



DID THE CFPB LET WELLS FARGO “BEAT THE RAP”?:
SECOND INTERIM MAJORITY STAFF REPORT ON THE WELLS FARGO FRAUDULENT
ACCOUNTS SCANDAL

COMMITTEE ON FINANCIAL SERVICES, U.S. HOUSE OF REPRESENTATIVES
HON. JEB HENSARLING, CHAIRMAN

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HON. ANN WAGNER, CHAIRMAN

115TH CONGRESS, FIRST SESSION
SEPTEMBER 19, 2017

*This report has not been officially adopted by the Committee on Financial Services
and may not necessarily reflect the views of its Members.*

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EXECUTIVE SUMMARY

On June 6, 2017, the House Financial Services Committee (“Committee”) issued its first Interim Majority Staff Report regarding the Committee’s investigation into the Wells Fargo & Co. (“Wells Fargo” or “Bank”) fraudulent accounts scandal entitled “*Was the ‘Cop on the Beat?’*”¹ This report concluded that the Committee could not complete its investigation because the Bureau of Consumer Financial Protection (“CFPB”) and its Director, Richard Cordray, had failed to fully comply with the Committee’s subpoena seeking all records relating to the CFPB’s investigation of Wells Fargo.²

With the publication of this second Interim Majority Staff Report, the Committee is regrettably still unable to complete its investigation because Director Cordray remains in default of the Committee’s April 4, 2017, *Subpoena Duces Tecum* (“April 4 Subpoena”).³

Nevertheless, the Committee has obtained a crucial new document in its investigation—a document that the CFPB appears to have unlawfully and deliberately withheld from this Committee for over one year. This document, a “Recommendation Memorandum” presented to and approved by Director Cordray, assessed the CFPB’s case against Wells Fargo and sought authorization to enter into settlement negotiations with—or sue—the bank.⁴

Among other things, the Recommendation Memorandum suggests that the Obama-era policy of “Too Big to Jail” remains alive and well at the CFPB.⁵ For instance, the Memorandum notes that by application of the lowest statutory penalty

¹ MAJORITY STAFF OF THE H. COMM. ON FIN. SERVS., 115TH CONG., WAS THE “COP ON THE BEAT”? INTERIM MAJORITY STAFF REPORT ON THE WELLS FARGO FRAUDULENT ACCOUNTS SCANDAL (June 6, 2017) (“June 6 Report”), https://financialservices.house.gov/uploadedfiles/2017-6-6_interim_cfpb_wells_fargo_report_final.pdf.

² *Id.*

³ H. Comm. on Fin. Servs. *Subpoena Duces Tecum* to the Hon. Richard Cordray (Apr. 4, 2017), App. at 430–50.

⁴ Memorandum from Office of Enforcement, Consumer Fin. Prot. Bureau, to the Hon. Richard Cordray HFSC_CFPB_20170404_0064927 (July 12, 2016) (“Recommendation Memorandum”), App. at 1–23; *see also* Memorandum from the Hon. Richard Cordray to Anthony Alexis, Assistant Dir. for Enforcement, Consumer Fin. Prot. Bureau, HFSC_CFPB_20170404_0064926 (July 12, 2016) (“Decision Memorandum”), App. at 24.

⁵ *See* Appendix to June 6 Report, OCC-LD-00002774–75, at App. 81–82 (“CFPB staff stated that [Wells Fargo] may be able to avoid an injunction by settling the case administratively with the CFPB. The reason that the Bank wants to do this in July is because it may influence the City of LA’s decision to seek an injunction, which would trigger significant consequence for the Bank under the Investment Adviser Act of 1940. The CFPB staff thinks that an injunction may cause safety and soundness issues but not sure.”), https://financialservices.house.gov/uploadedfiles/appendix_final.pdf; *see also generally* MAJORITY STAFF OF THE H. COMM. ON FIN. SERVS., 114TH CONG., TOO BIG TO JAIL: INSIDE THE OBAMA JUSTICE DEPARTMENT’S DECISION NOT TO HOLD WALL STREET ACCOUNTABLE (July 11, 2016), https://financialservices.house.gov/uploadedfiles/07072016_oi_tbtj_sr.pdf.

level against each instance of fraud committed by Wells Fargo employees against bank customers, CFPB estimated that the bank was potentially liable for a statutory civil monetary penalty *exceeding \$10 billion*.⁶ This penalty could potentially be increased further, CFPB enforcement attorneys noted, if CFPB determined whether the fraudulent behavior was reckless or knowing, as opposed to negligent, or if the CFPB discovered additional fraudulent behavior not yet reported or violations of other statutes.

Additionally, at the time the CFPB sought authorization to negotiate a settlement with Wells Fargo, the Memorandum indicates that the facts underlying the violations were undisputed and a clear application of the CFPB's authority, simplifying any potential litigation.⁷ Notwithstanding the CFPB's apparent slam-dunk case, Director Cordray approved a settlement with Wells Fargo bank for \$100 million—one cent on the dollar of the CFPB's own conservative estimate. In support of the decision, the Recommendation Memorandum suggested that there were unspecified benefits from settling the case quickly without further investigation.⁸ However, the facts in the Recommendation Memorandum undermine this claim.⁹ As noted in the Recommendation Memorandum, Wells Fargo had already taken steps to suspend fraudulent behavior by its employees and had set aside sufficient funds to make victims whole, meaning there was no further immediate risk to consumers except that which might not be discovered without further investigation.¹⁰ And, as it would turn out, the CFPB's premature suspension of its investigation meant that it potentially lost the opportunity to discover recently announced instances of consumer harm by Wells Fargo.¹¹

Why then would the CFPB rush to settle a strong case against one of the largest banks in the country for one percent of its possible statutory liability? One possibility is reputational risk: had the CFPB not settled in time to announce a joint enforcement action with both the Los Angeles City Attorney's Office and the Office of the Comptroller of Currency ("OCC"), that failure might raise difficult questions about whether the CFPB had failed to discover the widespread fraudulent sales account practices at the bank in spite of its ongoing supervision and examination activities.¹²

Adding to the mystery is why, in records discovered by the Committee and made public today, Director Cordray, other senior CFPB officials, and CFPB

⁶ Recommendation Memorandum, at HFSC_CFPB_20170404_0064933-34, App. at 7-8

⁷ *Id.* HFSC_CFPB_20170404_0064935, App. at 9.

⁸ *Id.*

⁹ *See, infra*, at IB.

¹⁰ *See, infra*, at IB.

¹¹ *See* Wells Fargo & Company, Quarterly Report (Form 10-Q), at 124 (Aug. 4, 2017).

¹² *See* June 6 Report, at 10 (noting that a CFPB attorney told the Office of the Comptroller of the Currency that the CFPB was "interested in trying to coordinate on the timing with LA but only if LA is willing to slow down its settlement/action a little").

oversight attorneys appear to have deliberately withheld the Recommendation Memorandum and other key records in response to the Committee's records requests and Subpoena, and that some officials even appear to have taken affirmative steps to attempt to conceal the Recommendation Memorandum's existence from the Committee.¹³ Moreover, these internal CFPB records suggest that Director Cordray and his staff appear to have engaged in these activities while simultaneously making public statements that declared an ignorance of what records the Committee sought, and despite Director Cordray's representations to the Committee that the CFPB had produced "the key documentation of the Bureau's investigation of Wells Fargo."¹⁴ Surely, if the Director could justify his settlement on the merits, there would be no reason to conceal it.

At a minimum, information revealed in the Recommendation Memorandum does not corroborate Director Cordray's congressional testimony that the CFPB conducted an "independent and comprehensive investigation"¹⁵ of Wells Fargo and also raises questions as to the veracity of the Director's testimony before the Senate Banking Committee on September 20, 2016,¹⁶ before this Committee on April 5, 2017,¹⁷ and in his June 14, 2017, letter to Chairman Hensarling in response to the Committee's June 2017 Interim Staff Report ("June 14 Letter").¹⁸

The Committee's investigation of Wells Fargo and its federal regulators will continue. Committee Majority Staff ("Staff") recommend that the Committee consider all options to enforce the Committee's Subpoena against the CFPB.

¹³ CROSS X

¹⁴ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 17–18 (May 2, 2017), App. at 467–68.

¹⁵ *The 2016 Semi-Annual Reports of the Bureau of Consumer Financial Protection: Hearing Before the H. Comm. on Fin. Servs.*, 115th Cong., at 6 (Apr. 5, 2017) ("April 5 Trans.") (statement of the Hon. Richard Cordray), App. at 631.

¹⁶ *See generally An Examination of Wells Fargo's Unauthorized Accounts and the Regulatory Response: Hearing Before the S. Comm. on Banking Housing & Urban Affairs*, 115th Cong. (Sept. 20, 2016) ("Senate Banking Hearing").

¹⁷ *See generally* April 5 Trans.

¹⁸ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 3–5 (June 14, 2017) ("June 14 Letter"), App. at 31–33.

DISCUSSION

I. The Recommendation Memorandum Reveals that the CFPB Settled with Wells Fargo for One Cent on the Dollar and Fails to Adequately Explain this Decision.

A. The Recommendation Memorandum Calculated a Potential Penalty to Wells Fargo of Over \$10 Billion.

The CFPB's Enforcement Division's policy is to present the Director with a Recommendation Memorandum to authorize either settlement negotiations with an enforcement subject, or to commence an enforcement action against that subject. A Recommendation Memorandum typically is a comprehensive document that provides: an overview of the enforcement matter; detailed factual background; legal analysis of the causes of action against the subject under investigation based on known conduct; a recommendation by the Enforcement Division to the Director to either settle or sue to resolve the enforcement matter, including suggested penalties or settlement amounts; and an assessment of the risks of the recommended approach. If the Director agrees with the Enforcement Division's assessment and wishes to proceed with an enforcement action, the Director then signs a Decision Memorandum that authorizes the Enforcement Division to pursue a settlement or file a lawsuit under the parameters discussed in the Recommendation Memorandum. In any CFPB enforcement matter, a Recommendation Memorandum is undoubtedly a key document.

For the investigation of Wells Fargo's fraudulent branch sales practices, the CFPB Enforcement Division provided a Recommendation Memorandum to Director Cordray on July 12, 2016.¹⁹ Director Cordray then executed the Decision Memorandum that same day.²⁰ Although the Committee requested records that include the Recommendation Memorandum just days after the CFPB settled with Wells Fargo, the Committee did not obtain it until September 5, 2017.²¹ This was 368 days after the Committee's initial request for records on September 16, 2016, related to the CFPB's investigation in connection with the Wells Fargo scandal, and 140 days after Director Cordray defaulted on the Committee's April 4 Subpoena that clearly compelled production of the Recommendation Memorandum (among other records).

Most CFPB Recommendation Memoranda contain a calculation of possible penalties that could be obtained at trial, and a calculation of the possible "settlement" value of the case—that is the amount of money that the CFPB could reasonably expect to get in a settlement (a value typically discounted from the possible penalties at trial). The Recommendation Memorandum for the Wells Fargo

¹⁹ See Recommendation Memorandum, at HFSC_CFPB_20170404_0064927–49, App. at 1–23.

²⁰ See Decision Memorandum, at HFSC_CFPB_20170404_0064926, App. at 24.

²¹ See, *infra*, at section III.D.

matter reveals that the CFPB recommended settling with Wells Fargo for one cent on the dollar—\$100 million as opposed to the CFPB’s conservative penalty estimate of over \$10 billion.²²

The Recommendation Memorandum’s penalty analysis begins with the CFPB calculating that there were two million known violations of the Consumer Financial Protection Act (“CFPA”) and a statutory penalty at the time of up to \$5,437 per “ordinary” violation.²³ The Recommendation Memorandum then recounts that the statutory penalty could have been much larger, as the CFPA provides that the penalty for each “reckless” violation was up to \$27,186 and the penalty for each “knowing” violation was up to \$1.087 million.²⁴ But despite the Enforcement Division’s observation in the Recommendation Memorandum that “the bank’s violations could be characterized as reckless, at least, and possibly knowing,” the CFPB did not calculate an enhanced penalty.²⁵ Instead, the CFPB calculated the most *conservative* penalty—which was still potentially in excess of \$10 billion.²⁶ The Recommendation Memorandum then concludes that the “mitigating factors” the CFPB must consider when it calculates a penalty did not justify reducing the penalty:



July 12, 2016

Recommendation Memorandum for the Director

FROM	Lawrence Brown, Barry Reiferson, Leanne Hartmann, John Wells, Jeff Ehrlich, and Tony Alexis, Office of Enforcement
SUBJECT	Authority to Settle with Wells Fargo Bank, N.A. and to File Suit – ENF Matter No. 2016-1667-02

* * *

²² Recommendation Memorandum, at HFSC_CFPB_20170404_0064933–34. App. at 7–8.

²³ Recommendation Memorandum, at HFSC_CFPB_20170404_0064933, App. at 7; 12 C.F.R. § 1083.1.

²⁴ Recommendation Memorandum, at HFSC_CFPB_20170404_0064933, App. at 7; 12 U.S.C. § 5565(c)(2); 12 C.F.R. § 1083.1.

²⁵ Recommendation Memorandum, at HFSC_CFPB_20170404_0064933, App. at 7.

²⁶ *Id.* at HFSC_CFPB_20170404_0064933–34. App. at 7–8.

But even if we were to calculate only a first-tier penalty for each of Wells Fargo's more than 2 million violations, the penalty could exceed \$10 billion before considering any mitigating factors. Among the mitigating factors we must consider are the size and good faith of the subject, the gravity of the violations, the severity of the risks to or losses suffered by consumers, the history of previous violations, and "such other matters as justice may require."²⁷ Those factors do not justify significantly reducing the penalty here. Wells Fargo is one of the world's largest banks. Last year, it earned \$86.1 billion in net revenue and a \$22.9 billion profit; it finished the year with more than \$1.8 trillion in total assets.²⁸ While the amount of known consumer harm is only a few million dollars, the severity of the risks to consumers is demonstrated by the pervasiveness of the violations: the bank opened millions of deposit and credit-card accounts without consumers' consent, affecting more than a million consumers.

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Often in an enforcement action, there can be a functional difference between a possible statutory penalty and the facts a law enforcement agency can prove and the penalty that it can achieve through litigation. This is one aspect of what is commonly referred to as litigation risk. The Recommendation Memorandum reveals that the CFPB's Enforcement Division stated that it saw "no significant risks" in litigation, as both "the facts underlying the violations [the CFPB] identified are undisputed" and the CFPB's "claims are straightforward applications of [its] standard UDAAP authority."²⁸

B. The Recommendation Memorandum Fails to Adequately Explain Why the CFPB Sought Authority to Settle the Case for \$100 Million—One Percent of the CFPB's Possible Conservative Penalty Estimate of over \$10 Billion.²⁹

The Recommendation Memorandum fails to adequately explain why the Enforcement Division recommended that the CFPB settle the matter for one cent on the dollar under the CFPB's *conservative* penalty estimate. The Enforcement Division claims in the Recommendation Memorandum that there are "benefits" to "proceeding quickly" to a settlement, but those benefits are not articulated, and other factors in the Recommendation Memorandum seemed to weigh against a quick settlement.³⁰ For instance, for harmed consumers to obtain some level of financial remediation, a rapid and low dollar value settlement between Wells Fargo and the CFPB was not required, as the Recommendation Memorandum made clear that Wells Fargo had claimed to "have paid redress to all simulated-funding victims through July 2015 and all credit-card victims through September 2015."³¹

²⁷ *Id.* at HFSC_CFPB_20170404_0064927, HFSC_CFPB_20170404_0064934, App. at 8.

²⁸ *Id.* at 9.

²⁹ *Id.*, at HFSC_CFPB_20170404_0064932, App. at 6 ("We recommend settling this matter for injunctive relief, redress to consumers, and a \$100 penalty."). To be sure, the Recommendation Memorandum later uses slightly different verbiage: "we recommend settling this matter for a penalty of at least \$100 million." HFSC_CFPB_20170404_0064934, App. at 8.

³⁰ *Id.* HFSC_CFPB_20170404_0064935, App. at 9.

³¹ *Id.* HFSC_CFPB_20170404_0064933, App. at 7.

Additionally, a quick settlement pausing or ending the investigation meant that the CFPB risked “failing to identify similar sales-integrity issues involving other products or developing theories for why the practices identified may violate other laws within the Bureau’s authority.”³² In fact, the Recommendation Memorandum states that the CFPB believed there were likely more violations that had yet to be revealed, and consequently the CFPB could potentially have sought a larger statutory penalty because a thorough investigation would likely have revealed additional violations.³³ Indeed, at the time the Recommendation Memorandum was drafted, the CFPB was waiting on information from Wells Fargo that would have established the number of violations relating to the unauthorized request and activation of debit cards, and the CFPB believed that more violations of unauthorized credit cards and enrollment in online banking services existed than Wells Fargo had reported at the time of the enforcement action’s settlement.³⁴

It remains unclear why the Enforcement Division suggested that the CFPB settle the matter with Wells Fargo for a penalty of \$100 million.³⁵ No reason is articulated for the \$100 million figure besides a summary conclusion that a “penalty in that amount would sufficiently deter similar violations and would impress upon the bank the need to review its incentive-compensation program and to better monitor its effect on bank employees in the future.”³⁶ Yet, the Recommendation Memorandum also states that Wells Fargo “failed to appreciate the gravity of what has occurred.”³⁷ The Recommendation Memorandum notes that in the year 2015 Wells Fargo earned a \$22.9 billion profit; why a penalty for less than half of a percent of the Bank’s yearly earnings or less than one percent of the potential statutory penalty (under the CFPB’s *conservative* estimate) would get Wells Fargo’s attention, or make the bank appreciate the seriousness of the violations, is left unexplained.³⁸

Committee Staff nor do not take any position as to the size of the penalty assessed in the CFPB’s September 8, 2016, Consent Order with Wells Fargo. This Staff Report reaches no conclusion on the matter, especially as the Committee has not reviewed all relevant CFPB records. Instead, this Staff Report observes that the Recommendation Memorandum conspicuously lacked analysis to support the penalty that the CFPB ultimately imposed (particularly in light of the delta

³² *Id.* at HFSC_CFPB_20170404_0064935, App. at 9.

³³ *Id.* at HFSC_CFPB_20170404_0064930, App. at 4.

³⁴ *Id.* at HFSC_CFPB_20170404_0064929–30, App. at 3–4.

³⁵ *Id.* at HFSC_CFPB_20170404_0064934, App. at 8.

³⁶ *Id.*

³⁷ *Id.*

³⁸ The Recommendation Memorandum does contain a passage that may help explain the desire for a quick settlement: “We have worked closely with LA [Office of the Los Angeles City Attorney] and would continue to do so if you authorize us to act. Ideally, we would simultaneously announce the settlement of LA’s pending case and an administrative consent order in ours.” *Id.* HFSC_CFPB_20170404_0064928, App. at 2.

between the CFPB's internal numbers) and that the analysis present in the Recommendation Memorandum raises questions. All Staff conclude is that these questions are deserving of answers. But until Director Cordray complies with his legal obligations and produces *all* relevant documents, the Committee Staff's review will continue in order to understand all aspects of the CFPB's enforcement action. Committee staff are not yet able to offer final conclusions or recommendations to the Committee.

II. The Recommendation Memorandum and Other Internal CFPB Records Do Not Substantiate Assertions that Director Cordray Made to Congress Regarding the CFPB's Investigation of Wells Fargo, But Do Raise Questions Regarding Their Veracity.

A. The Committee Continues to be Unable to Corroborate Director Cordray's Representation to the Committee that the CFPB's Investigation Was "Independent and Comprehensive."³⁹

Additionally, the Recommendation Memorandum raises questions as to the veracity of the Director's representations and requires further exploration.

1. The Recommendation Memorandum states that even though other legal theories were potentially in play, the CFPB only pursued CFPA violations:

The bank's conduct potentially violated the requirements of several federal laws, including TISA, which prohibits inaccurate statements in soliciting deposit contracts; TILA, which requires that credit cards be issued only upon request or application; EFTA, which requires that access cards be issued only upon request or application; and the Gramm-Leach-Bliley Act, which requires banks to safeguard consumer information. For efficiency, we propose to settle or sue for only CFPA violations stemming from the bank's providing products and services without consumers' consent.⁴⁰

2. The Recommendation Memorandum also explains the Enforcement Division's position that the CFPB "could continue to investigate whether the bank has committed similar violations with respect to other products and services." But the Recommendation Memorandum ultimately advised against continuing the CFPB's investigation even though the Enforcement Division concluded that this approach risked failing to uncover further misconduct by Wells Fargo:

³⁹ April 5 Trans., at 6 (Apr. 5, 2017) (written statement of the Hon. Richard Cordray, Dir., Consumer Fin. Prot. Bureau), App. at 631. This is still the case when that statement is read as glossed by Director Cordray in response to the June 6 Report. See June 14 Letter, at 3–4.

⁴⁰ Recommendation Memorandum, at HFSC_CFPB_20170404_0064930, App. at 4.



July 12, 2016

Recommendation Memorandum for the Director

FROM	Lawrence Brown, Barry Reiferson, Leanne Hartmann, John Wells, Jeff Ehrlich, and Tony Alexis, Office of Enforcement
SUBJECT	Authority to Settle with Wells Fargo Bank, N.A. and to File Suit – ENF Matter No. 2016-1667-02

* * *

By pausing our investigation to attempt to resolve this matter, we risk failing to identify similar sales-integrity issues involving other products or developing theories for why the practices identified may violate other laws within the Bureau’s authority. The Legal Division perceives optical and legal risks in advancing only UDAAP claims for conduct that may also violate other Federal consumer financial laws, but we (and the Legal Division) believe those risks are outweighed here by the benefits of proceeding quickly. Moreover, during our investigation we briefly explored other acts and practices that may also be illegal, but we’ve determined that these potential violations are likely to be less pervasive and less egregious than the ones we’ve identified here. None appear likely to involve significant consumer harm. Given the seriousness of the violations we *have* identified, and the significant penalties associated with them, we see little upside to continuing our investigation in the hope that we might find more.

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These portions of the Recommendation Memorandum raise the question of whether the CFPB failed to avail itself of the opportunity to potentially uncover some of the conduct that Wells Fargo publicly reported on August 4, 2017, that may have caused consumer harm, such as issues with Wells Fargo’s Collateral Protection Insurance and Guaranteed Auto Protection products.⁴² The Committee is actively seeking answers to this important question.⁴³

⁴¹ *Id.* at HFSC_CFPB_20170404_0064927, HFSC_CFPB_20170404_0064935. App. at 1, 9.

⁴² *See* Wells Fargo & Company, Quarterly Report (Form 10-Q), at 124 (Aug. 4, 2017).

⁴³ The Committee initiated a comprehensive investigation into both: “(1) how and why Wells Fargo and Wells Fargo’s apparent agent, National General Insurance (“National General”), charged so many consumers for forced place insurance policies they did not need and how those individuals may have been hurt by these actions via fees or even repossessions; and (2) whether or not federal financial regulators were effective in detecting and remedying Wells Fargo and National General’s practices in this area.” Letter from the Hon. Jeb Hensarling to the Hon. Maxine Waters, at 1 (Aug. 14, 2017), App. at 540. *See also*, Letter from the Hon. Jeb Hensarling to Timothy Sloan (Aug. 28, 2017), App. at 542–59; Letter from the Hon. Ann Wagner to Barry Karfunkel (Sept. 1, 2017), App. at 560–75; Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray (Sept. 7, 2017), App. at 576–90; Letter from the Hon. Jeb Hensarling to the Hon. Janet Yellen (Sept. 7, 2017), App. at 606–20; Letter from the Hon. Jeb Hensarling to Keith Noreika (Sept. 7, 2017), App. at 591–605.

3. The Recommendation Memorandum also states that the CFPB believes that Wells Fargo’s analysis of the number of unauthorized credit card openings, upon which the CFPB was relying, likely underestimated the actual number of consumers who had been enrolled in credit card product without their consent: “We believe, therefore, that the number of consumers who were actually enrolled in a credit-card product without their consent is likely greater than the 565,000 figure provided by the bank.”⁴⁴ Despite this, the Recommendation Memorandum does not reference any effort by the CFPB to investigate whether additional consumers were harmed prior to determining to settle with Wells Fargo. Based on the current record before the Committee, it is unclear whether the CFPB ever “independently and comprehensively” investigated how many credit cards accounts were opened without consumers’ consent.⁴⁵

4. The Recommendation Memorandum states that the CFPB believes that Wells Fargo enrolled significantly more consumers in online-banking services without their knowledge or consent than the number determined by the Los Angeles City Attorney’s Office: “We estimate that the number is far greater nationwide, and we have requested information from Wells Fargo to confirm this.”⁴⁶ Based on the incomplete set of information available to the Committee, it is unclear to Staff whether the CFPB ever “independently and comprehensively” investigated the number of consumers who were enrolled in online-banking services without their consent and, if so, why the CFPB did not provide this number in its Consent Order.⁴⁷

5. The Recommendation Memorandum states that the CFPB did not know how many consumers’ debit cards were requested and activated without their consent: “We do not yet know the number of debit cards that were requested and activated by bank employees without consumers’ consent; we have outstanding requests to the bank to help us determine that information.”⁴⁸ It is unclear to Staff from this limited record whether the CFPB ever “independently and

⁴⁴ Recommendation Memorandum, at HFSC_CFPB_20170404_0064929–30, App. at 3–4.

⁴⁵ The CFPB’s Consent Order suggests that the CFPB did not investigate this matter further, as the Consent Order’s “Findings and Conclusions as to Unauthorized Credit Cards” cites the same number of violations as stated in the Recommendation Memorandum: “Respondent’s [i.e., Wells Fargo’s] analysis concluded that its employees submitted applications for 565,443 credit-card accounts that may not have been authorized by using consumers’ information without their knowledge or consent.” Consent Order at 7, *In the Matter of Wells Fargo Bank, N.A.*, 2016-CFPB0015 (CFPB Sept. 8, 2016) (“Consent Order”).

⁴⁶ Recommendation Memorandum, at HFSC_CFPB_20170404_0064930, App. at 4.

⁴⁷ In the “Findings and Conclusions as to Unauthorized Enrollment into Online-Banking Services” section of its Consent Order with Wells Fargo, the CFPB declines to provide even a ballpark estimate of the number of consumers affected by these unauthorized activities. *See* Consent Order at 8–9. Presumably, if CFPB had fully investigated by September 8, 2016, the extent of the number of consumers that had been enrolled in online banking services without their consent, the CFPB would have provided this figure in the Consent Order.

⁴⁸ Recommendation Memorandum, at HFSC_CFPB_20170404_0064930, App. at 4.

comprehensively” investigated the extent to which Wells Fargo debit cards were requested and activated without consumers’ knowledge or consent and, if so, why the CFPB did not divulge this number in its Consent Order.⁴⁹

6. Internal CFPB records also raise questions as to whether the CFPB “independently and comprehensively” investigated the extent of the simulated funding and unauthorized deposit accounts openings occurring at Wells Fargo, or whether the CFPB relied primarily, if not exclusively, on the PricewaterhouseCoopers (“PwC”) Report (“PwC Report”). For example, in his comments to a draft version of a letter that Director Cordray would send to Chairman Hensarling on June 14, 2017, in response to the June 6 Report (“June 14 Letter”), John Coleman, the CFPB’s Deputy General for Oversight and Litigation, advised Director Cordray that his attempt to argue in the draft letter that “we [*i.e.*, the CFPB] conducted our inquiries independently to satisfy our obligation to determine that Wells Fargo had . . . in fact opened millions of deposit and credit card accounts without the knowledge or consent of consumers” overstated, if not misstated, the record.⁵⁰ Specifically, Mr. Coleman advised Director Cordray that “[o]n this point, my understanding is that we relied *exclusively* on Wells Fargo’s internal audit.”⁵¹ Similarly, in a later draft to what would become the June 14 Letter, Jeff Ehrlich, the CFPB’s Deputy Enforcement Director, attempted to correct Director Cordray’s attempt to argue that the CFPB relied on “the bank’s own records to help establish what happened,” rather than merely the PwC Report, by advising the Director that “[i]t could be argued that we didn’t rely on the bank’s own records; rather, we relied on the PwC report, which the bank paid for.”⁵² Mr. Ehrlich later sought yet another revision to what would become the June 14 Letter, writing:

⁴⁹ The Consent Order does not offer any indication of the number of consumers who may have been affected by these unauthorized activities. See Consent Order at 9–10.

⁵⁰ Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040825, at HFSC_CFPB_20170703_0040829, (June 10, 2017, 19:57), App. at 173.

⁵¹ *Id.* at HFSC_CFPB_20170703_0040829, App. at 173 (JRC17) (emphasis added). In a separate comment to another draft of the June 14 Letter, Deputy Enforcement Director Jeffrey Ehrlich defends his Office’s enforcement investigation by stating that “[n]otwithstanding what we say in the decision memo, I don’t think it is fair to say we relied *exclusively* on the PwC analysis.” Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040863, at HFSC_CFPB_20170703_0040867 (June 11, 2017, 11:47), App. at 222 (JPE15) (emphasis in original). Apparently, Mr. Ehrlich wanted to note that there may have been *something* besides the PwC report that the CFPB relied upon, although it is unclear to Staff what that might have been, if anything. If Mr. Ehrlich did have some additional information in mind when he wrote this comment—and was not merely being defensive about his Office’s work—Staff find it curious that Mr. Ehrlich would not clearly specify the additional information in his comments, if what he had in mind was, in fact, noteworthy.

⁵² Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040891, at HFSC_CFPB_20170703_00408914 (June 12, 2017, 18:11), App. at 231 (JPE1).

As I said in my comment, I'm still concerned about saying "we relied on the bank's own records." I know our order used the phrase "the bank's own analysis," but in this context, where the committee report accused us of relying exclusively on the PwC report, I'm afraid using the phrase "the bank's own records" would open us to the attack that once again we're downplaying the significance of our reliance on the PwC report. I'd rather point out that we compelled an analysis of the violations, and in response the bank provided the PwC report. There's no shame in us relying on the PwC report, which we only obtained through our CID. I'd be happy to discuss this further.⁵³

Both Coleman's and Ehrlich's advisements to Director Cordray appear to conform with the language of the Consent Order and internal CFPB records acquired by the Committee—including the Recommendation Memorandum. The Consent Order's "Findings and Conclusions as to Unauthorized Deposit Accounts & Simulated Funding" merely notes that "[Wells Fargo's] analysis concluded that its employees opened 1,534,280 deposit accounts that may not have been authorized and that may have been funded through simulated funding, or transferring funds from consumers' existing accounts without their knowledge or consent."⁵⁴ No other analysis is mentioned as informing the CFPB's findings.⁵⁵ Likewise, the Recommendation Memorandum does not refer to any independent investigative work or analysis apart from the Bank's own analysis.⁵⁶

B. The Committee Continues to be Unable to Corroborate Director Cordray's Representations to Congress in Testimony Before the Senate Banking Committee on September 20, 2016,⁵⁷ and This Committee on April 5, 2017,⁵⁸ as Well as Correspondence with the Committee Dated September 23, 2016,⁵⁹ That the CFPB Was Actively Investigating or Conducting Active Supervision (Internal or External) of Wells

⁵³ Email from Jeffrey Ehrlich to the Hon. Richard Cordray et al., HFSC_CFPB_20170703_0036011, at HFSC_CFPB_20170703_0036011-12 (June 12, 2017, 19:15), App. at 233-34.

⁵⁴ Consent Order at 5.

⁵⁵ *Id.*

⁵⁶ See Recommendation Memorandum, at HFSC_CFPB_20170404_0064929-30, App. at 3-4.

⁵⁷ *An Examination of Wells Fargo's Unauthorized Accounts and the Regulatory Response: Hearing Before the S. Comm. on Banking Housing & Urban Affairs*, 115th Cong. (Sept. 20, 2016).

⁵⁸ See generally April 5, App. at 626-751.

⁵⁹ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 1 (Sept. 23, 2016) ("Bureau staff first became aware of some related issues around Wells Fargo's sales practices through whistleblower tips in mid-2013, and began conducting initial evaluation of the situation at that time. Bureau staff continued to assess those issues internally through 2014, and then began directly engaging Wells Fargo in the spring of 2015. Direct engagement with Wells Fargo and the Bureau's investigation of the sales-practices issues continued throughout the spring, summer, and fall of 2015, leading eventually to the joint resolution of this matter with the City of Los Angeles City Attorney's Office and the OCC."), App. at 426.

Fargo’s Fraudulent Branch Sales Practices After Receiving “Whistleblower Tips in Mid-2013” or at any Point Prior to the Filing of the Los Angeles City Attorney Complaint on May 4, 2015.

1. The Recommendation Memorandum notably states that the CFPB’s Enforcement Division opened its enforcement investigation in response to the L.A. Times articles and the complaint filed by the Los Angeles City Attorney’s Office, as opposed to the CFPB’s own investigative work or supervisory activity:

We opened this matter in March [2016] following media reports and a lawsuit by the Los Angeles City Attorney (LA) alleging that Wells Fargo employees opened accounts for consumers or signed them up for additional products without their consent, and that the employees’ conduct was driven by the bank’s incentive-compensation program, unrealistic sales goals, and a high-pressure sales culture.⁶⁰

(Indeed this passage could be why as detailed, *infra*, at III.D, Director Cordray may very well have actively concealed the existence of this document from the Committee).

2. Likewise, the March 2016 Memorandum that opened the investigation into Wells Fargo’s fraudulent branch sales practices by the CFPB’ Office of Enforcement also does not credit whistleblower tips or cite any CFPB work as its basis to open an enforcement investigation, notwithstanding the fact that this Memorandum mentions certain efforts undertaken by the L.A. Times, Los Angeles City Attorney, the OCC, and the Federal Reserve Bank of San Francisco.⁶¹

3. In a separate comment to a draft of what would become Director Cordray’s June 14 Letter, Mr. Coleman provides the Director with an exhaustive list of the known evidence of CFPB supervisory activity in the Wells Fargo matter prior to the Los Angeles City Attorney’s lawsuit filed on May 4, 2015. That list consists in its entirety of emails among west region supervisory CFPB staff in January 2014 circulating links to the L.A. Times articles about Wells Fargo;⁶² a few CFPB emails after the L.A. Times article that propose a supervisory exam of Wells Fargo in the future; and emails about a single whistleblower complaint alleging the unauthorized opening of credit card accounts in a single branch, about which the CFBP enforcement division concludes that “there is not much going on” in the

⁶⁰ Recommendation Memorandum, at HFSC_CFPB_20170404_0064927, App. at 1.

⁶¹ Opening Investigation Memorandum from Office of Enforcement, Consumer Fin. Prot. Bureau, at HFSC_CFPB_20170902_000061, at HFSC_CFPB-20170902_000061–62, App. at 84–85.

⁶² The emails between CFPB staff regarding the L.A. Times articles merely forward the articles for information and contain comments such as, “Hope we can investigate this soon.” See Email from Susie Clark to Alan Carmer (Jan. 3, 2014, 14:03), HFSC_CFPB_20170404_0064570, at HFSC_CFPB_20170404_0064570 (Jan. 3, 2014, 14:03), App. at 242–43.

whistleblower allegation and refers the complaint back to the Office of Supervision.⁶³

4. Likewise, internal CFPB documents used to prepare Director Cordray for Congressional testimony that the CFPB was actively tracking the Wells Fargo fraudulent branch sales practices since receiving whistleblower tips in mid-2013. In a “Wells Timeline for Hearing Prep 4.1” document prepared by the Office of Supervision denoting the key events pertaining to the Wells Fargo matter, the earliest known CFPB “supervisory activity” is catalogued as “CFPB exam staff circulates the L.A. Times article within the agency.”⁶⁴ This chart, last updated by the CFPB on September 15, 2016, makes no mention of any of the whistleblower tips from mid-2013.⁶⁵ Director Cordray repeatedly touted these whistleblowers tips just days later at the September 20, 2016, Senate Banking Committee hearing as being crucial to the CFPB’s uncovering of the Wells Fargo scandal.

C. Newly Obtained Internal CFPB Documents Also Suggest That Director Cordray Appears to Have Been Advised by his Staff That he May Have Made Misstatements to Congress Concerning the CFPB’s Investigation of Wells Fargo, But Director Cordray Has Yet to Correct the Record.

On June 9, 2017, Director Cordray was preparing a letter to the Committee that was intended to respond to the June 6 Report. In drafting this letter Director Cordray reviewed a “Wells Timeline” document prepared by his staff in September of 2016. In an email to various CFPB staff Director Cordray notes that everything in this supervision chart “jibes” with his recollection of the significant events in the Wells Fargo matter, except that it does not include reference to any whistleblower tips—a “key point” that he asserts he believed to be true at the time of his Congressional testimony:

⁶³ Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040825, at HFSC_CFPB_20170703_0040829 (June 10, 2017, 19:57), App. at 173, 176 (JRC21).

⁶⁴ Email from Julia Szybala, Esq. to Zol Rainey, HFSC_CFPB_20170703_0040743 (Sept. 16, 2016 10:14), and accompanying attachment, (CSI) Wells Timeline for Hearing Prep. 4.1, HFSC_CFPB_20170703_0040744, at HFSC_CFPB_20170703_0040744 (Sept. 15, 2017), App. at 377.

⁶⁵ *Id.*

From: RC
Sent: Friday, June 09, 2017 11:36 AM
To: Coleman, John (CFPB); Chow, Edwin (CFPB)
Cc: McLeod, Mary (CFPB); Galicia, Catherine (CFPB); Fulton, Kate (CFPB); Howard, Jennifer (CFPB); Martinez, Zixta (CFPB); Ehrlich, Jeffrey (CFPB); D'Angelo, Chris (CFPB)
Subject: FW: Wells Documents

As I work on a responsive letter to the Chairman about the recent staff report, a key point is the document attached here on our supervisory timeline, which contains a chart of events that I am relying on (and that jibes with my own recollection, except that one item not included in the chart but of which I understood myself to be aware at the time of my testimony was that we also had a couple of whistleblower tips on related issues in 2013). The timeframe for sending the letter is urgent, probably as soon as Monday, and so as we do the important work of scrubbing the accuracy of the potential representations I would be making in my letter (a draft of which is also attached), it is important to accomplish all we can on that TODAY thx
RC

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In written comments made to him by his staff on June 10, 2017, Cordray appears to have been affirmatively advised that his previous Congressional testimony may have been inaccurate or misleading in that, contrary to Director Cordray's testimony, there were not multiple whistleblower tips in mid-2013 and they did not play a significant role in allowing the CFPB to uncover and actively track the bank's fraudulent branch sales practices.⁶⁷ For example, on June 10, 2017, in a comment to Director Cordray laying out all evidence the Legal Division is aware of concerning the CFPB's Wells Fargo investigative and supervisory activities predating the Los Angeles City Attorney's lawsuit, Mr. Coleman notes that the Legal Division can only confirm the existence of a single whistleblower complaint from that time period, which the Enforcement Division dismissed and referred back to Supervision at the time:

Emails within [the Enforcement Division] relating to a single whistleblower complaint about, inter alia, the unauthorized opening of credit card accounts in a single branch. [Enforcement] concludes that there is not much going on and resolves to refer it to [Supervision].⁶⁸

Conforming with Mr. Coleman's affirmative advisement to Director Cordray, the one whistleblower tip on Wells Fargo branch sales practices in 2013 of which the Committee is aware appears not to have been taken seriously by the Division of Enforcement, and subsequently not pursued. Upon reviewing the whistleblower tip that a staff attorney presented to him, Mr. Ehrlich wrote on May 28, 2013, that he believed the Enforcement Division should pass on investigating the tip and instead present the matter to the CFPB's Office of Supervision ("Supervision"):

⁶⁶ Email from the Hon. Richard Cordray to John Coleman and Edwin Chow, et al., HFSC_CFPB_20170703_0040833, at HFSC_CFPB_20170703 (June 9, 2017, 11:36), App. at 158–59

⁶⁷ See Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040825, at HFSC_CFPB_20170703_0040829 (June 10, 2017, 19:57), App. at 173, 176 (JRC21), (KMF24).

⁶⁸ *Id.*, at HFSC_CFPB_20170703_0040829, (June 10, 2017, 19:57), App. at 173, 176 (JRC21).

I can't believe I'm saying this, but this seems to me like something we ought to present to Supervision. Maybe check Sentinel first to determine whether there are complaints that indicate this might be widespread. If you agree, send a separate email to [Assistant Director for Enforcement] Tony [Alexis] proposing this action and see whether he approves. Thx.⁶⁹

On June 6, 2013, the same staff attorney emailed Mr. Alexis to inform him of the tip and to recommend, based on the findings from his Sentinel search, that the CFPB address the potential issue of fraudulent branch sales practices through Supervision because “there does not appear to be a significant pattern of unlawful conduct warranting Enforcement Action.”⁷⁰ Alexis responded in an email the following day, June 7, 2013, that he agreed with this analysis that the matter did not merit further action from the Enforcement Division.⁷¹ While it appears that the whistleblower tip was then referred to Supervision, from Supervision's timeline of events relevant to its work in the Wells Fargo matter it appears that Supervision did not view this “lead” as significant to its supervisory work, particularly since Supervision never formally examined or even contacted the bank about its fraudulent branch sales practices until May 8, 2015⁷²—nearly two years after receiving a whistleblower complaint and a mere four days after the bank contacted the CFPB on May 4, 2015, about the Los Angeles City Attorney's complaint filed earlier that day. Indeed, according to the timeline, before the Los Angeles City Attorney's lawsuit was filed on May 4, 2015, the CFPB's most significant planned supervisory action was an examination related to “deposit operations” set to commence on December 27, 2015.⁷³

Internal CFPB records appear to show that as of at least April 18, 2017, (based on currently available information), the CFPB's oversight team was aware of

⁶⁹ Email from Jeffrey Ehrlich to CFPB Staff Attorney, at CFPB_HFSC_OI_IMG_2017_08_18_0004506, at CFPB_HFSC_OI_IMG_2017_08_18_0004506 (May 28, 2013, 20:30), App. at 403.

⁷⁰ Email from CFPB Staff Attorney to Anthony Alexis, CFPB_HFSC_OI_IMG_2017_08_18_0004510, at CFPB_HFSC_OI_IMG_2017_08_18_0004511 (June 6, 2013, 16:32), App. at 408.

⁷¹ Email from Anthony Alexis to CFPB Staff Attorney, CFPB_HFSC_OI_IMG_2017_08_18_0004510 at CFPB_HFSC_OI_IMG_2017_08_18_0004510 (June 7, 2013, 7:26), App. at 407.

⁷² See Email from Julia Szybala, Esq. to Zol Rainey, HFSC_CFPB_20170703_0040743 (Sept. 16, 2016 10:14), and accompanying attachment, (CSI) Wells Timeline for Hearing Prep. 4.1, HFSC_CFPB_20170703_0040744, at HFSC_CFPB_20170703_0040745 (Sept. 15, 2017), App. at. 378. Moreover, Kate Fulton relayed in her comments to Director Cordray that “Edwin [Chow] recommends striking [a] reference to whistleblower complaints” in the June 14 Letter because whistleblower complaints played no role in the risk rating CFPB assigned to Wells Fargo. See Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040825, at HFSC_CFPB_20170703_0040829, June 10, 2017, 19:57), App. at 173 (KMF24).

⁷³ See Email from Julia Szybala, Esq. to Zol Rainey, HFSC_CFPB_20170703_0040743 (Sept. 16, 2016 10:14), and accompanying attachment, (CSI) Wells Timeline for Hearing Prep. 4.1, HFSC_CFPB_20170703_0040744, at HFSC_CFPB_20170703_0040744 (Sept. 15, 2017), App. at. 377.

the relative *insignificance* of this whistleblower tip to the CFPB’s action against Wells Fargo.⁷⁴ Notwithstanding the foregoing, neither Director Cordray nor his staff has at any time sought to retract or amend the Director’s Congressional testimony. In fact, in the June 14 Letter, Director Cordray, in response to his staff’s comments, removed all mention of 2013 whistleblower.⁷⁵ Yet even in this June 14 Letter, ostensibly intended to “correct the record” regarding the assertions made in the Committee’s interim staff report, Director Cordray nevertheless declined to amend his apparent previous misstatements and overstatements concerning the CFPB’s Wells Fargo investigation.⁷⁶ Instead, Director Cordray used the opportunity afforded by the June 14 Letter to tout the CFPB’s work and double down on his contention that the CFPB’s investigation was both “independent and comprehensive.”⁷⁷

III. Internal CFPB Records Obtained by the Committee Raise Grave Questions As to Whether Director Cordray, Other Senior CFPB Officials, and CFPB Oversight Attorneys Engaged in Actions that Had the Effect of Obstructing the Committee’s Lawful Oversight Related to the Wells Fargo Account Scandal.

A. The CFPB Fails To Produce The Recommendation Memorandum In Response To The Committee’s Records Request Despite The Memorandum Apparently Being Deemed A Key Document For The Purposes Of Preparing Director Cordray For The Senate Banking Committee’s Wells Fargo Hearing.

CFPB’s Public Actions. Shortly after the public announcement of the OCC’s, Los Angeles City Attorney’s, and CFPB’s settlements with Wells Fargo on September 8, 2016, the Committee initiated an investigation into—among other things—whether federal financial regulators were effective in detecting and remedying Wells Fargo’s fraudulent branch sales practices. As is detailed in the June 6 Report, as part of this investigation the Committee sought records from the CFPB on September 16.⁷⁸

⁷⁴ See Email from Julia Szybala, Esq. to Anne Tindall, Esq. and Steven Bressler, Esq., at CFPB_HFSC_OI_IMG_2017_08_18_0004485 (Apr. 18, 2017, 12:33) (citation to attachments omitted), App. at 382–423.

⁷⁵ See June 14 Letter, App. at 29–33.

⁷⁶ See *id.*

⁷⁷ April 5 Trans., at 6 (Apr. 5, 2017) (statement of the Hon. Richard Cordray, Dir., Consumer Fin. Prot. Bureau), App. at 631; see also June 14 Letter, App. at 29–33.

⁷⁸ June 6 Report at 5–8.

The CFPB produced 176 of records in response to the Committee’s September 16 records request on September 23, 2016.⁷⁹ This production was composed entirely of CFPB policies and procedures and other material readily obtainable from Wells Fargo or the OCC, such as information-sharing MOU’s and information-sharing requests between the CFPB and the Los Angeles City Attorney’s Office and the OCC, as well as correspondence between the CFPB and the Bank.⁸⁰ The CFPB also promised the future production of “additional responsive materials,” and to “work with Committee staff to determine how we can most efficiently satisfy the Committee’s oversight interests in this matter.”⁸¹

Behind the Veil. This production did *not* include the Recommendation Memorandum,⁸² the Decision Memorandum,⁸³ or other key internal CFPB documents. The failure to include these documents in the CFPB’s records response raises serious questions because when the Committee’s request was transmitted on September 16, 2016, it appears that CFPB oversight staff had already begun to gather the key documents regarding the CFPB’s Wells Fargo Investigation in order to prepare Director Cordray for his then-upcoming testimony before the Senate Committee on Banking, Housing, and Urban Affairs on September 20, 2016.

1. On September 14, 2016, CFPB Enforcement Staff, Supervision Staff, and Legislative Affairs staff were preparing “documents for RC’s binder.”⁸⁴ “[T]he first iteration of this binder”⁸⁵ contained six documents including the Recommendation Memorandum:

⁷⁹ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 2 (Sept. 23, 2016), App. at 427.

⁸⁰ See HFSC_CFPB_WF_00001–00175.

⁸¹ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 2 (Sept. 23, 2016), App. at 427.

⁸² See Recommendation Memorandum, App. at 1–23.

⁸³ See Decision Memorandum, App. at 24.

⁸⁴ Email from John Coleman, Esq. to Julia Szybala, Esq. and Elizabeth France, Esq., HFSC_CFPB_20170902_000126 (Sept. 15, 2016, 12:31), and accompanying attachments, Wells Fargo Sales Practice Investigation—Opening Memorandum, HFSC_CFPB_20170902_000128 (Mar. 2016), Decision Memorandum, HFSC_CFPB_20170902_000130 (July 12, 2016), Recommendation Memorandum for the Director, HFSC_CFPB_20170902_000131 (July 12, 2016), Recommendation Memorandum for the Director, HFSC_CFPB_20170902_000154 (Sept. 2, 2016), Consent Order, *In the Matter of Wells Fargo Bank, N.A.*, 2016-CFPB0015, HFSC_CFPB_20170902_000185 (CFPB Sept. 8, 2016), Enforcement Action Against Wells Fargo Bank, N.A. re: Illegal Sales Practices—Q&A, HFSC_CFPB_20170902_000211 (undated), Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation, HFSC_CFPB_20170902_000216–20 (June 25, 2013), Complaint in *California v. Wells Fargo & Co.*, No. BC580778, at HFSC_CFPB_20170902_000221 (Cal. Super. Ct. May 4, 2015), App. at 244–375.

⁸⁵ Email from Joanna Pearl to Catherine Galicia et al., HFSC_CFPB_20170902_000126, at HFSC_CFPB_20170902_000127 (Sept. 14, 2016, 11:09), App. at 245.

From: Pearl, Joanna (CFPB)
Sent: Wednesday, September 14, 2016 11:09 AM
To: Manna, Meredith (CFPB); Pippin, Matthew (CFPB); Galicia, Catherine (CFPB)
Cc: Alexis, Anthony (CFPB); Ehrlich, Jeffrey (CFPB); Donoghue, Kristen (CFPB); Boison, Elizabeth (CFPB)
Subject: documents for RC's binder

Hi Meredith,

Attached are:

- The opening memo for this matter
- **Our recommendation settle or sue and Rich's decision memo authorizing action**
- Our recommendation memo asking him to sign the consent order
- The final order
- Cleared Q&As on the matter
- The Bureau's Responsible Business Conduct Bulletin

Let me know if you are expecting more from Enforcement for this first iteration of the binder.

Joanna

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This binder appears to have been compiled for the purposes of preparing Director Cordray for his then-upcoming testimony before the Senate Banking Committee on September 20. This email was forwarded the next day by Catherine Galicia, Assistant Director for Legislative Affairs, to Coleman:

From: Galicia, Catherine (CFPB)
Sent: Thursday, September 15, 2016 7:25 AM
To: Coleman, John (CFPB)
Subject: Fw: documents for RC's binder

Here are the SEFL documents that went into the briefing binder last night. LA's complaint is one of them.

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Coleman then forwarded that memorandum to two line oversight attorneys who were assigned to handle the response to the Committee's September 16, 2016, records document request.

From: [Coleman, John \(CFPB\)](#)
To: [Szybala, Julia \(CFPB\)](#); [France, Elizabeth \(CFPB\)](#)
Subject: FW: documents for RC's binder
Date: Thursday, September 15, 2016 12:31:57 PM
Attachments: [Opening Investigation Memo---Wells Fargo Sales Practices.docx](#)

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⁸⁶ *Id.* at HFSC_CFPB_20170902_000126–7 (emphasis added), App. at 244–45.

⁸⁷ Email from Catherine Galicia to John Coleman, Esq., HFSC_CFPB_20170902_000126 (Sept. 15, 2016, 7:25), App. at 244.

⁸⁸ Email from John Coleman, Esq. to Julia Szybala, Esq. and Elizabeth France, Esq., HFSC_CFPB_20170902_000126 (Sept. 15, 2016, 12:31), App. at 244.

None of the four internal CFPB documents attached to this email were produced on September 23 despite being highly responsive to the Committee’s request and having been identified as documents regarding Wells Fargo that were so important that they deserved the Director’s personal review prior to his Senate testimony.

2. The next day, September 16, 2016, the same day the Committee’s document request arrived, Julia Szybala circulated an elaborate timeline compiled to prepare the Director for his Senate Banking Hearing:

From: Szybala, Julia (CFPB)
Sent: Friday, September 16, 2016 10:14 AM
To: Rainey, Zol (CFPB)
Cc: Boison, Elizabeth (CFPB); Tindall, Anne (CFPB)
Subject: Timeline Document
Attachments: (CSI) Wells Timeline for Hearing Prep 4.1.docx

Hi Zol,

Attached is the most recent version of the timeline document, which has incorporated minor revisions from Edwin and his team.

Please let me know if you have any questions.

Thanks,

Julia Szybala

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(Anne Tindall, copied on the email, was then Assistant General Counsel for Oversight and in charge of responding to the Committee’s request.) This timeline made reference to key events and dates during the CFPB investigation of Wells Fargo. Many of these events make specific reference to important sounding internal CFPB documents—one of which is “Settle or Sue Authority Granted.”⁹⁰ None of these internal documents were produced on September 23.

B. Director Cordray Does Not Produce the Recommendation Memorandum Despite Being Given Multiple Opportunities to Do So.

There were numerous subsequent instances where the CFPB should have produced the Recommendation Memorandum to the Committee, given that Director

⁸⁹ Email from Julia Szybala, Esq. to Zol Rainey, HFSC_CFPB_20170703_0040743, at HFSC_CFPB_20170703_0040743 (Sept. 16, 2016 10:14), and accompanying attachment, (CSI) Wells Timeline for Hearing Prep. 4.1, HFSC_CFPB_20170703_0040744 (Sept. 15, 2017), App. at. 376–79.

⁹⁰ (CSI) Wells Timeline for Hearing Prep. 4.1, HFSC_CFPB_20170703_0040744, at HFSC_CFPB_20170703_0040746, App. at 156.

Cordray and Senior CFPB staff were aware of the document and its importance. But the CFPB did not do so.

1. On November 3, 2016, the Committee reiterated its records request.⁹¹ The CFPB responded on November 10, 2016, and produced 834 pages of records. Despite the CFPB’s promise of a “rolling” production, the CFPB did not produce the Recommendation Memorandum (nor other documents apparently important enough to be given to Director Cordray directly to prepare for his Senate Banking testimony). In this November 10 production, the CFPB again did not produce a single internal record regarding the CFPB’s investigation of Wells Fargo’s branch sales practices, such as internal emails or memoranda relating to its investigation. Again, the CFPB only produced records readily obtainable from Wells Fargo or the OCC such as the Civil Investigative Demands (“CID”) the CFPB sent Wells Fargo.⁹²

2. On April 4, 2017—more than *six months* after the initial Committee records request—and in the face of the CFPB’s failure to voluntarily comply, the Committee subpoenaed the overdue records—*i.e.*, “all records relating to the CFPB’s investigation of Wells Fargo.”⁹³ The Committee gave the CFPB until May 2, 2017—four weeks—to comply with this Subpoena. One day after the Subpoena issued, Director Cordray assured the Committee in oral testimony: “If there are documents you don’t have, happy to try to provide them.”⁹⁴

On May 2, 2017, the CFPB responded to the Committee’s April 4 Subpoena. The CFPB did not produce the Recommendation Memorandum and other records that were so “key” to the CFPB’s Wells Fargo investigation that Director Cordray appears to have personally reviewed them before testifying regarding that investigation before the Senate Banking Committee.⁹⁵ What the CFPB did produce

⁹¹ Letter from the Hon. Sean Duffy to the Hon. Richard Cordray (Nov. 3, 2016), App. at 428.

⁹² See HFSC_CFPB_WF_00176–HFSC_CFPB_WF_001010.

⁹³ H. Comm. on Fin. Servs. *Subpoena Duces Tecum* to the Hon. Richard Cordray, Schedule A, at Specification 27 (Apr. 4, 2017) (internal quotation omitted), App. at 435. The April 4 Subpoena also compelled production of “All records relating to the sales practices of Wells Fargo” described in the CFPB’s consent order.” *Id.* at Specification 26, App. at 435.

⁹⁴ April 5 Trans., at 32, App. at 670.

⁹⁵ See Email from John Coleman, Esq. to Julia Szybala, Esq. and Elizabeth France, Esq., at HFSC_CFPB_20170902_000126 (Sept. 15, 2016, 12:31), and accompanying attachments, Wells Fargo Sales Practice Investigation—Opening Memorandum, HFSC_CFPB_20170902_000128 (Mar. 2016), Decision Memorandum, at HFSC_CFPB_20170902_000130 (July 12, 2016), Recommendation Memorandum for the Director, at HFSC_CFPB_20170902_000131–53 (July 12, 2016), Recommendation Memorandum for the Director, at HFSC_CFPB_20170902_000154–84 (Sept. 2, 2016), Consent Order, *In the Matter of Wells Fargo Bank, N.A.*, 2016-CFPB0015 (CFPB Sept. 8, 2016), at HFSC_CFPB_20170902_000185–210, Enforcement Action Against Wells Fargo Bank, N.A. re: Illegal Sales Practices—Q&A, at HFSC_CFPB_20170902_000211–15 (undated), Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation, at HFSC_CFPB_20170902_000216–20 (June 25, 2013), Complaint in *California v. Wells Fargo & Co.*, No. BC580778, at HFSC_CFPB_20170902_000221–57 (Cal. Super. Ct. May 4, 2015), App. at 244–375.

to the Committee were records that Wells Fargo had previously produced to the CFPB in response to the CFPB's CIDs. The CFPB knew that Wells Fargo had already produced these records to the Committee *months* ago.⁹⁶ Once again, the CFPB did not produce *any* internal records regarding its Wells Fargo investigation, even though it was now legally compelled to do so. In his letter to the Committee accompanying the production of the subpoenaed records, Director Cordray offered no explanation of the CFPB's inability to produce all records subpoenaed by the Committee, stating only his subjective determination that the materials the CFPB produced to date "comprises the *key* documentation of the Bureau's investigation of Wells Fargo."⁹⁷

3. As detailed in the August 4, 2017, Arbitration Majority Staff Report, the Committee informed Director Cordray that he was in complete default of the April 4 Subpoena and CFPB staff promptly disputed this fact in a lengthy email,⁹⁸ and attached a chart with specifics as to Wells Fargo and closed with: "If the Committee identifies specific additional records it believes are responsive to this request, the Bureau would be happy to determine whether those documents exist and are in its custody or control."⁹⁹ Yet again, Director Cordray did not avail himself of the opportunity to produce the Recommendation Memorandum.

C. The Committee Issues the First Interim Majority Staff Report Detailing Director Cordray's Failure to Comply with the April 4 Subpoena and Provides Director Cordray With As Much Detail as Possible on the Records the Committee Believed the CFPB Failed to Produce.

The June 6 Report extensively detailed the CFPB's lack of meaningful cooperation with the Committee's investigation into the Wells Fargo branch sales practice matter.¹⁰⁰ In particular, the June 6 Report took Director Cordray and the

⁹⁶ See WF-0000001-WF-0140462. The CFPB knew that the records had been produced, because Wells Fargo notified the CFPB of this fact prior to producing the records to the Committee. See Letter from Michael D. Bopp, Esq. to Edwin L Chow (CFPB) (Sept. 26, 2016), App. at 621-22; Letter from Anand Raman, Esq. to Mary McLeod, Esq. (CFPB) (Oct. 3, 2016), App. at 600; Letter from Darren Welch, Esq. to Kevin J. Rice, Esq. (CFPB) (Nov. 9, 2016), App. at 624-25. The CFPB also re-produced records previously produced to the Committee. Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 17-18 (May 2, 2017), App. at 467-68. To be sure, the page count of this production was over 57,000 pages, but what matters the most is the quality of the production not the quantity.

⁹⁷ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 18 (May 2, 2017) (emphasis added), App. at 468.

⁹⁸ See Email from Steven Bressler, Esq. to Committee Counsel (June 1, 2017, 18:43), *and accompanying attachment*, CFPB, Summary of Bureau Response to April 4 Subpoena & Related Staff-Level Discussions (June 1, 2017), App. at 470-75.

⁹⁹ CFPB, Summary of Bureau Response to April 4 Subpoena & Related Staff-Level Discussions (June 1, 2017), App. at 475.

¹⁰⁰ June 6 Report at 5-8.

CFPB staff up on their prior offer and attempted to explain with as much detail as possible what responsive records had not been produced.¹⁰¹ First, the June 6 Report demonstrated that based on the CFPB's production to date, no strictly internal CFPB records had been produced.¹⁰² Second, the June 6 Report stated:

Based on a review of the records produced to the Committee by OCC and Wells Fargo, it is incontrovertible that the CFPB possess additional records responsive to the Committee's Subpoena that the CFPB has failed to produce to the Committee. For example, the OCC has produced a CFPB report and contemporaneous OCC employee notes of calls with the CFPB, recounting CFPB decision memoranda and communications that appear to be essential to the CFPB's Wells Fargo investigation. [FN. 33. *See, e.g.*, Examination Report, App. at 1–35; Wells Fargo Sales Practices—CFPB Call Notes, at OCC-LD-00002774, at 1 (July 8, 2016) (OCC call notes in which CFPB attorneys stated that they were preparing a memorandum for Director Cordray seeking authority to charge Wells Fargo) . . .]. *None* of these, or other responsive records, have been produced to the Committee by the CFPB.¹⁰³

Contextually, it is quite clear that the specific document referenced in the OCC notes was the Recommendation Memorandum. Based on the records presented to the Committee, that was the only Memorandum “seeking authority to charge Wells Fargo” sent to Director Cordray on or about July 8 (in fact on July 12).¹⁰⁴

D. Director Cordray Responds to the First Interim Majority Staff Report and Appears to Work to Conceal the Fact that the CFPB Has Not Produced the Recommendation Memorandum and Other Key Documents.

The CFPB's Public Actions. Director Cordray responded directly to the June 6 Report in the June 14 Letter. In this document he directly responded to the issue of whether he had complied with the April 4 Subpoena as it concerned the CFPB's Wells Fargo Investigation. The June 14 Letter made two points relevant here.

¹⁰¹ There is obviously a chicken and egg problem here—and as detailed in the Arbitration Staff Report, Director Cordray's broader approach to the April 4 Subpoena was contumacious. *See generally*, MAJORITY STAFF OF THE H. COMM. ON FIN. SERVS., 115TH CONG., DIRECTOR CORDRAY'S FAILURE TO COMPLY WITH HIS LEGAL OBLIGATIONS UNDER THE COMMITTEE'S SUBPOENA DUCES TECUM DATED APRIL 4, 2017, ISSUED IN PART TO FURTHER THE COMMITTEE'S ON-GOING INVESTIGATION INTO THE CFPB'S ARBITRATION RULEMAKING (Aug. 4, 2017), *available at* https://financialservices.house.gov/uploadedfiles/080417_arbitration_report_final.pdf.

¹⁰² June 6 Report, at 5–8.

¹⁰³ *Id.* at 7.

¹⁰⁴ *See* Recommendation Memorandum, at HFSC_CFPB_20170404_0064927–49, App. at 1–23.

- The Director took issue with the June 6 Report discussing “which documents have been produced and which *supposedly* have not” as opposed to Director Cordray’s preference of looking to the page count of documents previously produced.¹⁰⁵
- The Director took issue with a supposed lack of clarity from the Committee, insisting that “CFPB staff have consistently sought further guidance from the Committee staff to narrow and target its inquiries and the appropriate response.”¹⁰⁶

Behind the Veil.

1. The day after the June 6 Report issued, on Wednesday June 7, 2017, Director Cordray requested that Mr. Coleman transmit him a number of “documents and emails related to Wells Fargo.”¹⁰⁷ Mr. Coleman sent Director Cordray: (1) “correspondence with the Committee related to Wells Fargo”; (2) “[e]xcerpts of the April 5, 2017 testimony transcript related to Wells as well as the

¹⁰⁵ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at 5 (June 14, 2017) (emphasis added), App. at 33.

¹⁰⁶ *Id.* Through the publication of the First Interim Staff Report in June 2017 and to this day, the CFPB insists that “if the Committee is aware of specific, identifiable categories of documents of interest to it, it behooves Committee Staff to narrow, or at least prioritize, the relevant specifications” Email from Steven Bressler, Esq. to Committee Counsel (June 1, 2017, 18:43), *and accompanying attachment*, CFPB, Summary of Bureau Response to April 4 Subpoena & Related Staff-Level Discussions (June 1, 2017), App. at 470–75; Email from John Coleman, Esq. (CFPB) to Committee Counsel (Aug. 24, 2017, 14:50), App. at 476–539.

¹⁰⁷ Email from John Coleman, Esq., to the Hon. Richard Cordray, HFSC_CFPB_20170703_0040656 at HFSC_CFPB_20170703_0040656–57 (June 7, 2017, 17:48), *and accompanying attachments*, Letter from Mary McLeod, Esq. to Michael D. Bopp, Esq., HFSC_CFPB_20170703_0040658 (May 25, 2017), Wells Fargo Sales Practices Enforcement Action, HFSC_CFPB_20170703_0040660, Letter from Mary McLeod, Esq. to Michael D. Bopp, Esq., HFSC_CFPB_20170703_0040664 (Sept 17, 2016), Letter from Richard G. Lepley, Esq., to Anand S. Raman, Esq., HFSC_CFPB_20170703_0040665 (Oct. 3, 2016), Letter from Mary McLeod, Esq. to Darren Welch, Esq., HFSC_CFPB_20170703_0040666 (Dec. 8, 2016), Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray, HFSC_20170703_0040668 (Sept. 16, 2016), Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray, HFSC_CFPB_20170703_0040670 (Sept. 21, 2016), Letter from the Hon. Richard Cordray to the Hon Richard Cordray, HFSC_CFPB_20170703_0040671 (Sept. 22, 2016), Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040673 (Sept. 23, 2016), Recommendation Memorandum for the Director, HFSC_CFPB_20170704_0040674 (Sept. 22, 2016), Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, CFPB_20170703_0040675 (Sept. 23, 2016), Letter from the Hon. Jen Hensarling to the Hon. Richard Cordray, HFSC_CFPB_20170703_0040677 (Sept. 16, 2016), Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray, HFSC_CFPB_20170703_0040679 (Nov. 3, 2016), Letter from the Hon. Catherine Galicia to the Hon. Sean P. Duffy, HFSC_CFPB_20170703_0040680 (Nov. 10, 2016), H. Comm. on Fin. Servs. *Subpoena Duces Tecum* to the Hon. Richard Cordray, HFSC_CFPB_20170703_0040681 (Apr. 4, 2017), Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040702 (May 2, 2017), Excerpt of April 5 Hearing Trans, HFSC_CFPB_20170703_0040721 (Apr. 5, 2017), Letter from the Hon. Sonya White, Esq. to Darren Welch, Esq., HFSC_CFPB_20170703_0040734 (Feb. 1, 2017), App. at 34–114.

full transcript”; (3) “[a] document provided to you as part of your preparation for the April 5, 2017 hearing”; (4) “[a] timeline of relevant events prepared by SEFL staff and provided to the Front Office on September 16”; (5) “Correspondence with Wells Fargo related to HFSC requests to Wells for Information.”¹⁰⁸

2. The next day, Director Cordray personally wrote and circulated the first draft of what would become the June 14 Letter:

From: RC
Sent: Thursday, June 8, 2017 12:52 PM
To: Coleman, John (CFPB)
Cc: McLeod, Mary (CFPB); Galicia, Catherine (CFPB); Fulton, Kate (CFPB); Howard, Jennifer (CFPB); Bressler, Steven (CFPB); O'Brien, Patrick (CFPB); Ehrlich, Jeffrey (CFPB)
Subject: RE: Wells Documents
Attachments: Letter -- Response to Chairman Hensarling 6.9.17.docx

Here is a draft letter to the Chairman. I continue to think it is important that I take the opportunity to “correct the record” on the issues raised in the staff report, especially the mischaracterization of my testimony, but also on their mischaracterization of the Bureau’s work here and how it should be perceived. Let me know your thoughts
thx
RC

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In pertinent part, this first draft seems to concede that the CFPB had withheld responsive documents relating to Wells Fargo in the face of the Subpoena: “In fact, the Bureau’s production to date in response to the Committee has totaled over 57,000 pages of records in an effort to comply with the broadly worded requests. In an effort to obscure this substantial response, the staff report complains instead about which documents have been produced and which have not.”¹¹⁰

3. Director Cordray then edited his draft throughout the day of June 8, circulating two updated versions in quick succession.¹¹¹ The third draft circulated

¹⁰⁸ *Id.* at HFSC_CFPB_20170703_0040656–57, App. at 34–35. The fourth point continued “We do not have a record that this previously has been provided to you, but staff who helped you prepare for your September Senate testimony and April House testimony had seen this document, or some version of it” *Id.* at HFSC_CFPB_20170703_0040657, App. at 35.

¹⁰⁹ Email from the Hon. Richard Cordray to John Coleman, Esq., at HFSC_CFPB_20170703_0040759, at HFSC_CFPB_20170703_0040759 (June 8, 2017; 12:52), and accompanying attachment, Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040761, App. at 126–33.

¹¹⁰ See Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040766, at HFSC_CFPB_20170703_0040766 (June 8, 2017; 12:52), App. at 133.

¹¹¹ See Email from the Hon. Richard Cordray to John Coleman, HFSC_CFPB_20170703_0040769 (June 8, 2017; 12:58), Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, at HFSC_CFPB_20170703_0040771 (June 8, 2017; 12:58), App. at 134–41; Email from the Hon. Richard Cordray to Catherine Galicia, Esq., HFSC_CFPB_20170703_0040781 (June 8, 2017; 19:25),

by Director Cordray contained, among other things, a pertinent revision indicated in red underlined font, “In an effort to obscure this substantial response, the staff report complains instead about which documents have been produced and which supposedly have not.”¹¹² It is unclear why the Director inserted the word “supposedly” given that the Recommendation Memorandum was identified in the June 6 Report and had not been produced.¹¹³

4. On Friday, June 9, 2017, Mr. Coleman circulated a detailed redline of Director Corday’s draft to senior CFPB officials and attorneys on his staff, Ms. Szybala and Mr. Bressler.¹¹⁴ The email strongly advocated against sending any response to the June 6 Report. It stated in pertinent part:

From: Coleman, John (CFPB)
Sent: Friday, June 9, 2017 9:35 PM
To: Fulton, Kate (CFPB)
Cc: McLeod, Mary (CFPB); Galicia, Catherine (CFPB); Howard, Jennifer (CFPB); Martinez, Zixta (CFPB); Ehrlich, Jeffrey (CFPB); D'Angelo, Chris (CFPB); Chow, Edwin (CFPB); Szybala, Julia (CFPB); Bressler, Steven (CFPB)
Subject: RE: Wells Documents
Attachments: Letter -- Response to Chairman Hensarling 6.9.17 (JC edits and suggestions).docx

* * *

Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040783 (June 8, 2017; 19:25), App. at 142–49.

¹¹² Committee Counsel Redline of Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_004071, at 6 (June 8, 2017, 12:58), *against* Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040783, at 6 (June 8, 2017; 19:25), App. at 150–56.

¹¹³ It is also unclear how Director Cordray would fail to identify the record specifically identified in the June 6 Report as the Decision Memorandum, considering he appears to have considered it a key document for his preparation for the Senate Banking Committee’s Wells Fargo hearing, and that document was clearly identified on a timeline which Director Cordray told senior staff “contains a chart of events that I am relying on (and that jibes with my recollection. . . .)” Email from the Hon. Richard Cordray to John Coleman, Esq. and Edwin Chow, HFSC_CFPB_20170703_0040789, at HFSC_CFPB_20170703_0040789 (June 9, 2017; 11:37), *and accompanying attachments*, Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_0040791 (June 9, 2017; 11:37), Email from Julia Szybala, Esq. to Zol Rainey, HFSC_CFPB_20170703_0040797 (Sept. 16, 2016; 10:14), *and accompanying attachment*, (CSI) Wells Timeline for Hearing Prep. 4.1, HFSC_CFPB_20170703_0040798, at HFSC_CFPB_20170703_0040800 (Sept. 15, 2017), App. at 188–99. Committee Staff do not credit that Director Cordray—a Jeopardy champion renowned for his memory—would have a failure of recollection on such an important point.

¹¹⁴ See Email from John Coleman, Esq. to Kate Fulton Esq., HFSC_CFPB_20170703_0040832 (June 9, 2017; 21:35), *and accompanying attachment*, Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040835 (June 9, 2017; 21:35), App. at 157–67.

In general, this exercise has convinced me (and again, I speak only for myself here) that this approach is unwise. This matter does not appear to have gained traction with the press or the public generally, and even if it were otherwise, it is not clear to me how a letter to Chairman Hensarling would become public. Further, debating the facts pertaining to the lead-up and conduct of our Wells matter presents two significant risks. First, we could say something that is contradicted by various documents that the Committee either already has or will obtain from us or others in the future. In only a few hours and based on a necessarily incomplete understanding of the existing record, I have found a number of instances in which I think we overstate or misstate the record, and I am probably better intentioned than others. Second, it seems especially unwise to assert facts in response to the staff report based on documents that the staff has not yet obtained because (they would say, unfairly I think) we have not complied with the Committee’s subpoena. Recall that the threatened contempt proceeding is based not on Rich’s statements during the hearing that we had engaged in “supervisory activity” prior to LA’s lawsuit and conducted an “independent and comprehensive” investigation, but on our alleged failure to provide documents, particularly internal documents, in response to the subpoena. Reliance on internal documents will, therefore, only highlight that we have not yet provided such documents to the Committee.

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Mr. Coleman’s comments on Director Cordray’s draft stated, in pertinent part:

further penalties imposed by the Los Angeles City Attorney’s office and the OCC. [The amount of the penalty assessed by the Bureau was determined by taking into account the statutory factors for calculating such penalties set out in 12 U.S.C. 5565(c)(3), which include the state of mind of the offender, the gravity of the violation, the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided, and such other matters as justice shall require, which typically involves considerations about the deterrence of future violations. The staff report does not take issue with the amounts of the penalties imposed in this matter.

The remaining portion of the questions that are the stated focus of the Committee’s investigation is whether the federal financial regulators were effective in detecting Wells Fargo’s fraudulent branch sales practices. Again, at the outset the staff report acknowledges that these practices went on for at least a decade before the Bureau even was created at all, and even longer before

Comment [JRC9]: This is true, but note that this statement may prompt a request for our decision memo in this case. That memo begins by stating: “We opened this matter in March following media reports and a lawsuit by the Los Angeles City Attorney (LA) alleging that Wells Fargo employees opened accounts for consumers or signed them up for additional products without their consent. . .”

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The import of Mr. Coleman’s comment seems unmistakable. Coleman specially notes that the Decision Memorandum discloses that the CFPB “opened this matter in March following media reports and a lawsuit by the Los Angeles City Attorney,” presumably to remind the Director that the Decision Memorandum would lend credence to claims made by Oversight and Investigations Subcommittee Chairman Wagner and other Members of the Committee and undermine the CFPB’s narrative.¹¹⁷ Mr. Coleman therefore suggests deleting the referenced text to ensure that the Committee did not request the Memorandum. (It is unclear why Mr. Coleman did not mention that the Committee had *already* specifically pointed to the Recommendation Memorandum as a document the CFPB had failed to produce.)

The next day, Mary McLeod, the CFPB’s General Counsel, replied by writing “All: I agree with John’s thoughtful analysis, and strongly feel it would be better

¹¹⁵ Email from John Coleman, Esq. to Kate Fulton Esq., HFSC_CFPB_20170703_0040832, at HFSC_CFPB_20170703_0040832 (June 9, 2017; 21:35), App. at 157.

¹¹⁶ Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040835, at HFSC_CFPB_20170703_0040837, (June 9, 2017; 21:35), App. at 162.

¹¹⁷ *Id.* The Recommendation Memorandum later produced to the Committee on September 5, 2017 confirms what Mr. Coleman reminded the Director—that the CFPB opened the matter following media reports and a lawsuit by the Los Angeles City Attorney filed May 4, 2015. See Recommendation Memorandum, at HFSC_CFPB_20170404_0064927, App. at 1.

that RC not send a letter.”¹¹⁸ Mr. Coleman’s full email and his comments on the Director’s draft letter were forwarded to the Director later that day.¹¹⁹

5. Director Cordray responded the next day:

From: RC
Sent: Sunday, June 11, 2017 8:53 AM
To: Coleman, John (CFPB); Chow, Edwin (CFPB)
Cc: McLeod, Mary (CFPB); Galicia, Catherine (CFPB); Fulton, Kate (CFPB); Howard, Jennifer (CFPB); Martinez, Zixta (CFPB); Ehrlich, Jeffrey (CFPB); D'Angelo, Chris (CFPB); Conrad, Derek (CFPB)
Subject: RE: Wells Documents
Attachments: Letter -- Response to Chairman Hensarling 6.12.17.docx

Attached is the latest version of this letter, now dated 6/12. It incorporates all comments received to date. One paragraph still contains two comment bubbles from John, indicating that he is not in position to confirm two specific points (though I have now made efforts to write around the points raised in these two comments). I believe we will be hearing from Jeff with his perspective on this paragraph and those two comments, hopefully sometime today.

If people want to discuss this matter in person some more, I am available to do so at 10:00 or so on Monday and perhaps at other times on Monday as Derek might be able to arrange thx
RC

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Pertinent here, Director Cordray made the following edit (as tracked against Coleman’s draft and comments):

¹¹⁸ Email from Mary McLeod, Esq., to Kate Fulton, Esq. and John Coleman, Esq., CFBP_HFSC_OI_IMG_2017_08_18_0003471, at CFPB_HFSC_OI_IMG_2017_08_18_0003471-72 (June 10, 2017, 17:13), App. at 73-74.

¹¹⁹ See Email from Kate Fulton, Esq. to the Hon. Richard Cordray, HFSC_CFPB_20170703_0030824 (June 10, 2017; 19:57), and accompanying attachments, Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040825 (June 10, 2017, 19:57), Email from John Coleman, Esq. to Kate Fulton Esq., HFSC_CFPB_20170703_0040832 (June 9, 2017; 21:35), and accompanying attachment, Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040835 (June 9, 2017; 21:35), App. at 168-87.

¹²⁰ Email from the Hon. Richard Cordray to John Coleman, Esq., and Edwin Chow, HFSC_CFPB_20170703_0035990, at HFSC_CFPB_20170703_0035990 (June 11, 2017; 8:53), and accompanying attachment, Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling HFSC_CFPB_20170703_0035992 (June 11, 2017; 8:53), App. at 200-07.

further penalties imposed by the Los Angeles City Attorney's office and the OCC. ~~The amount of the penalty assessed by the Bureau was determined by taking into account the statutory factors for calculating such penalties set out in 12 U.S.C. 5565(c)(3), which include the state of mind of the offender, the gravity of the violation, the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided, and such other matters as justice shall require, which typically involves considerations about the deterrence of future violations. The staff report does not take issue with the amounts of, all of which tend to deter such conduct by Wells Fargo and by any other institution in the future. The staff report does not take issue with~~ the penalties imposed in this matter.

The remaining portion of the questions that are the stated focus of the Committee's investigation ~~is~~ concerns whether the federal financial regulators were effective in detecting Wells Fargo's fraudulent branch sales practices. Again, at the outset the staff report acknowledges that these

Comment [JRC11]: This is true, but note that this statement may prompt a request for our decision memo in this case. That memo begins by stating: "We opened this matter in March following media reports and a lawsuit by the Los Angeles City Attorney (LA) alleging that Wells Fargo employees opened accounts for consumers or signed them up for additional products without their consent. . ."

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This deletion carries through to the letter's final version. The only explanation of Director Cordray's deletion in the records is Mr. Coleman's comment.

6. After 354 days, the CFPB finally produced the Recommendation Memorandum on September 5, 2017. And the Committee had undertaken extraordinary efforts to obtain the document.

STAFF RECOMMENDATIONS

Committee Staff concludes that the foregoing raises grave questions as to whether Director Cordray, other senior CFPB officials, and CFPB oversight attorneys engaged in actions that had the effect of obstructing the Committee's lawful oversight related to the Wells Fargo fraudulent account scandal. The Committee's examination and investigation continues.

¹²¹ Committee Counsel Redline of Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0040819, at 2-3 (June 10, 2017, 11:23) *against* Draft Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling, HFSC_CFPB_20170703_0035992, at 3 (June 11, 2017, 8:53), App. at 208-14.