WELLS FARGO

August 10, 2007

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. OP-1288

Ladies and Gentlemen:

In Docket OP-1288 of the Federal Register, the Federal Reserve Board ("FRB") announced that it is holding hearings and has requested written comments on the Home Ownership and Equity Protection Act ("HOEPA") to assist its review of Regulation Z, which implements HOEPA. The goals of the hearings and comments are to examine how the Board should use its rulemaking authority to address concerns about certain loan terms or practices.

Wells Fargo & Company and its affiliates ("Wells Fargo"), including Wells Fargo Bank N.A. and Wells Fargo Financial, Inc., appreciate the opportunity to provide written comments in response to the FRB's specific questions. Wells Fargo is a financial services company that owns and operates national banks in 23 Western and Midwestern states, is a leading originator of residential mortgage loans, and is one of the nation's leading financial services companies. Wells Fargo is committed to mortgage lending that helps customers achieve financial success, to fair and responsible lending standards that exceed certain requirements of HOEPA or other laws and to offering our customers appropriate products at appropriate prices.

Wells Fargo takes its responsibility as a leading mortgage lender and servicer very seriously and has long followed a number of responsible lending standards and practices in our consumer real estate lending business, many of which you are currently considering. In 2004, we formally adopted responsible lending principles that we live by for our nonprime real estate lending. These principles address many of the topics you are discussing today. First and foremost, we only approve applications for loans if we believe the borrower has the ability to repay. We provide consumers with the information needed to make informed decisions about the terms of their loan. We do not make pay option ARMS or loans with negative amortization. We have controls in place to ensure that first mortgage customers are offered prime pricing options when they qualify, based on their credit characteristics and terms of their loan transaction. We advise customers who apply for loans with prepayment penalties of the availability of loans without them, and we help them understand the associated cost impacts. We also limit our prepayment penalty terms on first mortgages to the lesser of three years or the initial fixed period of an adjustable rate loan. And finally, we only make a loan if it offers a demonstrable benefit to the consumer, such as reducing the monthly payment on debt, obtaining significant new money, or purchasing a new home. These principles have been publicly posted for years on our wellsfargo.com web site. It is in this context that we are providing a response to your request for comments.

Should the Board use its rulemaking authority to address concerns about certain loan terms or practices?
Wells Fargo recommends that the Board use its rule making authority, but use it carefully, with full consideration of all the impacts of any rules that are promulgated. Any regulation should be strictly drawn. Strictly drawn regulations, however, do not provide flexibility for lenders and regulators to adjust the legal parameters as the market changes. It is, therefore, imperative that the Board take into account the difficulty of reversing any regulation it chooses to adopt, and the importance of drafting any regulations strictly, sharply, and limited to what is absolutely necessary.

It is important to note that the specific loan terms and practices being examined by the Board are not, by themselves, unfair, deceptive, or abusive. Lenders who adhere to responsible lending principles can develop responsible loan products that incorporate some of these loan terms for certain customers. The problem with the loan terms in question is that irresponsible lenders and brokers without a shared interest in the long-term financial success of the consumer and investor can abuse each of these loan terms and practices.

From our viewpoint, many of the mortgage brokers and lenders are not regulated by a federal regulator, and as such are not subject to the guidance, oversight and if necessary, enforcement that has been provided by the federal regulators on subprime lending and nontraditional mortgage products. This gap is one we strongly feel needs to be addressed. Any action taken by the Board should be designed to create uniform standards that apply to all lenders and brokers, including federal and state-regulated lenders, brokers and others.

In considering whether to use its authority under HOEPA to expand restrictions beyond high cost loans to abusive loan practices, we respectfully request that the Board consider the impact of extending HOEPA remedies to the context of abusive loan practices. As you know, in addition to actual and statutory damages, HOEPA provides for rescission and enhanced damages. It also provides for assignee liability that extends to violations by the creditor of any laws, not just those that arise under HOEPA. There are limited cure rights under HOEPA for a creditor or assignee. There is virtually no primary or secondary market for loans subject to HOEPA because of the profound financial risks faced by both creditors and assignees, without regard to actual harm suffered by the mortgagor or assignee's knowledge of or participation in the origination violation by a creditor. If these same remedies were available to mortgagors whose loans were not high cost loans, but were merely a hybrid ARM type product, there would be a significant disruption in the marketplace, leading to lessening of credit availability to deserving consumers. As a result, we believe that any proposed rule making should address less drastic remedies, safe harbors, and enhanced cure rights.

Under TILA, the Board also has the authority to promulgate rules requiring that lenders provide certain disclosures to enhance borrowers' knowledge of the loans into which they are entering. Wells Fargo strongly believes that consumers should be provided clear, concise disclosures so that they can understand the terms, costs and risks of various mortgage products, and can make an informed choice about which product meets their needs. Wells Fargo supports enhanced consumer education and disclosures, and urges the Board to use its rulemaking authority under section 105 of TILA, to develop improved uniform mortgage disclosures that will lessen the chance that consumers do not understand the terms and risks of the loan products they choose.

To summarize, Wells Fargo recommends that rules should be promulgated, but only if they can be drafted with clear definitions, so that lenders unequivocally know what practices are appropriate and compliant. Appropriate remedies, safe harbors and cure rights should be *incorporated. There should be no room for subjective judgment or interpretation in a rule*, as the risk of noncompliance is too great. Rules should apply to all lenders and brokers.

What terms or practices should be regulated? And for what population?
The Board has asked whether specific terms or practices should be regulated across the board, or just for subprime lending. Wells Fargo believes that truly unfair, deceptive, and abusive practices should be eliminated for *all* mortgage loans and not just a subset or segment of the market such as subprime loans. This is true not only because the absence of a clear definition for "subprime" would make any regulation or guidance vague and subjective, but also because we believe that all consumers, prime and subprime alike, would benefit from the revised regulations. That being said, we think that the risks of certain practices and terms vary depending on other products or transaction characteristics. Wells Fargo proposes three levels of triggers for when certain practices or terms should be regulated, namely:

<u>Payment Shock Loans</u>: Payment Shock Loans are loans where a borrower may experience a significant increase in their payment as an adjustable rate mortgage loan ("ARM") resets. We recommend the following bright line definition of a Payment Shock Loan:

"A closed end adjustable rate mortgage loan, other than a reverse mortgage transaction, which:

(a) Contains an initial fixed interest rate for an initial period of less than five years; and
(b) Utilizes a comparative interest rate during the initial fixed period (the introductory rate as adjusted to remove the pricing or rate influence of discount or premium points, prepaid buy downs, or prepayment penalties) that is discounted by 200 basis points or more from the fully-indexed rate at the time of final loan approval; and
(c) Contains provisions whereby the initial fixed interest rate can increase by (i) 200 basis points or more at the first interest rate reset date; (ii) 100 basis points or more at any interest rate change date occurring after the first reset date; or (iii) 600 basis points or more over the term of the loan."

<u>Covered Loans</u>: Covered Loans incorporate loan terms which need additional restrictions in more limited circumstances. Covered Loans should include all Payment Shock Loans as described above, as well as loans with interest only features and loans with negative amortization features.

<u>Trigger Loans</u>: There are certain classes of transactions where additional caution and restriction is needed. Wells Fargo feels that a high cost type trigger that is based on the HOEPA definition is the best black line definition of these types of transactions. Utilizing a

credit score- or HMDA rate reportable-based definition to identify loans where additional caution and restriction is needed will be operationally problematic and will result in "false positives" depending on the interest rate environment and the yield curve. Wells Fargo suggests that Trigger Loans be defined as: "Loans whose annual percentage rate exceeds the threshold utilized for identifying loans that are subject to the requirements of Section 226.32 of Regulation Z (HOEPA loans), reduced by 300 basis points." For example, if Treasury securities with comparable maturities as of the 15th of the month prior to application are 6.25%, first-lien loans with annual percentage of 14.25% or greater would be subject to the requirements of HOEPA. Accordingly, in this example, Trigger Loans would be defined as loans with annual percentage rates in excess of 11.25%.

Should the Board restrict certain practices and loan terms?
Certain practices and loan terms should be restricted if black line tests can be developed defining when the restrictions would be applied. The restrictions should be limited to certain transactions or products. Below are Wells Fargo's recommendations on restrictions, and the products or transactions, as defined above, to which the restrictions should apply.

Prepayment Penalties: Wells Fargo believes that prepayment penalties, responsibly provided, are useful and appropriate because they allow consumers who intend to stay in their homes for an extended period of time the option of a lower interest rate. The existence of prepayment penalties also has contributed to the liquidity of the secondary markets by assuring a minimum return to investors. The proper standard for the industry is to limit the term of prepayment penalties to end at the earlier of 60 days prior to the interest rate reset, for an ARM loan, or three years. Also, providing additional disclosures about the nature of prepayment penalties and the availability of loans without such terms, as Wells Fargo does currently, is appropriate. The consumer should receive a clear benefit, such as a reduced interest rate, if he or she chooses a prepayment penalty. Any restrictions on prepayment penalties should apply to any loan with a prepayment penalty.

Escrows for taxes and insurance on subprime loans: Wells Fargo believes that lenders should require escrows for certain types of loans, namely first lien Payment Shock Loans or Trigger Loans, as described above. In both of these types of transactions, the borrowers may demonstrate difficulty in budgeting to pay taxes and insurance. The Board must consider, however, the operational difficulty associated with developing the processes needed to support the establishment and servicing of escrow accounts and must provide lenders and servicers sufficient time to establish a system for escrow establishment and servicing, and should delay the effective date of this portion of the regulation for at least 18 months, with implementation priority given first to Payment Shock Loans.

"Stated Income" or "Low Doc" loans: Wells Fargo believes that any restrictions on stated or low documentation loans need to be tied to a bright line test that can be consistently documented. Several years ago, Wells Fargo implemented such a bright line test when it chose to eliminate the availability of stated income loan products to all consumers whose FICO scores were below 620. Our recommendation is that stated income or low documentation loans should not be allowed for Trigger Loans as described above. If a restriction is promulgated it must clearly state what documentation is acceptable, create a safe harbor if that documentation is obtained, and not leave any room for discretion. Care needs to be taken that any guidance does not unnecessarily threaten the use of low documentation requirements on transactions or products where, based on a borrower's credit history and performance, the lender determines no further documentation is necessary. Wells Fargo also endorses the use of clear and understandable disclosures about the availability of full documentation loans, and the cost of a low or stated documentation product if there is a cost differential.

Unaffordable Loans: With respect to the affordability of credit, there has been a great deal of discussion about how to determine a borrower's ability to repay an ARM loan and what rate and payment amount should be used in underwriting an ARM. Wells Fargo strongly believes that the evaluation of a consumer's ability to repay any Covered Loan, as defined above, should be determined using a payment that is calculated using the fully indexed, fully amortized rate prevailing as of the origination date, plus the margin, plus taxes and insurance. A debt-to-income ratio ("DTI") cap of 50%, or any other level, should not be a component of any rule-making actions by the Board. This kind of inflexible cap would not permit lenders to consider multiple mitigating factors that can influence underwriting decisions, and could contribute to the unavailability of credit to those who are otherwise eligible. Wells Fargo would recommend that any regulation about determining affordability be applied to all Covered Loans as defined above.

What other issues should the Board consider?
Broker Regulation: While brokers play an important role in the mortgage finance system, they are infrequently, if at all, subject to the same level of laws, regulation and oversight as financial institutions and other lenders. We support strong uniform regulation of mortgage brokers, including requiring the formation of a national registry of approved brokers. A clear national regulatory standard for mortgage brokers is an important step to create a seamless mortgage lending infrastructure for borrowers. We are asking the Board to advocate legislation to create such a registry.

In addition to advocating the registry, Wells Fargo recommends that the Board considers regulations to restrict or require certain acts or practices of mortgage brokers. The Board could adopt a regulation that prohibits a lender from compensating a mortgage broker if the broker fails to provide the borrowers with a disclosure of the nature of the broker relationship with the borrowers, the amount of the broker's compensation, and who is responsible for paying the compensation. The lender's receipt of a signed copy of such a disclosure should be deemed sufficient evidence to permit the lender to compensate the broker.

Uniformity: Should the Board choose to promulgate regulations, we would request that the Board harmonize the regulations with the existing regulatory guidance that has been recently issued, and specifically state that compliance with the regulations constitutes compliance with any outstanding guidance on the subject matters covered in the regulations. Further, any regulation should explicitly provide that the regulations preempt inconsistent state laws even if they are deemed to be more restrictive than the new regulations. Uniformity is imperative in order to reduce the quagmire of compliance with state by state disclosures and requirements, leading to simplification of the mortgage process for consumers, and ultimately, a lowering of the cost of credit to consumers.

Disclosures: The Board has asked whether enhanced disclosures would be useful or desirable. Wells Fargo believes that clear disclosures are very important for a consumer to understand the mortgage transaction. That being said, Wells Fargo does not advocate additional disclosures, but rather that the Board uses this opportunity to revise and simplify the disclosure regime for all disclosures currently required under TILA so that the disclosures more clearly disclose the key terms and features of the products in a manner that consumers can readily understand.

In summary, the Board should focus on creating a regime of uniform consumer protection requirements that consistently applies to all lenders and brokers. All regulations should be based on bright line standards, and supersede existing guidance and state law. We thank you for the opportunity to provide these comments. If you have any questions or would like to discuss this further, you can contact me at (515) 213-6117.

Sincerely,

Michael J. Heid

Michael J. Heid
Division President
Wells Fargo Home Mortgage,
a division of Wells Fargo Bank, NA,
(515) 213-6117