WELLS FARGO

December 23, 2009

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

Re: Docket No. R-1366
Truth in Lending Act ("TILA")
Proposed Changes to Regulation Z, Closed End Credit Secured by Real Property or a Consumer's Dwelling
74 Federal Register 43232-43425 (August 26, 2009)

Ladies and Gentlemen:

Wells Fargo & Company and its affiliates ("Wells Fargo"), including Wells Fargo Bank, National Association and Wachovia Bank, National Association, appreciate the opportunity to provide written comments on the Federal Reserve Board's (the "Board's") proposed amendments to Regulation Z (the "Proposal") which implements the Truth in Lending Act ("TILA") and the Home Ownership and Equity Protection Act ("HOEPA") and to provide answers to specific questions raised by the Board. Wells Fargo is a financial services company that owns and operates national banks in 39 states nationwide and the District of Columbia, a leading originator of residential mortgage loans, and one of the nation's leading financial services companies. Wells Fargo is committed to mortgage lending that helps customers achieve financial success, to fair and responsible lending standards, and to offering its customers appropriate products at appropriate prices.

Wells Fargo takes its responsibility as a leading mortgage lender and servicer very seriously and has long followed a number of responsible lending standards and practices in our consumer real estate lending business. We provide consumers with the information they need to make informed decisions about the terms of their loan. We have controls in place so that first mortgage customers are offered prime pricing options when they qualify based on their credit characteristics and the terms of their loan transaction. These and other responsible lending principles have been publicly posted for years on our wellsfargo.com web site. It is in this context that we are providing a response to your request for comments.

Wells Fargo applauds the approach the Board has taken in drafting these proposed regulations. The Board has successfully drafted regulations that will provide consumers with clearer disclosures of the loan and payment terms, and the Board has addressed important issues of mortgage broker and loan originator compensation. Wells Fargo stands behind the objectives that the Board wants to achieve. This letter highlights recommended changes to the finance charge, disclosure and loan originator compensation provisions; these suggested changes are designed to avoid the unintended consequence of reduced availability of credit, particularly for smaller balance loans, and inability to compensate employees for originating important loan products such as CRA loans. In addition, we call to the Board's attention the need for coordination of the final TILA rule with the changes to the Real Estate Settlement Procedures Act ("RESPA") revised Regulation X that will be effective on January 1, 2010, as well as the need for an adequate implementation period. We would be happy to meet with the Board staff to discuss any of these matters, or other aspects of our analysis of the Proposal, in greater detail.

GENERAL COMMENTS:

Wells Fargo agrees with the "all-in" finance charge concept and believes the proposed disclosures represent significant improvements by focusing on the key pieces of information of interest to consumers. We also support limitations on loan originator compensation so long as the flexibility remains to encourage desirable behaviors such as the origination of more complex and smaller balance loans. Wells Fargo has concerns, however, about the scope of the proposed rule relative to non-real estate, dwelling-secured loans, as well as the provisions related to voluntary credit insurance and debt cancellation products. In addition, we are providing comments on the complexities of implementing disclosures in languages other than English, including but not limited to the cost and system challenges of maintaining disclosures in a significant number of languages. Finally, we believe a phased implementation of the final rule is necessary and have provided our perspective on the time needed to implement each major component of the Proposal.

A. SCOPE OF PROPOSAL'S APPLICATION

As currently drafted, the Proposal covers "closed-end credit secured by real property or a consumer's dwelling". Wells Fargo strongly urges the Board to limit the scope of the final rule to "closed-end credit secured by real property or a consumer's ***principal*** dwelling." There are several factors supporting this recommendation.

First, the approach of only applying real estate-focused requirements to personal property loans that are secured by a ***principal*** dwelling is consistent with the traditional approach that the Board has historically taken relative to closed-end disclosures. *See*, 12 C.F.R. §§ 226.18(f & q), 226.19(b), 226.23, 226.32, 226.33, 226.34, 226.35, 226.36 and 226.39. In addition, while 226.19(a) applies to "dwelling" secured, consumer transactions, it also only currently applies to transactions covered by RESPA (i.e., real property secured).

Second, except for mobile/manufactured housing, the vast majority of tangible personal property is ***not*** used as a residence, much less as a primary residence. However, as the Board recognizes in 12 C.F.R. § 226.2(19) and its Commentary, vehicles, boats, RVs, campers, and/or trailers can and are used as "dwellings". Dealers and lenders who make direct/indirect personal property loans involving vehicles, boats, RVs, campers and/or trailers are not going to be able to justify or feasibly build completely different origination systems, document sets, and compliance processes to support two different Regulation Z disclosure regimes. Given the extremely small percentage of vehicle, boat, RV, camper, and/or trailer "dwelling" transactions, the proposed new closed-end disclosures provide little meaningful benefit, and any benefit is clearly outweighed by the operational and compliance costs. Moreover, businesses involved in mortgage/real property secured lending are unlikely to build the infrastructure to support personal property secured lending for such a small amount of business. As a result, it is likely that traditional creditors will exit this business and consumers will be negatively impacted.

It is also worth noting that in proposed Comment 1, to 12 C.F.R. § 226.4(c)(1), the Board replaced the word "mortgage" with "automobile" in reference to the types of loans where an application fee can be excluded from the finance charge. However, as noted above automobile loans can also be "dwelling" secured loans, and therefore this change implies that the Board may not appreciate the potential scope and impact of the Proposal. As a result, we recommend that the Board limit the scope of the Proposal to "closed-end credit secured by real property or a consumer's *principal* dwelling".

B. INCLUSION OF MOST CLOSING COSTS IN THE FINANCE CHARGE

The Proposal would revise the calculation of the finance charge and corresponding annual percentage rate ("APR") to capture most fees and costs paid by consumers in connection with the credit transaction secured by real property or a consumer's dwelling. Under the Proposal, all fees payable by the consumer and imposed by the creditor incident to the credit extension would be included in the finance charge, including any third party charges if the creditor either requires the use of the third party or retains a portion of the fee (to the extent of the retained fee.) Charges that would be incurred in a comparable cash transaction would continue to be excluded from the finance charge.

1. The Concept

Wells Fargo applauds the Board's effort to simplify the "some fees in, some fees out" method of calculating finance charge, and we agree that it will improve consumers' ability to comparison shop.

2. Scope of Application

Wells Fargo believes that the Board should ultimately consider application of the revised finance charge definition to all closed-end credit. However, because the caption of this proposed rulemaking is "Proposed Changes to Regulation Z, Closed End Credit Secured by Real Property or a Consumer's Dwelling", we believe that creditors who make other types of closed-end loans may not have sufficiently focused on the Proposal and its possible impacts to their business operations and the credit products they offer. As a result, we believe a separate proposal and comment period for other closed end credit is needed to ensure that all stakeholders have the opportunity to provide comments. In addition, we recommend a staged approach to implementing the changes to the finance charge calculations in order to ensure technology resources are available to implement them in an accurate and timely fashion.

In the interim, as discussed above, we believe that dwellings other than principal dwellings, such as boats, trailers, and recreational vehicles should continue to be subject to the TILA rules applicable to non-real estate secured closed end credit, including the proposed finance charge calculation. Loans for these structures are typically originated on systems also used for other non-real-estate secured, and unsecured, loans. The requirement to house two different methods of calculating the finance charge within those systems will result in additional work and complexity.

3. Impact on Number of Higher Priced and HMDA Reportable Mortgages and Federal and State "High Cost" Loans

Wells Fargo is concerned that the new finance charge/APR calculation could distort HMDA reporting and cause many more loans to be considered higher priced mortgages or high cost loans if the thresholds for higher priced mortgages or high cost loans are not adjusted. Because most national banks and other lenders do not make federal or state high cost loans (due to the perception of increased liability attributed to these transactions, investor restrictions, and/or regulator concerns), the impact to consumers could be reduced availability of credit. In addition, some lenders will not make higher priced mortgages due to the escrow servicing requirements. Even if these federal thresholds are adjusted, state by state impacts may occur if a state's high cost test is APR based. For example in New York and Florida, there are significant mortgage recording taxes; if these are included in the APR, since the states' high cost tests are APR based, more loans in these states may fall into the higher priced, or high cost categories.

Because the definition of finance charge under the Proposal would include third party fees in § 226.4(c)(7) that were previously excluded for closed-end mortgage loans, and because the definition of points and fees in § 226.32(b) includes all items included in the finance charge, the points and fees triggers, as well as the APR triggers, for HOEPA and state high cost laws are also impacted. The number of transactions that exceed the points and fees triggers may increase, resulting in an even greater impact to the availability of credit. This could be especially true in areas with lower home values and smaller loan amounts, which may disproportionately impact lower income borrowers, and have the unintended effect of limiting credit in for smaller loan amounts or certain geographies. Based on our test of a very limited sample of lower balance FHA loans incorporating the proposed finance charge definition into existing state high cost calculations, we believe that smaller balance loans with mortgage insurance will be at risk of failing the points and fees tests in states with restrictive tests and high closing costs. Wells Fargo recommends the Board consider revising the Section 32 points and fee triggers to minimize the effect on the availability of credit. In addition, Wells Fargo recommends the Board evaluate whether the changes to the finance charge calculation necessitate a change in the manner in which the Average Prime Offer Rate (APOR) used to determine higher priced mortgages is calculated.

In addition, many state high cost laws have incorporated the current HOEPA definitions into the statutes. Much of the language used in those state high cost laws, as well as the citations and cross-references to Regulation Z provisions that are being amended, will be outdated upon adoption of this Proposal, and will require state by state legislative action to realign to the new APR formulas, which realignment most likely will not occur at the time the TILA changes are effective. As a result, the changes to Regulation Z will require additional programming and testing for origination systems to address the resulting inconsistencies between some state high cost laws and HOEPA.

The Board acknowledges in the Supplementary Information that the impact of the proposed finance charge definition on APRs will vary among loans based on loan size and geographic location, including by state, county, or other political jurisdiction. In this regard, it would be helpful if the Board provided some affirmative commentary that these geographic differences in finance charges and resulting APRs based on inclusion of additional charges under the Proposal should not be interpreted to be indicative of disparate impact.

For consumers who have an existing closed-end mortgage loan who seek to refinance after the proposed changes become effective, there may be "sticker shock" regarding the difference between their existing APR and their future APR, even if their new interest rate is lower. This may result in consumer confusion and may make it more difficult for a lender to calculate whether there is a benefit to the borrower on a particular transaction. For lenders with structured benefit-to-borrower tests, this may result in additional origination system programming and testing.

4. Possible Exclusions from Finance Charge

Wells Fargo believes that escrows for hazard insurance and taxes should continue to be excluded from the finance charge since hazard insurance and taxes themselves are excluded from the finance charge. In addition, these escrow deposits can be one of the largest charges a borrower pays at closing, particularly in urban areas, and the amounts are dependent on factors beyond the control of the creditor such as when the last payment was due. Further, if these escrows are included in the finance charge, we foresee possible manipulation of this item by less responsible brokers or lenders, who may offer consumers non-escrowed loans in order to avoid inclusion of the escrow amounts in the finance charge (possibly triggering of higher priced mortgage or high cost thresholds). Such a result seems contrary to public policy.

Wells Fargo also believes, as discussed below, that costs of voluntary credit insurance and debt cancellation products should be excluded from the finance charge, for the reasons discussed below.

5. Increased Tolerances

The Board has requested comment about whether the Board should increase the finance charge tolerance in light of the proposal to require more third party charges to be included in the finance charge. Wells Fargo believes an increase in the tolerance is appropriate, since the lender has reduced ability to control the third party costs that will become part of the finance charge. Further, the tolerance levels were initially set in 1995. We recommend that a higher tolerance level be established, then that amount should be adjusted annually, similarly to the manner in which the Section 32 high cost fees amounts are adjusted.

6. Implementation Timing

Because the finance charge and APR calculation pull data from many systems and feed many others, it will be an enormous undertaking to reprogram these calculations. Our reprogramming estimate is discussed in detail in Section G below.

C. DISCLOSURES

For closed-end mortgages secured by real estate or a consumer's dwelling, the Board proposes changes to four types of disclosures: (1) disclosures at application; (2) disclosures within three business days after application; (3) disclosures three business days before consummation; and (4) disclosures after consummation.

1. Disclosures at Application.

The Proposal contains new requirements and changes to the format and content of disclosures given at application. The Proposal would require creditors to provide consumers with a new one-page Board publication, titled "Key Questions to Ask about Your Mortgage," which would explain the potentially risky features of a loan. This publication would be provided for all closed-end mortgages, before the consumer applies for a loan or pays a nonrefundable fee, whichever is earlier. In addition, creditors would be required to provide another new one-page Board publication, titled "Fixed vs. Adjustable Rate Mortgages," for all closed-end mortgage loans. This publication would explain in plain language the basic differences between such loans and replace the lengthy Consumer Handbook on Adjustable-Rate Mortgages (CHARM booklet) that is currently required. The current adjustable-rate mortgage (ARM) loan program disclosure would be revised to focus on the interest rate and payment information and to include a new disclosure of potentially risky features, such as prepayment penalties. This disclosure would be given to consumers who express an interest in an ARM, as currently required.

Wells Fargo applauds the simplification of these disclosures and agrees that they should be provided on all closed end real property secured loans. We are concerned however about the timing requirements for delivery, as 56% of our inquiries or applications were taken by telephone in our retail mortgage channels in the second and third quarters of 2009. The timing requirement stated in the proposed regulation is tied to the consumer's receipt of "application forms". In today's lending environment, "application forms" *per se* are usually completed orally or electronically with the consumer verifying the information at time of closing. The consumer rarely provides a completed application form to the creditor. The regulation should be crafted to permit these application disclosures to be mailed to consumers within 3 business days of any telephone, oral, or electronic application, along with the other application disclosures discussed below.

2. Disclosures within Three Days after Application.

The Proposal contains a number of revisions to the format and content of the disclosures provided within three business days after application to make them clearer and more conspicuous, including revising the calculation of the finance charge and APR. In particular, the APR would be displayed in 16-point font in close proximity to a graph showing consumers how the APR disclosed compares to the APRs for borrowers with excellent credit (and significant equity) and for borrowers with impaired credit. In addition, creditors would be required to disclose the consumer's settlement costs and the interest rate along with the corresponding monthly payment, including escrows for taxes and property and/or mortgage insurance. For adjustable-rate mortgages, the disclosure would show the highest possible maximum interest rate and payment.

As discussed above, Wells Fargo generally supports the inclusion of all settlement costs in the APR. We believe this approach will simplify calculation of the finance charge and make APRs more comparable between lenders for the same transaction. That being said, with respect to the disclosures provided three days after application, there are specific items that need to be considered, such as:

- While we agree with the need to provide consumers with information about how the rate being offered to them compares to rates for other products, we believe the APR graph proposed is not clear or easy to understand. In addition, it will be very difficult to program the placement of a dot in the right spot on a graph using a scale that will vary constantly. If the consumer does not lock his rate upfront, the information on this graph may change dramatically by the time his/her rate is set. We recommend in the alternative either 1) a simple textual message telling the consumer to inquire about the rates available for a 30 year fixed rate prime product, or 2) providing the rate for a 30 year fixed rate prime product with a 1 point origination fee on the date of the disclosure.

- These proposed disclosures contain similar (but not the same) information as that contained in the revised Good Faith Estimate ("GFE") form effective January 1, 2010. In the

Supplementary Information, the Board notes that it anticipates working with HUD to ensure that the TILA and RESPA disclosures are "compatible and complementary". Wells Fargo has just completed a 14 month initiative to prepare for the new GFE and believes such coordination is essential, and that items of essential information be presented in one or the other, but not both, sets of disclosures. This will be less confusing to consumers, who may not understand the differences if the disclosures for the same loan product describe the loan product in slightly different ways.

3. Disclosures Three Days Prior to Consummation.

The Proposal would require the creditor to provide a "final" TILA disclosure that the consumer must receive at least three business days before consummation, even if nothing has changed since the early TILA disclosure was provided. This requirement would address longstanding concerns about consumers being surprised at the closing table with different loan terms and closing costs. Wells Fargo agrees that this approach will be beneficial to consumers.

The Board has requested comments on two alternative approaches to address changes to loan terms and settlement charges during this three-business-day waiting period, namely:

- Alternative 1: If ***any*** term changes during the three-business-day waiting period prior to consummation, the creditor would be required to provide another final TILA disclosure and wait an additional three business days before consummation could occur; or

- Alternative 2: The creditor would be required to provide another final TILA disclosure and wait an additional three business days ***only if*** the difference in the APR exceeds a certain tolerance or if the creditor adds an adjustable-rate feature. All other changes could be disclosed at consummation.

Wells Fargo recommends that the Board adopt the alternative of only requiring a new TILA disclosure, with waiting period, if there is a material APR change or if an ARM feature is added. An additional waiting period can be costly, particularly in purchase transactions if a borrower has arranged a move for a particular date, or in cases where an interest rate lock will expire. Our experience has shown that consumers prefer to go forward with the transaction without a waiting period and that the additional waiting periods should be required only if there are material changes.

We would also ask that the Board consider a less onerous process to waive these timing requirements. Under the current Mortgage Disclosure Improvement Act ("MDIA") rules, processing a waiver request often takes as long as the required waiting period, and the waiting periods can only be waived in extreme circumstances. If a customer acknowledges receipt of the revised disclosure, and requests a waiver, he or she should be able to waive the three day wait period for whatever circumstances he or she believes necessary.

4. Servicing Disclosures

The Proposal contains changes to the form and timing of the current requirements regarding adjustable-rate mortgage payment changes:

- Under the Proposal, consumers with ARM loans would be given at least 60 days notice before an ARM adjustment is made instead of the current 25-day notice period. The operational changes needed to increase the timing of the advance notices to 60 days and allow sufficient time to perform quality control reviews would be significant. Moreover, there would be a significant risk of non-compliance with the change as Servicers would not have the indices necessary in time to calculate the new payment.

- This proposed requirement would be impossible to implement for the vast majority of existing ARM loans. The terms of the promissory notes for one-third (1/3) of the loans Wells Fargo services require calculation of the new interest rate 30 or fewer days prior to the new interest rate going into effect. These look-back provisions make it impossible to comply with the Proposal. This is because the notes call for an interest rate change to be tied to the index rate as of a specific date, and there is not sufficient time after the date specified for the servicer to calculate the new rate and payment information in order to communicate it to the customer 60 days prior to the date on which the new payment would be due. In addition, some interest rate indexes are not published on a schedule that would allow for compliance with a 60-day notice period. As a result, servicers would be forced to choose whether to comply with the new disclosure requirements and violate the contractual terms of these mortgages, or to honor the terms of the mortgages and be out of compliance with the disclosure requirements. This will expose servicers to significant compliance and litigation risk. We recommend a provision be added to the regulation that grandfathers existing loans with respect to the 60 day requirement (or 45 days should the Board adopt that time period instead). Additionally, we would recommend that language be added to allow for compliance with loan documents and a maximum number of 5 business days from the date the index is published to generate and mail the notice to the customer.

- The Board further requests comment on whether shortening the notice period to 45 days would resolve any compliance issues that servicers may have with a longer notice period. This change would not materially improve the ability of servicers to prepare accurate disclosures. We believe the current requirement of advance notice of 25 days properly balances the concern for sufficient notice to consumers and time to prepare accurate disclosures.

The Proposal also contains a proposed Negative Amortization Monthly Disclosure Model Form. The language set forth in the proposed Negative Amortization Monthly Disclosure Model Form H-4(L) makes unequivocal statements that, when applied to some ARM products, could result in a misleading disclosure. This is due in some cases to unique features such as a 7.5% payment increase cap and a 10-year recast in the "Pick-a-Payment" ARM product, acquired by Wells Fargo in the Wachovia merger, and/or in other cases, due to changed market conditions.

- When disclosing what "This Payment Covers" for the Minimum Payment, the model form states that it is "Just part of the interest that you owe this month." With today's low interest rate environment approximately one-third of Pick-a-Payment customers choosing the minimum payment did not defer interest in September. In fact, many customers' minimum payment covered not only interest due, but also paid down some principal.

- When disclosing what happens "If you make this payment *this* month" for the Minimum Payment, the model form states that "**$___ in unpaid interest will be added to your loan balance this month.**" This statement seems to assume that the minimum payment will always result in unpaid interest, which as stated above is not always accurate.

- The same part of the model form goes on to state that when making the Minimum Payment, "You are borrowing more money, and you will be losing equity in your home." Equity is not solely a function of principal balance; it is also influenced by market value. Even assuming that the loan is negatively amortizing, if the housing market is appreciating at a rate higher than the negative amortization, customers can still maintain or even gain equity. Clearly, this condition does not exist today, but has historically and may in the future during the life of these loans.

- When disclosing what happens "If you make this payment *every* month" for both the Interest Only Payment and the Minimum Payment, servicers are asked to insert a date on the model form when a customer "will have to make payments significantly larger," without defining what is significant. More importantly is the use of the term "will" which incorrectly presumes that payment amounts necessarily increase significantly despite the possibility of lower interest rates which could result in lower payments even with a higher principal balance.

- Finally, the model form does not provide for other payment options. Many of Wells Fargo's customers are offered the option of paying on a 15-year plan which of course will result in a balance decrease at a rate faster than scheduled. Other Lenders may offer other payment options as well.

Finally, the Board solicits comment on whether premiums or other amounts for credit life insurance, debt suspension and debt cancellation agreements and other similar products should be included or excluded from the disclosure of escrows for taxes and homeowner's insurance. We believe co-mingling premiums for voluntary/optional products with required escrow amounts for taxes and insurance will confuse and inappropriately lead consumers to think the credit insurance, debt suspension and debt cancellation products are required products. We recommend that such premiums be excluded as these are voluntary products for Wells Fargo customers and as such can be cancelled at any time.

5. Reverse Mortgages

The Board has indicated reverse mortgages are not intended to be covered by the Proposal; unless specific carve-outs are included in the final rule, however, reverse mortgages will have to follow the new rules. As the new rules are drafted with forward mortgages in mind, the disclosures make frequent reference to "monthly payments" which, of course, do not apply to reverse mortgages. To provide these disclosures to a reverse mortgage borrower will result in confusion. For example, the "Key Questions to ask about Your Mortgage" disclosure refers specifically to possible increases in monthly payments, as well as to increases in monthly payments due to interest rate increases. Similarly, the "Fixed vs. Adjustable Rate Mortgages" disclosure is drafted using the basic premise that the borrower will be making monthly payments.

We recommend that the Board consider explicitly carving out reverse mortgage loans from the revised disclosure requirements, and then providing a unique set of disclosures that are specific and meaningful to reverse mortgage borrowers. These new reverse mortgage disclosures would be in addition to the Total Annual Loan Cost disclosures already required by Section 226.33 of Regulation Z. These disclosures should be specifically tailored to the uniqueness of the reverse mortgage program, which, although the basic terms and conditions of a reverse mortgage are the same, can be either an open end transaction or a closed end transaction under Regulation Z. It would be beneficial to a reverse mortgage borrower to receive the same or similar disclosures whether or not the borrower's reverse mortgage is an open end or closed end transaction.

We also request that the Board clarify which formula a lender should use to calculate the APR for a reverse mortgage. Beginning in 2008, the number of reverse mortgage loans that constitute "closed-end credit" for Regulation Z has significantly increased. Appendix J to Regulation Z contains several formulae that lenders may use to calculate the APR for closed-end credit. However, none of these formulae specifically apply to reverse mortgages, and it is not clear which formula is most appropriate for the unique structure, features, and fees associated with reverse mortgages.

D. LOAN ORIGINATOR COMPENSATION AND STEERING PROPOSAL

The Board is proposing to use its authority under HOEPA to prohibit unfair or deceptive practices by restricting certain practices related to the payment of loan originators. The Board proposes to define a loan originator to include both mortgage brokers and employees of creditors who perform loan origination functions. The proposed rule would prohibit a creditor or other party from paying compensation, either directly or indirectly, to a loan originator based on any of the credit transaction's terms or conditions. The principal amount of credit extended is deemed to be a transaction term; however, the Board is also soliciting comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount. The Proposal would also prohibit a mortgage broker or other loan originator from directing or "steering" consumers to transactions that are not "in the consumer's interest" in order to increase the originator's compensation, and offers a safe harbor for originators who present the consumer with various loan options, including loans with the lowest interest rates and settlement costs for which the consumer likely qualifies.

Wells Fargo strongly supports the policy objective of controlling the inappropriate steering of borrowers to less favorable and/or more risky products than those for which they are qualified. Wells Fargo believes, however, that this part of the Proposal goes too far and should only focus on the loans that present more cost and/or risk to consumers: 1) higher-priced and high cost loans, and 2) loans with the features that the Board has identified in this Proposal as "riskier" features. Prohibiting payment of additional or increased compensation for higher priced or high cost mortgage loans and for loans with that pre-determined set of product features will curb "steering" and should be the focus of the rule. A more precise restriction focused on these loans, rather than one broadly applicable to loan "terms or conditions", would achieve the Board's stated objective while allowing creditors to continue to effectively function in a competitive mortgage market and avoiding the unintended consequence of restricting mortgage credit to creditworthy borrowers. We further believe the anti-steering "safe harbor" is unworkable as proposed, and that, absent a sound alternative, the Board should focus on the compensation provisions as the primary means of controlling "steering".

1. Loan Originator Compensation Restrictions

We recommend that the compensation restriction focus on higher-priced and high cost loans and loans containing the "riskier" features that are identified in the proposed origination disclosures. These are the loans for which originators should not receive greater compensation than for loans without these characteristics. This approach would prohibit compensation incentives for steering customers into "riskier" terms and conditions, but avoid micromanaging loan terms and conditions and compensation practices at the granular level.

For this specifically defined set of loans, we recommend that the loan originator compensation provisions be revised to include the exceptions and clarifications below. Should the Board decide to proceed with the broader "terms or conditions" prohibition as presently proposed, the exceptions and clarifications below will be even more essential to ensure continued access to credit to a broad segment of consumers.

- Retain the language currently proposed in Comments 36(d)(1)-3, 36(d)(1)-4, 36(d)(1)-5, and 36(d)(1)-7, allowing for the continued use of over par pricing to finance loan originator compensation or other closing costs, as well as increased compensation based on overall loan volume or loan performance, payments based on hourly rates, for new versus existing customers, and for geographic differences.

- Permit traditional loan amount-based compensation, as well as flat fee compensation percentages that vary based on ranges of loan amounts, including compensation structures in which lower loan amounts earn higher percentage compensation in order to encourage origination of small balance loans.

- Permit reductions in loan originator compensation where the final loan terms include a price concession (in interest rate or origination fee) to the borrower where necessary to respond to a competitive offer. Permissible reductions could occur only within a structured process established by the creditor and reviewed and enforced by the creditor's regulator. Eliminating a creditor's ability to respond to market competition significantly limits its ability to function efficiently in what is a highly competitive environment based on ever-changing local market conditions. Today, to effectively respond to such conditions, loan originators may lower the interest rate and/or fees on a transaction-specific basis. In order to maintain the profitability of their business, creditors in turn require the flexibility to adjust loan originator compensation levels on a loan level basis when price concessions are made. Prohibiting all compensation adjustments based on pricing reductions will necessarily impede competition, and we believe retention of flexibility, within a managed framework, would allow for continuation of healthy competition.

- Permit borrowers to continue to chose to compensate mortgage broker companies both *through* the interest rate and borrower-paid broker fees in the same transaction. Consumers need to be able to choose to pay closing costs, including reasonable loan originator fees, both directly and through the interest rate in order to incur fewer out-of-pocket costs. Any such payment-through-the rate will be subject to full disclosure under the new RESPA rules, which do not permit increases in broker compensation after the GFE has been issued, as well as in the requisite broker fee disclosures required by the broker's and creditor's regulators.

- Permit creditors to offer enhanced incentive compensation to loan originators for originating smaller balance loans and government and affordable housing/CRA loans which may require additional time and resources on the part of individual loan originators. Failure to do so may have the unintended effect of chilling origination of loans to the traditionally underserved as well as the development of products to serve such consumers.

- Confirm that internal referral programs that serve responsible lending objectives do not constitute "steering". In its attempt to control steering, the rule as proposed could also unintentionally prevent creditors from providing internal compensation incentives to refer eligible borrowers to channels and/or products with more appropriate "terms" (e.g., a compensation incentive designed to encourage originators in a nonprime channel to refer eligible loans to a prime channel) or which may simply better serve the borrower's stated preference (e.g. a home equity loan rather than a refinance of the borrower's primary mortgage).

- Confirm that the term "indirect compensation" does not apply to ancillary compensation such as retail compensation incentives related to referrals or cross-sell activities.

- Confirm that payments in secondary market transactions are not subject to the proposal.

- Confirm that the definition of "loan originator" applies to the customer-facing sales force, and not to lender companies, or their management or executive personnel, and that different business channels, such as loan originators in a centralized call center versus a bricks and mortar branch network, housed within the same creditor may have different compensation structures.

- Further clarify the phrase "based on the terms of the loan". Without further specification, this phrase could be broadly construed to include interest rate, origination fees or other costs, discount points, lien position, maturity period, amortization type, product type (conventional or government, conforming or nonconforming, affordability program, etc.), loan-to-value ratio or down payment requirements, and a potential myriad of other product "features". If the broad "terms or conditions" approach is retained, significantly more guidance will be essential.

- Clarify reverse mortgage requirements. HUD regulations allow lender compensation for reverse mortgages based on the Maximum Claim Amount (MCA). MCA is the lower of the appraised value, sales price (if any) or the HUD HECM Lending Limit. The RESPA "Frequently Asked Questions" recently defined "loan amount" as the Principal Limit, yet for Reverse Mortgages lender compensation is based on the MCA. As a result, the Proposal needs to better define allowable loan originator compensation with respect to reverse mortgages. Using different definitions of "loan amount" is very confusing to reverse mortgage borrowers.

2. "Steering" Proposal

The Proposal would also prohibit a mortgage broker or other loan originator from directing or "steering" consumers to transactions that are not in the consumer's interest in order to increase the originator's compensation. To encourage responsible lending, the Proposal offers a "safe harbor" for originators who present the consumer with other loan options, including loans with the lowest interest rates and settlement costs for which the consumer likely qualifies.

As the Board has indicated, there is no standard measure for determining whether a loan is "in the interest" of a consumer. Many factors, some of them very personal, are involved in a consumer's decision to choose a particular loan product. It is not possible to draft a bright line rule that will meaningfully assist a loan originator in determining whether a loan product is "in the consumer's interest". As a result, we urge the Board to focus on the compensation provisions as the means of controlling "steering" rather than attempting to create a safe harbor that is subjective and appears to be unworkable.

The lack of a bright line test for "the consumer's interest" makes an effective feasible safe harbor provision essential if the steering provisions are adopted. The safe harbor provision proposed in Section 226.36(e)(2) requires, among other things, (1) that the consumer be provided with at least 3 loan options for each type of transaction in which the consumer has expressed interested, and (2) that the loan originator have a good faith belief that the options presented to the consumer are loans for which the consumer likely qualifies. We believe that the second requirement cannot be met without significant effort on the part of the loan originator, including affirmatively shopping the loan options offered to the respective creditors through submission of a loan application. We believe this may not be feasible under the new RESPA rule and urge the Board to coordinate these provisions with HUD if this approach is to be included in the final rule.

Wells Fargo concurs with the concept in the proposed rule whereby loan originators who are employed by a creditor who is not a mortgage broker would be deemed to have complied with any anti-steering requirement if the creditor has complied with the loan originator compensation rules, subject to the flexibility suggested above.

E. TRANSLATION OF DISCLOSURES

The Board has requested comment on whether some or all of the required disclosures or other documents should be required to be translated into other languages. According to the US Census Bureau, over 300 languages are spoken in the United States, with many of them not including a written language (e.g. Hmong) and many more not using a Roman alphabet (e.g. Chinese, Japanese, Vietnamese, Russian, Greek, Arabic, Hebrew). The challenges posed by translating or printing documents in such languages would be significant, particularly for smaller institutions. Wells Fargo notes that even for European languages written in a Roman alphabet, the costs of translation are likely to outweigh the benefits. In 2007, our affiliate Wachovia Bank spent over $1 million to translate a small portion of its home equity documents into Spanish – what the US Census identified as the most common language in the United States other than English. Between November 1, 2007 and June 15, 2009, out of 187,308 loans booked, only 304 home equity loans and HELOCs were booked with a Spanish-language preference (only 0.16% of loans booked).

Even if the translation requirements were to apply only to the loan origination disclosures, and even if the Board were to provide forms translated into foreign languages, creditors will still face significant challenges in properly populating the forms. For forms with variable text, where concepts such as for variable rate loans or open end accounts may need to be explained to customers, origination systems do not have the ability to print in non-Roman alphabets. Moreover, complex consumer lending concepts are capable of multiple translations, particularly for languages that do not current incorporate those concepts, so reaching consensus on how such terms should be translated for Federal law compliance purposes will be challenging. For larger institutions, the costs are likely to be prohibitive. For smaller institutions, such a requirement is likely to be unworkable.

In the interest of providing consumers who are not proficient in English with information, Wells Fargo suggests that the Board translate a static form or booklet into the most common languages, other than English, spoken in the United States. This booklet would generally describe the mortgage application process and emphasize the importance of understanding the documents and the transaction. The borrower could be encouraged to obtain a translator of their choosing if they wish, and, if relevant, the borrower could be invited to go to a government website for more information.

F. VOLUNTARY CREDIT INSURANCE AND DEBT CANCELLATION PRODUCTS

The Board has requested comment regarding proposed changes to §226.4 – Finance Charge as it applies to credit insurance and debt cancellation products. Wells Fargo respectfully requests clarification as to the intent and breadth of the proposed changes to this section. The proposed changes to Regulation Z in Part II are directed at closed-end real estate secured transactions and Part III toward open-end real estate secured transactions but it appears that the changes to §226.4 are applicable to all credit transactions. There is no carve-out that limits applicability to real estate secured transactions and the Commentary also supports the fact that the changes apply to both open-end and closed-end non-real property credit transactions. Wells Fargo's comments are provided with the understanding that the applicability of revised § 226.4 is broad in nature; however, in the event our interpretation is incorrect we would appreciate clarification. In addition it would appear that if broad changes are made here that impact all open-end credit transactions and other forms of closed-end credit, notification of such proposed changes should also be made to all impacted parties

1. Elimination of Exclusion from Finance Charge for Closed-End Mortgage Transactions

The Board has proposed to add new §226.4(g) that eliminates any exclusion from the finance charge for credit insurance or debt cancellation products for closed-end transactions secured by real property or a dwelling. Assuming that the Board has authority to require inclusion of premiums or fees for voluntary credit insurance or debt cancellation products in the finance charge even when the statutory requirements of 15 U.S.C. § 1605(b) are met, we believe that this change would be inconsistent with the other changes proposed for the finance charge calculation. Generally we have commended the Board for its efforts to make the finance charge more meaningful to consumers by focusing on costs truly required to obtain credit. We agree that charges that are truly required as part of the credit portion of the transaction are appropriately included in the finance charge. However, voluntary credit insurance and debt cancellation products are not required to obtain credit. While these products are specifically tailored to be offered in connection with consumer credits, they are often sold separately and often after loan closing. In these cases, there would be no way to disclose the costs as finance charges associated with the loan. The mere fact that these voluntary products are often sold after the credit transaction takes place demonstrates that they are not so entwined with the credit transaction that their associated fees/premium should be treated as finance charges.

Further, the inclusion of premium/fees for optional credit insurance/debt cancellation products in the APR calculation could contribute to more real estate secured loans being labeled as higher priced mortgages or high cost loans under HOEPA or pursuant to state laws. Creditors who do not have sufficient operational capability to offer these types of loans would be constrained from offering optional credit insurance/debt cancellation products to their mortgage loan customers, limiting availability of products that truly add value for many borrowers. Mortgage and home equity loan applicants desiring such protection would be forced to search elsewhere for protection alternatives. Some optional credit insurance/debt cancellation benefits are not generally available in the marketplace (such as involuntary unemployment) or customers may not qualify due to the inability to meet conventional insurance underwriting criteria. Many voluntary credit insurance/debt cancellation products are available without restrictions or underwriting criteria that are imposed with conventional insurance products. In addition, including premium/fees for these products in the finance charge could be even more confusing to a borrower and potentially lead the borrower to conclude the product is mandatory rather than optional.

The Board may be making certain assumptions regarding credit insurance or debt cancellation products that may not be entirely accurate. First, it appears the assumption is that these products are financed or paid for with loan proceeds with a single premium or fee. However, this is not always the case. For example, all credit insurance and debt cancellation programs offered by Wells Fargo to its customers are voluntary and are paid with a separate premium or fee on a monthly basis and coverage can be cancelled at any time by the consumer. There also appears to be an assumption that consumers never see a statement indicating the charge for a credit insurance or debt cancellation product. Wells Fargo customers receive a monthly statement itemizing any charges for credit insurance or debt cancellation products.

2. Additional Verification Requirements for Transactions other than Closed End Mortgage Transactions

The proposed rule in §226.4(d)(1)(iv) and 226.4(d)(3)(v) would expand the disclosure requirements necessary to exclude premium/fees for voluntary credit insurance and debt cancellation products from the finance charge on closed-end, non-real estate-secured credit and open-end credit. In addition to the current requirements imposed in §§ 226.49d)(1) and (3), a creditor would also be required to determine that the borrower meets any applicable age and employment eligibility requirements at the time of enrollment and must provide a disclosure that such determination has been made. This determination must be made based on "reasonably reliable evidence." If the creditor offers a bundled product and the consumer does not meet the age and/or employment eligibility criteria for all of the bundled products, the creditor must either (1) treat the entire premium or charge for the bundled product as a finance charge, or (2) offer the consumer the option of selecting only the products for which the consumer is eligible and exclude the premium or charge from the finance charge if the consumer chooses an optional product for which the consumer meets the age and/or employment eligibility criteria at the time of enrollment.

The proposed change puts the burden on the creditor to determine the borrower's age and employment status. In a real estate secured transaction the creditor may have the information available to make determinations as to age and employment status of the borrower. However, in a situation where a consumer applies for open-end non-real estate secured credit, the creditor may only be able to establish the age of the borrower but will not collect sufficient employment verification documentation to satisfy the proposed rule as to an optional credit insurance/debt cancellation product. A more stringent burden would be placed upon the creditor or a third party at point of sale to collect more information for purposes of an optional credit insurance/debt cancellation product enrollment than for the extension of credit itself. In such instances, requiring a creditor to determine a consumer's employment status upon the creditor would be unduly burdensome.

Further, the proposed disclosure requirements that relate specifically to eligibility, conditions and exclusions duplicate the legal requirements already in place for optional credit insurance/debt cancellation products. The Gramm Leach Bliley Act provides for and preserves functional regulation of insurance by the primary state insurance regulators. Credit insurance applications and certificates provided today already contain such disclosures pursuant to state law. Regulations of the Office of the Comptroller of the Currency (12 CFR Part 37) address the Board's concerns related to informing consumers that debt cancellation or suspension plans contain eligibility requirements, conditions and exclusions in a "readily understandable" format.

In addition there is the suggestion that a consumer should be able to pick and choose coverages either at their option or due to eligibility issues. The unbundling of a voluntary credit insurance or debt cancellation product, particularly at point of sale, is not feasible due to system and technological requirements as well as pricing and actuarial considerations.

3. Telephone Purchase - § 226.4(d)(4)

The final Regulation Z rule published January 29, 2009 (the "January 2009 Rule") contained new § 226.4(d)(4) pertaining to telephone purchases of voluntary credit insurance, debt cancellation or debt suspension coverage for an open-end (not home secured) plan. The January 2009 Rule specifically excluded "home secured" transactions. In Part III, page 43439 of the Summary of Proposed Changes, the Board proposes to extend the telephone sales rule for credit insurance and debt cancellation or suspension coverage, as adopted in the January 2009 Rule, to HELOCs. Section 226.4(d)(4) would be amended to apply to all open-end credit, not only open end (not home-secured) credit. However, there was no corresponding change made to the actual rule to include all open end credit (including HELOC) transactions in the telephone purchase section of the rule. The proposed rule still includes the limitation of [a] "not home secured" plan.

In Part II, as to closed-end real estate transactions, the proposed rule § 226.4(g) as well as the Board's commentary states that a telephone purchase rule for closed-end credit is not appropriate because monthly statements are not required for closed-end credit and it would be difficult for consumers who do not receive monthly statements to detect charges for unwanted coverage. It is not accurate to state that consumers do not receive monthly statements for closed-end real estate transactions that would also disclose any premium or fees for voluntary credit insurance/debt cancellation products. Furthermore, the Board can ensure that consumers are protected by appropriate safeguards by requiring creditors enrolling consumers in voluntary credit insurance/debt cancellation products by telephone to provide a monthly billing statement itemizing product premium/fees and to abide by a billing error resolution system.

4. Content of Disclosures for Closed-End Mortgages – New § 226.38

A new section 226.38 – Content for Disclosures for Closed-End Mortgages was added to the rule. Credit insurance and debt cancellation and debt suspension coverage disclosures are discussed in § 226.38(h). The Appendix included in this section is titled "Appendix G to Part 226 – Open–End Model Forms and Clauses." This is confusing as the Appendix is referring to "Open-End Model Forms and Clauses" and is found in that section of the rule specifically addressing "Content of Disclosures for Closed-End Mortgages." The question is if the Board intended these model forms and clauses to be used for both closed-end mortgages and open-end as well. Nowhere else in the proposed closed end rule do model forms and clauses appear for purposes of open-end real estate secured transactions, or open-end non-real estate secured transactions.

Further, the proposed model forms and clauses found in §226.38(h) do not "fit" open-end transactions. Modifications would be necessary and changes would have to be added to the Regulation Z Open-End Credit regulations as the currently proposed Model Forms are substantially geared toward closed-end credit transactions. For instance, products offered on open-end credit products involve monthly premium or fee amounts but there is no specific "term" of the coverage in months or years.

We have concerns regarding components of the proposed G-16(C) and G-18(D) - Credit Insurance, Debt Cancellation or Debt Suspension Model Clauses that are not accurate or particularly meaningful to the consumer. We would appreciate the opportunity to work with you to further evaluate the proposed disclosures and perhaps to develop meaningful certification language where the consumer verifies that he/she meets certain eligibility requirements. Many of these types of disclosures are already required under state insurance laws for credit insurance as well as under 12 CFR Part 37 for debt cancellation and debt suspension products. In addition, we would suggest that any new disclosures or model clauses should not mix insurance terminology with debt cancellation or debt suspension terminology. This can be confusing to the consumer as these are two different types of products and references to each type should be clear and separate.

G. IMPLEMENTATION TIMING

Many of the changes proposed with respect to real estate secured loans will require complex process and technology changes for Wells Fargo across at least five business lines plus our multiple sales channels for the products impacted by the proposed regulation. Wells Fargo utilizes a disciplined quarterly release cycle for our major technology systems across the enterprise. Typically, work for a specific release begins at least 6-9 months prior for small-medium sized changes, 9-12 months for large changes and 12-18 months for significant changes. We believe that timing can be broken down based on the complexity of programming and whether the items are interdependent with other items. While these time frames are appropriate for small, "one-off" issues, additional time will be needed initially to review the broad scope of these changes and determine how best to implement the requirements systemically before "projects" for each of the requirements can be kicked off.

As part of our review of the proposed regulation, we considered the amount of time required to implement the various changes, with respect to real estate secured loans only, from the time we receive the final regulation. Based on a preliminary high level review of the proposed regulation, we anticipate that it would take <u>at least</u> the following implementation time frames, calculated from the date that we have determined how to approach the changes overall:

- Static Disclosures at Application – 6-9 months
- Early and Final TIL Disclosures – 12-18 months
    - Please consider that the proposed Annual Percentage Rate graphic is practically impossible for Wells Fargo's document management systems and for vendors. We feel that this particular item needs to be reworked into a format that can be readily automated and delivered to applicants.
    - The revisions to what closing costs are included in the finance charge and subsequent APR calculations, and related adjustments to state high cost tests, will require significant data mapping, then testing to ensure that the changes are made across the multitude of systems that accumulate, calculate, and use the finance charge and APR information.
- ARM Adjustment Payment Notices – 6-9 months
- Payment Statement changes for Negative Amortization – 9-12 months
    - Any changes to payment statements require a significant amount of time for testing to ensure accuracy for our borrowers.
- Creditor Placed Property Insurance Notice – 9-12 months

We have not sized the changes with respect to non-real property secured loans, or the inclusion of escrows or Optional Credit Products in the finance charge.

Wells Fargo greatly appreciates the opportunity to provide these comments on the Proposal and we respectfully ask that you consider our comments and recommendations. In addition, we would welcome the opportunity to provide additional information to the Board and its staff concerning certain aspects of the Proposal, including treatment of reverse mortgage products, the payment statement changes for negative amortization loans, voluntary credit insurance and debt cancellation products, and implementation timing. We strongly support the spirit of the Proposal to provide clearer consumer disclosures and to strengthen consumer protections. We have pointed out those aspects of the Proposal that we believe may have unintended consequences and cause disruption to the marketplace. If you have any questions or would like to discuss our comments, you can contact me at (515) 213-4572.

Sincerely,

David Moskowitz
Deputy General Counsel
Wells Fargo & Company