a very tight time frame (usually the same day the person fills out the application, as the person shops), none of the data that was given in the original application has become stale and the creditor is able to easily determine ability to repay on a the higher line quickly (and in many cases may have already done so). Additionally, in the case of co-applicants, because both applicants are generally shopping together and filling out the application together, both applicants would be present at the time the credit limit is negotiated. In this context, Wells Fargo believes it is more logical to view this negotiation on credit limit as the setting of the original limit rather than a limit increase. Wells Fargo urges the Board to clarify that this process does not trigger the requirements of 226.51(b)(2). Requiring additional signatures during this process would be administratively burdensome to creditors, retailers and consumers while not adding any benefit to the consumers who are engaged in shopping and view this back-and-forth process as setting the limit on the account so that they can make the initial purchase that they desire to make. Alternatively, Wells Fargo asks the Board to clarify that in a private label context, if a joint account holder signs the invoice for the purchases on the account exceeding the original limit that was communicated, they are deemed to approve the higher limit.

Section 226.55: Limitations on Increasing Annual Percentage Rates, Fees and Charges

Wells Fargo believes that substantial clarification is needed for several issues arising from 226.55.

Transition Rule

A transition rule is necessary to coordinate the application of new substantive restrictions and exceptions enumerated in 226.55(b) to accounts that are outstanding on the effective date of the rule. For example, a creditor may have offered a 12 month promotional rate for a transaction on March 1, 2009 which is scheduled to expire on March 1, 2010. The creditor might not, while fully complying with rules in effect at the time of the promotional offer, have effectively disclosed prior to the commencement of the period, in writing, the duration or the rate that would apply after expiration of the promotion. To prohibit that creditor from increasing the rate on the outstanding promotional balance in March, 2010 would be unreasonable because there was no possible way the creditor could have intuited a future disclosure requirement springing into effect that would require anticipatory action almost a year before the effective date of the regulatory requirement. Similarly, many currently outstanding hardship or workout arrangements were initially entered into orally, the reduced rate given effect, and only later memorialized in writing. It would be unreasonable to now forbid increasing the rate at the end of the hardship or workout period when the creditor had no opportunity to comply with an advance written notice requirement that did not exist at the time the arrangement commenced. Wells Fargo therefore urges the adoption of an explicit transition rule to the effect that for purposes of qualifying for any of the exceptions listed in 226.55(b), a creditor need not have complied with any of the conditions or disclosures when the time for meeting the condition or making the disclosures under the circumstances of any specific account preceded the effective date of 226.55(b).

Consumer Selection of Account Terms

We request that the Board also consider the continuing application of the protected balance concept to balances that may be transferred to another account issued by the same creditor or an affiliate. This implicates both the protected balance provision in 226.55(c) and (d) and the discussion in the Commentary to 226.55(b)(3) related to substitution, replacement, or consolidation of card accounts. There are circumstances where strict application of this rule would limit the consumer's ability to structure his or her accounts for maximum benefit. For example, suppose single cardholders with differing account terms marry each other. The new spouses may wish to consolidate their affairs into one joint credit card account. One of the spouse's accounts may have a higher interest rate, but also some other feature(s) such as a more robust rewards program, which in their considered judgment would counterbalance any interest rate considerations. Consumers should have freedom to select which account they will keep, in consideration of all the terms of the account, particularly whichever terms are most important to those specific consumers, which best suit their lifestyle choices and their unique financial needs. Rather than predetermining that interest rate is the overriding factor that trumps all others, an exception to the protected balances and substitution rules should be provided for those situations where a consumer positively elects one complete set of account terms, including but not limited to rate, over another complete set that may incidentally feature a lower rate, and chooses to have the complete set of preferred terms apply to the entire account balance.

Curing Delinquency within a Deferred Interest Period

Wells Fargo also believes that clarification is necessary regarding the application of Section 226.55(b)(4)(ii) in a deferred interest context. The Proposed Rules indicate that if a consumer has promotional rate terms, then defaults and becomes subject to penalty pricing, they could cure before the promotional terms end. If they do cure, the consumer should get the remaining benefit of the promotional terms until the date those terms would have otherwise expired.

However, if a consumer has deferred interest terms, accrued interest is held in a separate "bucket" until the end of the special terms. If the consumer pays the balance in full prior to the expiration of those terms, the accrued interest is not added to the balance. However, if the consumer does not pay the balance within the special terms period, the accrued interest is added to the balance. Currently, creditors may do one of two things, (1) they may impose a penalty rate on the deferred interest balance in the event of default, or they may end the special terms and transfer the balance to regular interest bearing terms of the account. However, under the Proposed Rules, if a consumer with deferred interest terms becomes 60 days delinquent (subject to penalty pricing or to regular rate interest accrual under 226.55(b)(4)) it is not clear at what point the creditor may add the interest that has accrued up until that point to the balance.

Wells Fargo recommends that clarification be added to indicate that a creditor may assess accrued interest at the time the 45 day notice informing the consumer that they triggered the 60 day delinquency exception becomes effective. It seems that the Board did not intend for the deferred interest plans to be subject to cure after the consumer has made a late payment as evidenced in the model disclosure language in G-24, which states, "Interest will be charged to your account from the purchase date if the purchase balance is not paid in full with the/by [deferred interest period/date] or if you make a late payment." This makes sense, because it would be potentially confusing to the consumer and burdensome for the creditor to attempt allow someone to cure in a deferred interest scenario and return to the deferred interest terms. It presents issues regarding when accrued interest can be assessed and what balance would be subject to deferred interest in the event of cure. Because deferred interest terms are clearly disclosed as conditioned on consumer behavior, and because of the administrative burdens associated with trying to make deferred interest plans subject to cure, Wells Fargo urges the Board to clarify that late payment will cause a person to lose their deferred interest terms permanently and in that case, accrued interest will not be waived. Alternatively, Wells Fargo believes clarification should be added to indicate that if a consumer is 60 days delinquent (and proper 45 day notice is given) the creditor is entitled to assess accrued interest (rather than holding it in a separate bucket) at the point when it becomes clear that the consumer cannot cure their default status under 226.55(b)(4)(i)(B), because they have missed one of the six consecutive payments or because there are not six months remaining in the special terms period at the time the account goes into default.

Section 226.57: Special Rules for Marketing Open-End Credit to College Students

Prohibited Inducements

Scope

Wells Fargo strongly supports the Board's proposal to exclude home-equity lines of credit accessed by credit card and overdraft lines of credit accessed by debit cards from the various proposed credit card regulations. Wells Fargo urges the Board to extend the exclusion to proposed section 226.57(c) regarding prohibited inducements. The Board has proposed the prohibited inducement requirements to apply to open-end consumer credit plans offered by an issuer or creditor without providing for any exclusions. As discussed further in Wells Fargo's comment letter to the Board dated November 5, 2009, it does not appear to be the Board's intent to regulate real estate secured credit accounts through these regulatory changes.

For example, including home-equity lines of credit subject to 226.5b in this prohibition does not provide any meaningful protection for college students. First, home equity lending is not the type of lending associated with affinity-type relationships, relationships with educational institutions, or college campus events. Second, home-equity credit is not the type of credit a customer applies for and receives incidentally upon a visit to a college tabling event. Home-equity lending begins with an extensive application process, with documentation exchanges, and multiple disclosures during the application process. Third, because banks and other full-service financial institutions have branches in the prohibited geographies, this proposed regulation would impugn their traditional home-equity lending. Finally, although providing tangible inducements for home-equity applications are usually *de minimus* and infrequent, the proposal would prohibit all giveaways, ranging from pens, calculators and stuffed animals to vacation stays. Home-equity credit is a significant financing vehicle with a highly regulated process that allows for giveaways that can be *de minimus* or more reflective of the significance of the financing product. Accordingly, Wells Fargo urges the Board to limit the prohibitions on inducements to traditional credit card accounts.

Inducement Clarified

Wells Fargo requests the Board to clarify that issuers are permitted to provide an inducement if a credit card is one of many optional products offered in a combination package. Commentary 57(c), paragraph 2 explains that "[i]f a tangible item is offered to a person whether or not that person applies for an open-end consumer credit plan, the tangible item has not been offered to induce the person to apply for or open the plan." Some financial institutions offer combination packages—to both students and non-students—where customers may choose to apply for multiple products or services, such as a checking account, an ATM or check card, a savings account, overdraft protection from the savings account for the checking account, access to online banking, and/or a credit card. Applicants may, but are not required to, apply for a credit card as part of the combination package.

Under the proposed rules, it is clear that issuers may not provide college students with an inducement solely for completing a credit card application. It is not clear, however, whether issuers may consider providing an inducement to all students applying for a combination package regardless of whether or not they apply for the credit card.

Moreover, as discussed below in the sections discussing the standard of "near" campus and 226.57(a) (definitions), because the proposed definitions of "college student" and "near campus" are overly broad and could have unintended consequences, issuers may be forced to ask all customers whether they are students before they can offer an inducement for opening a combination package. Wells Fargo accordingly requests the Board to clarify that issuers may provide an inducement if a credit card is an optional product that is offered as part of a combination package.

Near Campus Clarified

The proposals currently prohibit issuers from offering college students tangible items to induce them to apply for or open an open-end consumer credit plan if the offer is made on or within 1000 feet of a campus of an institution of higher education. Wells Fargo urges the Board to carve out an exception to proposed section 226.57(c) and exclude licensed bank locations and the area immediately surrounding the licensed bank locations from the scope of the prohibited inducement requirements. First, it appears the prohibited inducement section is intended for tabling events targeting students on or near campuses, and is not intended for traditional functions banks perform on their own business premises. Second, issuers may have licensed branch locations on college campuses or within 1000 feet of college campuses and would be required to follow different practices in different branches depending on the location of their branches. Third, Wells Fargo notes the difficulty of determining whether a campus exists and whether an activity is taking place within 1000 feet of the campus. For example, some colleges offer extension programs or have satellite "campuses" away from the main campus, such as on a leased floor of a high-rise office building. A bank operating a branch on the ground floor of an adjacent office building could be in violation of the proposed rules without being aware that there is a college "campus" within 1000 feet. Moreover, as discussed below in the section discussing 226.57(a) (definitions), because "institution of higher education" is broadly defined, the bank may unknowingly offer an inducement to a student without specifically targeting students.

Mailings Included

Wells Fargo requests the Board to exclude mailings from the prohibited inducement requirement. The proposed commentary prohibits issuers from offering college students tangible items in any solicitation or application mailed to an address on or within 1000 feet of a campus of an institution of higher education. Issuers and credit reporting agencies do not have the ability to determine whether a consumer is a "college student" prior to mailing a solicitation or application. Moreover, because "near campus" is broadly defined, issuers may be unable to determine whether the mailed location (which potentially includes where electronic mail is received) falls within the prohibited geography where offers may be made. The proposal may result in the curtailment of direct marketing and prescreened credit offers with any tangible inducement.

Definitions

The Board solicits comment on whether the regulations should contain a definition of "college affinity card" as well as a definition of "college student credit card." Wells Fargo requests the Board to provide separate definitions and regulations for "college affinity card" and "college student credit card" to allow issuers to provide greater marketing, pricing, and product differentiation for products marketed to alumni associations and those to current students.

Wells Fargo believes the proposed regulation's inclusion of affinity credit cards as part of "college student credit card" is overly broad and has unintended consequences, particularly because "institution of higher education" is broadly defined to include graduate students, part-time and full-time students, and all students regardless of age. For example, if an issuer has an affinity card agreement with a college to issue credit cards to college alumni, both the college and the issuer would have to disclose the agreement if an alumni of the college's undergraduate program—who is currently a part-time graduate candidate in the Executive MBA program at the same school—can apply for a credit card under the agreement. Wells Fargo believes the Board's intent was to protect students under the age of 21. Wells Fargo therefore respectfully requests the Board to exclude affinity credit cards from the definition of college student credit card, and to limit "college student" and "institution of higher education" to students under the age of 21.

Annual Report to the Board

The Board solicits comment on whether creditors should include additional items of information in the annual report to the Board. Wells Fargo believes the current list of items is sufficient and that additional items of information are not needed.

Section 226.58: Internet Posting of Credit Card Agreements

Definition of "agreement" and "offers"

The Board seeks comment on the definition of a credit card agreement, and whether more or less information should be included. Wells Fargo requests the Board to exclude credit limit from the definition of credit card agreement. Credit limit is not a requirement under section 226.6 and therefore should not be a component of pricing information. Moreover, disclosing the range of credit limits (which is customer-specific) could be potentially misleading since few applicants may qualify for the upper limit.

Submissions of Agreements to Board

Wells Fargo strongly supports the proposal that credit card agreement submissions and postings be limited to those that are offered to the public at the end of each calendar quarter. Wells Fargo also has additional feedback regarding submissions and postings of agreements.

The Board solicits comments on whether issuers are more likely to make technical changes to an agreement without also making substantive changes at the same time, whether requiring issuers to resubmit agreements following any change (however minor) would impose a significant burden, and what standard the Board should use to determine what changes merit resubmission of an agreement. Wells Fargo generally groups all technical changes, including cosmetic, formatting and clarification changes that do not impact the overall product, until it makes a more significant revision to the agreement. Because tracking minor changes could be burdensome, Wells Fargo recommends that the Board does not require issuers to resubmit an agreement if a change simply clarifies language in the agreement, but does not change the obligations or liabilities of the parties. To avoid issues concerning technical changes, Wells Fargo encourages the Board to provide an option that would allow issuers to submit replacement credit card agreements for all current agreements on a quarterly basis. Because it could be burdensome to require issuers to document whether they need to update, replace, or withdraw any particular agreement from one calendar quarter to the next (including for pricing or technical changes), Wells Fargo suggests this more streamlined alternative.

If, however, the Board does not add an option to allow issuers to submit all current agreements on a quarterly basis, Wells Fargo requests that the Board clarify Appendix N to permit pricing information be provided as a range of margins, as opposed to a range of APRs. Because most variable-rate plans are directly tied to an index, such as the prime rate, disclosing the APR range instead of the APR range of margins could force card issuers to resubmit their agreements if there is a change in prime rate from one calendar quarter to the next, even if there are no other changes to the agreements.

In addition, Wells Fargo respectfully requests that the Board amend the proposed first submission date. The proposed regulations require that by February 22, 2010, issuers must submit to the Board and post on their website all agreements offered to the public as of December 31, 2009. Because most issuers will be making changes to their agreements by the February 22, 2010 effective date of the regulations, it may be futile for issuers to submit and post agreements that will be outdated by the time they are submitted to the Board and posted on the issuer's website. The submission and posting of such obsolete agreements will provide little or no benefit to consumers and will likely create confusion. Wells Fargo therefore respectfully requests the Board to provide a first submission date that is later than February 22, 2010 and to require issuers to submit and post agreements offered to the public as of a date that is no earlier than February 22, 2010.

Agreements for All Open Accounts

The proposals currently state that issuers must provide agreements and pricing information that are complete and accurate as of a date no more than 60 days prior to the date the agreement is posted on its website pursuant to section 226.58(f)(2)(i) or the date the issuer receives the cardholder's request pursuant to section 226.58(f)(2)(ii). The Board seeks comments on whether the 60 day time period should be shorter or longer. Wells Fargo believes that a 60 day time period is reasonable.

Because Wells Fargo generally provides customers with the most current information, Wells Fargo respectfully requests the Board to exclude temporary offers from the pricing information provided under 226.58(f)(2)(i) or (ii). Temporary offers, such as promotional rates on balance transfers, can change frequently for any given cardholder. Wells Fargo believes it will be misleading if cardholders receive pricing information that includes a promotional rate that became outdated shortly after the issuer mailed the pricing information.

Providing Copy of Agreement upon Cardholder's Request

The Board seeks comment on whether issuers should have a shorter or longer period to respond to cardholder requests. The proposals provide that issuers must respond to cardholder requests within ten business days of receipt of the request. Wells Fargo urges the Board to allow issuers at least 30 business days to respond to customer-initiated requests. Wells Fargo believes ten business days is not sufficient for issuers to receive a cardholder request, to manually integrate any change-in-terms notices, to include all pricing information for the individual customer, and to send a response to the customer. While Wells Fargo understands the Board would like cardholders to have prompt access to their agreements, Wells Fargo believes this need is minimized because cardholders should already have their agreements and any change in terms in their possession, as well as their most current pricing information on their periodic statements.

Wells Fargo further encourages the Board to provide an exception to the requirement to integrate change-in-terms notices into the cardholder agreement in situations where customers request a copy of their cardholder agreement, but the amended terms of a change-in-terms notice are not yet effective. Because issuers generally provide an opt-out period between the time it provides the change-in-terms notice and the time the terms become effective, it would be misleading for issuers to send the agreement with the integrated terms or to send the agreement without the separate change-in-terms notice.

Conclusion

Wells Fargo strives to provide our consumers 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 respectfully urge the Board to consider all of the comments and suggestions herein.

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,

/s/ MARTINE T. OLSON-DANIEL

Martine T. Olson-Daniel
Senior Counsel