



Americans for Financial Reform
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Scott J Wilson, Examiner in Charge
Office of the Comptroller of the Currency-National Bank Examiners
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Re: *AFR comment letter on Wells Fargo CRA Exam*

Dear Mr. Wilson:

Please consider this comment from Americans for Financial Reform as you examine Wells Fargo Bank, N.A. for its compliance under the Community Reinvestment Act.

Please note that many of the groups signing this letter, and other AFR members, have already separately expressed concerns regarding Wells Fargo's payday loan, or direct deposit advance, product. This letter is focused on concerns regarding Wells Fargo's mortgage and loan servicing practices. We believe that these practices are harmful to the communities in which Wells is chartered to conduct business, and as such, we urge the OCC to sufficiently downgrade Wells' CRA rating.

Wells Fargo has been subject to a dizzying array of public and private challenges to its mortgage origination and loan servicing practices that call into question whether it is in fact serving the needs of communities where it is chartered to do business.

As one important example, in July of this year, the Department of Justice entered into a settlement agreement with Wells Fargo over alleged overcharging of fees and steering of borrowers of color into higher cost subprime products. These are the very issues AFR affiliates have raised over the years, and that Wells Fargo has repeatedly and vehemently denied. This settlement stemmed from an initial fair lending lawsuit filed against the lender by the City of Baltimore. In that complaint, the City of Baltimore alleged that Wells Fargo discriminated in its loan origination practices by steering borrowers of color into subprime mortgages when they indeed qualified for prime mortgages. That complaint alleged that Wells Fargo's discriminatory practices resulted in a disproportionate number of foreclosures among African-American and

Latino homeowners and in communities of color. In that lawsuit, former Wells Fargo employees submitted affidavits alleging unconscionable discriminatory conduct which included the lender specifically targeting communities of color for the origination of subprime mortgages. The lawsuit revealed a perverse compensation scheme that financially rewarded loan originators by paying them more for placing borrowers into subprime rather than prime mortgages.

Additionally, Wells Fargo has been accused of defrauding the Federal Housing Administration and, by extension, the US taxpayers. In September of this year, the U.S. Attorney's office in Manhattan sued Wells Fargo for "reckless" and fraudulent mortgage practices that stuck FHA with hundreds of millions of dollars in insurance claims for loans that didn't meet FHA standards.¹ The lawsuit alleges Wells failed to properly underwrite more than 100,000 FHA loans, Wells failed to notify HUD when problems were discovered, and the misconduct took place over a ten year period.² AFR is disappointed to see that Wells Fargo chose to respond to these allegations by taking legal action and making the dubious argument that these claims are barred by the National Mortgage Settlement.³

AFR also notes with concern the recent reports of Wells Fargo quietly offering FHA borrowers compensation where Wells Fargo acknowledges it may have mistakenly placed nearly 10,000 borrowers into more expensive loans than they deserved.⁴ In light of the DOJ settlement with Wells Fargo over allegations of overcharging borrowers of color and the apparent disparities in Wells Fargo's 2011 HMDA FHA lending, the OCC must investigate and ensure that there was no disparate impact on protected classes in Wells' apparent admission that it overcharged its own customers. This episode is all the more disturbing in that Wells reportedly sent refund checks to borrowers that provided that borrowers would waive their rights to further pursue any claims by cashing the checks. These checks, along with purported waiver, conveniently came right before the holidays, when borrowers are understandably more focused on their short term cash needs than whether they have been treated fairly.

Unfortunately, Wells Fargo's problematic practices are not confined to mortgage originations. As the OCC is well aware from its own investigations and enforcement activity, Wells Fargo was one of several servicers engaged in robo-signing and other abusive foreclosure practices. As a result, the OCC entered into consent decrees with Wells Fargo and other institutions, and forty-nine state Attorneys General entered into a settlement agreement ("National Mortgage Settlement") to address the consumer and community harms caused by those improper foreclosure practices.

¹ Andrew Tangel, "Feds hit Wells Fargo with mortgage fraud suit," Los Angeles Times, October 9, 2012.

² Id.

³ Danielle Douglas, "Wells Fargo says Justice lawsuit violates deal with U.S.," November 1, 2012.

⁴ See, Kate Berry, "Wells Fargo Sends Refund Checks to Preempt Lawsuits," American Banker, October 30, 2012.

According to the most recent report submitted by Joe Smith, the federal monitor of the National Mortgage Settlement,⁵ Wells Fargo has thus far received the second most complaints from consumers, behind Bank of America. Seven hundred and thirty six (736) homeowners complained about Wells Fargo's loss mitigation practices. This is significant in that the Office of Mortgage Settlement Oversight is a new entity that most aggrieved consumers would never know or think to complain to.

AFR is concerned that the relief under the NMS is not reaching all communities. Part of this concern is driven by the structure of the settlement, which could tend to favor providing principal reduction to wealthier homeowners in more expensive homes. In addition, AFR members report specific concerns about implementation. AFR members report that borrowers have come into the offices of housing counselors with principal reduction offers that they cannot understand because they are English-only, and the borrower is Limited English Proficient. With the large number of LEP residents in our nation who were vulnerable to unaffordable loans that led them into foreclosure, it is unacceptable from a practical, moral, and legal fair housing standpoint that Wells Fargo is apparently NOT translating loan modification offers or other outreach under the NMS (and presumably the IFR process as well). AFR has submitted a formal letter to federal NMS monitor Joe Smith laying out these concerns and calling on the Office of Mortgage Settlement Oversight to more closely monitor these issues. Communities of color and other protected classes have been disproportionately affected by the foreclosure crisis, and it is particularly important that they not also be disproportionately excluded from limited relief. The OCC should ensure that Wells Fargo is complying with its duties to honor fair lending and fair housing principles.

AFR members continue to report HAMP and other violations by Wells Fargo in its servicing practices and performance. In an April 2012 survey of over 70 California housing counselors⁶, 70% of counselors responding reported that Wells "always" or "almost always" dual tracks customers, and 74% of responding counselors said Wells Fargo was "terrible" or "bad" when it came to helping borrowers save their homes where that appeared possible. These reports continue, as counselors, legal service lawyers, and homeowners throughout the country fail to see any substantial improvement by Wells Fargo in modifying loans where possible to keep people in their homes, avoid unnecessary displacement, and stabilize neighborhoods.

Additionally, AFR has heard complaints from its members that Wells Fargo does not consistently comply with the Protecting Tenants in Foreclosure Act (PTFA) and similar state and local tenant protection laws. The OCC should review Wells Fargo's policies to ensure it is not illegally evicting tenants, refusing to return security deposits, forcing tenants to endure

⁵ Office of Mortgage Settlement Oversight, "Continued Progress: A Report from the Monitor of the National Mortgage Settlement," November 19, 2012.

⁶ California Reinvestment Coalition, "Chasm Between Words and Deeds VIII: Lack of Bank Accountability Plagues Californians," April 2012.

uninhabitable conditions due to unmaintained properties, or otherwise failing to properly exercise its duties as landlord when it takes over a property through foreclosure that is occupied by a renter.

We are also concerned by reports that Wells Fargo has refused to take a proactive stance towards tenants by offering tenants long term leases instead of moving to evict them with all haste. One example of such a policy is the Fannie Mae Tenant in Place program that offers tenants in Fannie REOs a one year lease option. The Federal Reserve more recently clarified its view that continuing to rent to tenants in REO properties is not only permissible, it could enhance a financial institution's CRA record. Yet, Wells Fargo continues to seek to remove all tenants from REO properties, leading to unnecessary displacement of renters and further destabilizing communities.

While we have raised serious issues in this letter, we urge you to conduct a thorough review with all federal and state enforcement and supervisory agencies such as HUD, CFPB, state FHAP agencies and state finance departments. Your review should determine whether there are any pending complaints with these agencies that allege Wells Fargo's misconduct with respect to the Fair Housing Act, the Equal Credit Opportunity Act, and other similar statutes. If you find pending actions with any of these agencies, the OCC must conduct a thorough investigation of these pending actions to determine if they provide other information related to the concerns we raise in this letter.

Thank you for your consideration of these views.

Very Truly Yours,

Americans for Financial Reform
California Reinvestment Coalition
Connecticut Fair Housing Center
Consumer Action
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project
National Low Income Housing Coalition
National People's Action
Tenants Together

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services

- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group

- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Affiliates

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY

- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG

- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

