Financial Exploitation, Bank Workers' Rights, and the Prevention of the Next Crisis:

The Case for a Bank Workers' Bill of Rights

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GEORGETOWN UNIVERSITY

Kalmanovitz Initiative for Labor and the Working Poor

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The crisis of 2008 and the ensuing Great Recession revealed both the extent to which this country is vulnerable to predatory manipulations of powerful corporate entities and the degree to which the financialization of our economy has contributed to growing inequality, the concentration of incomes and wealth, and the growing precarity of American working families. The crisis and recession showed further that without effective regulation backed by the countervailing power of organized workers and consumers, the financial sector was prepared to aggressively pursue windfall profits in the short term over long-term growth and stability. The global assets of America's "big six" banks (J.P.Morgan Chase, Bank of America, Wells Fargo, Citi, Goldman Sachs, and Morgan Stanley) are roughly equivalent to one-half of the U.S. GDP. These entities are too big and too powerful not to be held accountable to the common good.

Years into a recovery from the 2008 catastrophe, we have yet to deal with many of the structural problems that led to it. Banks have not only rebounded from the recession, they have gone on to post record profits in excess of $150 billion per year. Yet most of the banking industry's front-line workers still live paycheck to paycheck while CEO pay skyrockets. The most egregious disparity is at Citi whose CEO made $24.2 million in 2018, which was 486 times the median pay of $49,766 for its nearly 66,740 employees.[1] At $15 an hour at full-time, Citi's lowest paid employees earn $31,200 - a whopping 776 times less than CEO Michael Corbat.

Meanwhile, the regulatory fixes that were put in place after the crash have already begun to erode. We learned hard lessons in 2008 that the boards of directors of our biggest financial institutions could not be trusted to provide the oversight necessary. If we are to avoid a repeat of the past, we need to address the precarious position of bank workers and make them allies in a public effort to ensure that their employers do not return to the predatory practices that helped trigger the 2008 crash.

As we enter the third decade of a century where economic change is being driven by financialization, the United States continues to occupy a dubious position: among the world's developed economies, this country is an outlier in lacking an independent voice for bank workers. While bank workers unions are common across the world, bank workers are unorganized in the United States. Bank workers' lack of an organized voice is all the more glaring in the light of existing laws which do not adequately protect either their rights or those of the consumers with whom they deal every day. To address these problems and diminish the likelihood of a repeat of the abuses that led to the 2008 crash, we need a Bank Workers Bill of Rights.

[1] U.S. House Committee on Financial Services, "Committee Finds Megabanks Coming up Short in Closing the CEO-to-Worker Pay Gap," Press Release, August 27, 2019. Online.

What's Wrong with Our Banks?
Seven Chronic Conditions in Need of Urgent Reform

Seven chronic conditions endured by workers in our current financial system threaten to undermine the stability and accountability of the system over the long run:

1. Inadequate Pay

A 2014 examination of bank teller compensation uncovered one-third had to rely on public assistance like food stamps in order to make ends meet because of inadequate pay.[2] As recently as 2017, median wages for bank tellers were $13.89 per hour.[3] In the past year, several large financial institutions have begun to raise wages. Bank of America recently announced that it was raising its minimum wage to $20 per hour.[4] Yet wages continue to lag across much of the industry. Reliance on a low-wage workforce leads to festering job dissatisfaction, contributes to the precarity of bank workers' lives, increases turnover, and discourages the formation of a stable professional workforce.

2. Persistence of Performance-Based Pay Metrics that Incentivize Predation and Undermine Workers' Dignity

As the Wells Fargo case showed, leading financial institutions have relied on performance-based pay metrics that have incentivized predatory practices. There is no evidence that the exposure of the Wells Fargo scandal has ended such practices across the industry. Indeed, a 2018 study by the National Employment Law Project has demonstrated their persistence.[5] There is even evidence that sales goals are returning to Wells Fargo, the most egregious example.[6] The recent charges against or settled with eight former Wells Fargo executives filed by the Office of the Comptroller of the Currency uncovered the problem to be incredibly more pervasive and rampant than previously known and had persisted for over 14 years with the complicity of the audit and legal departments.[7] An employee complaint to the CEO in 2013 captures the extent of the toxic corporate culture, "I was in the 1991 Gulf War …. This is sad and hard for me to say, but I had less stress in the 1991 Gulf War than working for Wells Fargo."[8]

Until such practices are eliminated, bank workers will continue to find themselves feeling pushed and pressured to market products that are not in the interests of the consumers they serve. At the same time, relentless pay-for-performance metrics have fostered

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[2] UC Berkeley Center for Labor Research and Education, "The Public Cost of Low-Wage Jobs in the Banking Industry," Sylvia Allegretto, Ken Jacobs, Dave Graham-Squire and Megan Emiko Scott, October 27, 2014. Online.
[3] U.S. Bureau of Labor Statistics, "Occupational Employment and Wages: 43-3071 Tellers," May 2017. Online.
[4] Kate Gibson, "Bank of America hiking minimum wage to $20 an hour," *CBS News*, November 5, 2019. Online.
[5] National Employment Law Project, "Cashing Out: How Bank Workers are Faring Almost Two Years After the 2016 Fraudulent Sales Scandals," Anastasia Christman, June 2018. Online.
[6] Emily Flitter and Stacy Cowley, "Wells Fargo Says Its Culture Has Changed. Some Employees Disagree," *New York Times*, March 9, 2019. Online.
Jim Puzzanghera, "Wells Fargo CEO heads to Congress amid claims that reforms are slipping," *Los Angeles Times*, March 11, 2019. Online.
Committee for Better Banks, "The Wheels Are Still Off at Wells Fargo," March 2019. Online.
[7] Office of the Comptroller of the Currency, "OCC Issues Notice of Charges Against Five Former Senior Wells Fargo Bank Executives, Announces Settlement With Others," News Release 2020-6, January 23, 2020. Online.
[8] Office of the Comptroller of the Currency, "Notice of Charges for Orders of Prohibition and Orders to Cease and Desist and Notice of Assessments of a Civil Money Penalty," Notice #N20-00, p. 12. Online.

workplace cultures where workers often feel that they cannot even take time to use the bathroom lest they fail to meet their quotas. There is no current requirement in the law that banks provide rest periods for employees for at least ten minutes every four hours. The lack of such regulations leads to conditions that undermine worker health and dignity.

3. The Use of Forced Arbitration
Major financial institutions are increasingly requiring their employees to sign away the option to pursue the legal rights in court should they find their rights on the job have been violated. Forced arbitration clauses in employment contracts contributed to the creation of a workplace culture that discourages workers from speaking out when they themselves have suffered abuse or exploitation, or when they witness actions that abuse consumers.

4. An Anti-Whistle-Blower Culture
Although whistle-blower laws are on the books, financial industry workers do not feel adequately protected by those laws. Non-disclosure agreements are increasingly used by financial industry employers to prevent the revelations of anti-consumer practices and to block efforts by workers to join together to identify abuses and seek their correction. The lack of "just cause" job protections workers have when they unionize also inhibits bank workers from filing complaints or talking to government regulators.

Meanwhile, the recent charges filed by the OCC document how Wells Fargo executives provided false, misleading and incomplete information on the bank's sales practices misconduct problem for over 14 years, highlighting the limits of government regulators to effectively enforce consumer protection laws by solely relying on information provided by top executives.[9]

5. Structural Racial and Gender Inequities
The banking industry's lowest wage workers are disproportionately women and people of color. Its highest wage workers are disproportionately white men.[10] As long as these patterns continue, they will contribute to larger patterns in our economy in which women's median wages trail men's and the median household wealth of people of color badly lags that of whites.

6. Lack of Transparency
The disclosure of a bank's total employment globally, its employment in the United States, its use of subcontractors are not required to be disclosed on the bank's 10-K forms. Nor are banks required to disclose the number of Worker Adjustment and Retraining Notification Act notices (informing workers of a layoff of more than 50 workers) that they were required to file in the previous year. For example, after the U.S. Department of Labor investigated several of Wells Fargo's announced layoffs over the last couple of years, the USDOL concluded that affected bank employees were entitled to Trade Adjustment Act benefits because the layoffs were due to international trade and were moved to another

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9 Office of the Comptroller of the Currency, "Notice of Charges for Orders of Prohibition and Orders to Cease and Desist and Notice of Assessments of a Civil Money Penalty," Notice #N20-00, p. 76-82. Online.
10 National Employment Law Project, "A $15 Minimum Wage for Bank Workers," Data Brief, August 2015. Online.

country.[11] Similarly, banks are also not required to disclose any lawsuits that they face pertaining to the violation of their workers' rights under the provisions of the National Labor Relations Act, Title VII of the Civil Right Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Americans with Disabilities Act, or the Genetic Information Nondiscrimination Act. This lack of transparency keeps workers in the dark regarding their employers' practices, thus preventing them from taking any individual or collective action to rectify these patterns.

7. Lack of Adequate Training on the Rights of Workers, Consumers and Whistle-Blowers
Bank workers themselves currently do not receive adequate training regarding either their rights as workers or whistle-blowers, or the rights of the consumers with whom they interact daily. Banks are currently not required to report on their training protocols to the Consumer Finance Protection Bureau or the Office of the Comptroller of the Currency. Care must be taken to ensure that bank workers are adequately trained and encouraged to be vigilant in upholding high ethical standards in the industry.

The Need for a Bank Workers Bill of Rights

Correcting the structural weaknesses that continue to beset our banking system requires that we protect and empower the industry's front line workers.

They must be protected from conditions that erode their professionalism, including low pay, pay-incentives that undermine their safety and dignity, requirements that they sign away their rights to take action individually or collectively to take action against abuses of their rights, the rights of their coworkers, or the rights of consumers.

They must be empowered to act individually and collectively to expose wrongdoing, to learn and foster ethical practices, and to hold their employers accountable not only to profit incentives, but to the common good. Banking, after all, should not only be a profit making venture but a service that advances the common good.

The provisions of a Bank Workers Bill of Rights should include:

- A firm recognition of workers' rights to take individual and collective action to seek improvements in their working conditions through unionization;
- Whistle-blower protections whose evidentiary standards, and burdens of proof protect workers against retaliation, as provided in the Whistleblower Augmented Reward and Non-Retaliation Act (Sec. 6 of H.R. 4619 in the 114th Congress);

[11] Deon Roberts, "Wells Fargo shifts many jobs overseas following layoffs in the US, documents show," *The Charlotte Observer*, December 20, 2018. Online.

- Transparency requirements that ensure that banks publicly disclose information regarding their compliance with the National Labor Relations Act, Title VII of the Civil Right Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, the WARN Act, and other laws and regulations pertaining to the protection of workers' rights;

- A guaranteed living wage for bank employees;

- An end to unreasonable sales goals, high pressure incentive pay and unattainable evaluation metrics; unreasonable pressure on employees to meet those goal; and especially pay-for-performance formulas that are overly reliant on sales quotas and cross-selling;

When bank workers feel protected and empowered, they will become a front-line force whose activities will help ensure the regulatory compliance of their employers. We cannot afford another financial meltdown triggered by the predatory practices of large financial institutions. The time has come for us to attend to the needs of our bank workers, making them allies in the larger fight to create a sustainable and responsible financial sector.

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