

**UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING**

**File No. 2016-CFPB-0013**

**In the Matter of:**

**Wells Fargo Bank, N.A.**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed certain student loan servicing practices of Wells Fargo Bank, N.A. (Respondent, as defined below) and has identified the following law violations: (1) unfair and deceptive practices related to payment allocation in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536; (2) unfair practices related to payment aggregation in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536; (3) unlawful practices related to payment aggregation in violation of Section 623 of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681s-2(a)(2), and Section 1022.42 of Regulation V, 12 C.F.R. 1022.42(a); and (4) unfair practices related to the assessment of late fees in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536. Under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

## **I**

### **Jurisdiction**

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, and under Section 621 of the FCRA, 15 U.S.C. § 1681s(b)(1)(H).

## **II**

### **Stipulation**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated August 18, 2016 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

## **III**

### **Definitions**

3. The following definitions apply to this Consent Order:
  - a. “Affected Consumers” means, collectively, the Grace Period Affected Consumers, Payment Aggregation Affected Consumers, and Payment Allocation Affected Consumers as defined herein.
  - b. “Board” means the duly-elected and acting Board of Directors of Wells Fargo Bank, N.A.
  - c. “Clearly and prominently” means:

- i. In textual communications (e.g., printed publications or words displayed on the screen of an electronic device), the disclosure must be of a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background on which it appears;
  - ii. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
  - iii. In communications disseminated through video means (e.g., television or streaming video), the disclosure must be in writing in a form consistent with subsection (i), and must appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it;
  - iv. In communications made through interactive media such as the internet, online services, and software, the disclosure must be unavoidable and presented in a form consistent with subsection (i);
  - v. In communications that contain both audio and visual portions, the disclosure must be presented simultaneously in both the audio and visual portions of the communication; and
  - vi. In all instances, the disclosure must be presented before the consumer incurs any financial obligation, in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.
- d. “EFS” means the Respondent’s Education Financial Services line of business.
  - e. “Effective Date” means the date on which the Consent Order is issued.

- f. “Eligible Payment” means a payment on a student loan account that is sufficient to satisfy the scheduled payment amount due for a billing cycle.
- g. “Grace Period” means the allotted time period following the monthly payment due date, as defined under the terms of the loan’s promissory note, during which a consumer who is past due on the loan will not incur a late fee if the consumer pays the past due amount within that allotted time period.
- h. “Grouped Account” means a student loan account serviced by Respondent containing two or more student loans with the same monthly due date in repayment status, for which the consumer receives a single billing statement.
- i. “Grace Period Affected Consumers” means any consumer who incurred a late fee that was not refunded or waived on a student loan despite making a payment sufficient to bring the account current within the Grace Period at any time between January 1, 2010 and May 31, 2013.
- j. “Overpayment” means a payment towards a student loan account that is more than the total amount due for that billing cycle, except when such payment is an exact multiple of the consumer’s regular monthly payment amount.
- k. “Partial Payment” means a payment towards a student loan account that is less than the scheduled payment amount due for that billing cycle.
- l. “Payment Aggregation Affected Consumers” means any consumer who between February 17, 2010 and December 11, 2011 incurred a late fee that was never refunded or waived and/or for whom Respondent furnished credit information to consumer reporting agencies that was never corrected or updated despite either: (i) making multiple Partial Payments within a single billing cycle that, when or if combined, constituted or would have constituted an Eligible Payment for the consumer’s

student loan account; or (ii) making Overpayments and Partial Payments over multiple billing cycles that, when combined, constituted an Eligible Payment for the consumer's student loan account.

- m. "Payment Allocation Affected Consumers" means any consumer with a Grouped Account who at any time between January 1, 2010 and August 31, 2012, (i) made one or more Partial Payments toward the Grouped Account; (ii) whose payment(s) was sufficient to constitute an Eligible Payment, inclusive of any amount in arrears, for at least one loan in the Grouped Account; (iii) did not designate how such Partial Payments should be allocated among the loans in the Grouped Account; and (iv) was charged more than one late fee.
- n. "Regional Director" means the Regional Director for the West Region for the Office of Supervision for the Consumer Financial Protection Bureau, or his/her delegate.
- o. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- p. "Respondent" means Wells Fargo Bank, N.A., and its successors and assigns.
- q. "Service Provider" shall have the meaning set forth in 12 U.S.C. § 5481(26).
- r. "Student Loan File" means (i) a schedule of all transactions credited or debited to the student loan account; (ii) a copy of the consumer credit agreement evidencing the student loan; (iii) any notes created by Respondent personnel reflecting communications with the borrower about the servicing of the student loan account; (iv) copies of all written communications with the borrower about the servicing of

the student loan account; and (v) the data fields in Respondent's electronic student loan servicing system relating to the borrower's student loan accounts.

## IV

### **Bureau Findings and Conclusions**

The Bureau finds the following:

4. Respondent, which is a national bank headquartered in Sioux Falls, South Dakota, is an insured depository institution with assets greater than \$10,000,000 within the meaning of 12 U.S.C. § 5515(a).
5. Respondent is the second-largest private student lender in the United States. EFS is a division of Respondent that bears responsibility for Respondent's student lending operations. Currently serving approximately 1.3 million consumers in all 50 states, EFS both originates and services private student loans.
6. Respondent is a "covered person" as that term is defined by 12 U.S.C. § 5481(6).

#### **Findings and Conclusions as to Respondent's Payment Allocation Practices**

7. Prior to 1999, Respondent required consumers to send each payment toward their private student loans with a separate payment coupon for each loan. In 1999, however, to consolidate the monthly billing process, Respondent began generally grouping together consumers' student loans serviced on one of its proprietary servicing platforms when they had the same monthly due date. From 1999 through at least the date of this Consent Order, Respondent provided consumers a monthly billing statement which grouped all qualifying loans and therefore included a single payment coupon for all the loans in the Grouped Account.

8. The first page of Respondent's grouped billing statement disclosed the aggregate "current payment due" for all the loans in the consumer's Grouped Account.
9. On the second page of the billing statement, Respondent provided consumers a "loan detail sheet" that separately identified each loan in the Grouped Account and displayed the "payment amount" for each loan.
10. Pursuant to consumers' loan agreements, Respondent could assess late fees on consumers who did not make their full monthly payment, inclusive of any amount in arrears. Even though Respondent combined loans in the grouped billing account and disclosed a single "current payment due" each month, it charged late fees at the individual loan level because each loan remained a separate debt obligation subject to its loan agreement.
11. Each of a consumer's loans was assigned to one of six possible late fee structures, depending on a consumer's initial loan agreement. Four of the six late fee structures charged consumers a late fee amounting to the greater of 5% of the monthly payment amount charged or a minimum late fee (ranging up to \$28); the other two late fees structures imposed either a flat fee or a percentage fee that amounted to the lesser of 5% or \$5. In November 2011, Respondent established a maximum monthly late fee per loan of \$28 for student loans that previously did not have a late fee limit.
12. Respondent accepted Partial Payments and applied such payments to consumers' accounts; however Respondent provided limited information about the potential consequences of making a Partial Payment. Prior to November 2011, the billing statement provided the following disclaimer to consumers related to Partial Payments:

“A partial payment (an amount less than your Current Payment Amount) will not advance your next payment due date.”

13. Beginning in or around November 2011, Respondent modified the first page of its billing statement to make the following disclaimer about Partial Payments: “Paying less than what’s due? The minimum required payments must be received in full each month, in order to advance your next payment due date and protect your good credit.”
14. Neither of these disclaimers stated that consumers could advance the next payment due date for any loan in their Grouped Account by making an Eligible Payment for that loan and directing Respondent to allocate the payment to that loan.
15. Moreover, Respondent did not disclose its methodology for allocating Partial Payments among loans in a Grouped Account.
16. Beginning at least January 1, 2010 through August 31, 2012, in the absence of consumer instructions, Respondent allocated Partial Payments across all loans in a Grouped Account as follows:
  - a. Payment was first allocated proportionally to any delinquent loans in the billing group to bring those loans as current as possible;
  - b. If the loans for a consumer were all current, then payment was allocated proportionally (based off the scheduled monthly payment amount) across the loans.
17. Respondent used the payment allocation methodology described in the preceding Paragraph for all consumers who did not designate the manner in which their Partial Payment should be allocated among the loans in their Grouped Account, even when consumers made a Partial Payment that was sufficient to satisfy at least one of the loans in the Grouped Account. As a result, Respondent’s allocation of a Partial Payment proportionally to all loans in the account sometimes caused consumers’ payments to

satisfy fewer, if any, of the loan amounts due in the account than if the Partial Payment had been allocated in a manner that satisfied as many of the loan amounts as possible.

18. Respondent assessed a late fee for each loan where the consumer failed to satisfy the monthly payment due, including any amount in arrears, and reported the loan as delinquent to the consumer reporting agencies if it were more than 30 days delinquent at the end of the month.
19. As noted above in Paragraph 15, none of Respondent's promissory notes, loan disclosures, billing statements, or printed, electronic, or online resources available to consumers or cosigners disclosed the payment allocation methodology used by Respondent when a consumer made a Partial Payment.
20. Moreover, Respondent did not disclose to consumers that they were entitled to direct payment to any of the individual loans in the account on the billing statement, loan detail sheet, or otherwise.

#### Unfair Acts and Practices

21. Section 1036(a)(1)(B) of the CFPA prohibits unfair acts or practices. 12 U.S.C. § 5536(a)(1)(B).
22. An act or practice is unfair under the CFPA if it (a) causes or is likely to cause consumers substantial injury; (b) such injury is not reasonably avoidable by consumers; and (c) such injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).
23. Respondent's failure to disclose its payment allocation methodology to consumers and the ability to provide payment instructions on how to allocate payments, while allocating Partial Payments towards Grouped Accounts in a manner that maximized late fees incurred by many consumers, caused or was likely to cause substantial injury to

consumers that was not reasonably avoidable or outweighed by countervailing benefits to consumers or to competition.

24. Thus, Respondent engaged in unfair acts and practices in violation of sections 1036(a)(1)(B) and 1031(c)(1) of the CFPA, 12 U.S.C. §§ 5536(a)(1)(B) and 5531(c)(1).

Deceptive Acts and Practices

25. Section 1036(a)(1)(B) of the CFPA prohibits deceptive acts or practices, 12 U.S.C. § 5536(a)(1)(B).
26. An act or practice is considered “deceptive” under the CFPA if it (a) misleads or is likely to mislead the consumer; (b) the consumer’s interpretation of the act or practice is reasonable under the circumstances; and (c) the misleading act or practice is material.
27. As described in Paragraphs 12 and 13, Respondent represented, on its billing statements, that a consumer’s student loans would not be advanced if the consumer made a Partial Payment for the consumer’s Grouped Account.
28. In reality, if a consumer made a Partial Payment that was sufficient to cover at least one of the loans in the consumer’s Grouped Account, and directed Respondent to allocate that payment to that loan, then Respondent would advance the next payment due for that loan, and would also not assess a late fee, provided that the applicable payment also covered any amount in arrears. Respondent’s failure to disclose these facts, in light of the representations made, was material and likely to mislead a reasonable consumer.
29. Thus, Respondent engaged in deceptive acts or practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

## **Findings and Conclusions as to Respondent's Payment Aggregation Practices**

30. As described earlier, Respondent accepted consumers' Partial Payments and applied such payments to their student loan account.
31. Respondent also accepted consumers' Overpayments and applied such payments to their student loan account.
32. Until June 2000, Respondent automatically aggregated multiple Partial Payments made within the same billing cycle. If those Partial Payments, when combined, totaled an Eligible Payment for the applicable billing cycle, Respondent updated the consumer's account to reflect receipt of an Eligible Payment and advanced the due date for the applicable loan(s).
33. Until June 2000, Respondent also automatically aggregated Overpayments and Partial Payments made in prior billing cycles with subsequent Partial Payments. If the combined Overpayments and Partial Payments totaled an Eligible Payment for the applicable billing cycle, Respondent updated the consumer's account to reflect receipt of an Eligible Payment and advanced the due date for the applicable loan(s).
34. On June 22, 2000, in view of operational and customer service considerations, Respondent discontinued automatically aggregating payments, and began combining payments through a manual process.
35. Between June 2000 and November 2011, Respondent's principal method of manually aggregating payments was through the review of a daily log of Partial Payments and Overpayments. Specifically, Respondent generated a daily partial pay report, which was intended to capture student loan accounts that were delinquent and for which a Partial Payment was received during the current billing cycle. Respondent's practice was to

combine such Partial Payments with other Partial Payments made within the same billing cycle, or with prior Overpayments and Partial Payments, that when combined, potentially constituted an Eligible Payment. When the aggregated payments summed to at least 95% of the monthly amount due, Respondent's practice was to combine the payments, update the consumer's account to reflect receipt of an Eligible Payment, and advance the due date for the applicable loan(s).

36. In order for an account to appear on the daily partial pay report, however, certain conditions had to be met; and in certain cases, the system failed to include consumers who had made a series of intra-billing cycle Partial Payments, the sum of which totaled an Eligible Payment. As a result, some consumers made multiple Partial Payments within the same billing cycle that, when combined, constituted an Eligible Payment, yet still incurred improper late fees and were reported as delinquent (if more than 30 days past due at the end of the month) to the consumer reporting agencies.
37. Although Respondent's billing statements disclosed that a Partial Payment would not advance the consumer's next payment due date, this disclosure did not specify that an Eligible Payment had to be submitted as one single payment.
38. Between at least February 17, 2010 and December 11, 2011, Respondent did not always timely or properly combine payments for student loan accounts that appeared on the daily partial pay report.
39. While Respondent was required by internal policies and procedures to review the partial pay report on a daily basis, this requirement was not regularly achieved. In fact, while the median time it took to evaluate the partial pay report was five business days, in some instances Respondent took more than 20 business days to review the report, combine

the payments, update the consumer's student loan account to reflect receipt of an Eligible Payment, and advance the due date for applicable loan(s).

40. Due to the manual nature of the partial pay report procedures, in some instances, Respondent made errors in reviewing and processing accounts that appeared on the daily partial pay report.
41. As a result, some consumers made multiple Partial Payments within the same billing cycle, or multiple Partial Payments and Overpayments over multiple billing cycles, that, when combined, constituted an Eligible Payment, yet incurred improper late fees that should have been subsequently waived and/or were reported as delinquent to the consumer reporting agencies and such reporting should have been updated at the time such Partial Payments were combined.
42. During that same time period, Respondent lacked any procedure to update or correct inaccurate information furnished to consumer reporting agencies about consumers who had made payments that matched the scenario described in Paragraph 41.
43. As a result, once Respondent reviewed the report, combined the payments, and updated the consumer's student loan account to reflect receipt of an Eligible Payment, the Bank failed to also update or correct the information it had previously furnished to consumer reporting agencies about consumers described in Paragraph 41.

#### Unfair Acts and Practices

44. Section 1036(a)(1)(B) of the CFPA prohibits unfair acts or practices. 12 U.S.C. § 5536(a)(1)(B).
45. An act or practice is unfair under the CFPA if it (a) causes or is likely to cause consumers substantial injury; (b) such injury is not reasonably avoidable by consumers; and (c)

such injury is not outweighed by countervailing benefits to consumers or to competition.  
12 U.S.C. § 5531(c).

46. Respondent's failure to aggregate multiple Partial Payments submitted by consumers within the same billing cycle, where the payments, if aggregated, would have satisfied the total amount due for that loan's billing cycle, and its failure to refund or waive any resulting improper late fees assessed, caused or was likely to cause substantial injury to consumers. The injury was not reasonably avoidable or outweighed by countervailing benefits to consumers or to competition.
47. Similarly, Respondent's failure to update or correct inaccurate credit reports for consumers who submitted multiple Partial Payments and Overpayments that, when they were aggregated in accordance with Respondent's internal policies and procedures, constituted an Eligible Payment, and whose student loan accounts, as a result of such aggregation, reflected receipt of an Eligible Payment, also caused or was likely to cause substantial injury to consumers that was not reasonably avoidable or outweighed by countervailing benefits to consumers or to competition.
48. Thus, Respondent engaged in unfair acts and practices in violation of sections 1036(a)(1)(B) and 1031(c)(1) of the CFPB. 12 U.S.C. §§ 5536(a)(1)(B) and 5531(c)(1).

#### Failure to Correct Inaccurate Credit Reporting

49. Section 1681s-2(a)(2)(A)-(B) of the FCRA requires a person who "regularly and in the ordinary course of business" furnishes information to a consumer reporting agency about its "transactions or experiences with any consumer" to promptly notify the consumer reporting agency that the person has furnished information that it has determined is not complete or accurate, and to provide any corrections or additional

information necessary to make the information provided by the person to the consumer reporting agency complete and accurate. 15 U.S.C. § 1681s-2(a)(2)(A)-(B).

50. Respondent reported to consumer reporting agencies that certain consumers were delinquent on their loans when, in fact, the consumers had satisfied their obligations through multiple Partial Payments before the end of their Grace Period and within the same billing cycle on their loans that Respondent did not aggregate or timely aggregate in accordance with its internal policies and procedures.
51. Respondent also reported to consumer reporting agencies that consumers were delinquent on their loans when, in fact, pursuant to Respondent's payment aggregation policies and procedures, the consumers had satisfied their obligations through a combination of prior Overpayments and subsequent Partial Payments over multiple billing cycles that Respondent failed to timely aggregate in accordance with such internal policies and procedures.
52. Thereafter, Respondent failed to promptly revise or provide additional information to the consumer reporting agencies after updating the consumer's student loan account to reflect that the consumer had submitted an Eligible Payment.
53. Thus, Respondent violated section 623(a)(2)(A)-(B) of the FCRA, 15 U.S.C. § 1681s-2(a)(2)(A)-(B).

**Failure to Establish Written Furnishing Policies and Procedures**

54. Section 1022.42(a) of Regulation V requires a furnisher of information to the consumer reporting agencies to "establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency." 12 C.F.R. § 1022.42(a).

The policies and procedures “must be appropriate to the nature, size, complexity, and scope of each furnisher's activities.” 12 C.F.R. § 1022.42(a).

55. A “furnisher” is an entity that “furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report.” 12 C.F.R. § 1022.41(c).
56. As a student loan servicer, Respondent routinely furnished information about consumers’ performance on loans to one or more consumer reporting agencies, but failed to establish and implement reasonable written policies and procedures that would ensure the updating of prior reporting with respect to Partial Payments made within the same billing cycle, or Partial Payments made with prior Overpayments and Partial Payments across multiple billing cycles, that if aggregated pursuant to Respondent’s payment aggregation policies and procedures would have constituted an Eligible Payment.
57. Thus, Respondent violated Regulation V, 12 C.F.R. § 1022.42(a).

### **Findings and Conclusions as to Respondent’s Late Fee Assessment Practices**

58. Promissory notes for student loans serviced by Respondent generally provide for a Grace Period, during which time a consumer who is past due on a student loan will not incur a late fee so long as the payment is made during the allotted period of time. The Grace Period generally ranges from 10 to 16 days, and is set forth in the relevant promissory note.
59. Until at least May 31, 2013, Respondent generated a daily late fee monitoring report which was intended to capture student loan accounts where a late fee was assessed with respect to a payment made with an effective date within the Grace Period. Respondent’s payment processors used the daily late fee monitoring report to identify accounts where

it assessed the consumer an improper fee under this scenario and to manually remove such fees from those accounts.

60. Between at least January 1, 2010 and May 31, 2013, however, a system coding error caused the daily late fee monitoring report to omit student loan accounts for consumers who made an Eligible Payment, inclusive of any amount in arrears, on the last day of their applicable Grace Period. This system coding error was brought to the Bureau's attention by Respondent.
61. Respondent assessed late fees on the accounts of consumers affected by this system coding error even though the consumer made an Eligible Payment within his or her Grace Period. Those fees were not subsequently waived or refunded by Respondent. As a consequence, some consumers paid late fees that were not owed by the consumer.

#### Unfair Acts and Practices

62. Section 1036(a)(1)(B) of the CFPA prohibits unfair acts or practices. 12 U.S.C. § 5536(a)(1)(B).
63. An act or practice is unfair under the CFPA if it (a) causes or is likely to cause consumers substantial injury; (b) such injury is not reasonably avoidable by consumers; and (c) such injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).
64. Respondent's above-described assessment of late fees for consumers who made an Eligible Payment inclusive of arrears on the last day of the Grace Period for their student loan(s) caused substantial injury to consumers that was not reasonably avoidable or outweighed by countervailing benefits to consumers or to competition.
65. Thus, Respondent engaged in unfair acts and practices in violation of sections 1036(a)(1)(B) and 1031(c)(1) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B) and 5531(c)(1).

**ORDER**

**V**

**Conduct Provisions**

**Order to Cease and Desist and to Take Other Affirmative Action**

**IT IS ORDERED**, under Sections 1053 and 1055 of the CFPA, that:

66. Respondent and its officers, agents, servants, and employees who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536; Section 623 of the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(a)(2); and Section 1022.42 of Regulation V, 12 C.F.R.

1022.42(a), as follows and must take the following affirmative actions:

a. Pursuant to the timetable set forth in the Compliance Plan required by this Consent Order:

- i. Adopt and implement reasonable written policies and procedures concerning the accuracy and integrity of information concerning student loan accounts that Respondent furnishes to consumer reporting agencies.
- ii. On or with all Repayment Schedules provided to a consumer before billing statements are sent on a grouping of a consumer's loans:
  - a. A statement that Respondent will accept Partial Payments;
  - b. An explanation of how Partial Payments will be allocated to any or all of the loans in the Grouped Account in the absence of consumer instruction, along with illustrative examples and a description of the potential consequences; and



- c. The inaccuracies, prior to correction, may have had an adverse effect on the consumer's credit; and
  - d. That Respondent recently submitted to the major credit bureaus a request to replace all potentially affected reporting instances on the consumer's credit reports with a "D" code, which is defined as "No payment history available this month."
- c. Respondent represents that since at least August 31, 2012, it has, and will continue to do, the following:
  - i. Allow all consumers to direct payments to any of the loans in the consumer's Grouped Account.
  - ii. Unless otherwise directed by a consumer to allocate a Partial Payment in a specific manner, allocate Partial Payments for consumers with a Grouped Account where all loans are current in a manner so as to maximize the number of loans within the Grouped Account on which a full payment can be made.
  - iii. Comply with all practicable consumer and cosigner instructions related to allocation of payments pertaining to a Grouped Account.
- d. Respondent represents that since at least December 11, 2011, it has, and will continue to promptly apply and aggregate Partial Payments made within a single billing cycle, and to the extent such Partial Payments constitute an Eligible Payment, advance the due date.
- e. Respondent represents that since at least June 1, 2013, it has not assessed late fees in the manner described in Paragraph 61, and will continue not to so assess such fees for an Eligible Payment made during the Grace Period, when the relevant promissory

note provides for a Grace Period, provided such Eligible Payment also satisfies any amount in arrears.

## VI

### **Compliance Plan**

**IT IS FURTHER ORDERED** that:

67. Within 90 days of the Effective Date, Respondent must submit to the Regional Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's student loan payment aggregation, payment allocation, and grace period late fee practices comply with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:
  - a. Detailed steps for addressing each action required by this Consent Order; and
  - b. Specific timeframes and deadlines for implementation of the steps described above.
68. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the Regional Director directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the Regional Director within 45 days.
69. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## VII

### **Role of the Board**

**IT IS FURTHER ORDERED** that:

70. The Board, or a relevant Committee thereof, must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
71. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with Federal consumer financial law and this Consent Order.
72. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board, or a relevant Committee thereof, must:
  - a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
  - b. Require timely reporting by management to the Board on the status of compliance obligations; and
  - c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

## VIII

### **Order to Pay Redress**

**IT IS FURTHER ORDERED** that:

73. Within 15 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account an amount not less than \$410,000, for the amount of consumer injury caused by the practices described in Section IV, for the purpose of providing redress to Affected Consumers as required by this Section. At a minimum, redress will consist of:
- a. A full refund of all late fees in excess of one late fee per billing cycle paid by Payment Allocation Affected Consumers between January 1, 2010 and August 31, 2012 related to Respondent's unlawful payment allocation practices, as well as interest on those late fees between the date the unlawful late fees were assessed and the date of this Consent Order.
  - b. A full refund of all late fees paid by Payment Aggregation Affected Consumers between February 17, 2010 and December 11, 2011 related to Respondent's unlawful payment aggregation practices, as well as interest on those late fees between the date the unlawful late fees were assessed and the date of this Consent Order.
  - c. A full refund of all late fees paid by Grace Period Affected Consumers between January 1, 2010 and May 31, 2013 related to Respondent's unlawful late fee assessment practices, as well as interest on those late fees between the date the unlawful late fees were assessed and the date of this Consent Order.
74. Within 90 days of the Effective Date, Respondent must submit to the Regional Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Regional Director will have the discretion to make a determination of non-objection to the Redress Plan or direct Respondent to revise it. If the Regional Director directs Respondent to revise the Redress Plan, Respondent must make the revisions and resubmit the Redress Plan to

the Regional Director within 45 days. After receiving notification that the Regional Director has made a determination of non-objection to the Redress Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

75. The Redress Plan must:

- a. Detail the manner and form in which redress will be provided to Affected Consumers;
- b. Detail how Respondent will make reasonable attempts to locate Affected Consumers for payment of redress, as well as an action plan to follow-up with consumers whose redress payments are returned as undeliverable and/or not cashed within a prescribed time period;
- c. Include the proposed text of letters that must be sent to Affected Consumers regarding the redress payment. Respondent must submit the proposed text of the letters to the Regional Director for review and non-objection. Upon receipt of non-objection from the Regional Director, Respondent will mail the letters by United States Postal Service First-Class Mail, address correction service requested pursuant to the timetable set forth in the Redress Plan. No other materials, other than the redress payment, shall be mailed with the letters; and
- d. Describe the steps Respondent will take to assess when the redress process is complete.

76. After completing the Redress Plan, if the amount of redress provided to Affected Consumers (inclusive of any funds escheated in accordance with state law) is less than \$410,000, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to

the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Consumers and \$410,000.

77. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
78. Respondent may not condition the payment of any redress to any Affected Consumer under this Order on that Affected Consumer waiving any right.

## **IX**

### **Order to Pay Civil Money Penalties**

**IT IS FURTHER ORDERED** that:

79. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law related to Respondent's payment aggregation practices described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$3,600,000 to the Bureau.
80. Within 15 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
81. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

82. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
83. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

**X**

**Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

84. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on

any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

85. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
86. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
87. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

## **XI**

### **Reporting Requirements**

**IT IS FURTHER ORDERED** that:

88. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at

least 30 days before the development, but in any case no later than 14 days after the development.

89. Within 30 days after the end of each quarter ending September 30, 2016, December 31, 2016, and March 31, 2017 and at least once annually thereafter for the duration of this Consent Order, Respondent shall submit a separate written progress report (Consent Order and Compliance Plan Tracking Report (collectively called the “Tracking Report”)) to the Regional Director. The Tracking Report shall, at a minimum:
- a. Separately list each corrective action required by this Consent Order, and the Compliance Plan;
  - b. Identify the required and anticipated completion date for each corrective action;
  - c. Discuss the current status of each corrective action, including the action(s) taken or to be taken to comply with each corrective action; and
  - d. For those items that require Respondent to perform a review or develop policies and procedures, include a summary of the results of such reviews and the status of such policies and procedures.

## **XII**

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that,

90. Within 45 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers and employees who will have responsibilities related to the subject matter of the Consent Order, plus those Service Providers or other agents and representatives who have a role in carrying out the requirements of this Consent Order.

91. For the duration of the Consent Order, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XI, any future board members and executive officers, as well as to any managers and employees who will have responsibilities related to the subject matter of the Consent Order, plus those Service Providers, or other agents and representatives who will have a role in carrying out the requirements of this Consent Order before they assume their responsibilities.
92. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. §§ 7001 *et seq.*, within 45 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

### **XIII**

#### **Recordkeeping**

**IT IS FURTHER ORDERED** that

93. Respondent must create, or if already created, must retain for the duration of the Consent Order, the following business records:
  - a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
  - b. All documents and records pertaining to the Redress Plan, described in Section VIII above.
  - c. All unique copies of billing statements and disclosures that describe Respondent's payment application and allocation methodologies, including with respect to partial payments, delinquencies, credit reporting, and late-fee assessment.

- d. All records relating to the payment histories of the Payment Aggregation Affected Consumers between February 17, 2010 and December 11, 2011.
  - e. For each individual Affected Consumer, records showing the consumer's name, address, phone number, and email address (if available), as well as each individual Affected Consumer's Student Loan File.
  - f. Copies of all written policies and procedures concerning the accuracy and integrity of consumer student loan information furnished to consumer reporting agencies.
94. Respondent must retain the documents identified in Paragraph 93 for at least 5 years.
95. Respondent must make the documents identified in Paragraph 93 available to the Bureau upon the Bureau's request.

#### **XIV**

#### **Notices**

**IT IS FURTHER ORDERED** that:

96. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* Wells Fargo Bank, N.A., File No. 2016-CFPB-0013," and send them either:
- a. By overnight courier (not the U.S. Postal Service), as follows:

Regional Director, Bureau West Region  
Consumer Financial Protection Bureau  
301 Howard Street  
Suite 1200  
San Francisco, CA 94105

Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1625 Eye Street, N.W.

Washington, D.C. 20006; or

- b. By first-class mail to the below address and contemporaneously by email to

[Enforcement\\_Compliance@cfpb.gov](mailto:Enforcement_Compliance@cfpb.gov):

Regional Director, Bureau West Region  
Consumer Financial Protection Bureau  
301 Howard Street  
Suite 1200  
San Francisco, CA 94105

Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1700 G Street, N.W.  
Washington D.C. 20552

## **XV**

### **Cooperation with the Bureau**

**IT IS FURTHER ORDERED** that:

97. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

## **XVI**

### **Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor Respondent's compliance with this

Consent Order:

98. Within 21 days of receipt of a written request from the Bureau, Respondent must submit additional compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
99. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
100. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

## **XVII**

### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

101. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Regional Director.
102. The Regional Director may, in his/her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he/she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

## **XVIII**

### **Administrative Provisions**

103. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent.

104. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
105. All pending motions are hereby denied as moot.
106. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
107. This Consent Order will remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
108. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
109. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

110. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
111. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
112. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 20<sup>th</sup> day of August, 2016.

  
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Richard Cordray  
Director  
Consumer Financial Protection Bureau