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

January 3, 2011

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

Re: Regulation Z; Proposed Rule; Request for Public Comment
Federal Reserve System Regulation Z; Docket No. R-1393;
RIN No. 7100-AD55

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 and clarifying provisions of the Truth in Lending Act, including provisions added by the Credit CARD Act of 2009, published in the Federal Register on November 2, 2010 at 12 CFR Part 226 (the "Proposed Rules"). Wells Fargo appreciates the opportunity to comment and respectfully requests that members of the Board of Governors of the Federal Reserve System ("Board") consider adopting the suggestions set forth herein.

The Wells Fargo vision to satisfy all of our customers' financial needs, 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.

Effective Date

Since new substantive requirements are included among the various clarifications, we urge the Board to follow the traditional Regulation Z revision schedule; that is adopt the changes as a final rule in April, 2011 and require mandatory compliance in October, 2011 with voluntary compliance permissible at any time after the final rule is issued.

We also request that the Board adopt clear transition guidance that the revised disclosure provisions of the final rule only apply to accounts opened after the final rule's effective date, or to changes in accounts that take effect after the final rule's effective date. The Proposed Rules contain provisions that could significantly alter lender practices, for example, account underwriting practices under Section 226.51 or rate and fee waivers impacted by Section 226.55, therefore applying revised duties retroactively would promote uncertainty and potential litigation.

Guidance related to the effective date and transition to new requirements is particularly important considering that rulemaking authority with respect to Regulation Z is scheduled to transition from the Board to the new Consumer Financial Protection Bureau prior to October, 2011.

226.2(a)(15) Definition of Credit Card

The Proposed Rules provide that an account number may constitute a credit card, even in the absence of any plastic, where the number may be used to make a purchase of goods or services at a merchant. We ask the Board's assistance in clarifying that an account number can constitute a credit card for purposes of this definition only when a merchant uses the number to obtain payment for goods or services directly. For example, the use of a number to confirm a consumer's identity would not constitute use of the account number as a credit card. Similarly, the use of an account number to access an online bill payment system (operated by a third party, such as a bank, rather than the merchant) which may subsequently distribute payments to multiple payees, including merchants, would not constitute use of the account number as a credit card.

226.6(b)(2)(i) Account Opening Disclosure-Introductory Rate

We urge the Board to clarify that a private label card issuer may utilize an exception to the general requirement that introductory rates must be specifically disclosed in the account opening table, which could be incorporated as part of Section 226.6(b)(2)(i)(E). Merchants will often offer promotions that include special financing rates or terms for some, but not all, items available for consumers to purchase. A furniture store, for example, may place special tags on display items indicating which pieces qualify for a reduced rate. Or, a store may offer promotional terms for purchase made over a dollar threshold, perhaps differing terms depending upon prices of items purchased. The store may also offer the consumer an opportunity to apply for a private label credit card to finance any purchase made in the store. When the consumer opens the private label credit card account disclosures are provided of the terms applicable to that account. The sales slip will also specifically disclose any special promotional rate applicable to all or part of that particular purchase, which may be a rate that is not generally applicable to the account but just to those specific items purchased that day. The promotional rates for those purchases and the time they apply may vary dramatically on an individual account. While they are detailed on the specific sales material, it may be impossible to generate an account opening disclosure that could contain all of the special rate terms that vary by item sold. For example, there may be a chair with zero percent for six months, a sofa with two percent for twelve months, and a bookcase with six percent for two years, all as part of the same initial purchase. Or, the sofa may qualify for a different, longer promotional term because it is priced higher than the other items. The Board should clarify that such promotional rates on specific purchases do not need to be disclosed as introductory rates in the account opening disclosure table in circumstances where the opening of the account simply happens to coincide in time with the special purchases.

226.12 Cardholder Claims and Defenses

The Proposed Rules clearly indicate that different treatment is permitted for accounts that fit the definition of "credit card accounts under an open-end (not home-secured) consumer credit plan" and those that fall outside of that definition. Please verify that for "other types of credit card accounts," i.e. those not under an open-end (not home-secured) consumer credit plan, that a creditor may nevertheless follow the payment allocation rules applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. Some issuers have multiple types of accounts that may be serviced on a common processing system. It would be most efficient to treat accounts similarly when they are serviced on a common system. Furthermore, consumer protection should be enhanced by following the most protective rules, those required for credit card accounts under an open-end (not home-secured) consumer credit plan.

226.51 Ability to Pay

There is confusion surrounding the proposal to extend the "independent" ability to pay requirement to all applicants, regardless of whether they are under or over 21. The CARD Act intended to provide special status for consumers under 21 entitling them to special protections in connection with applications for credit cards and increases in the amount of credit made available. It is unclear how applying the same independent standard to applicants 21 years of age or older will serve to preserve special protection for younger and more vulnerable borrowers.

The Proposed Rules add an "independent" ability to pay analysis for a "consumer" under the general rule that applies to consumers 21 years of age and older. This could be read, in the case of two joint over 21 applicants for a credit card, to require that each of those two applicants be subjected to an independent ability to pay analysis. Such a result is problematic under the Equal Credit Opportunity Act and the very concept of a joint application. The existing Regulation Z Comment 226.51(a)(1)-6 indicates that a creditor may consider the collective ability of joint applicants or cardholders to make payments required on the credit card account. There was no proposal to modify this Comment, yet it directly contradicts a requirement to ensure that each consumer making the joint application possesses an *independent* ability to pay. We believe the existing Comment reflects an appropriate balance of prudence and consumer rights. People should be able to apply for credit jointly, as a unit, and have their qualifications assessed on the basis of that application unit rather than reverting to any individual test.

Continuing to permit the aggregation of income and assets to judge ability to pay collectively, not independently, on joint applications from consumers 21 years of age and older would best preserve both the special protection of younger consumers and the social gains embodied in more than three decades of anti-discrimination progress.

The Board indicates, in the introductory material accompanying the Proposed Rules, that considering only an applicant's "independent" ability to pay will not violate ECOA or Regulation B. Please expressly state, either in the revised Regulation Z or the revised Commentary, that the Board has considered and determined that adherence to the ability to pay revisions finally promulgated will not violate the protections afforded to applicants by the ECOA and Regulation B. We believe it would also be appropriate to specifically address this issue in Regulation B and/or its Commentary.

226.52(a) First Year Fees

The inclusion of any minimum interest charge in the first year fee limitations needs to be clarified. Since a minimum interest charge is a substitute for interest that has been earned on the account, it would be appropriate only to include the excess amount of the charge in the first year fee provisions. The earned interest portion of the minimum interest charge is not a fee, it is the same as all other interest earned and billed on the credit card account. For example, suppose an account's terms include a minimum interest charge of two dollars per billing cycle, but the earned interest on a particular cycle is only one dollar, so the consumer is billed two dollars, one of which is earned, the second of which is added to the earned interest to make up the remainder of the minimum charge. In this situation, only the extra one dollar could possibly be considered a fee for first year restriction purposes because the first dollar represents earned interest, not a fee of any sort.

We would also suggest that a de minimis standard should apply. The Board has adopted a rule that says a minimum interest charge $1.00 or less need not be disclosed, either in the 226.5a application and solicitation disclosure or in the 226.6 account opening disclosure. Considering the Board's reasoned judgment that amounts of $1.00 or less are inconsequential in this context, we request that the Board please confirm that a minimum interest charge not more than $1.00 need not be included in the first year fee limitation because it is similarly below the materiality threshold.

226.52(b) Waiver of Penalty Fees

The Proposed Rules indicate that a penalty fee may not serve as a trigger for higher fees amounts associated with subsequent violations unless the first fee is actually imposed on the consumer's account. We question the wisdom of requiring the first penalty fee to actually be imposed in order for it to trigger a higher fee amount for a second violation within six months. At a minimum this will limit courtesy waivers of fees provided by creditors in circumstances where the lender is contractually permitted to charge the penalty fee. A creditor will now have to value the cost of a courtesy waiver as 40% higher (the potential $35 that is being given up instead of the $25 amount of the current fee). A penalty fee courtesy waiver may represent a good faith effort by the creditor to work with a consumer through unusual or difficult circumstances. The creditor should not be punished for waiving penalty fees, nor should the consumer be rewarded when the consumer repeats the proscribed behavior. If repetitive violations are to be discouraged by escalating penalties, it makes no logical sense to remove that disincentive merely because the creditor has displayed generosity toward the consumer. This rule would stifle generosity and harm consumers.

We would ask, if the Board decides to enact the Proposed Rule requiring the first penalty fee to be imposed, for an expanded discussion explaining the concept of when a penalty fee qualifies as being "imposed". Is it imposed if it appears on the related billing statement, whether or not later collected or waived? If a penalty fee is waived six months later does a creditor need to look backward and alter the original "imposed" status of the fee, making any corresponding changes based on account activity in the interim? At exactly what point would the imposition become final and not subject to later revision? We believe that neither the consumer nor the creditor is well served by lingering ambiguity and would suggest that any penalty fee that is billed to a customer and not waived or retracted by the end of the following billing cycle should be permanently deemed to have been imposed on the account for purposes of supporting an increased fee level if the same violation occurs within six months.

226.55(b)(3) Advance Notice Exception

Please clarify that the limitation on increasing rates, fees, or charges while an account is closed or not accessible for new transactions does not apply to accounts that may have been temporarily suspended due to a fraud alert, suspicious transaction, or similar short-lived status. Such accounts will normally be reopened to full transactional use by the consumer when the temporary issue has been resolved, usually within a few days. It would be an inappropriate procedural burden to eliminate all accounts in a temporary hold from participation in increase strategies. The costs of removing accounts from a notice and increase process and the costs of noticing that subset of accounts separately once the accounts have been reopened could add significantly to costs and, like any increase in costs, may ultimately lead to price increases. It would also increase the administrative burden on issuers to more closely track temporary statuses and move accounts in and out of rate strategies. It would take longer and be more costly to take actions that affect an entire portfolio.

We suggest that the Board expressly provide that where notice of a rate or fee increase has been provided to an account that is closed or suspended at any time during the pendency of the notice period, the increased rate or fee may properly apply to new transactions that are permitted if the account is subsequently reopened.

226.55(e) Promotional Waivers or Rebates

We believe that the amendments in this section and related changes to 226.9 place an unnecessary and inappropriate burden on the ability of lenders to devise promotional programs for the mutual benefit of the lender and the consumer. Consumers and lenders should be able to mutually contract for specific criteria that would result in a rate or fee buydown and then have the clear contractual provision self execute as originally intended by the parties without additional notice requirements and opportunity for rejection. For example, a bank may wish to contract for no annual fee as long as certain balance levels are met in unrelated loan or deposit accounts on the annual anniversary date. The consumer would know clearly what the requirement is for avoiding the annual fee. It creates an unreasonable burden to require additional notice accompanied by a right to reject and close the card account before the previously contracted, disclosed and understood fee may be charged.

We recognize that there are concerns that waivers or rebates associated with some activities may be problematic, such as associating them with activity or inactivity on the card account or with timely or delinquent payment behavior on the card account. We request that the Board consider excepting from the ambit of new Section 226.55(e) any waiver or rebate that is predicated on actions or conditions outside the credit card account relationship between the consumer and the issuer. This would preserve some limited flexibility for lenders to innovate and provide different choices in the marketplace, which would benefit consumers and lenders alike.

226.55(e) Rebates

The introductory material indicates that this new subsection is not intended to impact rewards programs, whether they involve merchandise or cash back. We would appreciate express clarification in the Regulation or Commentary that the application of a cash back reward to a credit card account at the consumer's option does not trigger this section. Many issuers provide a cash back program where the consumer has an option to receive the reward as a check, an advance into a deposit account, or as a credit on the card account. Clarification should specify that applying a reward credit to a card account is perfectly fine and does not itself trigger any other requirements or restrictions. Aside from the costs of redesigning rewards programs and materials, eliminating a popular consumer choice for receipt of rewards would not advance any consumer protection goal.

226.58 Internet Posting

We support the Board's proposal to fine tune the pricing information so that details such as margin, daily periodic rate, limitations, etc. do not need to be included. Simplifying the required information to that most meaningful to a consumer will further the consumer education and protection component of the regulation without increasing the compliance burden.

226.59(a) Evaluation of Increased Rate

The suggestion that changing an account's rate structure may result in a springing rate increase at some indefinite future time is very troubling. We agree that any change from a variable rate structure to a non-variable rate structure, or the reverse, must be examined to determine if it constitutes a rate increase. The appropriate standard is to compare the rate applied to the consumer's account immediately prior to the increase with that applicable to the consumer's account immediately after the increase (without the effect of any promotional or penalty provisions). If the new rate is higher, then there has been an increase and there should be a periodic reevaluation as provided for in 226.59.

The factual question of whether or not an increase has occurred needs to be considered at a specific time: the time the rate structure changes. The example in the proposed Commentary unfortunately suggests that an index change several months later could result in a post hoc increase in the consumer's interest rate which would then require reevaluation under 226.59. The same possibility could logically occur years, rather than mere months, later. It could logically occur multiple times on the same account as index values rise and fall over the ensuing business cycles. A prime purpose of the law is to provide certainty in human relations and commercial transactions. Leaving this window wide open provides no certainty at all, rather it guarantees perpetual doubt for all parties.

If the change in rate structure is from a non-variable to a variable rate, then there should be no subsequent confusion or surprise for the consumer because following changes in an index is the very nature of a variable rate. Indeed, if a variable rate is initially installed on an account, then the changes which flow from index movement are expressly exempt from advance notice requirements and from rate reevaluation requirements. It would be inconsistent to treat accounts modified to a variable rate structure differently.

If there is concern about potential manipulation of rate structure to the detriment of consumers, then thoughtful rules could address the potential for harm while still permitting reasonable changes in accounts. For example, a limit could be placed on switches between non-variable and variable rate structures, such as an account must not be switched more often that once in any two year period. Open-end accounts are predicated upon an ongoing relationship between the creditor and the consumer that must be able to evolve with circumstances for their mutual benefit.

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 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) 557-6321, (515) 222-8341, or jamescrowell@wellsfargo.com.

Sincerely,

/s/ JAMES DOUGLAS CROWELL

James Douglas Crowell

Senior Counsel