



February 13, 2015

**CRA Decision #165
March 2015**

Mr. Jonathan Velline
Executive Vice President
Wells Fargo Bank, National Association
101 North Philips Avenue
Sioux Falls, South Dakota 57104-6714

RE: Mobile branch application by Wells Fargo Bank, National Association, Sioux Falls, SD
OCC Control Number: 2014-LB-BranchNew-137270

Dear Mr. Velline:

The Office of the Comptroller of the Currency (OCC) hereby approves the application by Wells Fargo Bank, National Association, Sioux Falls, South Dakota (Wells Fargo or Bank) to establish a mobile branch serving the geographic area of Kerr County, Texas, with a designated location of 115 School Road, Ingram, Texas. This approval is granted based on a thorough review of the application, other materials the Bank and its representatives supplied, and additional information available to the OCC, including the representations and commitments made in the application and by the Bank's representatives. Based on this review, the OCC determined that approval to establish the mobile branch is consistent with the relevant statutory factors set forth in 12 U.S.C. § 36, including applicable state law, and with the Community Reinvestment Act. This letter also serves as authorization for the Bank to establish Branch Number 156060A at the above noted address.

The operation of the mobile branch is limited to Kerr County, as referenced in the Bank's application and the published notice for public comment. If you desire to operate the service outside of the geographic area noted above, a new application must be filed with the OCC.

Wells Fargo is a subsidiary of Wells Fargo & Company, San Francisco, California, which is a bank holding company. Wells Fargo is a national bank that operates branches throughout the United States, including in Texas.

I. Legal Authority for the Transaction

Wells Fargo has applied to the OCC for approval under 12 U.S.C. § 36(c) to establish a mobile branch serving the geographic area of Kerr County, Texas, with a designated location of 115 School Road, Ingram, Texas (the Application).

Federal law determines whether a proposed facility is a “branch” within the meaning of the McFadden Act, 12 U.S.C. § 36. *See First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 133-34 (1969). Federal law defines the term “branch” to include “any branch bank, branch office, branch agency, additional office, or any branch place of business . . . at which deposits are received, or checks paid, or money lent.” 12 U.S.C. § 36(j). The courts have also held that a mobile facility established by a national bank is a “branch” of that bank under federal law if it engages in the activities specified in section 36(j). Thus, the proposed mobile branch is a “branch” within the meaning of 12 U.S.C. § 36.

Under 12 U.S.C. § 36(c), a national bank may establish branches within the state in which the bank is situated to the same extent that state law permits state banks. Because Wells Fargo currently has branches in Texas, it is situated in Texas for purposes of section 36(c) and therefore can establish branches to the same extent Texas law allows Texas banks to do so. Under Texas law, a branch means a location of a bank, other than the bank's home office, at which the bank engages the public in the business of banking.¹ Texas permits state banks to establish branches without limitations as to the locations or number of branches.² However, the Texas statutes do not specifically address mobile branching.

Case law suggests that a national bank may only establish a non-traditional type of branch in a state if state law permits the establishment of such branches by state banks. In *Brown v. Clark*, 878 F.2d 627 (2^d Cir. 1989), the Court of Appeals provided that national banks may operate mobile branches only if state banks can do so under state law. However, where state statutory law is silent on mobile branching, as Texas law is, the OCC has long taken the view that a statute that does not expressly address mobile branching should not be read as prohibiting mobile branching. The OCC has previously found that mobile branching is permissible in Texas because it is not forbidden by Texas statutory law.³ Thus, Wells Fargo’s application to establish a mobile branch in Kerr County, Texas, is authorized under 12 U.S.C. § 36(c) and applicable branching laws of Texas, as applied to national banks under section 36(c).

II. Community Reinvestment Act

The Community Reinvestment Act (CRA) requires the OCC to take into account the record of the institution’s performance in helping to meet the credit needs of its communities, including low- and moderate-income neighborhoods, when evaluating applications for the establishment of a branch. In reviewing Wells Fargo’s application to establish a mobile branch at 115 School Road, Ingram, Texas, the OCC considered Wells Fargo’s record, including its CRA performance evaluation (PE).

¹ Tx. Stat. Ann § 31.002(8).

² Tx. Stat. Ann § 32.203(a).

³ OCC Interpretive Letter No. 5341, March 22, 1991, permitting the First National Bank of Amarillo to establish a manned van branch in Texas.

Wells Fargo's most recent PE, dated September 30, 2008, assigned to Wells Fargo an overall "Outstanding" CRA rating.⁴ In the PE, Wells Fargo received an "Outstanding" overall rating for the lending test, an "Outstanding" overall rating for the investment test, and an "Outstanding" overall rating for the service test.⁵ The major factors supporting Wells Fargo's overall "Outstanding" rating include: (i) lending levels that reflected excellent responsiveness to credit needs in the majority of assessment areas (AA); (ii) a generally good geographic distribution and distribution by income of the borrower or revenue of the farm or business; (iii) the significantly positive impact of the volume and nature of Wells Fargo's community development lending; (iv) excellent volume of qualified investments in 11 of the 17 full scope AAs in the primary rating areas and 22 of the 36 full-scope AAs in the non-primary rating areas; (v) qualified investments that were useful and effective in meeting the needs of the Bank's communities and their residents; (vi) retail delivery systems, including branches and automated teller machines, that were readily accessible to a majority of the Bank's AAs; (vii) the opening and closing of branches generally did not adversely affect the accessibility of the Bank's delivery systems; and (viii) the Bank was a leader in providing community development services in the majority of its full-scope AAs in the primary rating areas and many of its full-scope AAs in the non-primary rating areas.

A review of this record, information provided by Wells Fargo in response to public comments received in connection with this Application, and other information available to the OCC as a result of its supervisory responsibilities indicates that the Bank's record of helping meet the credit needs of its communities is consistent with approval of this Application.

III. Public Comments

The OCC received 15 public comments from the same commenter in connection with the Application to establish a mobile branch at 115 School Road, Ingram, Texas.⁶ These public comments raise similar issues as each other. In all of the comment letters, the commenter expresses concerns about alleged redlining and discrimination against African Americans in certain ZIP Codes in the Houston area. Some of the concerns expressed by the commenter are that Wells Fargo does not have a sufficient branch presence in certain ZIP Codes with large African American populations and, consequently, has insufficient or discriminatory advertising, small business and commercial lending, bank-financed developments, community development activities, home mortgage lending, and home equity lending in those neighborhoods. Further, the commenter expressed the concern that African Americans are denied equal rights under the CRA, asserting that the Bank has not formed any viable and visible working relations and CRA

⁴ A copy of Wells Fargo's CRA PE is available at <http://www.occ.gov/static/cra/craeval/JAN10/1741.pdf>.

⁵ Wells Fargo's overall "Outstanding" rating was based in part on an overall "High Satisfactory" rating for the State of Texas. Wells Fargo's overall "High Satisfactory" rating in the State of Texas was based in part on a full scope review of the Houston-Baytown-Sugarland Metropolitan Statistical Area (Houston MSA).

⁶ 115 School Road, Ingram, Texas is located in the Kerrville, Texas AA.

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partners in those neighborhoods. The commenter asserts that Wells Fargo has engaged in continuing violations of numerous laws, including “CRA, FHA, FTC Act – Section 5, Title VIII – 1968 Civil Rights Act and the Equal Protection Clause – 14th Amendment – US Constitution.” In addition, the commenter asserts that Wells Fargo should be subject to a series of enforcement actions to reverse the effects of the alleged discrimination and inhibit future discrimination. Further, among other assertions, the commenter has asserted that the OCC should deny Wells Fargo’s applications to open new branches unless those branches are located in the ZIP Codes identified by the commenter as lacking a sufficient branch presence. In the comment letters related to this Application, the commenter did not demonstrate a link between the proposed mobile branch in the Kerrville, Texas AA (Kerrville AA), which is approximately 265 miles from Houston, Texas, and the commenter’s general concerns about branch distribution and lending in the Houston area.

The OCC has carefully considered the commenter’s concerns, and has also carefully considered Wells Fargo’s record as it relates to these comments and the statutory and regulatory factors considered by the OCC when reviewing a bank’s application to establish a branch. The OCC’s consideration of Wells Fargo’s record as it relates to this Application and response to the commenter’s concerns are summarized below.

A. Applicant Response to Public Comments

After receiving the initial comment letters associated with this Application, Wells Fargo wrote a letter to the commenter, dated April 21, 2014. In its letter, Wells Fargo addressed the commenter’s concerns related to its branch distribution and efforts to serve minority individuals and neighborhoods. Wells Fargo represented that it currently has 205 retail branches throughout the Houston-Baytown-Sugarland Metropolitan Statistical Area (Houston MSA). Wells Fargo further represented that 36 percent of the branches in the Houston MSA are located within a mile of a low- or moderate-income neighborhood. In addition, Wells Fargo represented that the majority of the ZIP Codes identified by the commenter as lacking a branch presence are less than two miles from a Wells Fargo branch.

In addressing the commenter’s concerns related to advertising, Wells Fargo represented that the bank has “strong and long standing relationships and commitments with African American media publishers and participates in cultural events throughout the year.” Specifically, Wells Fargo represented that it advertises in several African American owned or operated publications; sponsors several Radio One programs that are important to the community;⁷ and regularly advertises on Majic 102.1/KMJQ.⁸

⁷ Wells Fargo represented that it advertises in the Houston Forward Times, the Houston Sun, the Houston Defender, and Rolling OUT. In addition, Wells Fargo represented that it sponsors Radio One programs such as History Makers, Our Moments, and The New Black.

⁸ KMJQ defines itself as Houston's R&B Urban Adult Contemporary radio station.

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With respect to Wells Fargo's home mortgage lending practices, the bank represented that it is committed to making credit accessible to all consumers in all segments of the community. Wells Fargo represented that, in 2012, the bank provided \$595 million in mortgage credit to low- and moderate-income communities and \$782 million in mortgage credit to low- and moderate-income borrowers in the Houston MSA. Wells Fargo further represented that, in 2012, the bank provided \$2.6 billion in credit to minority communities and \$1.1 billion in credit to minority borrowers in the Houston MSA.

Wells Fargo further represented that it engaged in outreach efforts in the Houston MSA related to its home mortgage lending. Wells Fargo highlighted two of its outreach efforts, its Neighborhood LIFT program and its Home Preservation Workshops. Wells Fargo represented that in 2012 it partnered with local nonprofits in Houston to launch a Neighborhood LIFT program, its fifth such program. Wells Fargo described the Neighborhood LIFT program as an innovative and responsive program designed to help communities attract qualified homebuyers to neighborhoods deeply affected by the housing crisis. Wells Fargo represented that almost 600 people attended the 2012 Neighborhood LIFT event in Houston and 121 loans have been closed as a result. The second outreach effort highlighted by Wells Fargo was its Home Preservation Workshop. Wells Fargo described the Home Preservation Workshop as a program focused on helping homeowners avoid foreclosure. Wells Fargo represented that it has held two Home Preservation Workshops in Houston, one in 2011 and one in 2012. Wells Fargo further represented that the 2011 Home Preservation Workshop provided support to 389 customers seeking assistance, and that the Bank invited 5,000 Houston-area mortgage customers to its 2012 Home Preservation Workshop.

With regard to Wells Fargo's small business lending, the Bank represented that it is committed to small businesses. Wells Fargo represented that it provided \$612 million in small loans to businesses in the Houston MSA. In addition, Wells Fargo represented that it provided \$255 million in credit to business with revenues less than \$1 million in the Houston MSA. To assist small business owners who do not qualify for traditional loans, Wells Fargo represented that it offers advice and access to tools and resources these businesses need to improve their business and become better positioned to obtain financing.

In addition to its home mortgage and small business lending activities discussed above, Wells Fargo represented that it is committed to providing community development activities that support low- and moderate-income communities and underserved communities, including those with limited access to traditional financial services. Wells Fargo represented that through its community development commitment the Bank supports economic development, job creation, community services, and affordable housing through Low-Income Housing Tax Credits, Historic Tax Credits, New Market Tax Credits, and financial education and contributions. Moreover, Wells Fargo represented that it has an active local team in Houston that is committed to working with non-profit organizations, government entities, municipalities, and other financial institutions. Wells Fargo further represented that it provided 84 community development loans and investments totaling \$95.8 million in the Houston MSA in 2012.

B. OCC Consideration of Public Comments

In determining whether to approve a bank's application to establish a branch, among the principles by which the OCC is guided are "[e]ncouraging a national bank to help meet the credit needs of its entire community" and, "[e]ncouraging healthy competition to promote efficiency and better service to customers." 12 C.F.R. § 5.30(e)(2), (4). As noted above, the proposed mobile branch is in the Kerrville AA, which is approximately 265 miles from Houston, Texas and the commenter's concerns are focused on the Houston area.⁹

Wells Fargo's overall "High Satisfactory" CRA performance in the State of Texas in its PE¹⁰ was partly based on a full scope review of the Houston MSA. The PE sets forth the basis for Wells Fargo's State of Texas ratings of an overall "High Satisfactory" rating on the lending test, an overall "High Satisfactory" rating on the investment test, and an overall "High Satisfactory" rating on the service test.

With regard to branch distribution, the PE indicates that Wells Fargo's delivery systems were accessible to essentially all portions of the Houston MSA. The PE states that the percentage of branches in low- and moderate-income geographies was significantly below the percentage of the population in those geographies, and that branches in middle-income and upper-income geographies that border low- and moderate-income geographies improved the accessibility of Wells Fargo's products and services to those residing in low- and moderate-income geographies. The PE indicates that Wells Fargo's ATMs had a similar distribution as its branches. In addition, the PE indicates that Wells Fargo's alternative delivery systems, including bank by phone and online banking, improved accessibility of the Bank's products and services for all geographies.

Wells Fargo's lending test performance in the Houston MSA was good in the 2008 PE. Wells Fargo's home purchase loans had a good borrower distribution and a poor geographic distribution. Wells Fargo had an adequate borrower distribution and geographic distribution for its home improvement loans. In addition, Wells Fargo had a good borrower distribution and a poor geographic distribution for its home refinance loans. With respect to Wells Fargo's small business lending, the Bank's geographic distribution of loans to small businesses was good. Further, Wells Fargo's distribution of loans to businesses based on the revenue size of the business was excellent. The PE notes that the volume and nature of Wells Fargo's community development lending had a significantly positive impact on lending test performance in the Houston MSA.

The OCC conducts annual fair lending risk assessments, undertakes periodic fair lending examinations, and coordinates with the Consumer Financial Protection Bureau (CFPB) regarding

⁹ The OCC did not receive comments raising any concerns relating to the Kerrville AA. Accordingly, the OCC's analysis has focused primarily on Wells Fargo's record, including CRA performance, in the Houston MSA.

¹⁰ As noted above, Wells Fargo's current CRA PE is dated September 30, 2008. As such, the PE takes into account performance context factors that may have changed since the issuance of the PE.

matters over which the CFPB has exclusive examination authority.¹¹ In 2009, the OCC conducted an examination of the home mortgage lending practices of Wells Fargo. As a result of that examination, the OCC determined that it had reason to believe that Wells Fargo engaged in a pattern or practice of discrimination against African American borrowers and African American census tracts in the Washington, DC, area on the basis of race or color in violation of the Fair Housing Act and the Equal Credit Opportunity Act. In December 2010, the OCC referred the matter to the United States Department of Justice.¹² In July 2012, Wells Fargo and the Department of Justice entered into a Consent Order resolving the lending discrimination complaint by the Department of Justice against Wells Fargo alleging a pattern or practice of discrimination against qualified African American and Hispanic borrowers in its mortgage lending from 2004 through 2009, which was based in part on the OCC referral, but had a broader nationwide scope. The borrowers harmed by the alleged discrimination included borrowers in the Houston MSA.¹³ Pursuant to this Consent Order, Wells Fargo agreed to provide \$59.3 million in compensation to 3,990 African American and Hispanic retail subprime borrowers and \$125 million in compensation to wholesale borrowers who were steered into subprime mortgages or who paid higher fees and rates than white borrowers because of their race or national origin.¹⁴ Through this settlement, Wells Fargo resolved to the satisfaction of the Department of Justice allegations of race discrimination in lending, including fair lending concerns that that were identified by the OCC.¹⁵ The OCC's subsequent supervisory activities have not resulted in findings of discrimination that would warrant denial of this Application.

The OCC has considered all of these factors in reaching a determination regarding Wells Fargo's application to establish a mobile branch at 115 School Road, Ingram, Texas. The bank's record of performance under the CRA, including consideration of the effect of evidence of discriminatory or other illegal credit practices, is consistent with approval of this mobile branch application.

¹¹ Effective July 2011, section 1025 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) assigned to the CFPB exclusive examination authority and primary enforcement authority to ensure compliance with "Federal consumer financial laws" (as that term is defined by the Dodd-Frank Act) by banks and federal savings associations with more than \$10 billion in assets. Since July 2011, the OCC and the CFPB have shared jurisdiction for fair lending matters at Wells Fargo, as the CFPB has exclusive supervisory and primary enforcement authority for the Equal Credit Opportunity Act and the OCC has supervisory and enforcement authority for the Fair Housing Act. CFPB's recent fair lending examinations of Wells Fargo have not resulted in findings of discrimination that would warrant denial of this Application.

¹² *United States v. Wells Fargo Bank, NA*, Civil Action 1:12-cv-01150 (D.D.C.) at 6-7 (available at <http://www.justice.gov/crt/about/hce/documents/wellsfargocomp.pdf>).

¹³ *Id.* at 4.

¹⁴ Information on this Consent Order is available at http://www.justice.gov/crt/spec_topics/wellsfargo.

¹⁵ Furthermore, in October 2014, the U.S. Department of Housing and Urban Development announced that it had reached a \$5 million settlement with Wells Fargo Home Mortgage that resolved allegations that the lender discriminated against women who were pregnant, or had recently given birth, and were on maternity leave. Information on the U.S. Department of Housing and Urban Development's settlement is available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-124.

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IV. Consummation Requirements

Within 10 days after opening, the Bank must advise this office of the opening date and confirm its popular name so the OCC may complete its records. If the branch is not opened within 18 months from this approval date, the approval automatically terminates unless the OCC grants an extension.

If the branch is subsequently closed, a 90-day advance notice of proposed branch closing must be submitted to the OCC pursuant to 12 U.S.C. § 1831r-1. Following the closing of the branch office, a final closing notice should also be submitted to this office.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the Bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, contact David Reilly by e-mail at Large.banks@occ.treas.gov or by telephone at (202) 649-6260. Please reference the OCC control number in any correspondence.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing