

**BETTER NEIGHBORHOODS, INC.
BROOKLYN COOPERATIVE FEDERAL CREDIT UNION
CHHAYA COMMUNITY DEVELOPMENT CORPORATION
COMMON LAW
EMPIRE JUSTICE CENTER
GROW BROOKLYN
LEGAL SERVICES NYC
LEGAL SERVICES NYC - BRONX
NEDAP
THE PARODNECK FOUNDATION
QUEENS LEGAL SERVICES
SOUTH BROOKLYN LEGAL SERVICES
STATEN ISLAND LEGAL SERVICES
URBAN JUSTICE CENTER, COMMUNITY DEVELOPMENT PROJECT**

c/o NEDAP, 176 Grand Street, Suite 300, New York, NY 10013

By email: ScottJ.Wilson@occ.treas.gov

December 10, 2012

Scott J. Wilson
Examiner in Charge
Office of the Comptroller of the Currency
343 Sansome St., 11th Floor, Suite 1150
San Francisco, CA 94163

Re: Comments regarding CRA Examination of Wells Fargo

Dear Mr. Wilson:

The organizations listed above jointly submit these comments concerning the Office of the Comptroller of the Currency (OCC)'s examination of Wells Fargo, pursuant to the Community Reinvestment Act (CRA) regulations, 12 CFR Part 25. Collectively, our organizations represent a broad spectrum of groups working in low- and moderate-income communities throughout New York State. We see first-hand the harms wrought by Wells Fargo's discriminatory and harmful practices, and call on the OCC to issue the bank a CRA rating of Substantial Noncompliance.

For years, there has been a glaring contradiction – with profound public consequences – between large banks' predatory and wealth-stripping practices and the CRA ratings they receive from their regulators. After all that the country has endured as a result of reckless banking practices, including Wells Fargo's, the OCC must no longer let banks off the hook for their harmful

practices. The CRA states that banks have a continuing and affirmative obligation to serve all communities equitably, including low- and moderate-income communities, within the bounds of safe and sound banking principles. It is now well documented that Wells Fargo has engaged in practices and offered products that systematically *harm* low- and moderate-income people and communities. It would therefore be nothing short of a travesty for the bank to receive a Satisfactory or Outstanding CRA rating, and we call on the OCC to demonstrate that it is publicly accountable in the CRA examination process.

Each week seems to bring new reports of lawsuits and enforcement actions against Wells Fargo for its discriminatory mortgage lending and improper foreclosure and mortgage servicing practices. Meanwhile, Wells Fargo is failing to meet community credit needs in New York, where the bank's mortgage lending to low- and moderate-income communities and people and communities of color indicates patterns of redlining. Indeed, Wells Fargo's reputation among many community groups and the general public has hit an all-time low, with continued revelations of the bank's abusive and deceptive practices, which have had a disparate impact on and devastating implications for people and communities of color.

Wells Fargo has also sought to use its status as a national bank to make "Direct Deposit Advance" (DDA) payday loans, which are illegal under our state's criminal usury cap. The bank reconsidered its plan to introduce bank payday lending in New York, after community and advocacy groups made clear that the product would not be tolerated here. But Wells Fargo continues to violate the consumer protection and anti-payday lending laws of a number of states in which the bank makes its payday loans.

Our groups join with the thousands of organizations and individuals around the country – including Americans for Financial Reform, California Reinvestment Coalition, Center for Responsible Lending, Consumer Federation of America, National Consumer Law Center, National People's Action and its members, Philadelphia Unemployment Project, Philadelphians Allied for a Responsible Economy, Woodstock Institute, and many others – that have commented on the bank's harmful mortgage lending, mortgage servicing and foreclosure practices, and payday lending. These comments present evidence that warrants the OCC's further investigation, supervision, and appropriate enforcement action, and issuance of a failing CRA rating, given the many ways in which Wells Fargo is harming, not serving, communities.

Commenters

The groups listed below collectively represent thousands of New Yorkers and New York communities. The organizations have first-hand knowledge of Wells Fargo's practices, working on the ground with aggrieved individuals and communities. Many of the groups have provided foreclosure prevention services to low- and moderate-income New Yorkers for years, and all of the commenters have significant experience working on CRA-related matters.

- **Better Neighborhoods, Inc.** is a private not-for-profit Homeownership Center located in Schenectady, New York. Core services include housing renovation and new construction, comprehensive housing counseling services, and provision of affordable rental housing.

BNI is a NYS Neighborhood Preservation Company and a HUD Approved Housing Counseling Agency.

- **Brooklyn Cooperative Federal Credit Union (BCFCU)** serves the under-banked Brooklyn communities of Bushwick and Bedford-Stuyvesant. BCFCU offers various products and programs to build credit and empower individuals and households to take control of their finances. Founded in 2001, BCFCU has grown with its community, is among the fastest growing community credit unions in the country, and serves as a national model for how to build a sustainable neighborhood financial institution.
- Based in Jackson Heights, Queens, New York, **Chhaya Community Development Corporation (Chhaya)** – meaning “shelter” or “shade” – is dedicated to creating more stable and sustainable communities by increasing civic participation and addressing the housing and community development needs of New York's South Asians, new immigrants and their neighbors. Its work encompasses tenant rights, financial education, sustainable homeownership, foreclosure prevention, energy efficiency, workforce development, and civic engagement, as well as research and advocacy around community needs.
- **Common Law** provides legal education and legal assistance to homeowners and tenants in New York City. Common Law partners with grassroots housing organizations and associations to ensure that New Yorkers know about and fight for their right to fair and affordable housing.
- **Empire Justice Center** is a non-profit legal services organization in New York with offices in Albany, Rochester, White Plains and on Long Island. Empire Justice provides support and training to legal services offices statewide, undertakes policy research and analysis, and engages in legislative and administrative advocacy. Empire Justice also represents low-income New Yorkers on poverty and consumer law matters.
- **Grow Brooklyn (GB)** is a small nonprofit based in Bushwick, Brooklyn, which provides legal services and financial counseling. Grow Brooklyn's mission is to help stabilize and grow the wealth of its community. Grow Brooklyn offers foreclosure prevention counseling and legal representation for at-risk homeowners; workshops and counseling for first-time homebuyers; and hosts the Volunteer Income Tax Assistance program. Through its affiliation with the Brooklyn Cooperative Federal Credit Union, GB offers its clients credit counseling and small business advising. GB is committed to and actively engaged in community empowerment and legislative advocacy.
- **Legal Services NYC (LSNYC)** is the nation's largest provider of free civil legal services to the poor. For more than 40 years, LSNYC has provided expert legal assistance and advocacy to low-income residents of New York City. LSNYC's foreclosure prevention projects employ more than 50 attorneys and paralegals, who represent distressed homeowners and victims of predatory lending in neighborhoods decimated by

foreclosures, across Brooklyn, Queens, Staten Island, and the Bronx, and it has provided such assistance to more than 6,000 families to date.

- **Legal Services NYC – Bronx** is the largest provider of free civil legal services in the Bronx, and the largest Legal Services office in NYC. The office assists more than 10,000 Bronx residents each year in areas including government benefits advocacy, employment, tax, housing, foreclosure prevention, elder, consumer, immigration, and family and education law. Legal Services NYC – Bronx advances its mission by representing Bronx residents in court on critical issues that affect their lives, and conducts "Know Your Rights" trainings with advocates and community members.
- **NEDAP** is a resource and advocacy center based in New York City. Founded in 1995, NEDAP works with community groups and low-income New Yorkers to promote community economic justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty.
- **The Parodneck Foundation for Self-Help Housing & Community Development, Inc.**, is a not-for-profit housing organization that provides financial and technical assistance to self-help housing groups and to homeowners in distress throughout New York City. Our CATCH affiliate has been a leading citywide not-for-profit sponsor, developer and operator of low- and moderate-income housing since its inception in 1991. Parodneck also oversees The Senior Citizen Homeowner Assistance Program, which since its inception in 1986 has provided more than \$16 million in loans to more than 1,000 borrowers. In 2011, Parodneck's Foreclosure Prevention Program assisted 448 distressed homeowners throughout NYC.
- Founded in 1967, **Queens Legal Services (QLS)** seeks equal justice for all Queens residents. QLS provides free legal counseling and representation in civil matters, including foreclosure defense, and works with our clients and community partners to identify and address root causes for systemic inequality, such as predatory lending and housing discrimination. Since beginning the Homeowner & Consumer Rights Project in 2009, QLS has provided direct legal services to more than 1,000 homeowners.
- Founded in 1998, **South Brooklyn Legal Services' Foreclosure Prevention Project (SBLS)** was the first project of its kind in New York City, and combines litigation, outreach, education and advocacy to combat predatory lending and prevent foreclosures. Since the project's inception, SBLS has provided counsel and advice, referral services, or legal representation to several thousand homeowners in all five New York City boroughs. The project also serves as a resource center for attorneys and advocates around the state. SBLS has detailed knowledge of the array of abusive lending and servicing practices in New York, and the devastating effects these practices have had on low- and moderate-income communities of color.

- **Staten Island Legal Services (SILS)** opened its doors in 2004. Since then, SILS has helped more than 4,000 Staten Island residents address critical civil legal matters in a variety of areas, including foreclosure prevention, family law and immigration.
- **Urban Justice Center's Community Development Project (CDP)** strengthens the impact of grassroots organizations in New York City's low-income and other excluded communities. CDP partners with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice.

Wells Fargo's Mortgage Lending Raises Fair Lending Flags

The OCC should assign Wells Fargo a Substantial Noncompliance CRA rating based on Wells Fargo's persistent pattern of discriminatory lending, and enforce fair lending laws to ensure that the bank no longer engages in redlining. Wells Fargo recently entered into a \$175 million settlement with the U.S. Department of Justice (DOJ), and settled with the municipalities of Baltimore, Maryland and Memphis, Tennessee to compensate mortgage borrowers whom Wells Fargo illegally steered into subprime home loans, or charged higher rates or fees, on the basis of borrowers' race or national origin.

According to Home Mortgage Disclosure Act (HMDA) data Wells Fargo reported for 2011, the bank's mortgage lending in New York indicates that Wells Fargo is failing to comply with both the spirit and letter of the CRA. The data, summarized below, warrants further investigation by the OCC and DOJ, as the findings also raise serious concerns about Wells Fargo's compliance with fair lending and fair housing laws. In New York City:

- Although 43.3% of New York City census tracts are low- or moderate-income, Wells Fargo made only 13% of its home purchase and refinance mortgages to borrowers in low- and moderate-income neighborhoods.
- Wells Fargo made high-cost mortgages to borrowers in communities of color ten times more frequently than to borrowers in white communities.¹
- Wells Fargo made high-cost mortgages to borrowers in low-income neighborhoods more than three times more frequently than to borrowers in upper-income neighborhoods.
- The breakdown of Wells Fargo's applications received raises serious fair lending flags about the banks' marketing practices:

¹“Communities of color” are defined as census tracts in which 80% or more of residents are non-white. “White communities” are defined as census tracts in which 90% or more of residents are white.

- Wells Fargo received only 16% of its home purchase and refinance loan applications from low- and moderate-income (LMI) neighborhoods, even though 43.3% of the city's census tracts are LMI.
- Wells Fargo received 55% of its home purchase and refinance loan applications from white New Yorkers, even though 33% of the city's population is white.
- Wells Fargo denied loan applications from New Yorkers seeking to purchase or refinance homes in communities of color almost twice as often as it denied loan applications from white communities.
- Although two-thirds (65%) of New Yorkers live in predominantly non-white neighborhoods, Wells Fargo made only 27% of its mortgages in predominantly non-white neighborhoods.

According to HMDA data for the past three years, Wells Fargo has been the second largest mortgage lender in the Rochester, New York Metropolitan Statistical Area. Since Wells Fargo does not include Rochester in its CRA assessment area, however, the bank has no CRA obligation to serve low- and moderate-income neighborhoods in Rochester. According to HMDA data Wells Fargo reported in 2010, the bank is not serving low- and moderate-income communities equitably. For example, Wells Fargo denied prime refinance loan applications more than three times more often in low-income communities in Rochester than in the city's upper-income communities. Wells Fargo denied black applicants for prime home purchase loans three times more often than white applicants.

Wells Fargo's Foreclosure Practices Harm New Yorkers

The OCC should assign Wells Fargo a Substantial Noncompliance CRA rating based on Wells Fargo's egregious foreclosure practices, which have become notorious across the country. In 2011, the OCC and the Federal Reserve Board of Governors brought an enforcement action against Wells Fargo regarding widespread problems with its mortgage servicing and foreclosure practices, which resulted in a consent decree with Wells Fargo. In 2012, 49 state Attorneys General and the DOJ investigated Wells Fargo for its improper mortgage servicing and foreclosure practices, leading to the \$25 billion national mortgage settlement with Wells Fargo and other banks. Under the national mortgage settlement, Wells Fargo is required to provide mortgage relief, including loan modifications with principal reduction, to homeowners across the country.

Unlike the other large banks that are party to the national mortgage settlement, Wells Fargo has indicated that it will not provide principal reduction modifications to homeowners whose loans are held in securitization trusts. This policy disproportionately denies principal reduction relief to black and Latino homeowners and homeowners in communities of color – *whom Wells Fargo for years targeted for subprime loans* – as a clear majority of subprime loans made from 2002 through 2006 are held in private-label securitization trusts.

As described in the case examples below, Wells Fargo has persisted in abusive and discriminatory servicing and foreclosure practices, notwithstanding the various settlements, continuing to harm thousands of New Yorkers and having a disparate impact on people and communities of color. Foreclosure prevention advocates from across New York report that struggling homeowners seeking modifications from Wells Fargo routinely find the bank in violation of state and federal laws, regulations, and guidance. They report that homeowners struggling with loans made, owned, or serviced by Wells Fargo face needless delays and get non-stop runaround from Wells Fargo. One New York City-based group reports that homeowners in foreclosure with loans serviced by Wells Fargo wait an average of 401 days before reaching a resolution with the bank.

Case Examples

As the following case examples illustrate, Wells Fargo has misled homeowners and obstructed loan modifications, frequently dragging people through years of unfair treatment. The case examples depict experiences that people all too commonly have with Wells Fargo, and represent just the tip of the iceberg. Our groups would be happy to provide the OCC with many more examples.

- **Wells Fargo fails to offer affordable loan modifications and engages in abusive foreclosure practices.** Mr. W, a Queens homeowner, has for years sought to negotiate a reasonable loan modification with Wells Fargo, which owns his mortgage loan. Wells Fargo has not only failed to enter into an affordable loan modification with him on a loan that was deceptively made at the outset, but also has engaged in abusive foreclosure practices. Watch Mr. W speak about his experiences with Wells Fargo at <https://www.youtube.com/watch?v=p9gQ96r-Qrg&feature=youtu.be>
- **Wells Fargo unfairly delays and obstructs loan modifications.** Wells Fargo's subsidiary, America's Servicing Company (ASC), told Mr. P, a Brooklyn homeowner in foreclosure, that each of the four payment plans he successfully completed would result in a permanent, affordable loan modification. The bank, however, has reneged on each deal and is now offering Mr. P an unaffordable loan modification. After four years of applications and his successful completion of four payment plans, Mr. P is still fighting for a permanent and affordable modification.
- **Wells Fargo fails to offer reasonable relief on second mortgages, denying homeowners permanent HAMP modifications on first mortgages.** Mr. D, an immigrant and Brooklyn homeowner, has two mortgages serviced by Wells Fargo/ASC. In 2008, Mr. D fell behind on both of his mortgages after his interest rate increased. After denying Mr. D's multiple modification applications, Wells Fargo/ASC granted Mr. D a HAMP trial modification on his first mortgage. But the bank charged off his second mortgage instead of offering a settlement or loan modification. Although Mr. D fulfilled his obligations under the trial modification, Wells Fargo/ASC has refused to permanently modify his loan because the second mortgage is in default. Mr. D has offered to pay Wells Fargo a settlement to satisfy his second mortgage, but Wells Fargo has both

refused to consider a reasonable settlement and failed to offer other options, such as a second mortgage modification or subordination, that would allow Mr. D's HAMP modification to become permanent.

- **Wells Fargo stalls loan modification applications and delays making modifications permanent.** Wells Fargo required Mr. A and Ms. B, who are siblings, to submit eight complete loan modification packages to the bank, over a one-year period, before it finally provided them with a Home Affordable Modification Program (HAMP) trial loan modification. Despite Mr. A and Ms. B's successful completion of the trial plan and their persistent efforts to contact the bank, Wells Fargo has yet to make their loan modification permanent. In fact, Wells Fargo has failed to return repeated calls from Mr. A and Ms. B's legal services advocate, who was directed to a sixth assigned point of contact at Wells Fargo to find out the status of the loan modification.
- **Wells Fargo has failed to offer affordable proprietary loan modifications, even when the bank's own error caused the mortgage default.** Ms. H lives with and cares for her elderly, disabled mother, in a home that has been fitted to accommodate the mother's disability. Wells Fargo made an escrow error on her loan, which ultimately led to the bank's refusal to accept her payments. To bring her mortgage current, Ms. H has submitted 13 complete loan modification applications to Wells Fargo over the course of two years. Wells Fargo, however, refuses to offer her a reasonable modification, causing fees and arrears to continue to accrue. Wells Fargo has repeatedly denied Ms. H a HAMP modification, allegedly because of investor restrictions. Instead, the bank has offered her a proprietary modification, which would require a substantial down-payment that Ms. H has no means of paying. The bank has offered to let Ms. H sell her home in a short sale, but refuses to negotiate an affordable loan modification that would allow Ms. H and her mother to remain in their home.
- **Wells Fargo violates federal HAMP directives by refusing to make trial loan modifications permanent.** Mr. and Mrs. A are immigrants who live in Queens, New York. When they purchased their home, their lender misled them about vital terms of the mortgage. They fell behind on their payments to Wells Fargo after their adjustable rate mortgage reset years earlier than the lender had led them to expect. Mr. and Mrs. A therefore applied for a HAMP modification from Wells Fargo's subsidiary, ASC, and in late 2009 received a HAMP trial modification. Mr. and Mrs. A made seven months of payments through May 2010, but instead of making the modification permanent, as HAMP directives require, Wells Fargo/ASC rejected Mr. and Mrs. A's eighth payment – without explanation. In further violation of HAMP, Wells Fargo/ASC initiated a foreclosure action against the As in May 2011.

To date, Wells Fargo/ASC has failed to reevaluate Mr. and Mrs. A for a HAMP modification, despite their and their legal services advocate's repeated requests for modification assistance. Neither Wells Fargo/ASC's single point of contact, nor her supervisor, returns phone calls, emails, or written correspondence in a timely manner. As

a result of Wells Fargo/ASC's inaction, their documents are growing stale, Mr. and Mrs. A continue to face foreclosure, and the bank is violating HAMP directives.

- **Wells Fargo refuses to follow HAMP guidelines for divorced homeowners.** Wells Fargo offered Ms. B a HAMP modification offer, but insisted that both she and her ex-husband sign the paperwork, even though she was awarded the property in their divorce and in contravention of HAMP guidelines. Fortunately, in Ms. B's case, her ex-husband was willing to sign the documents, but many estranged spouses are unwilling or unavailable to sign mortgage paperwork related to houses they no longer own. Wells Fargo is unfairly blocking divorced people from desperately-needed modifications, based on its wholly unreasonable policies.
- **Wells Fargo misleads homeowners in order to continue profiting from abusive force placed insurance.** Ms. D, a Staten Island homeowner in foreclosure, recently tried to replace her force placed hazard insurance policy with a voluntary policy to lower her monthly mortgage payments and increase her eligibility for a HAMP modification. During court-mandated foreclosure mediation, Wells Fargo, which services her loan, misleadingly told her that she was not permitted to replace the policy while in default. The statement was flatly incorrect and misleading because homeowners in fact have the right to replace force placed coverage with a voluntary policy at any time. Wells Fargo has every incentive to mislead homeowners, given industry kickbacks and conflicts of interest associated with force placed insurance, and the OCC should investigate Wells Fargo's practices in this area.

Wells Fargo's Payday Lending

The OCC should assign Wells Fargo a Substantial Noncompliance CRA rating based on Wells Fargo's harmful "Direct Deposit Advance" (DDA) lending. Wells Fargo's DDA product has the same dangerous and troubling features as storefront payday loans, including triple- and even quadruple-digit annual percentage rates, and a very short-term balloon payment tied to the receipt of a wage or benefit check. Like storefront payday lenders, Wells Fargo does not underwrite its payday loans based on borrowers' ability to repay, trapping lower income borrowers in a cycle of indebtedness when they inevitably must borrow another payday loan to repay the original loan and still cover essentials such as food and housing.

Wells Fargo's DDA payday loans are not only patently abusive, but also violate state laws. Under New York's 25% criminal usury cap, the state has long banned the making of payday loans and other usurious short-term loans. In 2011, Wells Fargo became the first national bank to attempt to introduce a direct deposit advance/payday loan product in our state. New Yorkers, including the commenting organizations, were outraged that Wells Fargo would use its national bank charter to circumvent the state's usury protections, and Wells Fargo eventually agreed to postpone the introduction of the product in New York. Wells Fargo indicated that it would introduce a different usurious loan product in New York, but has yet to do so. Although Wells Fargo has to date refrained from making payday loans in New York, the bank makes payday

loans in five other states that have, through usury caps, for example, banned store-front payday lending.²

CONCLUSION

For the reasons set forth above, the OCC should closely examine Wells Fargo's harmful practices and issue a CRA rating of Substantial Noncompliance. The OCC should not reward the bank with a Satisfactory or better rating, given its record of redlining, abusive mortgage servicing, payday lending and other practices antithetical to the spirit and letter of the CRA.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact Alexis Iwanisziw or Sarah Ludwig at NEDAP (212-680-5100) to reach any of the commenters, or if you have questions or would like more information.

Sincerely,

Better Neighborhoods, Inc.
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Queens Legal Services
South Brooklyn Legal Services
Staten Island Legal Services
Urban Justice Center, Community Development Project

² <http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf> and https://www.wellsfargo.com/help/faqs/dda_faqs