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December 20, 2010

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

Re: 12 CFR Part 226: Truth-in-Lending; Proposed Rule amending Regulation Z
Federal Reserve System Docket No. R-1390: September 24, 2010

Dear Ms. Johnson:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates (Wells Fargo) in response to the Federal Reserve's proposed amendments to Regulation Z published in the Federal Register on September 24, 2010 at page 58539 (the Proposed Rule or the Rule). We support the efforts of the Federal Reserve Board of Governors (the Board) to produce disclosures consumers will understand, while preserving broad access to credit. Wells Fargo appreciates the opportunity to comment and respectfully requests that the Board consider adopting the suggestions set forth in this letter.

Wells Fargo's comments are summarized in the following categories. A detailed discussion of material topics in each category can be found in the Appendix portion of this letter.

A. Implementation and Rule Making Considerations

B. Right to a Refund of Fees

C. Higher-Priced Mortgage Loans

D. Interest as a Prepayment Penalty

E. Loan Modifications

F. HELOC Requirements

G. Reverse Mortgage Loans

H. Rescission

A. Implementation and Rule Making Considerations

Coordination with other Regulatory Changes

We call to the Board's attention the critical need to coordinate the final Regulation Z amendments with the mandate of the Consumer Financial Protection Bureau (CFPB) set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to issue a new consumer disclosure that combines the current TIL and GFE disclosures into one. Wells Fargo believes that the interests of consumers are best served if the mortgage lending industry is given one coordinated and comprehensive set of rule changes applicable to these disclosures, which then can be consistently implemented. If separate regulations impacting the same disclosures are promulgated in a piecemeal fashion, this will increase consumer confusion, significantly increase the implementation costs and timeframes, and ultimately increase the cost of consumer credit.

Timeline for Mandatory Compliance

Wells Fargo urges the Board to maximize the time between publication of a final regulation and the mandatory compliance date. Many of the proposed changes will require complex process and technology changes across multiple origination and servicing systems and lines of business. In addition, a large number of additional regulatory changes will impact the mortgage lending industry over the next 12–24 months. It can be anticipated that resources at all mortgage lending institutions will be operating at or beyond maximum capacity to implement all the required changes.

B. Right to a Refund of Fees

Wells Fargo does not support requiring a creditor to refund any fees imposed within 3 business days after receipt of the early disclosures at the request of the consumer. Our concerns involve the inevitable delay in the processing time of the consumer's transaction, to the potential detriment of the consumer, and the complexity to administer such a requirement.

C. Higher-Priced Mortgage Loans

Wells Fargo supports the creation of a "transaction coverage rate" to determine whether a transaction is a higher-priced mortgage loan under Regulation Z, and we generally support the Board's effort to exclude third party fees and costs from those used to calculate a high-cost loan. However, Wells Fargo strongly urges the Board to mandate the use of the transaction coverage rate to ensure consumers receive consistent treatment among all creditors.

D. Interest as a Prepayment Penalty

Wells Fargo does not support requiring the assessment of interest for a period after loan payoff to be treated as a prepayment penalty. The Board should work with the Department of Housing and Urban Development (HUD) to reconcile this requirement with the current FHA and GNMA requirement to assess and collect such interest on FHA loans, in order to ensure FHA loans remain widely available and affordable to consumers.

E. Loan Modifications

Wells Fargo is generally supportive of the Board's proposed clarifications and exceptions relative to the applicability of TIL disclosure requirements to loan modification scenarios. However, Wells Fargo is requesting further clarification and specificity for several concepts, including the scope and definition of "delinquency", "default", "refinancing", "de minimus increase" and "reasonable fees". In order to ensure the final rules do not have the unintended effect of discouraging servicers from using all available options to structure modifications for consumers, Wells Fargo urges the Board to codify exceptions for several modifications scenarios, such as those where only reasonable fees and expenses and third party fees are charged, and those where the payment amount is decreasing, among others.

F. HELOC Requirements

Wells Fargo does not support extending the new credit card account prohibition on floor rates to open-end real estate secured credit (HELOCs). We feel HELOCs more closely align to a closed-end ARM loan than a non-real estate secured credit card in terms of consumer behavior, risks and transaction size, and similarly should not carry a restriction against a floor interest rate.

G. Reverse Mortgage Loans

Wells Fargo applauds the Board's efforts to address very significant issues relating to reverse mortgage loans in the proposed rule. Wells Fargo is highly supportive of the Board's efforts to provide creditors with disclosures that are designed specifically for the unique features of reverse mortgage loans. We also believe that the Board's proposed rules regarding third party counseling and advertising offer meaningful protections for consumers, although Wells Fargo recommends that the restriction on the imposition of nonrefundable fees extend for a maximum of one business day. Wells Fargo supports further rulemaking and clarification in the area of offering financial and insurance products with reverse mortgages but also believes that CDs should be added to the products exempt from the anti-tying rule. Wells Fargo supports the Board's determination not to impose a suitability standard, focusing instead on provisions to ensure that the consumers can be fully informed to select the product that best suits their needs. We share the Board's goal of ensuring that reverse mortgage rules and disclosures maximize transparency, consistency and plain language for the reverse mortgage consumer. It is in that context that we offer the majority of our suggestions, corrections and clarifications that we urge be incorporated into the final rule.

H. Rescission

Wells Fargo generally supports the Board's proposed amendments to the consumer's right to rescind in certain transactions and circumstances. We have concerns with the timing requirements for the acknowledgement the lien holder must provide in cases where the consumer notifies the servicer of their exercise of the right to rescind. In addition, Wells Fargo feels strongly that the final rules should address the long-standing complexity around the two separate model rescission notices, and take this opportunity to create one consolidated form, thereby greatly reducing the risk of consumer confusion.

Wells Fargo would also like to draw the Board's attention to our comment letter dated December 23, 2010 regarding the proposal to include consumer-selected credit insurance and debt cancellation charges in the finance charge for closed-end real estate secured loans. Wells Fargo does not support this requirement for products that are optional and voluntarily selected by the consumer. If the proposal to remove the finance charge exclusions for these products is adopted, we believe it will result in many more loans triggering high-cost thresholds. Because Wells Fargo and nearly all other creditors do not originate high-cost loans, consumers would be left with more limited options to purchase this voluntary financial protection. Refer to Wells Fargo's comment letter dated December 23, 2010 for additional discussion of this topic.

Wells Fargo strives to provide consumers with flexible, wide-ranging and competitive credit products, and superior service, while fully complying with all applicable laws and regulations. We strongly support the improved disclosures to promote consumer understanding. At the same time, we urge the Board to consider the significant number of regulatory changes impacting mortgage lenders and consumers within the next 12 – 24 month period when establishing mandatory compliance dates for the final rules.

Wells Fargo appreciates the opportunity to provide comments.

Respectfully,

Cara K. Heiden

Cara K. Heiden
Co-President
Wells Fargo Home Mortgage

Appendix

Section A – Implementation and Rule Making Considerations

This issue is addressed in Sections B–H.

Section B – Right to a Refund of Fees

Refunding Fees collected within three business days after receipt of early disclosures

The Board is proposing that a creditor be required to refund to the consumer any fees previously imposed if the consumer decides not to proceed with the loan and so requests within three business days after receipt of early disclosures. Wells Fargo does not support this requirement. RESPA and TILA both now require that a creditor not collect any fee, except for the cost of a credit report, until the consumer has received their initial disclosures. Most creditors are reluctant to order appraisals, or incur any other processing expense until they have collected the cost from the consumer. Not collecting upfront fees for an additional three business days during the refundability period will delay the processing of the transaction for the consumer in two ways. In a purchase money transaction, where the closing date is chosen by the consumer and seller rather than the creditor, a critical factor in meeting the chosen closing date is the timely receipt of the appraisal. A delay in ordering the appraisal can in many cases delay the chosen closing date to the detriment of the consumer and seller. In a refinance transaction, consumers are very interest rate sensitive. Creditors are not willing to lock in interest rates until fees are paid. A delay in the ability to collect the rate lock fee and lock the interest rate could have significant financial impact to the consumer. In addition, to provide for the refundability, the creditor will need to set up a complex "trust account" process to deposit any fees collected early, along with a process to make the refunds.

The Board indicates that the goal of this proposal is to encourage a consumer to further "shop" for a better loan package after they have received their disclosures. Our experience and research have shown that a consumer "shops" prior to applying for a loan and once they have applied for a loan they are committed to proceeding with the creditor they have chosen. Wells Fargo recommends that the Board delay any proposal such as this until such time as the Consumer Financial Protection Bureau has reviewed the application process, in conjunction with their mandate to combine the early TIL with the Good Faith Estimate required by RESPA, and determined what disclosures and timing are appropriate in light of actual consumer behavior.

Section C – Higher-Priced Mortgage Loans

Transaction coverage rate and changes to Higher-Priced and High-Cost metrics

The Board proposes to revise how a creditor determines whether a closed-end loan secured by a consumer's principal dwelling is a higher-priced mortgage loan. The proposal would replace the Annual Percentage Rate ("APR") as the metric a creditor compares to the average prime offer rate ("APOR") to determine if the transaction is a higher-priced mortgage loan. The new metric would be the "transaction coverage rate", which would be calculated in the same manner as the APR except that it would be based on a modified prepaid finance charge that would include only finance charges retained by the creditor, its affiliates, or a mortgage broker. The transaction coverage rate would not reflect other closing costs that would be treated as finance charges for the purposes of calculating the APR. The proposed changes tie back to the proposed closed-end TILA rules that were published in 2009, which would change the APR calculations to include basically all settlement charges in the APR calculation.

- Wells Fargo agrees with the creation of the transaction coverage rate to be used to test whether a transaction is a higher-priced mortgage loan. This transaction coverage rate more closely aligns with the APOR and will be a more accurate determination of whether a transaction is truly a higher-priced mortgage loan. If the transaction coverage rate is implemented, it should not be optional. All creditors should use the same standard in determining if a transaction is a higher-priced mortgage loan. An optional metric for determining a higher-priced mortgage loan would encourage differing treatment creditor by creditor, and perhaps transaction by transaction. It could also distort reporting of, and lender-to-lender comparisons with respect to higher-priced mortgage loans; and could cause difficulties in testing compliance with secondary market restrictions and representations.

- The Board has reviewed its proposed changes to the APR calculation as they will impact the high-cost tests. The proposal clarifies that, not withstanding their inclusion in the APR, most third party fees should not be counted toward the points and fees that trigger high-cost mortgage loans. Wells Fargo agrees with limiting the fees and costs that trigger a high-cost mortgage loans. We are concerned, however, about the level of complexity these proposed regulations would create. We will now need to track which fees are included for the APR and , which are included for the high-cost test, then which are covered for state specific higher-priced or high-cost tests, which may or may not align with these proposed regulations. This becomes extremely complex. The risk of non compliance is so great this additional complexity could lead to reduced availability of credit or an overall increase in the cost of credit for consumers.

- The Board has asked for comments on the impacts of using the transaction coverage rate regarding state or local high-cost, and higher-priced statutes or regulations. Many state high-cost laws have incorporated the current HOEPA definitions into their statutes. Much of the language used in these state high-cost laws, as well as the citation and cross reference 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 APOR formulas and adoption of the transaction coverage rate. Realignment may take many years. As a result, the changes to Regulation Z, and the implementation of the inclusive APR are very complex. Creditors will need to continue to calculate and track APR and high-cost thresholds under the existing calculations for various states.

Section D – Interest as a Prepayment Penalty

Content of Disclosures/Prepayment Penalties - Comment 18(k)(1)-1

The Board is proposing to amend comment 18(k)(1)- 1 to clarify that, on a closed-end transaction, assessing interest for a period after the loan balance has been paid in full is a prepayment penalty, even if the charges result from the interest accrual amortization method used on the transaction. Today, if the loan is a higher-priced mortgage loan, a prepayment penalty may not apply after the second year after application; Dodd-Frank imposes further limitations. The Board recognizes the impact this has on Federal Housing Administration (FHA) insured loans, where, under the terms of the FHA note, if a consumer prepays an FHA loan in full in the middle of the month, the consumer must pay interest through the end of the month in which the prepayment is made.

Wells Fargo is very concerned about the Board's position on this issue, and requests that the Board work with the FHA and Government National Mortgage Association (GNMA) to resolve the dichotomy between the agencies. Under the current FHA notes and structure of GNMA securities the economics of the transaction are based on this method of calculating interest. Changing this requirement will have negative impacts on the cost and availability of FHA-insured credit. Wells Fargo requests that if the Board publishes this commentary as proposed, the Board clearly indicate that the interpretation applies only for applications taken after the publication date and provide for sufficient time to make appropriate changes before the change is effective.

Section E – Loan Modifications

- **Modifications to Mortgage Terms - 226.20(a)(1)**

  Wells Fargo generally supports the exceptions provided by the proposal. However, we request a clear definition of "delinquency" and "default". We believe defining these terms to be delinquency or default according to the terms of the contract will encourage rather than discourage creditors from offering workouts to consumers because there will be a clearer designation of when no new TILA disclosures are required.

  For home equity lines of credit (HELOCs), Wells Fargo believes that a modification of a HELOC to cure or prevent delinquency does not constitute a conversion to closed-end credit and TILA disclosures are not required. This will further encourage creditors to offer workouts to consumers in these circumstances.

  In addition, although the Board did not specifically request comment, Wells Fargo further requests clarification from the Official Staff Comment to 226.20, which provides as follows:

  > *Paragraph 20(a)(4).*
  > *Workout Agreements. A workout agreement is not a refinancing unless the annual percentage rate is increased or additional credit is advanced beyond amounts already accrued plus insurance premiums.*

  Wells Fargo strongly recommends that a workout that includes capitalization, but where no additional credit is extended, should not be considered a refinancing. For example, if the creditor previously paid the consumer's real property taxes and added that amount to the mortgage balance as a non-interest-bearing amount secured by the mortgage, but through a modification, the creditor capitalizes those amounts, such a workout is not a "refinancing" that requires new TIL disclosures. We encourage the Board to consider providing this further clarification to this exception.

  Finally, Wells Fargo strongly urges that the Board not expand the number of features that would trigger new disclosures. We believe that any effort to expand the number of transactions will discourage servicers from offering broad workout arrangements to consumers.

- **Increase Loan Amount - 226.20(a)(1)(i)(A)-3**

  Wells Fargo is in favor of the Board providing that a *de minimis* increase in the loan amount owed on the existing legal obligation would not trigger a requirement to give new disclosures. However, the provision should further exclude from the definition those additional debt amounts a creditor is authorized to advance, pay or disburse, to protect its interest and rights under the terms of the contract or when such advances and payments are capitalized as part of a modification of the existing mortgage loan obligation. The provision should clarify that such advances and payments of additional debt by the creditors are not to be considered in determining whether there was an increase in loan amount or in calculating the *de minimis* increase. With this clarification that a new disclosure is not required under such circumstances, Wells Fargo would support the *de minimis* increase being stated in terms of a percentage of the original loan amount.

- **Fees - 226.20(a)(1)(i)(B)**

  Wells Fargo wishes to emphasize the need to clarify and exclude authorized advances, payments and disbursements imposed on consumers in connection with a modification under the terms of the loan obligation from any new TIL disclosure requirement.

- **Necessary Fees and Expenses - 226.20(a)(1)(i)(B)**

  Wells Fargo strongly recommends that the Board provide for an exception to the new TIL disclosure requirement in those instances where reasonable fees are incurred as necessary expenses to underwrite and process loan modifications. Examples of these fees include the actual costs incurred for appraisals, credit reports, recording fees, etc. Wells Fargo believes that requiring new disclosures for imposing these actual costs and fees will discourage creditors from offering broad workout arrangements to consumers.

- **Decreases in Payment - 226.20(a)(1)(i)(A)-(G)**

  Wells Fargo fails to see the benefit to the consumer in providing a new TIL disclosure when there are decreases in the payment amount as part of a loan modification. Moreover, Wells Fargo's loan modification documents contain language regarding periodic payment amounts and a new TILA disclosure would not add benefit to the consumer.

- **Fees That Do Not Trigger New Disclosure - 226.20(a)(1)(i)(B)**

  Wells Fargo believes that creditors should be allowed to charge the actual cost for fees and expenses incurred to underwrite and process loan modifications without having to provide a new TIL disclosure. However, we request that the Board provide clear direction around what is considered "reasonable fees". Furthermore, we believe the intent of this proposal will be better served by limiting the fees that would trigger this redisclosure requirement to creditor-retained fees, excluding any fees that are pass-through fees to a third party service provider, whether or not the fees are paid to an affiliate of the creditor.

- **Streamlined Disclosure - 226.20(a)(1)(ii)(B)**

  Wells Fargo strongly supports the Board's position to permit creditors to rely on the delinquency or default exceptions to giving the new disclosures. We believe adopting a rule that requires servicers to provide a full TIL, or even a streamlined version, will result in discouraging creditors from offering workouts. The Board's concern that consumers will not know how their loan terms are being modified is unrealistic as the terms of the modification agreements sufficiently detail the changed loan terms. Moreover, we do not feel that a streamlined disclosure will provide any greater benefit to the consumer than what is already being disclosed in the modification agreement.

- **Imminent Delinquency or Default - 226.20(a)(1)(ii)(B)**

  Wells Fargo strongly recommends that the Board propose an exception to the new disclosure requirement for loans where delinquency or default is imminent. We believe the following recommended changes to the proposal will provide sufficient clarity to facilitate compliance:

  > Loan Modification That Require New TILA Disclosure
  >
  > Consistent with current rules, no new disclosures would be required for modifications reached in a court proceeding, and modifications for borrowers in default or delinquency, or for modifications to current accounts where the borrowers claim a hardship, and/or the servicer reasonably foresees an impending default, unless the loan amount or interest rate is increased, or a fee for the modification itself is imposed on the consumer.

  We further urge the Board to extend the exception to current subordinate lien accounts where the servicer is required to complete a modification under a government-sponsored modification program. We believe this clarification will benefit the consumer and encourage creditors to continue to offer broad workout arrangements.

- **ARM Converted to Fixed-Rate Transaction - 226.20(c)**

  Wells Fargo strongly urges that the TILA ARM change disclosures continue to be provided under § 226.20(c). We find there to be limited benefit to the consumer in comparing loan terms. In most instances of a fixed rate conversion, the customer would be unable to compare truly like loan terms with products offered by another creditor, depending on the remaining loan term at the time of conversion. The ability to compare like terms between a product from another potential creditor would be very limited or potentially not applicable for existing legal obligations. The additional disclosure requirement and related risks would likely discourage some creditors from providing ARM loan terms with a conversion option. We believe the notice of an interest rate adjustment under § 226.20(c) provides the information necessary for the consumer's financial decisions.

- **Third Party Fees - 226.35**

  Wells Fargo urges the Board to permit servicers to charge consumers third party fees and actual costs incurred as part of the loan modification process without triggering a new disclosure. These actual fees and expenses are incurred to underwrite and process the loan modification. Such third party fees do not rise to the same level of concern or need for the consumer to have an opportunity to review and compare to other options. We believe the consumer is better served by allowing for an exemption from the new TIL disclosure requirement for such third party fees.

* **Ten Day Safe Harbor - 226.41**

  Although Wells Fargo would prefer to have a 20 day safe harbor period, we do not find the 10 day rule to be overly burdensome.

Section F – HELOC Requirements

* **Prohibition of Rate Floors as an Index Control Issue on Open-End (Home Secured) Credit - 226.5b(f)**

  Regarding the Board's request for comments as to whether to extend the new credit card account prohibition on floor rates to open-end (home secured) credit (HELOCs), Wells Fargo does not support this proposal for the following reasons.

  While both credit card accounts and HELOCs are categorized as different versions of "open-end credit" under Regulation Z, the true nature and purpose of HELOC lending is more analogous to variable rate mortgage lending. Consumers make more thoughtful and careful decisions when applying for a mortgage loan or a HELOC product by comparison to credit cards. It is the commonality of nature, purpose and collateral, beyond the simple structure of the variable interest rate mechanism that Wells Fargo believes should be considered in determining the appropriate legal protections and risk balancing in HELOC consumer regulatory protections. Under the current proposal, the result would be that closed-end credit secured by real estate ARMs would continue to have floor rates but HELOCs would be prohibited from having floor rates. Rather, Wells Fargo believes that there needs to be a continued consistent approach to the balancing of the risks to the lender and the consumer in variable rate credit secured by real estate under Regulation Z.

  Secondly, as the Board recognizes, unlike closed-end real estate secured credit, HELOCs remain, for the most part, on the balance sheets of most of the creditors who have originated these accounts. As such, removing the current contractual provisions of these existing HELOC portfolios may have significant and unintended consequences. HELOCs differ from credit card accounts in numerous ways that, when considered, mean that the consequences of this proposal may be very different from the impact of the recently enacted similar law change to credit card accounts. The immediate impacts to the existing HELOC portfolios will be greater, as the size of the average HELOC is much greater than the average credit card account. Furthermore, under Regulation Z, creditors are very limited in their ability to change terms on existing HELOCs, unlike creditors on credit card accounts. For example, as of this time, home equity lenders under Section 226.5b are not necessarily empowered to change an existing floor rate term on a HELOC solely based on the regulation change as proposed here.

  Lastly, as TILA and Regulation Z currently require creditors to contract for a maximum interest rate on HELOCs for the consumer's protection, the safety and soundness of the home equity lenders market should be afforded some level of similar protection in future economic times by not prohibiting a reasonable interest rate floor. Some institutions, including Wells Fargo, permit their consumers to manage their maximum rate risk by offering the consumer to pay a reasonable fee at origination in order to lower their maximum rate for the life of the HELOC. In our experience, consumers have taken advantage of this feature to help manage their interest rate risks. As the Index movement is outside the control of both the consumers and the creditors, making a reasonable minimum interest rate protection available to the creditor doesn't result in unfair treatment of the consumer.

- **Periodic Statements: Grouping of Fees and Interest, Separated from Transactions - 226.7(a)(6)(i)**

  Wells Fargo supports the proposed changes to the periodic statements for HELOCs. However as we commented in our December 23, 2009 letter, given that HELOCs have numerous features that offer the consumer differing interest rate structures, Wells Fargo believes the consumer should be presented with a periodic statement that concisely displays the interest accrued, rates and fees charged together with the type and amount of borrowing/transaction associated with those specific charges. Wells Fargo believes such a presentation will enable the consumer to more readily manage their HELOC.

  As Wells Fargo advised in our earlier letter, from an operational standpoint the proposed changes represent significant and extensive changes to current servicing and statement systems such that a two year period for implementation compliance is necessary.

- **Uniform Total One-Time Tolerance for Fees on HELOCs and Closed-End Credit - 226.15(a)(5)(ii)**

  The Board's proposal to provide for uniformity in the origination fee and charge tolerances for both HELOCs and closed-end loans secured by real estate is appropriate. Wells Fargo agrees that the proposed $100 tolerance is adequate for both. The Board's proposal to provide uniform tolerances is appropriate because creditors, in both HELOCs and closed-end real estate secured credit, use third parties to conduct the real estate loan closing process. It is this process that introduces an element of unknown and execution issues that more often implicate fee/charge uncertainties. It is this commonly shared closing process aspect that calls for uniformity overriding the differences in the nature of the credit.

  As to the Board's proposal to not provide HELOCs with the same foreclosure credit limit tolerance as provided to closed-end home secured credit, Wells Fargo recommends providing further uniformity here, as it is not unusual that HELOCs be in first lien position or in significant credit amounts.

Section G – Reverse Mortgage Loans

Wells Fargo acknowledges that the Board is addressing very significant issues with respect to reverse mortgages in the proposed rule. Wells Fargo originates the HUD-insured and regulated Home Equity Conversion Mortgage (HECM) loans, and does not originate proprietary reverse mortgage products or a reverse mortgage product with a shared appreciation or shared equity feature.

Wells Fargo supports informed consumer choices and applauds the Board's efforts to provide creditors with disclosure forms that are specific to and designed for reverse mortgage loans. Wells Fargo strongly supports robust independent third party counseling as a gate keeper function for all reverse mortgage consumers, regardless of product, but expresses concern on the imposition of a second layer of refundable fees. Wells Fargo supports the Board's efforts to further clarify rules regarding reverse mortgage advertising and regulate deceptive advertisements. Wells Fargo supports further rulemaking and clarification in the area of offering financial and insurance products with reverse mortgages but also believes that clarification can be made to the Board's proposed rule specifically to exempt products. Wells Fargo also supports the Board's decision not to impose a suitability standard. Finally, Wells Fargo is concerned with the implementation timeframe for the proposed rule to allow creditors time to make the necessary enhancements.

- **Proposed Reverse Mortgage Disclosures - 226.33(a)–(d)**

  Wells Fargo supports the new proposed model forms for reverse mortgage loans. We believe these disclosures will provide more meaningful information to reverse mortgage consumers than disclosures that currently are required under Regulation Z. Current disclosures (such as the "When Your Home is on the Line" HELOC booklet and the Consumer Handbook on Adjustable Rate Mortgages "CHARM" booklet) do not provide the information relevant to a reverse mortgage consumer to make an informed decision on a reverse mortgage.

  Wells Fargo agrees with the Board's analysis of the disclosures that would no longer be material disclosures for reverse mortgages, particularly as to "credit limit" which has always been a challenging concept for consumers and creditors when applied to a reverse mortgage transaction.

  Wells Fargo urges the Board to continue to remove the distinction between an open-end credit reverse mortgage transaction and a closed-end reverse mortgage transaction as it pertains to disclosures for reverse mortgages. It is our opinion that this distinction is not meaningful to a reverse mortgage consumer when considering a reverse mortgage product and the Board should drive to a single set of reverse mortgage disclosures.

  The Board proposes three consolidated reverse mortgage disclosure forms:

  - An early disclosure for open-end reverse mortgages,
  - an account-opening disclosure for open-end reverse mortgages, and
  - a closed-end reverse mortgage disclosure.

  Additionally, the Board proposes a "Key Questions to Ask About Reverse Mortgage Loans" document.

  The formatting in the proposed disclosures is clear and easy to follow and the information to be provided generally appears to be the information that reverse mortgage consumers should find helpful. While the proposed disclosures are significant improvements, Wells Fargo has suggestions, corrections, and clarifications itemized below that are needed before the disclosures become final.

  <u>General to all proposed disclosures:</u>

  - Wells Fargo requests clarification from the Board that the lender is allowed to use larger font size for the disclosures and whether there is any flexibility in the template format.

- Wells Fargo requests that consistent terminology is used within and among the disclosures. For example, the terms "borrower" and "consumer" appear to be used interchangeably.

Reverse Mortgage Loan Summary disclosure forms:

General:

- Wells Fargo requests clarification as to whether all of the proposed disclosures for reverse mortgages, or what specific portions, are considered "material" disclosures for right to rescind purposes.

- Wells Fargo suggests the Board add tolerances for accuracy of the information provided in the Reverse Mortgage Loan Summary disclosures or clarify that the current tolerances in Regulation Z apply (see comment below on *APR Tolerances*).

- In the "Borrower & Property Information" section:

  - *Borrower Age:* Wells Fargo requests clarification that the creditor is allowed to use the consumer's nearest age at loan closing on the disclosure (see also comment below on *Borrower's Age*).

  - *Appraised Value:* For the early disclosures, the appraised value would be an estimate of property value as provided by the consumer. Wells Fargo requests clarification from the Board that use of an estimated appraised value in the early disclosure is acceptable.

    For a HECM, if the estimated appraised value is larger than the national lending limit (currently set by HUD at $625,500) the amount used for purposes of final loan calculations would be the lending limit not the appraised value. In this instance, Wells Fargo asks the Board to clarify what value the creditor should use for "property value".

    In a reverse mortgage purchase transaction, the purchase price as opposed to the appraised value should be used for property value. Wells Fargo requests clarification from the Board that the use of purchase price would be acceptable.

    As property value may be a valuation other than the appraised value (as noted above), the Board should consider adding a statement that the property value used may be other than the appraised value for purposes of reverse mortgage calculations. Wells Fargo is concerned that if appraised value is used across the board in all instances, the reverse mortgage consumer may be misled to believe that this is the value used for loan calculations, and that may not be the case. For example, on a purchase transaction the lower of the purchase price, appraised value or lending limit will be used for final loan calculations.

- In the "About this Loan" section, while the general examples provided are helpful, this section allows for significant discretion. Such discretion could result in the information provided to a consumer varying considerably from creditor to creditor, which could cause confusion to a consumer shopping for a reverse mortgage loan. Wells Fargo requests and welcomes more guidance from the Board on specific model statements for this section.

- In the "Payment of Loan Funds" section:

- Particularly for the early disclosure, Wells Fargo suggests the addition of a statement that the consumer may change how they have chosen to receive their funds prior to loan closing. At the time the early disclosure is provided, the consumer may not have decided how they prefer to receive their loan funds.

- As it pertains to "Monthly Advance", Wells Fargo suggests the addition of another option: Term or Tenure. Reverse mortgage consumers have the option to receive monthly advances for life or "tenure", or for a set period of time or "term".

o In the "Fees" Section, Wells Fargo questions if a reverse mortgage consumer understands the term "account opening fees" as the consumer likely doesn't think they are opening an "account" but rather about a "loan". We suggest use the of term "loan costs" in lieu of "account opening fees". In the early disclosures, Wells Fargo brings to the Board's attention that some of these fees would be estimates.

- **Historical Index/Margin - 226.33(c)(6)(i)(A)**

  Wells Fargo agrees with and supports the reverse mortgage disclosure showing only the index value. It is the historical range of the index value that is most meaningful to a consumer. Margin is set at lender discretion; therefore a historical range of margin values is not useful to the consumer. This would be consistent with Wells Fargo's comments to the Board's August 2009 HELOC Proposal.

- **Borrowing Guidelines/Transaction Requirements - 226.33(c)(7)(v)**

  In the "Borrowing Guidelines" section, the "Minimum Transaction" and "Limits on Number of Credit Transactions" do apply to reverse mortgage loans. The "Limits on Amount of Credit Borrowed" does not currently apply to a reverse mortgage loan but may apply in the future. Therefore, Wells Fargo recommends that "Limits on Amount of Credit Borrowed" be included and a creditor can insert "not applicable" if that is the case .

- **TALC/Loan Balance Growth - 226.33(c)(8)**

  Wells Fargo supports the Board's proposal to replace the current Total Annual Loan Cost (TALC) disclosure with the loan balance table. We agree that the current TALC is often confusing and unhelpful to reverse mortgage consumers. We agree that a table that shows the consumer how the reverse mortgage's loan balance grows over time in dollar amounts would be more meaningful to a reverse mortgage consumer.

  Wells Fargo suggests to the Board that the time periods of two years, five years, ten years and twenty years may be more appropriate. We suggest four time periods because a maximum ten year time period as proposed by the Board may not be as illustrative as it could be for a 62 year old reverse mortgage consumer. This is why we suggest a longer time period of twenty years be included. We suggest a two year period as opposed to a one year period because one year provides minimal value to a reverse mortgage consumer, but we feel that a time period less than five years is meaningful.

- **Annuity - 226.33(c)(8)**

  In Wells Fargo's opinion the cost of, and payments from, an annuity should not be included in the loan balance table. Consistent with the Board's proposal, and other regulatory guidance in this area, the purchase of a financial or insurance product should not be recommended or encouraged as a part of the reverse mortgage loan transaction. If the consumer chooses to purchase such a product it should be done separate and apart from the reverse mortgage loan transaction and therefore the cost should not be included in the loan balance table. The creditor may have no knowledge that the consumer intends to use their funds to purchase such a product.

- **Limits on Liability - Comment 33(c)(4)-1**

  Wells Fargo recommends that the amount owed by the consumer should reflect limitations on the consumer's liability, particularly as it pertains to nonrecourse limit.

- **Set Asides - Comment 33(c)(8)-9**

  Wells Fargo agrees that a set aside for repairs, as well as taxes and insurance, should be considered an advance for the benefit of the consumer.

- **Assumptions Used to Calculate Loan Balance Growth - 226.33(c)(8)(i)**

  Wells Fargo requests clarification from the Board that any items paid outside of closing by the consumer (including items paid in cash, out of pocket, at closing) would <u>not</u> be included in the assumptions for the loan balance growth.

  Wells Fargo agrees with the assumptions to base the loan balance growth table on the initial interest rate in effect at the time the disclosures are provided and that the consumer does not make any repayments during the term of the reverse mortgage.

- **Amount the Customer Will Owe, Appreciation Assumption - 226.33(c)(8)(iv)**

  Wells Fargo does not originate reverse mortgages that have a shared equity or shared appreciation feature.

  In our view, 4% per year property appreciation for reverse mortgages that have a shared equity or shared appreciation feature seems high given the economic environment of the past 24 months.

  Wells Fargo's opinion is that a uniform appreciation assumption should be used for reverse mortgages regardless of whether the reverse mortgage has a shared appreciation feature or not. The shared appreciation feature would not impact the property appreciation.

  Wells Fargo's opinion is that a separate shared appreciation disclosure should be used if there is a shared appreciation feature to the reverse mortgage.

- **Type of Payments Selected by Consumer/Discretionary Cash Advance Assumption - August 2009 HELOC Proposal**

  Wells Fargo agrees that the growth feature should not be reflected in disclosures as the feature would be confusing to consumers given the uncertainty of the timing of draws on the credit line.

If the consumer elects for a payment plan that accounts for less than 50% of the principal loan amount, then Wells Fargo recommends that in lieu of the Board's proposal to assume 100% is drawn at loan consummation for purposes of the loan balance growth table, instead the creditor assumes 50% of the principal loan amount available to the consumer is drawn at loan consummation. In this assumption, the creditor would also assume the consumer takes no further advances. This approach provides a minimum 50% benchmark for all assumptions.

For purposes of the assumptions, the Board should clarify that "principal loan amount available to the consumer" is net of financed closing costs.

- **Credit Insurance/Debt Cancellation/Debt Suspension Coverage - 226.38(h)**

  Wells Fargo would agree that reverse mortgage consumers are not offered credit insurance or debt cancellation or debt suspension coverage and these disclosures would not be applicable to a reverse mortgage loan transaction.

- **Borrower Age - 226.33(c)(14)**

  Wells Fargo's preference would be that the Board adopt a uniform assumption for determining the consumer's age and requests that the consumer's nearest birthday be used for the assumption for consumer's age. This would be consistent with HUD's HECM loan calculations which are all based on consumer's nearest age.

- **Use of Estimates - 226.19(a)**

  Reverse mortgage creditors have typically used estimates in making closed-end disclosures due to the product features. Wells Fargo agrees that it should be clarified that the use of the assumptions in the proposed rule would therefore not constitute estimates. However, areas remain where the Board's guidance is needed before Wells Fargo agrees with a broad statement that estimates may not be used in connection with reverse mortgage disclosures. We call the Board's attention to the APR calculation for closed-end reverse mortgages and our comments below on APR Calculation.

- **Appendix L/Life Expectancy Table - 226.33(c)(14)**

  Wells Fargo requests that the table of life expectancies in Appendix L be retained in Regulation Z as the life expectancies are still used by the creditor in determining the term of the loan, specifically in calculating the APR.

  It is our understanding that the new disclosures would replace the traditional Federal Truth in Lending Disclosure Statement required for closed-end loans, however Wells Fargo would appreciate confirmation of this understanding from the Board as the disclosure statement is particularly challenging to tailor to provide meaningful information to a reverse mortgage consumer, and requires the use of estimates.

- **Annual Percentage Rate ("APR") Calculation - 226.22**

  Wells Fargo respectfully requests clarification on how a creditor should calculate the APR on a "single advance" closed-end credit reverse mortgage transaction.

- Term – For the APR calculation, it is our understanding that, as with the current TALC and other Regulation Z disclosures, creditors use the consumer's estimated "life expectancy" as stated in Appendix L for the term. This is an estimate because a creditor does not know when the maturity event for a reverse mortgage consumer will occur. Wells Fargo respectfully requests clarification of what the term input for the APR calculation should be and that the use of an estimate is permissible.

- Amount/Total of Payments – For the APR calculation, it is our understanding that creditors use the amount of the estimated loan balance on the estimated maturity date (term) for amount of payments. Wells Fargo respectfully requests clarification that a creditor should calculate this using the estimated loan balance for amount of payment, rather than what the consumer's estate may actually owe (e.g. the value of the property at 0% appreciation) and that the use of an estimate is permissible.

- Wells Fargo requests the Board's clarification whether or not a reverse mortgage transaction is to be considered a "regular" or "irregular transaction" under Regulation Z, Section 226.22 for APR tolerance purposes.

- **"Key Questions to Ask About Reverse Mortgage Loans" Document**

  In general we believe the Key Questions document addresses the most common questions that consumers have regarding reverse mortgages. We, however, comment on the following as it pertains to enhancements to the Key Questions document:

  - We note that the use of the term, "cash" to describe loan proceeds could be misleading, especially for a product that is not always understood to be a "loan." Wells Fargo respectfully suggests that references to accessing the consumer's home equity should be provided in terms that support the fact that the proceeds are the result of a loan that must be repaid. We suggest, for example, the terms "loan disbursements", "loan advances", or "loan proceeds".

  - The Key Questions Document does not mention the requirement that tax and insurance premiums be paid and that the home must be maintained to HUD's standards along with statements of "no payments." Based on the most recent FFIEC guidance for Reverse Mortgage Loans, any statement that implies the consumer has no liability until they move or die could be misleading. Wells Fargo suggests the Key Questions Document be made consistent with, and meet all other regulatory guidance, to ensure consumers are consistently reminded that they will remain responsible for maintaining the property and for the continued payment of taxes and insurance premiums required for the property whenever "no monthly mortgage payments" are stated or implied.

  - Questions 1 and 8 of the Key Questions Document discuss repayment of the loan without explicitly stating that the loan balance may be higher than the home value, which appears inconsistent with other areas of the proposed rules.

  - Question 4 of the Key Questions Document (second bullet point) mentions "Reverse mortgage insurance premium". Wells Fargo requests that the mortgage insurance premium is generally referred to as "mortgage insurance premium" with the word "reverse" eliminated. This is how the marketplace refers to the premium and to say "reverse mortgage insurance premium" implies that the creditor is imposing the mortgage insurance premium when it is HUD that imposes the premium on a HECM loan.

- Question 4 of the Key Questions Document (fourth bullet point) mentions servicing fee "which is charged each month". Wells Fargo requests permission to change this to state "which *may* be charged each month" as there are reverse mortgage products available to consumers that do not provide for a monthly servicing fee.

- **Counseling Required - 226.40(b)(1)**

Today Wells Fargo does not originate a reverse mortgage proprietary product, only HECMs. Wells Fargo strongly supports independent third-party counseling for all prospective reverse mortgage applicants, regardless of the reverse mortgage product.

Wells Fargo supports properly trained reverse mortgage counselors. We support counseling requirements for proprietary products that are "substantially similar" to HECM.

While counseling availability for HECMs is fairly robust, the available counselors within HUD's counseling network could be strained if HUD-approved counselors were required to provide the counseling for proprietary reverse mortgage consumers. Wells Fargo's concern is that this could be to the detriment of a reverse mortgage consumer seeking a FHA-insured reverse mortgage product, which could cause delays in the availability of counseling sessions.

- **Type of Counseling/Face to Face Counseling**

Wells Fargo agrees that either telephone or face to face counseling should be available to consumers. We agree with the Board that in some instances internet counseling may also be appropriate. All options should be available and accessible to the consumer depending on their particular circumstances.

Wells Fargo recommends that face to face counseling should be encouraged by all creditors.

- **Counselor Compensation - 226.40(b)(6)(i)**

Wells Fargo agrees that persons involved in the reverse mortgage loan transaction should not compensate the counselor for the particular transaction, thereby supporting counselor independence.

Wells Fargo requests clarification whether this proposed rule would prohibit creditors that originate reverse mortgages from generally compensating a counseling agency which may or may not also provide reverse mortgage counseling for other types of counseling, such as credit, loss mitigation, or foreclosure counseling.

If HUD-approved counselors are leveraged for required counseling for proprietary products, Wells Fargo requests that the Board consider allowing general contributions by creditors to the counseling agencies for use toward counseling for non-HECM counseling in order to assist with the agencies' additional need for funding sources.

- **Steering - 226.40(b)(6)(ii)**

  Wells Fargo supports a list provided to the consumer with multiple counseling agencies however Wells Fargo is concerned whether five counseling agencies will be available in all geographic locations for proprietary product counseling. In Wells Fargo's opinion, a list of at least three counselors or counseling agencies would be sufficient for proprietary products.

- **Communications with Counselors**

  Wells Fargo agrees that creditors should not steer a consumer to a specific counselor or agency. However, we request a clarifying comment that communications between counselors and participants in a reverse mortgage transaction may be appropriate in limited circumstances such as to address discrepancies in the information on the counseling certification and counselor questions to the creditor about features of the creditor's proprietary product.

- **Nonrefundable Fees - 226.40(b)(2)(ii)**

  Wells Fargo suggests to the Board that the new restriction against imposing nonrefundable fees until three business days after the date the consumer was counseled should be, <u>at most</u>, for one business day, and we question if the waiting period is necessary at all. HUD does not impose a similar restriction for HECM loans. This is an area where the Board's proposed rule conflicts with HUD's guidance.

  As the Board points out, there are today, federal restrictions on nonrefundable fees that already apply to reverse mortgages. With this proposed rule there would be two waiting periods on nonrefundable fees that would apply to reverse mortgage consumers. Imposing an additional waiting period adds unnecessary complexity resulting in multiple waiting periods with multiple trigger events. Our concern is that this could extend the loan process at the detriment of consumers.

- **Clarifying Information Required in Reverse Mortgage Advertising - 226.33(e)(10)**

  Wells Fargo agrees with the Board on the first seven statements that warrant clarifying information, and is in support of the correlating proposed requirements.

  For statement eight, the Board proposes that advertisements that mention housing or credit counseling must also contain a telephone number and website for HUD housing counseling resources. Wells Fargo strongly supports counseling for all reverse mortgage consumers. While it is not necessarily problematic to also provide the website for HUD housing counseling resources, Wells Fargo questions if a telephone number in the advertisements provides additional resources to a consumer or if it is duplicative of a current HUD requirement. HUD currently requires that reverse mortgage creditors provide a prospective reverse mortgage consumer with a list of names of at least five local counseling agencies, plus the toll-free phone numbers for NFCC, MMI, CCS of Greater Atlanta, and NCOA. This list is to be provided to the consumer in the pre-application stage, before a creditor can take an application for a reverse mortgage. If the Board feels that a telephone number in the advertisement is still necessary, Wells Fargo requests that the Board clarify what telephone number the creditor is to include given the multitude of numbers available.

- **Triggered Disclosures in Reverse Mortgage Advertising - 226.33(e)**

  As noted by the Board in proposed Section 226.36(a)(1), reverse mortgages are subject to the general advertising requirements under Section 226.16 for open-end credit and Section 226.24 for closed-end credit. Under existing Section 226.16(d)(1), if an advertisement sets forth certain terms (so-called "trigger terms"), further disclosures are also required. Of relevance here, if an advertisement sets forth payment terms, either affirmatively or negatively, there is a trigger for providing a full detailed APR disclosure.

  One example proposed by the Board to illustrate how an advertisement may disclose the clarifying information in proposed Section 226.33(e)(4) is "Never repay during your lifetime, except that you may have to repay early in some cases such as if you sell your house or live somewhere else for longer than the time stated in the loan contract." Proposed Official Commentary, Section 226.33(e)(4)(iii).

  Wells Fargo respectfully requests clarification as to whether such language constitutes a "trigger term" for the full APR disclosure under existing Section 226.16(d)(1) in that it constitutes a "payment term of the plan" triggering the full detailed APR disclosure. A requirement that reverse mortgage advertisements include additional information which is a trigger for more disclosures under section 226.26 may easily, as the Board points out in a similar context, contribute to "information overload".

- **Set Asides for Property Taxes and Insurance - 226.33(c)(4)iii and 226.33(e)(7)**

  Wells Fargo agrees with the Board that the proposed TILA reverse mortgage disclosure and advertising rules will help to highlight with the consumer their continuing obligation to pay property charges.

  Wells Fargo agrees that the Board should wait to address set-asides for property charges in reverse mortgage transactions due to HUD's pending initiative. In our opinion, proprietary reverse mortgages should not be treated any differently.

- **Cross-Selling/Anti Tying**

  Wells Fargo, as a policy, does not require a reverse mortgage consumer to purchase an annuity or similar financial or insurance product as a condition of obtaining a reverse mortgage. In addition, Wells Fargo does not refer, recommend, or endorse that a reverse mortgage consumer purchase such products in conjunction with the reverse mortgage transaction (other than those products customary for the reverse mortgage transaction such as title, hazard, flood, or other peril insurance, or a traditional banking product such a checking or savings account in which the consumer can deposit their proceeds).

  The area of greatest concern is a creditor requiring a reverse mortgage consumer to use the funds available from the reverse mortgage loan to purchase an investment-like product that may not be in the consumer's best interest. We do feel the proposed anti-tying rule addresses this concern.

  In addition to the anti-tying proposal, Wells Fargo recommends the Board prohibit a creditor from recommending or endorsing that a reverse mortgage consumer uses the reverse mortgage proceeds to purchase an investment-like product, as well as prohibiting any practice by a creditor that would lead a consumer to believe that approval of the reverse mortgage is contingent on the purchase of such a product.

- **Anti-Tying Proposed Exemptions**

  In Wells Fargo's opinion, the exemption for transaction (checking) and savings deposit accounts from the products that cannot be tied to a reverse mortgage is warranted and necessary. Wells Fargo supports this exemption as a reverse mortgage consumer may want to open such accounts as a place to deposit their loan proceeds. Wells Fargo suggests that Certificates of Deposit (CDs) should be included within the scope of the proposed exemption. In Wells Fargo's opinion, CDs do not carry the same risks and complexities as products such as annuities and long-term care insurance.

- **Products and Services Customarily Required in Connection with a Reverse Mortgage**

  Wells Fargo agrees with the Board that this exemption for products and services customarily required in connection with a reverse mortgage is also warranted and necessary and recommends the tax service fee be included in this exempt category. The tax service fee offsets charges paid to real estate tax reporting services. The tax service reports property tax amounts for loans with set-asides and delinquencies on loans without set-asides.

- **Anti-Tying Covered Products and Services**

  In regards to home repairs, creditors should only require repairs noted on the appraisal, purchase contract, or home inspection report be completed by a licensed contractor. Any other repairs should not be tied with the reverse mortgage loan transaction.

- **Safe Harbor - Comment 41-1**

  Wells Fargo is of the opinion that a safe harbor is necessary to the anti-tying rule. A creditor has little or no influence on what a consumer chooses to do with their reverse mortgage proceeds after the closing of the loan, even if the creditor prohibits the tying of such products with the loan transaction and does not recommend or endorse the purchase of such products. While the 10 calendar days is acceptable to Wells Fargo, any time period beyond the 10 days would become more difficult for a creditor to adequately control.

- **Suitability**

  Wells Fargo supports informed consumer choice. In our opinion, the Board's proposals to enhance understanding through the new proposed disclosures and advertising rules, along with the required independent third-party counseling for all reverse mortgage consumers, serve to assist the consumer's determination of the appropriateness of the transaction for their own circumstances. These components taken together result in a fully-counseled and fully-informed consumer.

  As a result, Wells Fargo supports the Board's determination to not impose a suitability standard.

  Reverse mortgage consumers should have the freedom to make their own informed financial decisions without the creditor dictating that their decision is or is not "suitable". A single suitability standard would likely result in the denial of credit to some consumers who would truly benefit from a reverse mortgage.

Making a creditor responsible for an individual's loan decision would be an unprecedented and inappropriate shifting of personal responsibility that would expose creditors to liability for decisions made by the consumer and to second-guessing by heirs and assigns. It would be unfair to creditors to be judged based on the hindsight that follows after a change in the consumer's circumstances after loan consummation.

Additional liability that would be imposed on the creditor would add to the cost of a consumer obtaining a reverse mortgage product and moreover may result in creditors suspending the origination of reverse mortgage products. This would be an unfortunate result for consumers who have relied upon the product to manage the financial challenges that frequently accompany senior citizenship.

Section H – Rescission

- **Exercise of Right to Rescind - 226.15(a)(2), 226.23(a)(2)**

  Wells Fargo supports the intent behind the Board's proposal to permit consumers to exercise the extended right to rescind by notifying the servicer, but is concerned that, absent other changes, this may impair the ability of the current owner of the loan to timely comply with the acknowledgement requirement.

  While Wells Fargo attempts to promptly notify all affected parties regarding any notifications we receive, not all servicers will be capable of notifying the creditor, or other current owner, on the same day they receive the notification from the consumer. Moreover, processing errors are likely to occur, which will delay the communication.

  In light of the fact that the time for providing an acknowledgment of receipt begins when the servicer receives the consumer's notice, Wells Fargo urges the Board to consider a loan owner's ability to timely comply with the acknowledgement requirement when crafting the final rule. One method of addressing this concern would be to extend the time for providing a written acknowledgement of receipt to 60 days.

- **Rescission Period - 226.15(a)(3), 226.23(a)(3)**

  Wells Fargo supports the proposed clarifications regarding whether the consumer's death, bankruptcy, refinancing or paying off the loan are conditions that terminate the unexpired right to rescind, and believes these clarifications will assist creditors in assuring that consumers understand their right to rescind the transaction.

- **Material Disclosures, Tolerances - 226.15(a)(5), 226.23(a)(5)**

  Wells Fargo is generally supportive of the retention of the existing finance charge tolerances and the proposed adaption of those tolerances to the payment summary and interest rate, loan amount, total settlement charges and prepayment penalty disclosures. However, as noted in our December 23, 2009 comment letter on the Board's August 2009 Closed-End Proposal, Wells

Fargo believes an increase in the finance charge tolerances is appropriate since, under that proposal, a creditor has a reduced ability to control the third party costs that will become part of the finance charge. As also noted in the December 23, 2009 comment letter, Wells Fargo believes that the increased amount should be adjusted annually, similar to the adjustment of Section 32 high-cost fee amounts. If the Board does link the tolerances to an inflation index, Wells Fargo urges that such an index be adequately defined and explained to the consumer in a consistent manner across all lending institutions.

- **Notice of Right to Rescind, Form of Notice - 226.15(b)(2)-(4), (6), 226.23(b)(2)-(4), (6)**

  Wells Fargo supports the efforts of the Board to simplify and reduce confusion surrounding the notice of right to rescind. We believe the plain language requirements for informing consumers about the meaning of the right to rescind, and how to accomplish rescission, are beneficial to both the consumer and the creditor.

  Wells Fargo also agrees that providing one notice of right to rescind form to each consumer will reduce confusion and duplication for the consumer. However, we are concerned that the addition of a "tear off" to the notice of right to rescind may cause unintended problems. For example, it may be difficult for the consumer to fax the odd-sized form, or for a creditor to deal with receiving a small, non-uniform sized document. The consumer also may not fully understand that the upper portion of the document should be retained for their records. Wells Fargo accordingly suggests, should the Board retain the tear off format, that language be added to more clearly inform the consumer to retain the remainder of the form for their records.

  Finally, an area where the Board did not specifically request comment, but one that Wells Fargo believes should be addressed, is the difficulty that can be created by requiring two versions of the notice of right to rescind; one for rescindable transactions involving the same creditor and one for rescindable transactions involving a different creditor. While we firmly believe that most creditors attempt to fully comply with this regulation, it is sometimes difficult to control which of the two versions is sent to the consumer. Wells Fargo believes the appropriate language can be consolidated into one form that could be used for both types of rescindable transactions, and we encourage the Board to consider creating one uniform notice of right to rescind that can be used in all situations.

- **Time of Providing Notice - 226.15(b)(5), 226.23(b)(5)**

  For closed-end loans, Wells Fargo supports the Board's proposal to provide the notice of right to rescind prior to consummation. We believe, should the Board finalize the portion of its August 2009 Closed-End Proposal requiring creditors to provide final TILA disclosures at least 3 days prior to consummation, it would be beneficial for both the consumer and the creditor to have the notice of right to rescind provided with those disclosures. While providing another copy of the notice of right to rescind at signing would ensure the consumer is signing all documentation for the transaction at one time, providing the disclosures multiple times could be confusing to the consumer.

- **Effects of Rescission - 226.15(d), 226.23(d)**

  Wells Fargo applauds the efforts of the Board in proposing and further clarifying the duties of all the parties involved in the transaction, including the consumer's duty under an extended right to rescind to tender payment to the creditor prior to any security interest being released. We agree that the release of lien should not be required until the creditor has received all funds due from the consumer. However, Wells Fargo is concerned that not every creditor will be able to comply with the requirement, in transactions where disbursement has already occurred, to provide a written acknowledgement of receipt within 20 days. While the 20 day time period is consistent with the creditor's duties today, it is a relatively short period of time in light of the proposals that the acknowledgement be accompanied by the creditor's decision regarding cancellation of the transaction, and that, during the extended right to rescind, notice can be provided to the servicer. Given the fact gathering and other tasks a creditor must engage in to make a decision on cancellation, and given the possible delay that could occur between the servicer receiving the notice and passing the notice on to the creditor or current loan owner, Wells Fargo would suggest extending the period for providing an acknowledgment and statement to 60 days.

- **Waiver of Right to Rescind, Examples - 226.15(e), 226.23(e)**

Wells Fargo appreciates the clarification given regarding the waiver of the right to rescind and feels the examples will be helpful in making decisions regarding the financial hardship.

- **New Transactions - 226.20(a)(1)**

Wells Fargo strongly urges that the Board not expand the number of closed-end transactions considered "new transactions" subject to the right to rescind. We believe that any effort to expand the number of transactions will discourage servicers from offering broad workout arrangements to consumers.

- **Rescission Rules Applicable to Reverse Mortgage Purchase Transactions (open-end)**

Current and proposed Regulation Z does not require a creditor to give a consumer a right to rescind for purchase money funds, but it is required for non-purchase money funds. Therefore, if a reverse mortgage purchase transaction is structured as open-end credit, the consumer would have the right to rescind any non-purchase money funds. The consumer may choose to use all of the available funds in the line of credit for purchase money funds (this is by far the most likely scenario), or may choose to use only part of the available funds for purchase money funds and part for non-purchase money funds. This begs the question as to whether the consumer has the right to rescind the non purchase money funds (we assume they do have this right), and/or *the future right to repay the purchase money funds and re-access the funds as non-purchase money*. This is an issue of first impression and to our knowledge Regulation Z is silent to the issue for a reverse mortgage transaction. Wells Fargo requests Board input on this point. Wells Fargo's opinion is that the right of rescission does apply in this situation for both non-purchase money funds and the future right to repay purchase money funds and withdraw them as non-purchase money funds in an open-end purchase transaction.

- **Growth on the Available Line of Credit**

A reverse mortgage transaction that is structured as open-end, where the consumer leaves credit available in a line of credit, has a "growth" feature. Under a HECM, the Principal Limit "increases each month for the life of the loan at a rate equal to the sum of the applicable monthly interest rate charge, plus one-twelfth the annual MIP,"as described in Section 1.7 of the model HECM Loan Agreement. Section 2.6.1 of the same Agreement states, "The line of credit amount increases at the same rate as the total Principal Limit increases." Therefore, "growth", or the possibility of "growth", is an increase in the consumer's net principal limit, and thus the resulting line of credit according to the pre-established loan agreement. Any "growth" is applied monthly to the consumer's line of credit. Wells Fargo requests Board input on whether the consumer should be given a right to rescind any growth that is applied to the available line of credit. Wells Fargo's opinion is that the right to rescind should not apply to growth.

- **Model Form for Notice of Right to Rescind**

  In either of these above instances if the reverse mortgage consumer is to be given a right to rescind, Wells Fargo requests that the Board clarify which model form a creditor must provide the consumer.