

August 30, 2019

Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Dear Director Kraninger:

I write to express my alarm about recent reports that Wells Fargo appears to be keeping accounts active for months after informing customers that their accounts have been closed, and in some cases, charging customers thousands in overdraft fees when charges hit the still-open accounts.<sup>1</sup> The Consumer Financial Bureau (CFPB) is charged with ensuring Wells Fargo's compliance with consumer protection and anti-discrimination laws and the CFPB has entered into two separate record-breaking consent orders with bank connected with multiple scams that have cheated millions of customers. This latest revelation -- that nearly three years after the CFPB took action against Wells Fargo for opening millions of fake accounts, the bank is once again profiting off of accounts that its customers do not know that they hold -- suggests not only that deep structural problems persist at the bank, but also that its regulators have not figured out how to keep Wells Fargo customers from being cheated.

According to a recent report in the *New York Times*, Wells Fargo routinely keeps open accounts that it has told customers have been closed, causing the accounts to accrue overdraft fees anytime an additional charge -- even a fraudulent charge -- hits the account.<sup>2</sup> While the full scope and magnitude of this problem are not yet clear, one customer reportedly indicated that he was charged almost \$1,500 in fees on his "closed" account and a single company whistleblower apparently took in approximately \$100,000 in overdraft fees in just eight months.<sup>3</sup> Customers who are affected can pay a heavy price -- they "usually learn what happened only after their overdrawn accounts are sent to Wells Fargo's collections department ... [and are] reported to a national database ... which compiles names of delinquent bank customers ... [t]hat often means a customer cannot open a new bank account anywhere."<sup>4</sup> Moreover, according to reports, customers who attempted to mitigate the problem with Wells Fargo employees were told "[t]he accounts are closed out -- we cannot do anything."<sup>5</sup>

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<sup>1</sup> *New York Times*, Wells Fargo Closed their Accounts but the Fees Continued to Mount, Emily Flitter, August 16, 2019, <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

These reports raise troubling questions about whether the Wells Fargo has once again blatantly violated consumer protection laws, in this case the ban on Unfair, Deceptive, and Abusive Acts and Practices (UDAAP) under the Dodd-Frank Act and the Fair Credit Reporting Act (FCRA). For example, Wells Fargo apparently routinely misled customers about the timing of the closure of the account, a clear violation of the ban on deceptive practices in Title X of Dodd-Frank. The CFPB Examinations Manual defines a deceptive act or practice as a representation, omission or act when “(1) [t]he representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) The consumer’s interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) The misleading representation, omission, act, or practice is material.”<sup>6</sup>

According to reports, “[w]hen Wells Fargo decides it will close an account, it usually informs customers in a letter that lists two important dates” – the date after which deposits will not be accepted and the date after which withdrawals will not be honored.<sup>7</sup> However, in contrast to those representations, Wells Fargo apparently routinely kept accounts open for an additional two months -- an act that is likely to mislead a reasonable customer. In some cases, the failure to close accounts at the specified time led to thousands of dollars in overdraft fees, which more than meets the threshold for material.

Wells Fargo may have also violated the FCRA. According to reports, if customers did not pay the overdraft fees that accrued after Wells Fargo told them that their accounts were closed, “they [were] reported to a national database like Early Warning Services, which compiles names of delinquent bank customers.”<sup>8</sup> Early Warning Services, which is jointly owned by Bank of America, BB&T, Capital One, JPMorgan Chase and Wells Fargo is a nation-wide specialty credit reporting agency under the FCRA.<sup>9</sup> While these companies were originally established to flag customers who had committed fraud, the vast majority of the negative reports in customers’ files are overdrafts or non-sufficient fund transactions.<sup>10</sup>

Because it reports delinquent accounts to as a credit reporting, Wells Fargo is subject to obligations as a furnisher under the FCRA. Pursuant to the statute, “[a] person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or

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<sup>6</sup> CFPB “CFPB Consumer Laws and Regulations, Unfair, Deceptive, or Abusive Acts of Practices,” October 2012, [https://files.consumerfinance.gov/f/documents/102012\\_cfpb\\_unfair-deceptive-abusive-acts-practices-udaaps\\_procedures.pdf](https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf).

<sup>7</sup> New York Times, Wells Fargo Closed their Accounts but the Fees Continued to Mount, Emily Flitter August 16, 2019, <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

<sup>8</sup> New York Times, Wells Fargo Closed their Accounts but the Fees Continued to Mount, Emily Flitter August 16, 2019, <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

<sup>9</sup> National Consumer Law Center, “Account Screening Consumer Reporting Agencies -- A Banking Access Perspective,” October 19, 2015, <https://www.nclc.org/images/pdf/pr-reports/Account-Screening-CRA-Agencies-Banking-Access101915.pdf>.

<sup>10</sup> *Id.*

has reasonable cause to believe that the information is inaccurate.”<sup>11</sup> Wells Fargo had reason to know that any negative report that resulted from a withdrawal or overdraft fee that was charged after the date that Wells Fargo represented to the accountholder that the account was closed was inaccurate because keeping the accounts open without the knowledge of the customer was deceptive.

I’m also concerned that that Wells Fargo’s apparent failure to close accounts in a timely manner ran afoul of either the letter or the spirit of its settlements with the CFPB. CFPB’s April 2018 Consent Order with the bank required it to design a “Compliance Risk Management Plan” that will “ensure that [Wells Fargo’s] acts and practices comply with Federal Consumer Financial Law and the terms” of the consent order, including “detailed steps to develop, implement, and maintain policies and procedures that are designed to ensure self-identification and timely self-reporting to the Bureau of violations and potential violations of Federal Consumer Financial Law,” which must be approved within 60 days of the effective date of the Order and implemented.<sup>12</sup>

Likewise, the 2016 Consent Order in the fake accounts case requires an analysis of whether Wells Fargo “has adequate policies and procedures for (i) receiving, retaining, and addressing consumer inquiries or complaints (ii) receiving, retaining, and addressing employee allegations of Improper Sales Practices or any other allegations or sales-integrity violations.”<sup>13</sup> The reports that Wells Fargo may have committed blatant violations of consumer laws and ignored repeated complaints from consumers and employee whistleblowers suggest that Wells Fargo may never have fully implemented the reforms that your agency required, leaving millions of consumers vulnerable the bank’s latest scams.

CFPB appears to have had significant advanced notice of this latest scam. According to reports, while “[i]t is not clear how many people have been affected . . . aggrieved customers have brought complaints to the Consumer Financial Protection Bureau.”<sup>14</sup> Moreover, the CFPB has apparently been reviewing Wells Fargo’s procedures for closing accounts since at least the second quarter of 2017. Wells Fargo noted in its quarterly report with the Securities and Exchange Commission (SEC) for the period ending on June 30, 2017 that the CFPB had “commenced an investigation into whether customers were unduly harmed by the Company’s procedures regarding the freezing (and, in many cases, closing) of consumer deposit accounts after the Company detected suspected fraudulent activity (by third-parties or account holders).”<sup>15</sup>

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<sup>11</sup> 15 U.S.C. § 1681s-2.

<sup>12</sup> Consumer Financial Protection Bureau, “Administrative Proceeding 2018” [https://files.consumerfinance.gov/f/documents/cfpb\\_wells-fargo-bank-na-consent-order-2018-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-bank-na-consent-order-2018-04.pdf)

<sup>13</sup> Consumer Financial Protection Bureau, “Administrative Proceeding 2016-CFPB-0015,” September 8, 2016, [https://files.consumerfinance.gov/f/documents/092016\\_cfpb\\_WFBconsentorder.pdf](https://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf).

<sup>14</sup> New York Times, Wells Fargo Closed their Accounts but the Fees Continued to Mount, Emily Flitter August 16, 2019, <https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html>.

<sup>15</sup> Securities and Exchange Commission, Wells Fargo & Company, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2017, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2017/second-quarter-10q.pdf>

Two years later, in its most recent quarterly filing, Wells Fargo continued to reference the investigation as an ongoing legal matter.<sup>16</sup> This investigation was likely part of the CFPB's larger crackdown on furnishers. In a 2016, bulletin, the CFPB expressed concern that "[t]he supervisory experience of the Bureau suggests that some financial institutions are not compliant with their obligations under Regulation V with regard to furnishing to specialty CRAs," like Early Warning Services.<sup>17</sup> As a result, CFPB announced "stepped-up oversight of incoming data from furnishers," in March 2017.<sup>18</sup> The additional context that Wells Fargo was well aware that its handling of account closures was separately being investigated by your agency makes the actions described in the recent news reports all the more disturbing.

Three years after the CFPB took enforcement action related to the fake accounts scandal, new consumer scams keep pouring out of Wells Fargo. I'm deeply concerned not only about the bank's unwillingness to right its ship but also about your agency's inability to keep Wells Fargo from cheating its customers, even while the bank under intense scrutiny --. To help me better understand the CFPB's actions, I ask that you answer the following questions no later than September 13, 2019.

1. When did the Consumer Financial Protection Bureau first learn that Wells Fargo was keeping accounts open for months that customers thought had been closed?
  - a. How many consumer complaints has the agency received related to Wells Fargo's account closing procedures since September 2016?
  - b. How many consumer complaints has the agency received about Wells Fargo since 2016?
  - c. What response did consumers receive to their complaints about Wells Fargo's account closing practices?
2. Please provide the final Compliance Risk Management Plan approved by the Regional Director pursuant to the 2018 Consent Order and the Compliance Plan approved by the Regional Director pursuant to the 2016 Consent Order?
  - a. Has the 2016 Consent Order been terminated?
  - b. Has the 2018 Consent Order been terminated?
  - c. Does the CFPB believe that the allegations, if true, violated the consent orders?

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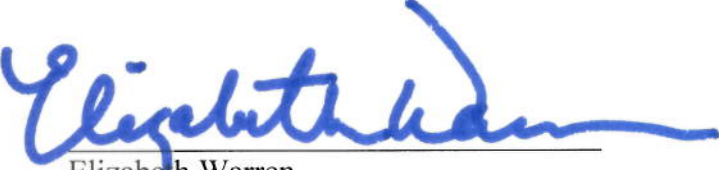
<sup>16</sup> Securities and Exchange Commission, Wells Fargo & Company, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2019, <https://www08.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2019/second-quarter-10q.pdf>

<sup>17</sup> CFPB, "CFPB Compliance Bulletin 2016-01," February 3, 2016, [https://files.consumerfinance.gov/f/201602\\_cfpb\\_supervisory-bulletin-furnisher-accuracy-obligations.pdf](https://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf).

<sup>18</sup> CFPB "Supervisory Highlights Consumer Reporting Special Edition," March 2017, [https://files.consumerfinance.gov/f/documents/201703\\_cfpb\\_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf](https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf).

3. When did the CFPB open the investigation into the freezing and closure of accounts that Wells Fargo refers to in its SEC filings?
  - a. Is the investigation still active? If so, when does the Bureau anticipate releasing its findings to the public?
  - b. What information about the account closure procedures at Wells Fargo has the institution provided?
  - c. Has the CFPB detected any evidence of violation of consumer laws?
4. Does the CFPB believe that the allegations, if true, merit further investigation under the agency's UDAAP authority or for violations of the Fair Credit Reporting Act?
5. Is Early Warning Services a "larger participant" under the Fair Credit Reporting Act, subjecting it to the CFPB's jurisdiction?
  - a. Has the CFPB ever undertaken an examination of Early Warning Services?
  - b. Has the CFPB ever conducted an examination of a bank account screening credit reporting agency?
  - c. What role does the CFPB think bank account screening credit reporting agencies play in denying consumers access to banking services?
6. How often is Wells Fargo typically examined?
7. In its examinations, does the CFPB investigate account closing procedure?

Sincerely,



Elizabeth Warren  
United States Senator