November 14, 2018

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Board of Governors,

The undersigned organizations represent and advocate for homeowners and former homeowners impacted by the foreclosure crisis. We write to urge the Board to maintain the Wells Fargo growth cap until significant remediation and other measures are implemented to prevent compliance breakdowns and Wells Fargo has sufficiently improved its governance and controls to prevent the pervasive and persistent misconduct that caused harm to homeowners and other consumers and that led to this restriction.

We know far too many homeowners who were harmed by banks and mortgage companies who mishandled their loan files during the modification process. Some homeowners suffered the ultimate harm of losing their homes to foreclosure. Others were eventually able to modify their mortgage, but only after many months or years of delay and additional damage to their credit and home equity while they repeatedly submitted the same documents and contested improper modification denials.

In February 2018, as a response to widespread consumer abuses and compliance failures, the Federal Reserve issued a cease and desist consent order prohibiting Wells Fargo's growth until there is sufficient improvement in Wells Fargo's governance, risk management, oversight, and business practices.

Only a few months after entering into this consent order, in August 2018, Wells Fargo revealed that a problem with its computer system caused them to improperly deny HAMP modifications to 625 qualified homeowners, and that as a result of Wells Fargo's wrongful modification denials, approximately 400 of the 625 homeowners who could have modified their mortgages eventually lost their home to foreclosure instead. In a new disclosure filed in November 2018, Wells Fargo revealed that even more homeowners were affected by this computer problem than initially reported. The updated numbers in the November disclosure reveal that 870 homeowners were improperly denied modifications, and that 545 of the 870 homeowners lost their home to foreclosure. Wells Fargo has not yet disclosed whether the remaining homeowners also lost homes as a result of a short sale or deed-in-lieu of foreclosure, or whether they are struggling to keep up with payments on less favorable proprietary loan modifications.

In this letter we are focused on the details of what adequate remediation and compensation, and steps to prevent future problems, would look like for homeowners affected by this particular failure at Wells; we urge you to maintain the growth cap until Wells has made these homeowners whole **and** addressed the grave problems across its businesses. The affected homeowners are only some of the many victims that have been harmed by Wells Fargo's widespread consumer abuses, and the Federal Reserve should not lift the growth cap unless and until Wells Fargo demonstrates that it has compensated the affected homeowners, taken the steps necessary to prevent such problems in the future, and implemented comprehensive reforms to prevent all consumer abuses going forward, including remedying predatory incentive structures and strengthening mechanisms for workers to prevent abuses..

With regard to these improper modification denials, Wells Fargo should take the following remedial steps to rectify the harm caused to the affected homeowners:

Homeowners should be made whole. Every homeowner who has suffered harm must be made whole in accordance with the level of harm they experienced. Homeowners who lost their homes should be compensated with an amount sufficient to allow them to purchase another similar property in a similar neighborhood at today's prices. Deficiency judgments should be waived and compensation should not be applied toward deficiency. All compensation should go directly to the homeowner.

More expensive modifications should be adjusted. Homeowners who were ultimately able to remain in their home through a more expensive modification should be compensated in an amount that covers the difference between the modifications they have now and the modification they should have received.

No amount of Wells Fargo's compensation to homeowners is taxable. Wells Fargo should not issue a 1099 to the compensated borrowers. The IRS has repeatedly ruled that the financial settlements for such wrongdoing, such as servicing errors, wrongful foreclosures, and refusals to issue loan modifications are exempt from taxation under the general welfare doctrine and that the payments to homeowners are not subject to information reporting requirements under IRC § 6041. Further, payments to homeowners made in lieu of amounts they would have received from the sale of their home had the wrongful foreclosure not occurred are excludable under I.R.C. § 121 as gain on the sale of a primary residence. The totality of the circumstances shows that the payments here are to compensate the homeowners for financial harm from the wrongful foreclosures of their primary residence. Under established IRS guidelines, the payments are excluded from the taxable income of the homeowners and the financial institutions have no information reporting requirements.

Negative credit reporting must be corrected. All affected homeowners have suffered damage to their credit as a result of Wells Fargo's improper modification denials. Homeowners who lost their homes now have an improper foreclosure and other negative information on their credit report resulting from the denial. Wells Fargo must correct the credit reporting for these mortgages for all homeowners by removing foreclosure notations and other post-denial negative reporting so that the homeowners are not penalized any further for Wells Fargo's mistake and are able to access the credit they would otherwise have qualified for without Wells Fargo's wrongful interference.

No waiver of legal rights should be allowed. Homeowners should not have to waive their legal rights as a requirement to receive due compensation for the harm these homeowners have suffered.

The Federal Reserve should require full transparency on Wells Fargo’s remediation process for this issue, including how they identified the affected homeowners, how much each received in compensation and how Wells reached those figures, how they conducted outreach to get in contact with the affected homeowners, and the steps they took to ensure that the credit reporting was repaired. Moreover, information should be made available regarding the delay in discovering the problem as well as the marked delay in disclosing the issue once it was discovered.

Beyond addressing the harms caused to the individual homeowners affected by this particular computer problem, the Federal Reserve should also require Wells Fargo to promptly report all systemic issues with its modification process and implement policies and procedures that safeguard future homeowners from this harm. To that end, Wells Fargo should be required to conduct an audit of its modification review processes and report all systemic problems and vulnerabilities, and to develop a plan to address them to prevent problems going forward. This audit should include a Fair Lending analysis to determine if this systemic error had a disproportionate effect on borrowers of color.

We ask that the Federal Reserve maintain its restrictions on Wells Fargo’s growth until Wells Fargo has taken these steps and made other necessary reforms to demonstrate that its directors are adopting and implementing more responsible practices and making amends with the people harmed by their previous practices.

Thank you for your consideration. We look forward to working with you on this matter.

Sincerely,

Americans for Financial Reform
American Family Voices
California Reinvestment Coalition
Center for Global Policy Solutions
Communications Workers of America (CWA)
Community Legal Services of Philadelphia
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Empire Justice Center
Franciscan Action Network
Housing and Economic Rights Advocates
Law Office of David Rogers
Long Island Housing Services, Inc.
MHANY Management Inc.
Mobilization for Justice Inc.
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Law Project

New Jersey Citizen Action
Philadelphia Unemployment Project
Public Citizen
Strong Economy For All Coalition
Take On Wall Street
Tennessee Citizen Action
The Center for Popular Democracy's Fed Up Coalition
U.S. PIRG