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February 22, 2011

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

RE: 12 CFR Part 226: Truth in Lending; Interim Rule amending Regulation Z Federal Reserve System Docket No. R-1366: December 29, 2010

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates in response to the Federal Reserve Board's December 22, 2010 interim rule which amends Regulation Z by implementing certain requirements of the Mortgage Disclosure Improvement Act of 2008. This interim rule provides certain clarifications and modifications of the earlier interim rule published on September 24, 2010.

Wells Fargo supports the efforts of the Federal Reserve Board (Board) to provide additional clarity on these important consumer disclosures to ensure consumers receive the most meaningful information possible.

We appreciate the opportunity to comment and respectfully request that the Board consider adopting the following suggestions introduced in this letter.

**A. Disclosure of Known Payment Increases vs. Potential Rate or Payment Increases**

Wells Fargo has always believed that consumers are better served when they receive information regarding all known payment increases. We believe the interim rule does a disservice to consumers by sacrificing the information regarding known payment increases in exchange for information regarding potential rate or payment increases.

It is our belief that the better practice is to provide the consumer with as much meaningful information as possible, and that the regulation should provide lenders with the ability and safe harbor to do so. Refer to Appendix A for more details.

**B. Loans with a Temporary Buydown Feature**

We appreciate that the Board could not anticipate every combination of loan products and features that may arise and understand that not all combinations will fit neatly into the Model Clauses.

However, we believe that the interim rule should allow lenders to disclose all payment increases occurring under the terms of a temporary buydown agreement. Furthermore, the level of information provided to a consumer regarding the payment increases associated with a temporary buydown should not vary based on the source of the buydown funds. Refer to Appendix B for specific examples and our suggested changes.

**C. Official Staff Interpretation Comment Appendices G and H**

The Commentary to Appendices G and H was revised to state that creditors, in utilizing Model Clause H-4(H), may modify the heading of the second column to read “first adjustment” or “first increase”, as applicable. However, the interim rule states that the “first adjustment” column is only to be used in conjunction with an adjustable rate mortgage, and the heading of Model Clause H-4(H) indicates that the Model Clause should be used for fixed rate mortgages. We believe this is a drafting error that should be corrected. Refer to Appendix C for further details.

**D. Potential Consumer Confusion in Use of “Maximum Ever” Heading**

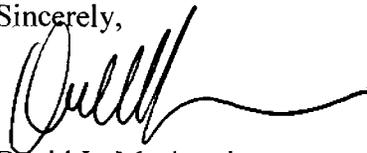
We are concerned that the “Maximum Ever” column used in conjunction with adjustable rate and step rate mortgages may lead consumers to believe the “Maximum Ever” column discloses the maximum payment they could be required to pay, when that will not always be the case. We believe this column heading (as well as the “First Adjustment” column) could be revised to provide more clarity to the consumer. Refer to Appendix D for suggested headings.

**E. Lender Confusion in Appropriate Use of Model Form H-4(H)**

The interim rule indicates that Model Clause H-4(H) is to be used in conjunction with fixed rate mortgages with interest only features. We ask that the Board clarify whether their intent was to treat fixed rate mortgages as step rate mortgages, and if not, provide further guidance as to which Model Clause lenders should use in conjunction with fixed rate interest only loans that have no rate adjustments. Refer to Appendix E for further detail.

As always, Wells Fargo appreciates the opportunity to be of any assistance.

Sincerely,



David L. Moskowitz  
Deputy General Counsel  
Wells Fargo & Company

Enclosure(s)

# Appendix Materials

## Appendix A - Disclosure of Known Payment Increases vs. Potential Rate or Payment Increases

As stated in the Supplementary Information provided in the interim rule published on September 24, 2010, the purpose of the interim rule is to implement the provisions of the Mortgage Disclosure Improvement Act which requires disclosure of payment examples if the loan's interest rate or payments can change. While we recognize that the Board could not foresee every combination of loan features that could result in an increase in interest rate or payment amount, we believe the better practice is to disclose all known and/or scheduled interest rate and payment increases.

We appreciate the logic behind the Board's decision to limit disclosure of potential increases; however, we believe there should be no limit on the number of disclosures made for known or scheduled increases. Further, we believe the regulation should provide lenders with a mechanism and a safe harbor to disclose all known or scheduled interest rate or payment increases in cases where such information helps consumers understand the impact of the loan product and features they have chosen.

## Appendix B - Loans with a Temporary Buydown Feature

1. **Fixed Rate Loans.** The comment to 226.18(s)(2)(i)(A) acknowledges that for some transactions, although the interest rate will not change after consummation, some fixed rate loans may have periodic payments that increase after consummation. Loans with a temporary buydown feature are one such example.

Section 226.18(s)(2)(i)(C) goes on to state that if a fixed rate loan provides for a payment increase without regard to an interest rate adjustment, the creditor should disclose the first payment increase and the interest rate in effect at the time of the payment increase, in a column labeled "first increase". The regulation and commentary would have the creditor stop there, without providing information to the consumer about additional payment increases that will eventually result in the full/maximum payment that applies once the temporary buydown expires.

The following example illustrates the consumer impact of the disclosures in the context of consumer-paid temporary buydowns (as well as lender and third-party paid temporary buydowns when the terms of the temporary buydown are contained in the credit agreement).

### Example: Fixed Rate Mortgage with Two-Year Buydown

**Assumption:** 6% note rate, \$100 monthly payment of principal and interest (P&I) for first 12 months, \$200 monthly payment of P&I for second 12 months, \$300 monthly payment of P&I for remainder of term; no escrows.

	Rate & Monthly Payment	First Increase (as early as 1/1/2012)
Interest Rate	6%	6%
Principal + Interest Payment	\$100	\$200
Est. Taxes + Insurance (Escrow)	N/A	N/A
Total Est. Monthly Payment	\$100	\$200

As demonstrated by the example, the full monthly payment of principal and interest of \$300 (the amount owed on 94% of the payments the consumer is obligated to pay) is never disclosed to the consumer under the Truth-in-Lending (TIL) disclosures. A three-year buydown feature would result in a similar lack of information being disclosed to the consumer. If the same loans were to include a 5-year or 10-year interest only feature, the TIL would not disclose the fully amortizing payment of principal and interest.

We encourage the Board to clarify in the final rule that in the case of fixed rate mortgages with temporary buydowns, for purposes of the disclosures under 226.18(s), that all such transactions be disclosed in accordance with the requirements for a step rate mortgage loan, and that the Board provide lenders with the ability to disclose all payment increases occurring under the terms of the temporary buydown agreement, notwithstanding the conditions set forth in the Official Staff Commentary, Comments 17(c)(1) – 3 and - 4. It is Wells Fargo’s position that the level of information a consumer receives about payment increases for a temporary buydown transaction should not vary based on the source of the temporary buydown funds or the form of the contractual agreement.

Additionally we encourage the Board to consider the adoption of mechanisms that will allow lenders to disclose non-rate related payment increases that may result from any combination of loan features, such as fixed rate interest-only loans with temporary buydowns.

2. **Adjustable Rate Mortgages.** There are difficulties with clearly disclosing the impact of temporary buydowns on adjustable rate mortgages under the interim rule. Section 226.18(s)(2)(i)(B)(1) states that for adjustable rate mortgages, the interest rate at consummation and the period of time until the first interest rate adjustment may occur should be disclosed in a column labeled “introductory rate and monthly payment.” However, the period of time disclosed in this column does not contemplate the impact of temporary buydowns on the payment amount, and the result is that the borrower is not given accurate information regarding the duration of their initial payment amount. The example below illustrates the difficulty in disclosing the correct period of time.

**Example: 5/1 ARM with Two-Year Buydown**

**Assumption:** Initial fixed rate of 4%, \$100 monthly payment of P&I for Year 1, \$200 monthly payment of P&I for Year 2, \$300 monthly payment of P&I for Year 3; maximum rate (capped at 10%) may be reached in month 61 with corresponding payment of \$860.

	<b>Introductory Rate and Monthly Payment (for first 60 months)</b>	<b>First Increase (as early as 1/1/2012)</b>	<b>Maximum during First Five Years (as early as 1/1/2016)</b>	<b>Maximum Ever (as early as 1/1/2016)</b>
<b>Interest Rate</b>	4%	4%	10%	10%
<b>Principal + Interest Payment</b>	\$100	\$200	\$860	\$860
<b>Est. Taxes + Insurance (Escrow)</b>	N/A	N/A	N/A	N/A
<b>Total Est. Monthly Payment</b>	\$100	\$200	\$860	\$860

As demonstrated in the example, the disclosure of the introductory rate and monthly payment would disclose the subsidized payment of \$100 to be effective for a period of 60 months, which also creates a contradiction with the information contained in the “first increase” column.

In such a loan scenario we believe the better practice would be to disclose the period of time until the first payment increase, as indicated below:

	<b>Introductory Rate and Monthly Payment (for first 12 months)</b>	<b>First Increase (as early as 1/1/2012)</b>	<b>Maximum during First Five Years (as early as 1/1/2016)</b>	<b>Maximum Ever (as early as 1/1/2016)</b>
<b>Interest Rate</b>	4%	4%	10%	10%
<b>Principal + Interest Payment</b>	\$100	\$200	\$860	\$860
<b>Est. Taxes + Insurance (Escrow)</b>	N/A	N/A	N/A	N/A
<b>Total Est. Monthly Payment</b>	\$100	\$200	\$860	\$860

We encourage the Board to clarify Section 226.18(s)(2)(i)(B)(1) in the final rule to provide that the period of time to be disclosed under the “introductory rate and monthly payment” column is the shorter of the period of time until the first interest rate adjustment or the period of time until the first payment increase.

### **Appendix C – Official Staff Interpretation Comment Appendices G and H**

The Commentary to Appendices G and H states that creditors may modify the heading of the second column in Model Clause H-4(H) to read “first adjustment” or “first increase”, as applicable, pursuant to 226.18(s)(2)(i)(C). We note that Model Clause H-4(H) is termed the “Fixed Rate Mortgage with Interest Only Interest Rate and Payment Summary Model Clause”, but that the heading “first adjustment” should only be used in connection with adjustable rate mortgages under 226.18(s)(2)(i)(C).

We respectfully submit that it would never be appropriate to use the heading “first adjustment” in modifying the second column in Model Clause H-4(H), and that the interim rule be corrected to delete the reference to usage of the “first adjustment” column.

### **Appendix D - Potential Consumer Confusion in Use of “Maximum Ever” Heading**

In those instances in which an adjustable rate mortgage with an interest only feature reaches its maximum interest rate prior to the date the first payment of principal and interest is due, the interim rule requires the maximum interest rate and the payment of *interest only* associated with that interest rate be disclosed under the “Maximum Ever” column. The *actual* maximum payment of *principal and interest* is then disclosed under the column

headed “First Adjustment”. We believe that, in such a scenario, consumers may simply read the “Maximum Ever” column as disclosing the maximum payment that could potentially occur and may disregard the “First Adjustment” column.

We encourage the Board to consider modifying the heading of these two columns to read “**Maximum Interest Rate Ever**” and “**First Payment Adjustment Without Rate Increase**”, or similar language that will alert the consumer to the fact that the “Maximum” column may not always disclose the maximum potential payment of principal and interest.

#### **Appendix E - Confusion in Use of Model Form H-4(H)**

The interim rule indicates that Model Clause H-4(H) is to be used in conjunction with fixed rate mortgages with interest only features. However, this Model Clause uses the “introductory rate and monthly payment” column, which is specific to adjustable rate or step rate mortgages. As a result, the title of the form “Fixed Rate Mortgage with Interest Only Interest Rate and Payment Summary Model Clause” is at odds with Section 226.18(s)(2)(i)(B), which states that the “introductory rate and monthly payment” column is to be used only with adjustable rate mortgages and step rate mortgages.

We respectfully request that the Board clarify whether form H-4(H) is to be utilized for all interest only, fixed rate mortgages (consequently treating all such loans as step rate loans), or clarify that the model form is to be used for step rate mortgages with interest only features.

In addition, we suggest the Board provide further guidance as to the proper treatment of interest only, fixed rate mortgages with no rate adjustment.