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September 30, 2020

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Chairman Powell:

I write to bring to your attention to new and previously unreleased information that I have obtained regarding recent reports that Wells Fargo placed non-delinquent mortgage borrowers into forbearance without their consent, potentially putting them at risk of greater financial hardship during the coronavirus disease 2019 (COVID-19) pandemic. Early reports on this matter identified cases involving "borrowers whose payments are monitored by bankruptcy courts."[1] But additional information that I have obtained from Wells Fargo reveals the extent to which Wells involuntarily placing borrowers into forbearance was a systemic practice at the institution and a direct result of the company's failure to have the appropriate internal controls in place. The Federal Reserve Board of Governors (Fed) placed Wells Fargo under a growth restriction in February 2018 as a result of its massive and ongoing corporate governance failures.[2] This recent incident is another stark reminder that Wells Fargo has not yet implemented the types of structural reforms needed, and that much additional progress is necessary before the Fed begins to consider permanently lifting the asset cap.

The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) provided important protections for homeowners with federally-backed mortgages, including an option for mortgage borrowers financially affected by COVID-19 to request forbearance for up to180 days with the ability to request an extension for another 180 days.[3] Wells Fargo provides this option to their federally-backed mortgage customers as required by law and has extended the same offer voluntarily to its portfolio customers.[4]

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[1] NBC News, "Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him," Gretchen Morgenson, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-hasalways-made-sure-pay-his-mortgage-time-n1233635.
[2] Board of Governors of the Federal Reserve System, "Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end," press release, February 2, 2018, https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm.
[3] CARES Act, Sec. 4023, https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.
[4] Wells Fargo, "Answers to frequently asked Mortgage and Home Equity questions," accessed on September 8, 2020, https://update.wf.com/coronavirus/home-lending/.

However, reports emerged in July that Wells Fargo placed borrowers in at least 14 states into forbearance without their knowledge or consent, many of whom were not delinquent on their mortgages, and that some borrowers were extremely upset about and suffered financial harm from this action.[5] Following these reports, I sent a letter to Wells Fargo requesting additional information about the bank's policies regarding when and how borrowers are entered into forbearance, how many of its customers were entered into forbearance without their consent, and how it planned to address and resolve these complaints.[6] In its response, Wells Fargo admitted to entering certain customers into forbearance without their consent, identifying four categories of customers who received such forbearances: [7]

- "In early March, Wells Fargo began providing forbearances to customers in active bankruptcy proceedings if we identified a court filing indicating that the customer may have been suffering a COVID-19-related hardship."
- "From late March until early April, we automatically provided forbearances to customers who sent a secure email or contacted us by phone regarding a COVID-19-related hardship, as well as to customers who requested a fee waiver, even when the customers' communications did not specifically request a forbearance."
- "In late March, Wells Fargo also granted forbearances to eligible Home Preservation customers (including some customers in active bankruptcy proceedings) who at the time: (i) were in the loan modification application process; or (ii) had been denied a forbearance before the pandemic."; and
- "Finally, in late March and early April, when a customer requested forbearance on one of the customer's mortgage or home equity accounts, we extended the forbearance to that customer's mortgage-linked accounts."

Wells Fargo was unable or unwilling to tell me how many total consumers were placed into forbearance without their consent, and troublingly, indicated in phone calls with my staff that they had yet to fully identify and resolve the cases of all customers that had been placed into forbearance without their explicit consent. They did inform my office that by August 12, 2020, they had "received and reviewed approximately 1,600 complaints from customers telling [the bank] that they did not request a forbearance."[8] An internal review showed that at least 904 accounts held by customers in active bankruptcy proceedings were placed into forbearance without an affirmative request, "to whom [it] provided forbearance relief that was not affirmatively requested by the customer,"[9] a fifth of which were current on their mortgage

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[5] NBC News, "More Wells Fargo customers say the bank decided to pause their mortgage payments without asking," Gretchen Morgenson, July 22, 2020, https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610.
[6] Letter from Senators Warren and Brian Schatz to Mr. Charles Scharf, CEO of Wells Fargo, July 29, 2020, https://www.warren.senate.gov/newsroom/press-releases/warren-schatz-to-wells-fargo-new-reports-show-mistreatment-of-customers-during-pandemic-induced-financial-crisis-highlighting-broken-culture-at-the-bank.
[7] Letter from Wells Fargo to Senators Elizabeth Warren and Brian Schatz, August 12, 2020, [on file with the Office of Senator Elizabeth Warren].
[8] Letter from Wells Fargo to Senators Elizabeth Warren and Brian Schatz, August 12, 2020, [on file with the Office of Senator Elizabeth Warren].
[9] Letter from Wells Fargo to Senators Elizabeth Warren and Brian Schatz, September 4, 2020 [on file with the Office of Senator Elizabeth Warren].

payments, and that, as of early September, 344 of the 904 – 38% - had confirmed that they did not want the forbearance assistance.[10] It does not appear that Wells Fargo took any measures to address its actions with the bankruptcy courts, creating problems for the customers' bankruptcy cases.

To be sure, it is crucial that homeowners facing economic hardship during the COVID-19 pandemic are able to easily take advantage of the forbearance protections included in the CARES Act. In some cases, such as when borrowers are already delinquent, putting homeowners into a forbearance rather than proceeding with steps toward foreclosure is the appropriate step.

However, the systemic practice of indiscriminately entering borrowers into forbearance without their consent and without regard for the individual financial needs of the borrower can have the opposite effect and further harm their finances.

- The borrowers most at risk by being placed into forbearance without their approval or awareness are customers in active Chapter 13 bankruptcy cases. A forbearance without other proper actions could interfere with the bankruptcy plan, potentially causing someone's Chapter 13 case to fail along with other consequences.[11]
- For borrowers who were current on their mortgage when placed into forbearance, having a forbearance could prevent them from being able to refinance their mortgage to take advantage of today's extremely low interested rates.[12] Additionally, depending on how Wells Fargo handled payments made during this forbearance, they could end up with unexpected arrearages or fees.[13]
- Wells Fargo, in its internal scripts for consumers calls (which they provided to my office upon request), also indicated that although the forbearance would not affect FICO scores, it could affect scores calculated by credit bureaus such as Equifax and Transunion, which could in turn, potentially affect consumers' access to credit. According to one script that Wells Fargo provided to its employees with answers for consumers in forbearance:[14] (emphasis added)

> Your FICO score will not be impacted, and … this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most

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[10] Letter from Wells Fargo to Senators Elizabeth Warren and Brian Schatz, September 4, 2020 [on file with the Office of Senator Elizabeth Warren].
[11] NBC News, "Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him," Gretchen Morgenson, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-hasalways-made-sure-pay-his-mortgage-time-n1233635.
[12] *Id*.
[13] Interestingly, while most servicers use the term "forbearance" to describe the pause in mortgage payments mandated by the CARES Act, Wells Fargo refers to it as "payment suspension." It is not clear whether that name implies that borrowers in forbearance who tried to pay their mortgage would not have those payments applied to their account, but would instead have them held in a suspense account. If that were true, that would be another highly problematic practice.
[14] Wells Fargo, "Procedures: Default Collection and Customer Contact: Handling Calls for COVID-19 Impacted Customers – DCCOL97180, Forbearance and Credit Bureau Talking Points," WF-000000036, 2020.

> lending companies. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this; however, we do know generally, those are not used for underwriting of credit. If you apply for credit while on a forbearance plan the lender will see the "account in forbearance" on your credit report. That may impact your ability to qualify for new credit or refinance.

Wells Fargo described extensive efforts to contact customers who had been placed into forbearance without their consent, but still indicated that they were not able to contact or obtain clarity on whether consumers wanted forbearance for over 20% of the affected consumers in bankruptcy proceedings.[15] The company also promised that "[w]e remain committed to make things right for any customer who tells us that he or she received an unwanted or unneeded forbearance. We will remove a forbearance if requested by the customer, adjust credit reporting, allow for immediate refinancing, and reinstate lines of credit for eligible customers who received a forbearance that was not utilized. We will work to make whole any customer who received an unwanted forbearance."[16] But it is not clear how Wells Fargo will remediate any potential damage done to these customers prior to the time the company identified them as being placed into forbearance without their consent, or whether they will ever be able to identify all affected consumers. It is also unclear whether proper remediation with the bankruptcy courts is part of this process.

These actions related to forbearances are in line with Wells Fargo's long history of illegal and inappropriate treatment of customers. Over the last several years, Wells Fargo has been charged with unlawfully repossessing vehicles belonging to active-duty servicemembers, wrongfully foreclosing on homeowners seeking assistance, illegally charging customers for add-on products, creating millions of fake customer accounts – and much, much, more. [17]

In 2018, as a result of "widespread consumer abuses and compliance breakdowns by Wells Fargo," the Fed restricted the bank's growth "until it sufficiently improves its governance and controls."[18] Wells Fargo's mistreatment of customers in the early days of the COVID-19

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[15] Letter from Wells Fargo to Senators Elizabeth Warren and Brian Schatz, September 4, 2020 [on file with the Office of Senator Elizabeth Warren].

[16] Letter from Wells Fargo to Senators Elizabeth Warren and Brian Schatz, September 4, 2020 [on file with the Office of Senator Elizabeth Warren].

[17] Reuters, "Wells Fargo repays $5.4 million for repossessing service members' cars," Jonathan Stempel, November 14, 2017, https://www.reuters.com/article/us-wellsfargo-justice/wells-fargo-repays-5-4-million-for-repossessing-service-members-cars-idUSKBN1DE32X; Washington Post, "Wells Fargo admits it incorrectly foreclosed on 545 homeowners it should have helped," Renae Merle, November 6, 2018, https://www.washingtonpost.com/business/2018/11/06/wells-fargo-admits-it-incorrectly-foreclosed-homeowners-it-should-have-helped/; Wall Street Journal, "Wells Fargo's Latest Challenge: Refunds for Pet Insurance, Legal Services," Emily Glazer, July 19, 2018, https://www.wsj.com/articles/wells-fargos-latest-challenge-refunds-for-pet-insurance-legal-services-1532009933; Washington Post, "Wells Fargo reaches $3 billion settlement with DOJ, SEC over fake-accounts scandal," Renae Merle, February 21, 2020, https://www.washingtonpost.com/business/2020/02/21/wells-fargo-fake-accounts-settlement/.

[18] Board of Governors of the Federal Reserve System, "Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end," press release, February 2, 2018, https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm.

pandemic provides more evidence that Wells Fargo remains broken. I have included for your review documents that Wells Fargo provided to my office regarding this matter, and ask that the Fed consider this latest example of Wells Fargo's inability to implement adequate internal controls and risk and compliance management practices as you monitor and review the status of the growth restriction you have placed on the bank.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator