



1900 F Street N.W. Washington, DC 20512

June 14, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling:

I write to correct the record in some respects concerning a House Financial Services Committee staff report issued on June 6, 2017. The staff report follows up on the investigation that the Committee launched last September into two specific questions: “(1) how and why Wells Fargo allowed these fraudulent activities to occur at a disturbing scale across the Bank for well over a decade; and (2) whether or not federal financial regulators were effective in detecting and remedying Wells Fargo’s fraudulent branch sales practices.” As the staff report notes, the Wells Fargo “practice of defrauding customers by opening millions of unneeded, and at times, unauthorized bank accounts” appears to have dated back at least to May 2001.

The Original Focus of the Committee Investigation and the Effectiveness of the CFPB Order

Last week’s staff report does not address the first question, of how and why Wells Fargo allowed these activities to occur across the Bank for well over a decade. In this respect, it is notable that the Consumer Financial Protection Bureau did not even open its doors until July 2011, more than ten years after these activities commenced, and did not reach steady-state in its staffing and operations until about 2014.

Nor does the staff report address whether or not federal financial regulators were effective in remedying Wells Fargo’s fraudulent branch sales practices. By contrast, the work done by the Consumer Bureau, in conjunction with our partners in this matter (the Los Angeles City Attorney’s office and the Office of the Comptroller of the Currency), halted Wells Fargo’s improper sales practices and is providing redress to harmed consumers. In particular, the investigation we conducted led to orders – including the CFPB Order issued on September 8, 2016 – which addressed what the staff report describes as “one of the worst banking scandals in years.” Our orders did so in four ways.

First, the 26-page CFPB Order publicly detailed the wrongdoing that occurred, so that it could be more fully known and understood by the public and other government officials. This Order and those reached by our partners stand as an authoritative account of events based on the results of our investigation into these matters. The orders, in fact, led to follow-on activity by other public officials around the country and prompted the first congressional hearings on these matters.

Second, the CFPB Order specifies that Wells Fargo must halt these improper practices and put in place a detailed compliance regimen to ensure that they cannot happen again. The details of this preventive relief include: (1) a provision directed at Wells Fargo and its “officers, agents, servants, employees, and attorneys” to prevent any further improper sales practices; (2) the installation of an independent consultant to ensure that Wells Fargo’s policies and procedures will forestall any such conduct in the future, including training, monitoring, evaluation of sales goals, and development of a specific compliance plan; (3) provisions addressing the role of the Wells Fargo Board of Directors, to ensure that they are actively engaged in ensuring compliance with the terms of the Order, including timely reporting by management and appropriate corrective action to remedy any identified deficiencies; (4) recordkeeping and reporting requirements to the Consumer Bureau; and (5) ongoing requirements to maintain cooperation and compliance with the Consumer Bureau as Wells Fargo implements the terms of the Order. The staff report never suggests that these provisions do not effectively remedy Wells Fargo’s improper practices.

Third, the CFPB Order requires Wells Fargo to make individual consumers whole for the harm they may have sustained as a result of the improper practices. To this end, the Order requires Wells Fargo to: (1) retain an independent consultant to identify and provide redress to all affected consumers; (2) develop and submit to the Consumer Bureau a written plan detailing the steps, recommendations, deadlines, and timeframes, as outlined in the redress plan; (3) establish procedures to locate, notify, and compensate affected consumers; and (4) involve Wells Fargo’s Internal Audit department in ensuring that consumer redress is carried out as specified. The staff report never suggests that these measures are ineffective to provide redress to harmed consumers.

Fourth, the CFPB Order imposed a civil monetary penalty of \$100 million on Wells Fargo, which is the largest penalty the Consumer Bureau has imposed. This penalty was in addition to the penalties imposed by the Los Angeles City Attorney’s office and the OCC, all of which tend to deter such conduct by Wells Fargo and by any other institution in the future. The staff report never suggests that the penalties imposed in this matter were improper in any way.

The remaining portion of the questions that are the stated focus of the Committee’s investigation concerns whether the federal financial regulators were effective in detecting Wells Fargo’s improper sales practices. Again, at the outset the staff report acknowledges that the sales practices at Wells Fargo went on for at least a decade before the Consumer Bureau was created, and even longer before it reached steady-state in its staffing and operations. And the staff report implicitly recognizes that the Consumer Bureau, in conjunction with our partners here, has now both detected and remedied the violations that occurred as a result of these practices.

The Consumer Bureau’s Cooperation with the Committee

The staff report does not focus on any of the above issues; instead, it devolves into various misstatements and allegations about the extent of the Consumer Bureau’s cooperation with the Committee’s investigation. I write in part to correct the record on three particular points.

The first area concerns the claim made in the staff report that “the CFPB has not cooperated with the Committee’s investigation to date.” The staff report suggests that the Consumer Bureau, and I myself, refused to brief Committee staff about the work we did on these matters. That is not

what happened, and the staff report selectively mentions only some of the communications between the Committee and the Consumer Bureau on this issue. Here is a fuller account:

- On September 20, 2016, Consumer Bureau staff first briefed a bipartisan group of staff of all of the Members of the Committee about Wells Fargo. During the briefing, some questions were asked that sought information about supervisory and investigative matters. The CFPB representatives were unsure whether they had the authority to respond. They thus indicated they would seek such authority and report back.
- On September 21, you sent me a letter asking for a second briefing from Consumer Bureau staff with authority to answer questions about nonpublic supervisory and investigative matters.
- On September 22, I responded to you in a letter and agreed that CFPB staff would be available to provide the requested follow-up briefing the next day, September 23. The staff report omits this fact.
- At the close of business on September 22, you sent me yet another letter stating that the Committee no longer wanted to receive the requested follow-up briefing. Instead, your letter requested that I provide a nonpublic briefing to Committee staff to be scheduled on September 23, the very next day. On that late notice, I was unavailable to do so.
- Although the staff report does not mention it, the Consumer Bureau offered to provide the requested follow-up briefing for majority and minority staff on September 23. Consumer Bureau staff did provide that briefing on that day. The minority staff of the Committee attended the briefing, but the majority staff declined to attend.
- I was aware that the Committee was planning a hearing about Wells Fargo, similar to a Senate Banking Committee hearing held on September 20, where I had testified. On multiple occasions, I offered to testify publicly at the Committee's hearing – including in my September 22 and September 23 letters to you – but you did not invite me to testify.

In the hearing before the Senate Banking Committee, I answered all of the questions that the Senators asked me about Wells Fargo's sales practices and the Consumer Bureau's investigation and resolution of those matters. I was prepared to do the same for your Committee.

My first opportunity to address the Wells Fargo issues publicly before the House Financial Services Committee occurred in my required testimony on our Semi-Annual Report on April 5, 2017. The staff report suggests two points of potential disagreement around interpretations of my testimony that day, and this is the second area where I am glad to have the chance to correct the record on these points of potential disagreement.

Initially, the staff report indicates an inability to corroborate my statement that the Consumer Bureau conducted an "independent and comprehensive" investigation of Wells Fargo's sales practices. The potential disagreement here seems to stem from differing interpretations of the terms "independent" and "comprehensive." As I see it, the Consumer Bureau worked with the Los Angeles City Attorney's office and the OCC to ascertain the facts and resolve the issues. So we were not operating "independently" in the sense that we operate in other cases where we are

the lone government agency involved. Nonetheless, we had an obligation to make our own independent judgment about the underlying facts and whether they could be sufficiently verified and documented for purposes of either filing a complaint or framing an order. We did that.

In particular, we furthered the investigation in important ways. First, we issued four Civil Investigative Demands for information from Wells Fargo – information that was essential to the investigation. Among other things, we compelled Wells Fargo to quantify the sales-practices violations and consumer harm. In response to our demand, Wells Fargo produced an analysis performed by PwC, among other items. All of this information has been provided to the Committee. Second, we were able to take investigational hearings – akin to depositions – of Wells Fargo officials. To my knowledge, that was the first time a government agency had been able to take testimony from Wells Fargo officials about their sales practices. The transcripts of our investigational hearings have also been provided to the Committee. Third, we were able to secure broad nationwide relief for consumers, beyond the boundaries of the State of California, based on our ability to establish violations of federal law through the CFPB Order.

In all of these respects, we conducted our inquiries to satisfy our independent obligation to determine that Wells Fargo had in fact violated federal law, and had in fact opened millions of deposit and credit card accounts without the knowledge or consent of consumers. In doing so, we relied where possible on the efforts of our partners, who did excellent work that was crucial to the success of the investigation. And we relied on the Bank's own records, including the PwC analysis, to help establish what actually happened. It would have made no sense for us to repeat the same work done by others, as long as we satisfied our independent obligation to ascertain, verify, and document the facts and to determine that violations of federal law had occurred.

As to whether our investigation was “comprehensive,” in my mind it was, in the sense that it thoroughly canvassed the factual and legal issues at stake in the enforcement investigation into Wells Fargo's improper sales practices, their effects on consumers, the consequent violations of the law, and the legal relief to remedy past violations and prevent future violations. Other work remains ongoing to this day, as the terms of the CFPB Order contemplated by installing an independent consultant and ensuring reporting about the implementation of compliance plans.

Similarly, the staff report alleges that it is unable to corroborate my statement that the Consumer Bureau “engaged in supervisory activity” with regard to these matters at Wells Fargo prior to May 2015. Again, we seem to have differing interpretations of what is meant by the phrase “supervisory activity.” In the staff report, the phrase appears to be interpreted narrowly to refer only to supervisory activity that involved direct contact with Wells Fargo. That is not how I have understood the meaning of this phrase, and it is not how the Consumer Bureau understands the concept of “supervisory activity,” which typically involves various kinds of activity that occur before an actual examination is conducted at an institution, and often afterwards as well. Our Examination Manual, published on our website, discusses our supervisory processes and corroborates this point. By contrast, the usage in the staff report seems instead to refer only to what I would consider to be an actual “examination” itself.

Accordingly, as I specifically noted in my letter to you dated September 23, 2016, the supervisory work that we conducted in 2014 was internal to the Consumer Bureau. We did not contact Wells Fargo directly regarding these practices until the Spring of 2015. But as the staff report itself notes, prior to May 2015, our regional supervisory staff had made the decision to

schedule “an examination of [retail banking sales practices] to commence in 2015,” based on an assessment that this matter posed a high risk rating to justify supervisory attention. And though the staff report finds no evidence that this examination actually occurred, that was because, as the situation unfolded with further developments, the Consumer Bureau’s focus moved beyond supervision to the enforcement investigation that ultimately resulted in the CFPB Order.

The third area where I want to correct the record is where the staff report makes the misleading and inaccurate claim that the Consumer Bureau failed to cooperate by providing responsive documents to the Committee as requested. The staff report mentions the numbers of pages of documents provided in the initial rounds of the Consumer Bureau’s production – 176 pages and 834 pages, respectively – and contrasts this production with Wells Fargo, which is said to have produced over 140,000 pages of records. In fact, the Consumer Bureau’s production to date has totaled over 57,000 pages of records, in an effort to comply with the Committee’s broadly worded requests. Obscuring this substantial response, the staff report complains instead about which documents have been produced and which supposedly have not. One complaint is that the Consumer Bureau’s production has been redundant of documents received from either Wells Fargo or the OCC, though the same point could be made in reverse, since the investigation of the Bank has led to many documents existing in the records of the Consumer Bureau as well as in the records of the Bank and the OCC, many of which have likely been produced to the Committee in duplicate or even triplicate. As for whether the Consumer Bureau should be producing some categories of documents rather than others, CFPB staff have consistently sought further guidance from the Committee staff to narrow and target its inquiries and the appropriate response. We have renewed this request for further guidance repeatedly, thus far to no avail.

In the end, I am quite proud of the CFPB team that has been working on the Wells Fargo matters, including those who worked with our partners to push forward and complete the enforcement action that resulted in the CFPB Order comprehensively addressing the issue of improper sales practices. Within about two years of the Consumer Bureau reaching steady-state in its staffing and operations, they successfully resolved what the staff report correctly stated was “one of the worst banking scandals in years,” after this scandal had festered on its own for more than fifteen years, including more than ten years before the Consumer Bureau was even created. Clearly our team, along with our partners, has performed a tremendous public service here.

In closing, we will continue to seek ways to cooperate with your oversight requests and to work toward an amicable resolution of any disagreements over the information you are seeking in order to fulfill those functions.

Sincerely,



Richard Cordray
Director

cc: The Honorable Maxine Waters, Ranking Member, Committee on Financial Services