



WAS THE “COP ON THE BEAT”?:
INTERIM MAJORITY STAFF REPORT ON THE WELLS FARGO FRAUDULENT
ACCOUNTS SCANDAL

COMMITTEE ON FINANCIAL SERVICES, U.S. HOUSE OF REPRESENTATIVES
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SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
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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 September 8, 2016, the world learned of one of the worst banking scandals in years. Since at least May 2001, thousands of Wells Fargo & Company (“Wells Fargo” or the “Bank”) employees had been engaged in the practice of defrauding customers by opening millions of unneeded, and at times, unauthorized bank accounts. Evidence suggested that executives at the Bank had turned a blind eye to this fraud for years.

The House Financial Services Committee (“Committee”) immediately began a comprehensive investigation of this matter to answer two critical 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 sale practices.

As a part of its investigation, the Committee sought records and information on September 16, 2016, from Wells Fargo, the Office of the Comptroller of the Currency (“OCC”), and the Consumer Financial Protection Bureau (“CFPB”).

Wells Fargo and the OCC have cooperated in full with the Committee’s investigation to date. Among other things, they promptly produced sensitive and confidential internal records relating to Wells Fargo’s branch sales practices requested by the Committee.

The CFPB, however, has not cooperated with the Committee’s investigation. In response to the Committee’s records request, the CFPB did not produce a *single* internal record related to its Wells Fargo branch sales practice investigation. Over the course of six months, the CFPB only produced 1,010 pages of records, comprised almost entirely of records easily obtainable from Wells Fargo or the OCC. Faced with six months of the CFPB’s refusal to voluntarily comply with its records request, the Committee subpoenaed the records from the CFPB on April 4, 2017, and gave the CFPB four additional weeks to produce those records. The CFPB’s response to this legally binding Subpoena was to produce records that Wells Fargo had already produced to it—records the CFPB knew that Wells Fargo had already produced to the Committee.

Due to CFPB Director Richard Cordray’s failure to honor his legal obligation to produce all records responsive to the Committee’s Subpoena, the Committee’s Wells Fargo investigation is at an impasse. Key questions remain unanswered. For example, the Committee cannot substantiate Director Cordray’s Congressional testimony on the current record.

Director Cordray testified before the Committee that the CFPB had engaged in supervisory activity regarding Wells Fargo’s branch sales practices prior to May

8, 2015. No records before the Committee corroborate this claim. Indeed, the only records before the Committee—those produced by the OCC and Wells Fargo—call it into question.

Similarly, Director Cordray also testified before the Committee that the CFPB’s Wells Fargo investigation was “independent and comprehensive.” But nothing before the Committee corroborates this claim. Again, records produced by Wells Fargo and the OCC raise questions regarding this claim.

In light of the foregoing, Committee Staff recommends that the Chairman takes steps, up to and including preparing for possible contempt proceedings against Director Cordray should they prove necessary, to enforce the Committee’s Subpoena in order to obtain the records and information necessary to complete the Committee’s Wells Fargo investigation.

DISCUSSION

I. Anatomy of a Scandal.

On December 21, 2013, the *Los Angeles Times* (“*L.A. Times*”) published an article about Wells Fargo employees opening unneeded, and sometimes unauthorized, accounts for customers. The article alleged that the high pressure culture in many branches to meet sales goals led to employees acting with an apparent disregard as to whether customers needed additional accounts.

In response to the article, the Office of the Los Angeles City Attorney (“L.A. City Attorney”) initiated an immediate investigation, and on May 4, 2015, filed a civil lawsuit against Wells Fargo “alleging the company has victimized consumers by opening customer accounts, and issuing credit cards, without authorization—then failing to inform customers of the alleged misuse of their personal information or refund fees for unwanted services.”¹ L.A. City Attorney Michael Feuer said the lawsuit “alleges that in Wells Fargo’s push for growth the bank often elevated profit over its customers’ legal rights.”²

That same day, Wells Fargo self-reported to the CFPB the existence of the lawsuit by the L.A. City Attorney regarding branch sales practices.³ Four days later, on May 8, 2015, the CFPB initiated a supervisory review, requesting that

¹ Press Release, Office of the City Attorney for the City of L.A., *City Attorney Feuer Files Lawsuit Against Wells Fargo for Allegedly Opening Unauthorized Customer Accounts* (May 5, 2015), available at, <http://freepdfhosting.com/c7384fa6fc.pdf> (last visited June 5, 2017).

² *Id.*

³ See Letter from Edwin Chow of CFPB to Yvette Hollingsworth of Wells Fargo, WF-0000001 (May 8, 2015), App. at 102; see also, CFPB, *Wells Fargo Full Continuous Supervision Examination Report*, OCC-HRSC-0001007 (Sept. 8, 2016) (“CFPB Examination Report”), App. at 1–35. All citations to “App.” are citations to the Appendix to this Interim Report in which the Committee has released key records forming the basis for its analysis.

Wells Fargo produce “a comprehensive description of the company’s consumer financial services sales policies” and records relating to internal investigations relevant to the allegations in the complaint.⁴ On June 26, 2015, the OCC, which had identified issues with Wells Fargo’s sales practices as early as 2010, issued a Supervisory Letter to Wells Fargo with a number of Matters Requiring Attention (“MRAs”) and corresponding corrective actions.⁵ These MRAs required that Wells Fargo management revisit the company’s sales practices and revamp the company’s process for receiving and responding to complaints.⁶

By September 8, 2016, Wells Fargo had reached simultaneous settlements with the L.A. City Attorney, the OCC, and the CFPB, in which the Bank agreed to pay a collective \$185 million in fines and set aside \$5 million to remediate customer harm.⁷ The total fine was comprised of \$100 million assessed by the CFPB, \$35 million assessed by the OCC, and \$50 million assessed by the City and County of Los Angeles.⁸ The Bank did not admit fault in any of these settlements.⁹

II. The Committee’s Investigation.

Following the public announcement of the OCC’s, L.A. City Attorney’s, and CFPB’s settlements with Wells Fargo on September 8, 2016, the Committee initiated an investigation into: (1) how and why Wells Fargo allowed these fraudulent activities to occur at a disturbing scale across the Bank since at least May 2001; and (2) whether or not federal financial regulators were effective in detecting and remedying Wells Fargo’s fraudulent branch sale practices. The Committee promptly held a hearing regarding Wells Fargo’s branch sales practices on September 29, 2016, where the then-CEO of Wells Fargo, John Stumpf, testified.¹⁰ The Committee also

⁴ See Letter from Edwin Chow of CFPB to Yvette Hollingsworth of Wells Fargo, WF-0000001 (May 8, 2015), App. at 102. The CFPB also requested that the Bank take steps to preserve all potentially responsive records. *Id.*

⁵ OCC, Office of Enterprise Governance and the Ombudsman, *Lessons Learned Review of Supervision of Sales Practices at Wells Fargo*, at 4 (Apr. 19, 2017), App. at 103–17.

⁶ OCC Supervisory Letter WFC 2015-36 (June 26, 2015), App. at 71–79.

⁷ OCC Consent Order for a Civil Money Penalty, In the Matter of Wells Fargo Bank, N.A., AA-EC-2016-67 (OCC Sept. 8, 2016), App. at 118–29; L.A. City Stipulated Final Judgment, *People of the State of California v. Wells Fargo & Company*, No. BC 580778 (L.A. Super. Ct. Sept. 8, 2016), App. at 130–53; CFPB Consent Order, *In the Matter of Wells Fargo Bank, N.A.*, 2016-CFPB0015 (CFPB Sept. 8, 2016), App. at 154–79.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Holding Wall Street Accountable: Investigating Wells Fargo’s Opening of Unauthorized Accounts: Hearing Before the H. Comm. on Financial Services*, 114th Cong. 2 (Sept. 29, 2016).

promptly sent records requests to Wells Fargo, the OCC, and the CFPB on September 16, 2016.¹¹

The Committee requested that Wells Fargo produce all records that the Bank had produced or made available to the OCC, CFPB, or the L.A. City Attorney.¹²

The Committee requested that the OCC produce all records relating to its enforcement action against Wells Fargo, including all supervisory and investigative records, correspondence, and applicable policies.¹³

The Committee requested that the CFPB produce all records relating to its enforcement action against Wells Fargo, including all supervisory and investigative records, correspondence, and applicable policies.¹⁴

A. Wells Fargo's Cooperation with the Committee.

Wells Fargo has cooperated in full with the Committee's investigation to date. Wells Fargo began producing records on September 27, 2016, and continued producing records on a rolling basis. To date, Wells Fargo has produced over 140,000 pages of records.¹⁵ These records include supervisory correspondence with the CFPB; training materials and internal policies; incentive compensation plans; sales quality manuals, assessments, and reviews; sensitive internal email correspondence; interrogatory responses to the CFPB; transcripts of employee interviews with the CFPB; customer complaints; and the PricewaterhouseCoopers Report commissioned by Wells Fargo to examine the scope of potentially unauthorized account openings; among other records.¹⁶ Wells Fargo responded to questions for the record from the Committee's September 29 hearing and has been responsive to all other questions and requests made by the Committee to date. The Board of Wells Fargo has kept the Committee apprised of its own independent investigation, and briefed Committee Staff on both on its progress and at its completion.

¹¹ See Letter from the Hon. Jeb Hensarling to James M. Strother (Sept. 16, 2016), App. at 180–81; Letter from the Hon. Jeb Hensarling to the Hon. Thomas J. Curry (Sept. 16, 2016), App. 182–83; Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray (Sept 16, 2016), App. 184–85.

¹² Letter from the Hon. Jeb Hensarling to James M. Strother (Sept. 16, 2016), App. at 180–81.

¹³ Letter from the Hon. Jeb Hensarling to the Hon. Thomas J. Curry (Sept. 16, 2016), App at 182–83.

¹⁴ Letter from the Hon. Jeb. Hensarling to the Hon. Richard Cordray (Sept. 16, 2016), App. at 184–85.

¹⁵ Letter from Michael D. Bopp, Esq., to the Hon. Jeb Hensarling (Sept. 27, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Oct. 13, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Oct. 14, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Oct. 28, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Nov. 1, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Nov. 9, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Nov. 21, 2016); Letter from Michael D. Bopp, Esq. to the Hon. Jeb Hensarling (Dec. 2, 2016).

¹⁶ *Id.*

B. OCC's Cooperation with the Committee.

The OCC has also cooperated in full with the Committee's investigation to date. Within three days, the OCC began producing records relating to its supervision of, and enforcement action against, Wells Fargo, including sensitive and confidential internal OCC documentation such as supervision reports and memoranda.¹⁷ Over the next weeks and months, the OCC continued to produce records responsive to the original September 16 records request and additional Committee records requests.¹⁸ These records include communications with the CFPB and L.A. City Attorney; a comprehensive timeline of OCC's supervision related to sales practices at Wells Fargo; draft CFPB consent orders; records of calls and meetings with the CFPB; the CFPB's four year Examination Report of supervision of Wells Fargo; OCC Supervisory Letters on Wells Fargo sales practices and other correspondence; third-party analysis of sales practice issues commissioned by Wells Fargo; internal OCC memoranda regarding supervisory planning, scoping, and conclusions; and Reports of Examination; among other records.¹⁹ On September 21, 2016, representatives from the OCC, along with those from the CFPB, appeared at a bipartisan briefing regarding the Wells Fargo Enforcement matter, and OCC Staff voluntarily answered questions asked by Congressional Staff.

C. The CFPB's Defiance of a Congressional Records Request and Subpoena.

Unlike Wells Fargo and the OCC, the CFPB has not cooperated with the Committee's investigation to date. At the September 21, 2016, bipartisan briefing, representatives from the CFPB refused to answer questions from Congressional Staff about the CFPB's investigation, citing a lack of authorization from Director Cordray to discuss supervisory matters. As a result, the Committee requested a second briefing from representatives of the CFPB who were authorized to answer questions regarding the Wells Fargo matter.²⁰ Director Cordray responded to this request by stating that he would make CFPB staff available again for a briefing, but

¹⁷ Letter from Carrie Moore to the Hon. Jeb Hensarling (Sept. 19, 2016), App. at 186.

¹⁸ See, e.g., Letter from the Hon. Sean P. Duffy to the Hon. Thomas Curry (Nov. 16, 2016). On April 19, 2017, the OCC issued a report on its oversight of Wells Fargo. See OCC, Office of Enterprise Governance and the Ombudsman, *Lessons Learned Review of Supervision of Sales Practices at Wells Fargo* (Apr. 19, 2017), App. at 103–17. The report was commissioned by Comptroller of the Currency Thomas Curry to “identify any supervision gaps and lessons learned to improve the OCC's supervisory processes going forward.” *Id.* at 2, App. at 105. The report found that the OCC “did not take timely and effective supervisory actions after Wells Fargo and the OCC identified significant issues with the complaint management and sales practices.” *Id.* at 4, App. at 107.

¹⁹ See OCC-Wells 0000001–OCC-Wells 0000840; OCC-HFSC-0000001-April 2017–OCC-HFSC-0000968-April 2017.

²⁰ Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray (Sept. 21, 2016), App. at 187.

that he himself was “in the best position to convey a comprehensive response.”²¹ Based on Director Cordray’s representation that he was the best person to address the Committee’s questions, the Committee asked the Director to brief the Committee about the CFPB’s investigation.²² In that letter, the Committee also reminded Director Cordray of the Committee’s request for CFPB records, and stated that the production of all relevant records would be a precondition for the Director to testify at any Committee hearing about Wells Fargo.²³ Director Cordray replied that he would not brief the Committee.²⁴

The CFPB responded to the September 16 records request on September 23, 2016, by producing 176 pages of records. This production contained *no* internal CFPB records regarding the Wells Fargo branch sales issue. It 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 L.A. City Attorney’s Office and the OCC, as well as correspondence between the CFPB and the Bank.²⁵ The CFPB also promised the future production of “additional responsive materials.”²⁶

When no additional records were forthcoming, on November 3, 2016, the Committee reiterated its request and again requested the production of all relevant records.²⁷ The CFPB responded on November 10 and produced 834 pages of records. In this 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.²⁸

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.”²⁹ The Committee gave the CFPB until May 2, 2017—four weeks—to comply with this Subpoena. Three days after the Subpoena issued,

²¹ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling (Sept. 22, 2016), App. at 188–89.

²² Letter from the Hon. Jeb Hensarling to the Hon. Richard Cordray (Sept. 22, 2016), App. at 190.

²³ *Id.*

²⁴ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling (Sept. 22, 2016), App. at 191.

²⁵ Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling (Sept. 23, 2016), App. at 192–93. HFSC_CFPB_WF_00001–00175.

²⁶ *Id.* at 2. App at 192–93.

²⁷ Letter from the Hon. Sean P. Duffy to the Hon. Richard Cordray (Nov. 3, 2016), App. at 194.

²⁸ See HFSC_CFPB_WF_00176–HFSC_CFPB_WF_001010.

²⁹ H. Fin. Servs. Comm. *Subpoena Duces Tecum* to the Hon. Richard Cordray, Schedule A at Specification 27 (April 4, 2017) (internal quotation omitted), App. at 200. The 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 200.

Director Cordray assured the Committee in oral testimony: “If there are documents you don’t have, happy to try to provide them.”³⁰

On May 2, 2017, the CFPB responded to the Committee’s Subpoena by producing the 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.³¹ 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.”³² Director Cordray has in no way asserted any claim of privilege or protection to justify withholding responsive records.

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.³³ *None* of these, or other responsive records, have been produced to the Committee by the CFPB.

Additionally, in at least one instance, the CFPB has intervened in the OCC’s production of records responsive to the OCC’s document request, suggesting redactions to an examination report prior to its production by the OCC to the

³⁰ *The 2016 Semi-Annual Reports of the Bureau of Consumer Financial Protection: Hearing Before the H. Comm. on Financial Services*, 115th Cong., at 32 (Apr. 5, 2017) (“April 2017 Committee Hearing”), App. at 286.

³¹ 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 216–17; Letter from Anand Raman, Esq. to Mary McLeod, Esq. (CFPB) (Oct. 3, 2016), App. at 218–20; Letter from Darren Welch, Esq. to Karen J. Rice, Esq. (CFPB) (Nov. 9, 2016), App. at 221–22. The CFPB also reproduced 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 239–40.

³² *Id.*, at 18 (emphasis added), App. at 240.

³³ See, e.g., Examination Report, App. at 1–35; Wells Fargo Sales Practices—CFPB Call Notes, at OCC-LD-00002774, at 1 (Jul. 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), App. at 80.

Committee. At the OCC's request, the CFPB later withdrew its redaction request, and the OCC then produced the unredacted record to the Committee.³⁴

III. Outstanding Matters.

Due to the CFPB's non-compliance with the Committee's Subpoena compelling the production of CFPB records, the Committee's investigation into the Wells Fargo matter has reached an impasse, and critical questions remain unanswered. Significantly, without reviewing the internal records the CFPB refuses to produce to the Committee, the Committee cannot substantiate several important assertions that Director Cordray made to Congress in public hearing testimony.

1. For instance, in a hearing before the Committee on April 5, 2017, Director Cordray testified before the Committee that the CFPB engaged in supervisory activity of Wells Fargo related to branch sales practices prior to May 8, 2015.³⁵ No records or other information before the Committee corroborate this claim.

Based on the evidence the Committee has reviewed to date it does not appear that the CFPB ever contacted the Bank about its branch sales practices prior to the Bank informing the CFPB on May 4, 2015, about the L.A. City Attorney's complaint.³⁶

³⁴ The Committee does not credit the CFPB's reluctant "cooperation" in this matter; were it not for the OCC, which would be under a legal compulsion to produce the unredacted record if the Committee were to subpoena it, the Committee has no reason to believe that the CFPB, which failed to produce this and other responsive records even under a subpoena, would have agreed to remove the redactions.

³⁵ See April 2017 Committee Hearing, Trans. at 29 ("MRS. WAGNER. Are you denying that the CFPB initiated its supervisory review of Wells Fargo's branch sales practices on May 9, 2015? Yes or No? MR. CORDRAY. We actually had engaged in supervisory activity prior to that time."), App at 283. See also Letter from the Hon. Richard Cordray to the Hon. Jeb Hensarling (Sept. 23, 2016), App. at 192-93; April 2017 Committee Hearing, Trans. at 10, 33-34, App. at 264, 287-88. *An Examination of Wells Fargo's Unauthorized Accounts and the Regulatory Response: Hearing Before the S. Comm. On Banking Housing & Urban Affairs, 115th Cong.*, Trans. at 145:22-146:19, 162:5-11 (Sept. 20, 2016) ("Senate Banking Hearing"), App. at 512-13, 529.

³⁶ Notwithstanding the fact that the Committee has received hundreds of thousands of pages of responsive material pertinent to its investigation as well as numerous briefings and interviews with bank executives and counsel, Committee staff to date have seen no evidence that the CFPB ever contacted Wells Fargo about its fraudulent branch sales practices prior to May 4, 2015. To the contrary, the Bank executives and counsel that the Committee have spoken with about the issue of the CFPB's engagement with the Bank regarding its branch sales practices, including former General Counsel James Strother, have indicated that they are not aware of the CFPB ever contacting Wells Fargo about the bank's fraudulent branch sales practices prior to the bank self-reporting to the CFPB on May 4, 2015. Their representations to the Committee adhere with then-CEO John Stumpf's testimony before the Senate Banking Committee that the Bank self-reported to the CFPB in May 2015. Senate Banking Hearing, Trans. at 62-63, 88-89, App. at 429-30, 455-56.

In addition, the CFPB’s Examination Report of Wells Fargo—the Report the CFPB sought to redact before the OCC provided it to the Committee—details a record of all of the CFPB’s supervision activities with regard to the Bank for the time period between January 28, 2013, and September 8, 2016.³⁷ The Examination Report contains no record of any CFPB supervisory activity related to Wells Fargo’s branch sales practices prior to May 4, 2015.³⁸ The CFPB’s Wells Fargo Examination Report shows that the CFPB sent Wells Fargo 65 Matters Requiring Attention (“MRA”) and six supervisory letters during the three year examination period, but did not send the Bank a single supervisory letter or MRA directed at the Bank’s branch sales practices during this time period. Moreover, the Examination Report is *explicit* that the CFPB *did not* initiate a supervisory review of Wells Fargo’s branch sales practice until May 8, 2015—after the L.A. City Attorney filed its lawsuit.³⁹

The only other mention of the CFPB’s work on Wells Fargo’s branch sales practices in the Examination Report is the statement that the CFPB “scheduled in 2014 an examination of [retail banking sales practices] to commence in 2015.”⁴⁰ It is unclear whether this examination ever commenced and, if so, on what date.

2. Another instance of Director Cordray’s public testimony before the Committee that cannot be corroborated by the record before the Committee is his claim that the CFPB’s investigation was “*independent and comprehensive.*”⁴¹

a. In early 2016, Wells Fargo was close to reaching a settlement with the L.A. City Attorney. *Wells Fargo* then asked in May 2016 for the CFPB to expedite its investigation and “to coordinate the timing with the City of Los Angeles” on the resolution of both actions.⁴² The CFPB indicated to the OCC that Wells Fargo’s

Moreover, Director Cordray appears to confirm that the CFPB’s did not reach out to the Bank about its fraudulent branch sales practices until this time frame when he represented to the Committee on September 23, 2016, that the CFPB “began directly engaging Wells Fargo [regarding its branch sales practices] in the spring of 2015.” Letter from Richard Cordray to Jeb Hensarling (Sept. 23, 2016), App. at 192.

³⁷ CFPB Examination Report, App. at 1–35.

³⁸ *See Id.*

³⁹ CFPB Examination Report, at 17 (indicating that the CFPB “initiated a supervisory review of Wells Fargo’s branch sales practices on May 8, 2015.”), App. at 17.

⁴⁰ *Id.*

⁴¹ April 2017 Committee Hearing, Written Testimony of the Hon. Richard Cordray at 6 (emphasis added), App. at 247; *see also, e.g.*, Senate Banking Hearing, Trans at 144:25–145:21 (Director Cordray denying before the Senate Banking Committee that the CFPB may have relied primarily on outside sources, such as PricewaterhouseCoopers (“PWC”), to determine the number of unauthorized deposit and credit card accounts that Wells Fargo opened), App. at 511–12.

⁴² Email from Jennifer LaRoche (OCC) to Brendan Clegg (OCC) and Lauren Snook (OCC), OCC-HFSC-000028-9-April 2017, at 2 (June 30, 2016), App. at 85; *see also*, Email from Jennifer LaRoche to Gerard Sexton (OCC) et al., OCC-LD-00002794 (May 26, 2016), App. at 83–84; Email from Jennifer LaRoche to Gregory Coleman (OCC), et al., OCC-LD-00002792 (June 29, 2016), App. at 101.

“objective was and is to provide the CFPB with all information necessary for the CFPB to make an enforcement decision *without having to conduct a full investigation* in order to align with the timing of the anticipated settlement with the city of LA.”⁴³

Wells Fargo’s interest in a simultaneous resolution appears to have been related to one of the proposed terms of a settlement with the L.A. City Attorney. The CFPB explained to the OCC that the L.A. City Attorney wanted an injunction against future illegal practices by Wells Fargo, which the Bank believed “could have dire consequences for it under the Securities Act, and it would therefore prefer to enter into a consent order with CFPB.”⁴⁴

In response to these overtures, the CFPB appears to have worked to move the settlement on the *Bank’s* timetable. For example, in May of 2016, a CFPB attorney told the OCC 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.”⁴⁵ In June of 2016, the CFPB reiterated this statement: “Our timing has changed a bit. At the bank’s request, we have picked up the pace and are now aiming for a resolution of enforcement action by mid-July, possibly as early as the week of the 18th. Also we’re working to coordinate the timing with the City of Los Angeles, again at the bank’s request.”⁴⁶

CFPB officials then apparently admitted to the OCC that it did not matter that the CFPB would be willing to forego a full investigation if “the CFPB is satisfied that it has sufficient information from the Bank *that there is no need for a full investigation*, and the CFPB is able to put enough protection in its enforcement document to prevent any future violations.”⁴⁷

The records also indicate that the CFPB actively worked in July 2016 to ensure that Wells Fargo entered into a consent order with the CFPB—the *Bank’s*

⁴³ Email from Jennifer LaRoche to Gerard Sexton (OCC) et al., OCC-LD-00002794, at 1 (May 26, 2016) (emphasis added), App. at 83.

⁴⁴ Email from Lauren Snook to Gregory Coleman et al., OCC-FRSC-0000380-April 2017, at 1 (July 1, 2016), App. at 97.

⁴⁵ Email from Jennifer LaRoche to Gerard Sexton et al., OCC-LD-00002794, at 1 (May 26, 2016), App. at 83.

⁴⁶ Email from Jennifer LaRoche to Brendan Clegg and Lauren Snook, OCC-HFSC-000028-9–April 2017, at 2 (June 30, 2016), App. at 86. *See also* Email from Jennifer LaRoche to Greg Sexton et al., OCC-LD-00002260 (June 30, 2016), App. at 95–96; Email from Jennifer LaRoche to Gregory Coleman (OCC), et al., OCC-LD-00002792 (June 29, 2016), App. at 101.

⁴⁷ Email from Jennifer LaRoche to Gerard Sexton et al., OCC-LD-00002794, at 1 (May 26, 2016) (emphasis added), App. at 83. *See also* Email from Jennifer LaRoche to Brendan Clegg and Lauren Snook, OCC-HFSC-000028-9–April 2017, at 2 (June 30, 2016) (OCC employee emailing CFPB attorneys that: “Based on our previous conversations, my understanding is that the CFPB would not be ready to make a decision as to whether it has sufficient information to support the initiation of an enforcement action until late July or early August.”), App. at 86.

preferred resolution. Internal OCC contemporaneous call notes indicate that the L.A. City Attorney stated he was “willing to forgo injunctive relief IF the Bank enters into a CFPB consent order requiring it to implement a compliance plan that would satisfy all of the City’s concerns.”⁴⁸ The CFPB in turn indicated that “it may also be in the OCC’s interest for the Bank to avoid such an injunction.”⁴⁹ The CFPB agreed that “an injunction may cause safety and soundness issues” for Wells Fargo, and “stated that their goal is to talk the City of LA out of some of their injunctive relief requests and get them to rely on the CFPB.”⁵⁰

b. On July 1, 2016, contemporaneous OCC notes record CFPB attorneys stating that the CFPB would not charge all possible areas of violation and would not pursue traditional remedies such as actions under the Truth in Lending Act (“TILA”):

The CFPB indicated that while these 4 practices would be the basis for any action that ends in a negotiated settlement, the CFPB believes that the Bank engaged in other illegal conduct beyond the 4 practices described above. CFPB indicated that the compliance plan will require the Bank to correct not only the four practices on which the order will be based, but also other the other potentially illegal practices the CFPB has identified at the Bank (including but possibly not limited to unauthorized enrollments in online bill pay and Express Send). The CFPB is currently gathering information on these practices. If the case does not reach a negotiated settlement, the CFPB may file a complaint in federal court alleging the above 4 practices, but may later amend the complaint to include additional practices that it believes violate applicable laws (UDAAP, TILA, TISA, EFTA, GLBA, etc.). The CFPB also noted that should the Bank agree to a Consent Order, the CFPB would use the Remediation Plan/Compliance Plan mechanisms as means of remediating and correcting all illegal practices at the Bank, and not just the 4 outlined above.⁵¹

c. On a July 2016 call, Jeffrey Ehrlich, CFPB Deputy Enforcement Director, explained to the OCC that the CFPB was content to only charge the four preliminary claims referenced above: “because [the CFPB has] reached the CMP

⁴⁸ Email from Lauren Snook to Gregory Coleman et al., OCC-FRSC-0000380-April 2017, at 1 (July 1, 2016), App. at 97.

⁴⁹ OCC, Wells Fargo Sales Practices—CFPB Call Notes, OCC-LD-00002774, at 2 (Jul. 8, 2016), App. at 81.

⁵⁰ *Id.* at 3, App. at 82.

⁵¹ Email from Lauren Snook to Gregory Coleman et al., OCC-FRSC-0000380-April 2017, at 3 (July 1, 2016) App. at 99.

[Civil Monetary Penalty] figure that they would likely impose, regardless of additional information on other practices.”⁵²

d. Another contemporaneous OCC note of communications with CFPB in July of 2016 reflects the CFPB’s admission that if Wells Fargo did not settle, the CFPB would proceed via an action in federal court because that course “would allow the CFPB to continue to collect evidence, and they would seek an injunction. Administrative action would require them to be ready to go to trial on filing.”⁵³

e. Finally, the Examination Report issued on September 8, 2017,—*after* the September 6, 2016, settlement—stated that the CFPB’s “review of retail branch activity is still in process and its findings will be reported under separate cover.”⁵⁴ (The CFPB attempted to prevent the Committee from obtaining this information from the OCC by suggesting it be redacted).⁵⁵ The CFPB has not informed the Committee of the status of the supervisory review or its findings.

f. Records received from the OCC also suggest that the CFPB relied significantly on the work of the OCC and the L.A. City Attorney for evidence for its allegations.⁵⁶ For instance, based on the records currently in the Committee’s possession, the evidence for the CFPB’s finding regarding the unauthorized opening of credit cards appears to have been a PricewaterhouseCoopers Report that the OCC directed Wells Fargo to commission.⁵⁷ Similarly, the CFPB’s evidence for the 1.5 million bank accounts opened without authorization appears to have been the PricewaterhouseCoopers Report and consumer declarations taken by the L.A. City Attorney’s office.⁵⁸ Based on the evidence available to the Committee, only one of the CFPB’s primary and corroborating pieces of evidence, the PricewaterhouseCoopers Report, could have determined the number of unauthorized accounts.

⁵² OCC, Wells Fargo Sales Practices—CFPB Call Notes, OCC-LD-00002774, at 2 (Jul. 8, 2016), App. at 81.

⁵³ *Id.* at 3, App. 82.

⁵⁴ CFPB Examination Report at 17, App. at 17.

⁵⁵ *Compare* CFPB Examination Report, App. at 1–35, *with*, CFPB, *Wells Fargo Full Continuous Supervision Examination Report*, OCC-HRSC-0000971 (Sept. 8, 2016) (containing CFPB redactions), App. at 36–70.

⁵⁶ To be sure, there is often nothing wrong with a regulator relying on outside evidence in an enforcement action, or coordinating with other regulators. In this case, however, the records currently available to the Committee raise important questions about whether Director Cordray has made misleading claims about the work the CFPB did to discover and investigate Wells Fargo’s consumer banking sales practices, or took credit for work that was performed by others. Again, because of Director Cordray’s current contumacy, the Committee cannot answer these critical questions.

⁵⁷ OCC, Wells Fargo Sales Practices—CFPB Call Notes, OCC-LD-00002774, at 1 (Jul. 8, 2016), App. at 80. In this meeting, the CFPB stated that *corroborating* evidence were interrogatories, document requests, and interviews with Wells Fargo employees. *Id.*

⁵⁸ *Id.* 1–2, App. at 80–81.

IV. Staff Recommendations for Further Action.

In light of the CFPB's actions to date, Committee Staff conclude that Director Cordray is in default of the Committee's Subpoena. Without receipt of all records requested by the Committee from the CFPB, the Committee cannot complete its investigation into the Wells Fargo matter. Accordingly, Committee Majority Staff recommend that the Chairman: (1) issue deposition subpoenas to CFPB employees to investigate Director Cordray's default; and (2) prepare to, if necessary, initiate contempt proceedings against Director Cordray unless the CFPB produces *all* responsive records.