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April 26, 2011

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

RE: 12 CFR Part 226: Truth in Lending; Proposed Rule amending Regulation Z
Federal Reserve System Docket No. R-1406: March 2, 2011

Dear Ms. Johnson:

This letter is being submitted on behalf of the Wells Fargo & Company and its affiliates (Wells Fargo) in response to the Federal Reserve Board's March 2, 2011 proposed rule, which would amend Regulation Z to implement certain escrow-related amendments to the Truth in Lending Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank).

Wells Fargo supports the efforts of the Federal Reserve Board (Board) to ensure appropriate escrow cancellation criteria for higher-priced mortgages, and to improve consumers' understanding of escrow accounts and the benefits and risks that may result from the decision to establish, not establish or cancel an escrow account in connection with a consumer loan. We appreciate this opportunity to comment on the proposed changes, and respectfully request that the Board consider adopting the suggestions made in this letter.

Wells Fargo's comments are summarized in the Appendix categories, as follows, with the attached appendices providing additional details:

Appendix A - RESPA/TILA Integration, CFPB Rulemaking. Wells Fargo believes that consumers benefit most from disclosures that are clear, consistent and streamlined. Accordingly, while we appreciate the Board's intent in proposing the new escrow disclosures at this time, we believe that consumers would be better served if implementation of the Dodd-Frank escrow disclosure requirements occurred in conjunction with the efforts of the Consumer Financial Protection Bureau (CFPB) to integrate existing TILA and RESPA disclosures. Similarly, while we are supportive of the proposal to revise the higher-priced mortgage pricing benchmark by replacing the annual percentage rate with the transaction coverage rate, we believe the change should not be implemented for discrete requirements, but instead be made at a future date, simultaneously where the change would be meaningful.

However, should the Board choose to proceed with this rulemaking in total, we offer the following suggested changes.

Appendix B - Proposed Escrow Disclosures – Scope. Wells Fargo agrees that consumers will benefit from receiving escrow-related information in conjunction with the consummation of most closed-end first lien mortgage loans, and upon cancellation of escrow accounts established in connection with such transactions. However, we would encourage the Board to limit the scope of the loans subject to the new escrow disclosure requirements to those closed-end first lien mortgage loans that are also subject to existing real-estate-secured TILA and RESPA disclosure requirements.

Appendix C - Proposed Escrow Disclosures – Establishment and Non-Establishment of Accounts. Wells Fargo understands the concerns that prompted the Board to propose these disclosures be received by the consumer three business days prior to consummation. However, we believe this timing requirement does not provide a meaningful benefit to the consumer. We would instead suggest a generic disclosure regarding the benefits and risks of establishing and not establishing an escrow account be provided to all consumers earlier in the process, followed by a disclosure at consummation directed to the specific circumstances of the transaction. As noted above, we encourage the Board to implement such changes in conjunction with the effort to integrate the RESPA and TILA disclosures.

Should the Board choose to proceed with the structure of the disclosures as proposed, Wells Fargo offers some suggested changes and comments in attached Appendix C regarding the proposed language of the model forms, the timing for providing the disclosures, and waiver of the waiting period. We also urge the Board to clarify that redisclosure would not be required. We believe that if the proposed disclosures are revised to provide all consumers with information about the risks of not having an escrow account, the new disclosures, in conjunction with existing TILA and RESPA disclosures of escrow-related amounts, will adequately inform consumers about the various aspects of establishing or not establishing an escrow account.

Appendix D - Proposed Escrow Disclosure – Cancellation. Wells Fargo agrees it is beneficial for a consumer to receive an escrow cancellation notice, but believes requiring the consumer to receive the notice prior to cancellation does not provide any true benefit to the consumer. We also encourage the Board to make some editorial changes to the model form and related rules, for added clarity, as described in attached Appendix D.

Appendix E - Mandatory Escrow Requirements, Higher-Priced Mortgages (HPMs). Wells Fargo supports the Board's efforts to implement Dodd-Frank requirements related to the duration, cancellation and exception to the establishment of mandatory escrow accounts for HPMs. We agree that, following the five year mandatory period, the equity requirement for cancellation of such an account should be similar to that under the Homeowners Protection Act for cancellation of private mortgage insurance. However, we suggest in Appendix E some clarifying revisions to the cancellation requirements, including further definition of when a loan will be considered to be "delinquent or in default."

Wells Fargo thanks the Board for this opportunity to provide comments.

Sincerely,

Cara K. Heiden

Cara K. Heiden
Co-President
Wells Fargo Home Mortgage

Appendix Materials

Appendix Materials

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Appendix A – RESPA/TILA Integration, CFPB Rulemaking

Wells Fargo agrees that certain provisions of this proposed rule - such as those relating to Dodd-Frank requirements on the duration, cancellation, and exception to the establishment of mandatory escrow accounts for higher-priced mortgages (HPMs) - should be implemented as a result of the current rulemaking. However, we strongly encourage the Board to delay implementation of the proposed escrow disclosures, as well as the revision of the HPM pricing benchmark. The Board is not facing mandatory compliance dates that require implementation of these provisions ahead of rulemaking efforts by the CFPB. Moreover, existing Regulation Z and X provisions currently provide for escrow disclosures and a workable metric for HPM determinations. We therefore urge the Board to delay rulemaking on these issues, and allow for future adoption of a comprehensive and coordinated set of rules, which can then be consistently applied to the benefit of consumers and lenders alike.

Wells Fargo supports the Board's efforts to provide consumers with information about the benefits, risks and consequences of having, or not having, an escrow account in conjunction with their loan transaction. We also believe that consumers benefit most from disclosures structured to maximize clarity and consistency while minimizing duplication and overlap. We accordingly believe consumers would be better served if implementation of the proposed escrow disclosures occurred in conjunction with the effort to integrate existing RESPA and TILA disclosures under Regulations X and Z. We are concerned that, should the Board move forward with adoption of the proposed escrow disclosures, there may be duplication of, or conflict with, the integrated RESPA/TILA disclosure, or other disclosure-related rules that may be adopted by the CFPB after July 2011. We agree with the Board's February 2011 decision not to proceed with certain Regulation Z rulemakings proposed in 2009 and 2010, in part, because "any new disclosures adopted by the Board would be subject to the CFPB's further revision in carrying out its mandate to combine the TILA and RESPA disclosures." We urge the Board to reach a similar decision in the present rulemaking, regarding the proposed escrow disclosures.

Similarly, while Wells Fargo is supportive of the proposal to revise the HPM pricing benchmark by replacing the annual percentage rate (APR) with the transaction coverage rate (TCR), we believe the change should not be implemented solely for the purpose of the HPM escrow requirements. As noted in our December 20, 2010 comment letter on the Board's September 24, 2010 proposed Regulation Z rulemaking, we agree the TCR is a better metric for determining whether a loan is a HPM, as it is more closely aligned with the average prime offer rate than is the APR. However, we are concerned that implementing this change for a discrete HPM requirement would result in a temporary increase in compliance complexity, which would then need to be revisited when the TCR is later applied to other calculations. We accordingly encourage the Board to delay implementation of the proposed amendment, so that the revised metric can be implemented simultaneously for each provision where the change is meaningful.

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Appendix B – Proposed Escrow Disclosures - Scope

Wells Fargo supports the Board's proposal to require escrow-related disclosures in connection with both voluntary and mandatory escrow accounts. This approach will help ensure consistency for consumers, while simplifying lender implementation. We also agree with the Board's decision to limit the requirements to first-lien mortgages. Imposing the disclosure requirements on both first and subordinate lienholders would require coordination between lenders to avoid duplication or discrepancy in the disclosures, and create the potential for communications from multiple lenders, which may confuse consumers. Given that escrow accounts are generally not required or offered in connection with subordinate loans, we believe the operational challenges posed by requiring escrow-related disclosures in connection with such loans outweigh the minimal benefit, if any, to consumers.

Wells Fargo encourages the Board to limit these new escrow disclosure requirements to first-lien closed-end loans that are currently subject to existing RESPA and TILA closed-end disclosures. At a fundamental level, we believe the Board's proposal to require the escrow disclosures in connection with any closed-end transaction secured by a first lien on real property or a dwelling goes beyond the intended mandate of Dodd-Frank. Additionally, as we noted in our December 23, 2009 comment letter on the Board's August 26, 2009 proposed Regulation Z rulemaking, we are concerned that expanding the historically real estate-focused scope of this type of disclosure, to loans secured by personal property that may be but is not typically used as a dwelling, could result in compliance difficulties for personal property lenders. Finally, we are concerned that setting the scope of the loans subject to the proposed escrow disclosure requirements beyond that currently in place for other Regulation Z and Regulation X disclosures would require lenders to set up a dual-track disclosure system, which would likely need to be revised after the CFPB conducts its integrated RESPA and TILA rulemaking process.

Appendix C – Proposed Escrow Disclosures – Establishment and Non-Establishment of Accounts

Wells Fargo strongly supports the Board's proposal to provide consumers with enhanced escrow disclosures prior to consummation. However, we believe the proposed timing requirement – receipt of the applicable disclosure three business days prior to consummation – does not provide a meaningful benefit to the consumer. Consumers ideally should be informed of the risks and benefits of escrow, or the lack thereof, early in the origination process, and providing such information three business days prior to closing leaves consumers and lenders a very limited window in which to implement a changed decision regarding establishment of an escrow account. Yet, lenders will not be able to provide accurate dollar amounts for an established escrow account until shortly prior to closing. We therefore suggest restructuring the proposed escrow disclosures to provide a generic disclosure regarding the benefits and risks of establishing and not establishing an escrow account with the early TILA and RESPA disclosures, to be followed by a disclosure at consummation directed to the specific circumstances of the transaction. As noted above, we encourage the Board to delay implementation of such changes so that they can be accomplished in conjunction with the effort to integrate the RESPA and TILA disclosures.

Should the Board choose to proceed with the structure of the disclosures as proposed, Wells Fargo is generally supportive of the proposed content, including whether certain fee disclosures are necessary. We do suggest, however, that the Board revise the proposed language in the model forms to set a more informal tone, in ways that enhance clarity and meaning for consumers. For example, the proposed statement regarding the risk of not having an escrow account in model form H-25 could be supplemented with language similar to the following: "Remember that by choosing to make your tax and insurance payments yourself, you will be required to come up with a large sum of cash on a periodic basis, which may be difficult to plan for. Escrow is a convenient way to budget for these expenses, and have them paid automatically."

Wells Fargo also suggests the following changes to model forms H-24 and H-25 (and corresponding changes to the related rule provisions), for enhanced clarity.

- We are concerned that some consumers may not understand what expenses will or will not be included in an escrow account based on the proposed model language, and accordingly suggest changing the term "home-related costs" in model forms H-24 and H-25, and the phrase "home-related costs such as property taxes and insurance" in model form H-24, to "property-related expenses" and "property-related expenses such as property taxes, insurance and similar costs," or something comparable. We also suggest making a corresponding change to the phrase in model forms H-24 and H-25 that informs the consumer the lender uses money from an escrow account to "pay costs as needed."
- We suggest further clarifying that escrowed amounts are included in the consumer's periodic mortgage payment in model form H-24, by including language to that effect not only in the "How will I pay into my escrow account?" statement, but also in the "What is an escrow account?" statement. We further suggest amending the language in H-24 regarding the amount of periodic escrow payments to clarify, consistent with Dodd-Frank, that the disclosed amount is an estimate.
- We suggest revising the model language regarding the responsibility of making direct payments when a consumer does not have an escrow account, in model forms H-24 and H-25, to account for the fact that some escrowed costs may be due other than annually or semi-annually.
- We suggest the Board provide additional clarification around disclosure of the escrow waiver fee in model form H-25, to account for the fact that such a fee may be collected not only as a dollar amount, but also by increasing the interest rate or loan balance.
- We suggest revising the proposed language in model form H-25 regarding whether the consumer can establish an escrow account in connection with their mortgage, to allow for the fact that a consumer may be able to establish an escrow account both prior to closing with the lender, and following closing with the loan servicer.

In addition, should the Board determine that a single, uniform pre-consummation waiting period is required, Wells Fargo is supportive of the Board's effort to select a waiting period that is consistent with other TILA disclosures, but provides lenders adequate time to determine the amounts of the initial escrow deposit and the periodic escrow payments (although, as noted above, we suggest a revision to the proposed rules and model form H-24 to provide that the lender may disclose the estimated amount of the periodic escrow payment). We also agree with the Board that waiver of any waiting period for the escrow disclosures should be based on a bona fide personal emergency, as we believe uniformity in the various TILA waiver requirements benefits both consumers and lenders. However, we encourage the Board to provide additional commentary about what constitutes a bona fide personal emergency. We believe that lack of specificity about this term may lead some lenders to deny waivers, even when the consumer is fully informed about the risks and benefits surrounding their escrow decision and will be negatively impacted by waiver denial.

Finally, Wells Fargo urges the Board to revise the proposed rules to clarify that lenders would not be required to provide an additional disclosure due to a consumer's changed decision about whether to establish an escrow account, or a change in the amounts to be escrowed.

- We believe a consumer's decision to change their election regarding whether to establish an escrow account indicates that a consumer is making a conscious and informed choice, provided the consumer is fully informed as to both the benefits of escrow, and the risks of not having an escrow account, before the decision is made. We believe this would be best accomplished by adopting the bifurcated escrow disclosure process we advocated above, as part of the RESPA/TILA integration effort. However, if the Board decides to proceed with the disclosure piece of this proposed rulemaking, we suggest revising the proposed rules and model form H-24 to include, within the disclosure for establishment of escrow, the statement from the rules and model form H-25 regarding the consequences of not paying property-related expenses when an escrow account is not established. We believe such revisions would render redisclosure for a changed election unnecessary.

- While we agree disclosures should be structured to ensure that consumers receive accurate information about their monetary obligations, we believe this goal can be met without requiring a corrected escrow disclosure when there is a change in the amounts to be escrowed. Regulations X and Z already mandate that consumers receive information about escrow amounts in various disclosures. The pre-consummation disclosures focus on estimated escrow amounts, which is consistent with the fact that amounts for the most frequently escrowed obligations – taxes and insurance – can easily change between application and closing. Moreover, unlike changed loan terms, a change in the amount of property taxes, insurance or other escrowed amounts is unlikely to cause a consumer to alter their decision regarding whether to establish an escrow account or to continue with the transaction.

- Should the Board determine that redisclosure is required when estimated escrowed amounts change, we urge the Board not to impose any waiting period in conjunction with the redisclosure. As previously noted, since a change in an escrowed amount is unlikely to lead to a changed decision by the consumer, a waiting period upon redisclosure is unlikely to benefit the consumer, or to serve any purpose beyond a potential delay in closing.

Appendix D – Proposed Escrow Disclosures – Cancellation

Wells Fargo is supportive of the Board's efforts to implement an escrow cancellation disclosure, but believes requiring the consumer to receive the disclosure prior to cancellation increases a lender's operational and compliance burden without providing any significant advantage to the consumer.

A consumer will have received multiple RESPA and TILA disclosures related to their escrow account, including the other new disclosures proposed in this rulemaking. We believe the prior disclosures, in concert with the consumer's experience of having an escrow account for some period of time, are sufficient to allow the consumer to make an informed decision to cancel their escrow account, or to understand the implications of a lender's decision to cancel the account.

Moreover, the presumed benefit from a pre-cancellation disclosure would be allowing the consumer an opportunity to request continuation of the escrow account. Most lenders, however, do not initiate cancellation of an escrow account absent consumer request, termination of the underlying obligation, or individual issues related to servicing the account that result in a lender decision to no longer allow escrow in connection with the loan. Therefore, in the majority of cancellations, the consumer is unlikely to request continuation of escrow, and the lender is unlikely to agree to continue escrow upon receipt of such a request. In addition, for consumer-initiated cancellations, the consumer is likely view a waiting period as an onerous and unnecessary obstruction of his or her right to cancel escrow.

Any potential benefit from a waiting period would be restricted to the small minority of cases where a lender initiates escrow cancellation but would allow the consumer to continue escrow. In those instances, however, the significance of a waiting period is substantially diminished by the consumer's ability to request reinstatement of the account. We believe this relatively limited consumer benefit is outweighed by the steps a lender would be required to take to ensure that consumers receive the disclosure a specified period of time prior to cancellation, particularly in light of the significant penalties a lender could face for an unintended violation of the timing requirement.

We believe that consumers would derive greater benefit if provisions in model form H-26 were instead added to a post-escrow-deletion instruction letter, which would inform a consumer of not only the facts currently contained in model form H-26, but also of the consumer's new monthly payment amount and, if applicable, a requirement to submit to the lender, on a periodic basis, proof the consumer has paid the previously escrowed amounts to the relevant third parties. In the case of consumer-initiated cancellations requested in person or via telephone, the instruction letter could be supplemented by an oral disclosure given at the time of the request.

Finally, Wells Fargo encourages the Board to make the same clarifying changes to model form H-26 (and corresponding changes to related rule provisions) that we advocated in relation to H-24 and H-25, in Appendix C, above, to the extent applicable. We also encourage the Board to provide clarification surrounding the disclosure, in model form H-26, of a fee for closing an escrow account. Some lenders may not charge a set dollar amount for cancellation of escrow, but instead pass through to the consumer the cost of conducting an appraisal or alternative valuation to confirm the current loan-to-value ratio. We urge the Board to clarify that such a cost is considered to be an appropriate and allowable "fee" for the purpose of this disclosure.

Appendix E – Mandatory Escrow Requirements, Higher Priced Mortgages (HPMs)

Wells Fargo is supportive of the Board's efforts to implement Dodd-Frank requirements related to the duration, cancellation and exception to the establishment of mandatory escrow accounts in connection with HPMs. However, we request that the Board make some clarifying changes surrounding the cancellation of such mandatory escrow accounts.

Wells Fargo strongly supports the Board's decision to define the equity cancellation requirement by reference to the requirements of the Homeowners Protection Act (HPA) for cancellation of private mortgage insurance (PMI).

- We agree with the Board's decision to coordinate the equity cancellation requirement with the 80% loan-to-value (LTV) ratio for borrower-requested PMI termination, rather than the 78% LTV ratio for automatic PMI termination.
- While the language of Dodd-Frank could be interpreted as imposing the equity cancellation requirement only on those loans where PMI is actually required, we believe it is consistent with Dodd-Frank, and a better practice that will provide enhanced security to both lenders and consumers, to impose the equity cancellation requirement for all HPMs.
- We agree with the Board's proposal to measure the equity cancellation requirement by reference to "original value" as defined in the HPA for borrower-requested PMI termination, as such consistency will provide for ease of implementation. Should this proposal be adopted, we encourage the Board to make it consistent with the HPA provision that allows the mortgage holder to require proof the value of the property has not declined below the "original value."
- We agree with the Board's decision to measure equity by reference to both first and subordinate liens, which is not only consistent with the HPA requirement for borrower-requested PMI cancellation, but also takes appropriate measure of the impact that subordinate liens have on the consumer's financial position.

However, Wells Fargo believes the language defining the equity cancellation requirement – that "[a]t least 20% of the original value of the property securing the underlying debt obligation is unencumbered" – is somewhat confusing. We therefore encourage the Board to revise the proposed language to indicate more clearly how the equity necessary for cancellation is to be measured.

Wells Fargo also requests the Board to provide additional details regarding the proposed requirement that a mandatory escrow account cannot be cancelled (absent termination of the underlying obligation) if the borrower is "delinquent or in default." Delinquency and default are terms that can be defined in many different ways, and we believe further detail is necessary to ensure consistent application. We accordingly encourage the Board to revise the proposed rule to clarify that these terms are defined in reference to the loan documents and investor or insurer requirements that govern the particular transaction. Alternatively, we urge the Board to adopt a "good payment history" requirement that is consistent with HPA's requirement for a borrower-requested PMI cancellation. Specifically, we urge the Board to require that the loan not only be paid current, but also that, within 12 months of the cancellation date, none of the consumer's payments were 30 days or more past due. Finally, we request the Board to clarify that, before a mandatory HPM escrow account can be cancelled, the consumer must bring current any negative escrow balance.