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The Wells Fargo Case: This is Consumer Protection?

The Consumer Financial Protection Bureau wasn't the hero; they were asleep at the wheel.

By Ronald L. Rubin

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Recent news that Wells Fargo employees had opened as many as two million unauthorized customer bank and credit card accounts since 2011 was shocking. The bank fired 5,300 workers and agreed to pay $185 million in fines to the Los Angeles City Attorney, the Comptroller of the Currency, and the Consumer Financial Protection Bureau. The CFPB's media blitz reduced the other two agencies to bystanders.

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The CFPB has been more political theater than good government since then-law professor Elizabeth Warren prodded the Democratic president and Congress to create the bureau in the 2010 Dodd-Frank law. The law insulated the new agency from Republican participation through a single director structure and funding independent of the congressional appropriations process. Warren was elected Massachusetts's senator. The CFPB quickly became a single-party, clandestine organization whose top priority is self-promotion.

Despite years of employee leaks and complaints about internal discrimination, illegal hiring, wasteful spending, inefficient regulations, and extortionate bullying of businesses, Democrats have thwarted every attempt to reformulate the CFPB as a transparent, bipartisan law enforcement agency.

The bureau's supporters have seized on the Wells Fargo case as blanket vindication of the CFPB. Warren and four other Senate Democrats quickly sent Senate Banking Committee Chairman Richard Shelby a letter demanding a prompt investigation. The Republican senator scheduled a hearing for September 20, at which Wells Fargo CEO Richard Stumpf will testify and answer many questions the CFPB will not. The Democrats should have quit while they were ahead.

That's because the Wells Fargo incident is a perfect illustration of what is both right and wrong about the CFPB. On the one hand, the bank employees' widespread misbehavior is a reminder that, in the absence of transparency and effective oversight, financial institutions can and often do make big mistakes. On the other hand, the CFPB's failure to quickly discover and stop the pervasive, prolonged fraud is a reminder that the same principle applies to government agencies.

With much fanfare, the CFPB became operational and launched its examination program on July 21, 2011. A drafting error in the Dodd-Frank law prevented supervisory examinations of most businesses other than large banks before the agency had its first director, in 2012. The examiners had little to do in 2011 besides audit big banks.

Senator Shelby should not wait long Tuesday before asking Stumpf when the CFPB began its first Wells Fargo examination, and how long it lasted. Democrats will not like the answer to that and other questions like:

- *Did the CFPB examiners detect any of the hundreds of thousands of accounts opened without customer authorization in 2011? 2012? 2013? What exactly were the bureau's examiners doing during those audits?*

- *How and when did the CFPB first learn about the unauthorized account openings?*

- *Which investigation began first, the Los Angeles City Attorney's or the CFPB's?*

- *Did the CFPB notify the Department of Justice or any other criminal authority of illegal activity at Wells Fargo before the bureau announced its settlement on September 8, 2016?*

The facts are almost as ugly for the CFPB as for Wells Fargo. The account openings began around May 2011. The CFPB had regulatory supervision powers—an almost unlimited ability to review internal documents and interview employees on short notice—and was exercising those powers over Wells Fargo during most of the five-year fraud.

On December 21, 2013, the Los Angeles Times published an in-depth article about Wells Fargo's practices based on internal bank documents and interviews with former bank employees. Did a journalist find what teams of CFPB examiners working hundreds of hours had missed? Was it the article or something else that finally got the CFPB enforcement attorneys' attention?

The Democratic senators' letter "applaud[ed] the CFPB's swift enforcement action." Swift? If the CFPB's director were a Republican, you can be sure Senator Warren would be calling for his or her resignation. Instead, she isn't even asking the obvious questions.

The CFPB's problem is simple. Lack of transparency and oversight leads to poor management. It's not a political issue; it's an organizational issue.

Before I worked at the CFPB, I spent seven years as a Securities and Exchange Commission enforcement attorney. I knew the SEC commissioners would ask uncomfortable questions and be critical of any investigation that had taken more than a year or two. That public scrutiny was powerful motivation to get things done. Government agencies, like businesses, benefit from sunlight, oversight, and constructive criticism.

The CFPB's compulsive secrecy has made it terribly inefficient. I'll never forget a 2011 meeting in which the bureau's senior managers discussed ways to avoid keeping statistics on investigations and enforcement actions. As we rose to leave, I whispered to Richard Cordray, who was awaiting confirmation as the CFPB's first director, that statistics could also be his friend. Benchmarks both document and help organizations improve productivity.

Democrats are spreading the word that the Wells Fargo case has eliminated any chance of enacting the CFPB reforms in the House Financial Services Committee's Financial Choice Act. The incident does show that the agency has an important job to do. But one of the bill's reforms would significantly strengthen, not weaken, the CFPB by restructuring it as a five-member bipartisan commission like the SEC, with two seats occupied by the minority party and a chairperson chosen by the sitting president. A depoliticized, transparent, well-run consumer financial regulator would have stopped the Wells Fargo fraud at least three years sooner than the CFPB.

Ronald L. Rubin was an enforcement attorney at the Consumer Financial Protection Bureau and chief advisor on regulatory policy at the House Financial Services Committee.