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February 9, 2009

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

Re: Docket No. R-1340

Ladies and Gentlemen:

On July 30, 2008, the Federal Reserve Board ("FRB") published a final rule amending Regulation Z ("Reg Z"), which implements the Truth in Lending Act ("TILA") and the Home Ownership and Equity Protection Act ("HOEPA"). Also on July 30, 2008, Congress enacted the Housing and Economic Recovery Act of 2008, which included amendments to TILA known as the Mortgage Disclosure Improvement Act of 2008 ("MDIA").

In Docket No. R-1340 of the Federal Register, the Federal Reserve Board ("FRB") requested written comments on proposed revisions to Regulation Z (the "Revisions") to be made to implement the provisions of MDIA, as amended.

Wells Fargo & Company and its affiliates ("Wells Fargo"), including Wells Fargo Bank, N.A., Wachovia Mortgage, FSB, Wachovia Savings, FSB, and Wachovia Bank, N.A., appreciate the opportunity to provide written comments in response to the FRB's invitation. Wells Fargo is a leading originator of residential mortgage loans and one of the nation's leading financial services companies. Wells Fargo is committed to mortgage lending that helps customers succeed financially and to fair and responsible lending principles that result in customers receiving the information they need to make fully-informed decisions about mortgage products and product options.

Wells Fargo provides the following comments in response to the invitation of the FRB:

Topic 1: Redisclosure Requirements – Section 226.19(a)(2)

TILA Section 107 provides that an APR shall be deemed accurate if the rate disclosed is within a tolerance not greater than one-eighth of one percent of the actual rate. In addition, Reg Z, Section 226.22(a)(4) provides that the APR shall also be deemed accurate if the disclosed finance charge would be accurate under Reg Z, Section 226.18(d)(1), which provides that the finance charge is deemed accurate if understated by no more than one hundred dollars ($100) or if overstated. MDIA provides that should the APR change beyond the tolerance specified in the TILA Section 107, a corrected disclosure statement must be furnished to the borrower no later than three business days prior to the consummation of the loan transaction. Although the MDIA lacks precise language to that effect, the implication is that the corrected disclosures must, within tolerance, comport with the final disclosures. If this tolerance is not met, additional disclosures, and a further three business day time period, will be required. The Revisions expand upon MDIA and contain language appearing to indicate that, should the APR be deemed accurate under 226.22, the lender will have complied with the final disclosures requirements and no further corrected disclosure statements will be necessary. This creates an incongruity under which the three-day prior disclosures may be more accurate than the final disclosures required by TILA.

In addition to the possible incongruity, a potential difficulty arises because the language of the Revisions exceeds that of MDIA without clearly expressing the regulatory intent to do so. It is an axiom of legislative construction that, absent a clear intent to do so, the reach of the rule or regulation should not extend beyond that of the legislation it supports.

Accordingly, Wells Fargo suggests that the language of the Revisions be altered to clarify and confirm the regulatory intent that, regardless of the language of MDIA, the alternative tolerance allowed by Reg Z, Section 226.18 is also sufficient for compliance with the MDIA and its final disclosure requirements. Such a clarification would not only retain consistency within Reg Z, but would also allow lenders to forego possible costly revisions to loan origination systems to accommodate for inconsistent tolerances, to avoid potentially ambiguous and confusing language in applicable lending policies and procedures, and finally, to avoid presenting prospective borrowers with multiple sets of confusing disclosures containing minimal disclosure revisions not previously required under Reg Z, which will ultimately delay the ability to close a loan transaction.

Topic 2: The definition of "Business Day" – Section 226.2(a)(6)

The term "Business Day" is central to various calculations of timeliness under MDIA and the Revisions. Business Days are used to calculate the time frame in which the lender must deliver the initial disclosures to the borrower and also determine the passage of the required time period before the loan may be consummated. MDIA also

restricts the amount and type of fees that may be charged until the passage of a certain number of Business Days. Business Days are also used to calculate the amount of time which must elapse before the consumer will be deemed to have received the necessary disclosures.

Currently, there are two definitions of "Business Day" in Reg Z and TILA; one is general and the other more precise. The general definition provides that a "Business Day" is any day on which the offices of the creditor are open to the public for carrying on substantially all of its business functions. The more precise definition states that a "Business Day" is any calendar day except Sunday and certain specified federal holidays.

MDIA employs the general definition in calculating the time by which the first set of disclosures must be mailed to the borrower and the length of time that must elapse prior to consummating the loan. However, the precise definition is used for determining when the borrower is deemed to have received a corrected disclosure, for calculating the time frame for deeming the initial disclosures to be received, and for calculating the time that must elapse between receipt of the amended disclosure and consummation of the loan.

Wells Fargo suggests that the definition of 'Business Day" be made consistent throughout the MDIA and the Revisions and further suggests that the precise definition be the definition that is retained.

A variety of reasons support this comment: first, most, if not all, of the time periods in MDIA and the Revisions are calculated on business days. Use of a definition that designates only one day of most weeks as a non-business day will reduce the time period in which loans are processed, closed, and funded. This may have the effect of reducing consumer cost, will facilitate and expedite loan closing and funding, and maximize a positive consumer loan experience; second, adoption of the precise definition removes a possible source of lender confusion generated by the two definitions and promotes consistency throughout MDIA and the Revisions; third, use of the precise definition permits industry-wide uniformity for loan origination systems and internal loan policies and procedures; fourth, consistency in the defined term will remove a possible source of unintended and inadvertent errors regarding the processing of loans; and finally, the general definition has been increasingly difficult to interpret for those institutions that have several divisions, some with offices, branches, or operation centers that are open on Saturday and some that are not.

Topic 3: Consumer's Waiver of Waiting Period Before Consummation – 226.19(a)(3)

MDIA permits the timing requirements for early disclosures and for consummating the loan to be modified when the consumer determines that the credit extension is needed to meet a bona fide personal financial emergency.

The proposed revisions allow the borrower to shorten or waive the seven-business day period (226.19(a)(1)), or to waive the three business day waiting period (226.19(a)(2)) if the consumer has received accurate TILA disclosures reflecting the final costs and terms at or before the time of the waiver or modification and the disclosures are not subsequently rendered inaccurate prior to loan closing. The waiver statement must be hand-written, must describe the emergency, and must specifically modify or waive the waiting period. Further, the bona fide emergency is to be determined by the facts surrounding the individual circumstances.

In observing that these waiver provisions are similar to those for waiving the right to rescind or waiving the waiting period prior to consummating certain high-cost mortgage loans, the FRB highlights the key concern of many lenders. Unfortunately, all of these provisions are quite subjective and speculative. Many lenders, including Wells Fargo, are reluctant to permit a borrower to waive the right to rescind, even for what may seem to be a bona fide emergency, because of the risk that a later determination by a court or some other determining body will disagree with the lender's conclusion. A subsequent determination by a court, or some other determining body, as to whether a bona fide emergency actually existed will be subjective in nature. It will frequently constitute no more than a second guess with the benefit of hindsight, and is likely to be adverse to the lender.

Wells Fargo requests that the FRB either fashion a quantifiable definition of what actually constitutes a bona fide personal financial emergency or, at a minimum, provide several more examples. The concept of what constitutes a bona fide personal financial emergency must extend beyond an imminent property foreclosure. Examples of qualifying circumstances may include any or all of the following: emergency house repairs; obtaining funds for medical needs; cash out or equity transactions on one property that must be completed within the guidelines provided in the sales or purchase contract in order to facilitate the purchase of another property; or to satisfy college tuition requirements.

Comment was invited as to whether the waiver should be permitted only if the emergency must be addressed prior to the end of the waiting period. This further illustrates the inexact nature of this line of inquiry. A determination as to whether the borrower, or other affected party, might be able to wait until after the end of the waiver period to have an emergency or crisis resolved is of a deeply subjective nature and depends on the circumstances at the time, and the perception of the parties

involved. For example, if funds are needed for emergency repairs, there is no "deadline" to ensure that a homeowner has water, heat, or a roof on their home. Further, even in the case of a foreclosure without a specific date, the consumer is likely to incur costs such as attorney fees, court costs, and other charges attendant to the foreclosure process, during the time leading up to foreclosure. The consumer should be free to cut short their period of difficulty as quickly as possible.

Topic 4: Notice – 226.19(a)(4)

MDIA requires that in both initial and in subsequent disclosures a "clear and conspicuous" cautionary notice be given to the effect that the borrower is not obligated to complete the transaction merely because disclosures have been provided or an application submitted.

Neither TILA nor Reg Z define precisely a standard for "clear and conspicuous." It would be helpful if the FRB would improve upon the present language to the 226.17 commentary and, at least as to this requirement, provide a quantifiable standard or a standard form as to what constitutes "clear and conspicuous." Guidance is requested concerning the size and placement of the cautionary language. Should it be inside or outside of the Reg Z segregated box? Should it be in a separate disclosure? It would be helpful if the FRB would include examples of appropriate disclosures in Appendix Hl.

Topic 5: The Extent or Applicability of MDIA – 226.19(a)

MDIA provides that the disclosure requirements apply to transactions involving a "consumer's dwelling" while the Revisions refer to the "dwelling of a consumer." The commentary in the Revisions indicates that the definitional purpose is to apply the disclosure provisions to dwellings other than the consumer's principal dwelling.

Currently, there are two definitions of "consumer." One is the natural person to whom credit is offered or extended. A second definition includes any natural person whose principal dwelling will be subject to a security interest. The question is whether the first or second definition applies for the purposes of MDIA.

The declared purpose of the Revisions is to extend their applicability beyond the principal dwelling of the consumer. Surely such an extension applies to a second home, but what about rental property? Presuming the loan proceeds are used for a consumer purpose, must the disclosures required by the MDIA and the Revisions be given in the case of rental property as collateral? Such property is not the consumer's dwelling if "consumer" is defined as a person to whom the credit is extended. However, if the definition includes a natural person in whose principal dwelling a security interest is taken, loan transactions secured by rental property may qualify for the disclosure requirements. It may be argued that since the disclosures are relevant to

the extension of credit and personal to the borrower, the first definition should apply. However, the language of the Revisions is not clear on the point. Wells Fargo suggests clarification and guidance on this subject.

Topic 6: Additional Remarks

There are several additional areas where Wells Fargo believes that guidance or direction from the FRB would be helpful.

Under the recent HOEPA revisions, a "higher priced mortgage loan" ("HPML") is defined as "a consumer credit transaction secured by a consumer's principal dwelling with an annual percentage rate that *exceeds* the average prime offer rate for a comparable transaction ...by at least...." Under the Home Mortgage Disclosure Act and Regulation C, the lender must report loans "having a spread between the APR and a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type if the spread is *equal to or greater than....*" Wells Fargo suggests that the FRB address this discrepancy and provide some guidance at the earliest opportunity.

Under the recent HOEPA revisions, one of the requirements for the ability to repay "safe harbor" is to underwrite the proposed loan based on the highest scheduled payment over the first seven years of the loan term. In many cases, the payment term for the first payment is extended and the first payment will be greater than the other scheduled payments due to the extended length of the payment term (i.e. the first payment may be due up to 45 days from closing instead of the standard 30 day interval). Technically, to qualify for the "safe harbor", the loan might be required to be underwritten based on this irregular first payment even though the borrower will have the benefit of extended time to gather the funds for this payment. Such an underwriting requirement could not only disqualify prospective borrowers who would otherwise legitimately qualify for the requested credit, but it also distorts the underwriting process in that the loan will be underwritten based on a loan payment that may be one-third or more greater than any other scheduled loan payment and which will never be repeated during the term of the loan. Wells Fargo believes that the purpose of this particular requirement was to discourage the use of "teaser" or other discount rates in the underwriting of the loan and not to base the underwriting process on a distorted view of the loan payment requirements. Reg Z Section 226.17(c)(4) and the commentary thereto provide relief from calculation and disclosure anomalies resulting from irregular first payment periods. The ability to repay provisions should be construed in the same manner and the lender should be permitted to disregard the first payment irregularity. As presently constituted, the applicable Revision language may improperly encourage a court to distinguish between calculations made for the purpose of disclosure and calculations made to measure ability to repay. Wells Fargo Requests that the FRB address this discrepancy and provide some guidance at the earliest opportunity.

Wells Fargo further requests clarification regarding ambiguities contained in two examples in the Revisions commentary. Concerning both the redisclosure requirement example of Paragraph 19 (a) (2), and the waiting period waiver example of Paragraph 19 (a) (3), the FRB is requested to clarify which day is to be the first business day of the calculation process. Is "business day one" the date the consumer receives the disclosures, or is the date of receipt to be considered "business day zero" with the business day following receipt considered, for the purposes of calculation, "business day one?" With regard to the seven business day period, Wells Fargo's preference is to include the date of receipt in the calculation as the first business day and consummate the transaction on the seventh business day rather than on the eighth business day.

Wells Fargo also suggests that the FRB clarify that the requirements contained in the MDIA apply to any loan application taken after the effective date of July 30, 2009.

Wells Fargo thanks the FRB for the opportunity to provide comments on the MDIA and the Revisions. If you have any questions or would like to discuss our comments, you can contact me at (515) 213-4572.

Sincerely,

David L. Moskowitz
Deputy General Counsel
Wells Fargo & Company