APPENDIX 7

to

NOVEMBER 9, 2020 EXPERT REPORT

of

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In the Matter County of Cook Illinois v. Bank of America Corporation, et al,

Civil Case No. 14-CV-2280 (N.D. Ill.)

Additional Materials Considered From the Evidentiary Record

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Countrywide's Systematic Disregard of its Loan Underwriting Standards

1. Underwriting is the first and primary level of assurance that the investor guidelines have been followed. HUD defines the purpose of underwriting in the forward section of the underwriting handbook [1] states simply: "…to establish that the borrower has the ability and willingness to repay the mortgage debt. This decision must be predicated on sound underwriting principles…" It is not only the purpose but a requirement of every lender that funds mortgage loans to ensure that the underwriter has reviewed every loan package to establish compliance with the investor product guidelines and that the borrower can meet the terms of the note.[2] The underwriter will check for issues relating to the borrower's income, debts, and employment though reviews of the verifications of income, employment, deposits, and rent. In addition, the underwriter reviews the loan portfolio to assure that the collateral (appraised value of the subject property) meets the minimum standards as established by the loan product being used. Therefore, it is the fiduciary duty and responsibility of the underwriter to ensure that the borrower and property meet the minimum standards of the investor and the investor's mortgage product.

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[1] HUD Handbook 4155.1 Forward: This Handbook describes the basic mortgage credit underwriting requirements for single-family (one to four units) mortgage loans insured under the National Housing Act. For each loan FHA insures, the lender must establish that the borrower has the ability and willingness to repay the mortgage debt. This decision must be predicated on sound underwriting principles consistent with the guidelines, rules, and regulations described throughout this Handbook and must be supported by sufficient documentation.

[2] HUD Handbook 4155.1 Chapter 2; Mortgage Credit Analysis; 2-1 Overview. The purpose of underwriting is to determine a borrower's ability and willingness to repay the mortgage debt, thus limiting the probability of default and collection difficulties, and to examine the property offered as security for the loan to determine if it is sufficient collateral. The "Four C's of Credit" (Credit history, Capacity to repay, Cash to close, and the Collateral) are evaluated during the underwriting process.

2. Countrywide typically represented to investors (securitization pools) that it applied its underwriting standards "to evaluate the borrower's credit standing and repayment ability" and that "a determination generally is made as to whether the prospective borrower has sufficient monthly income available to meet monthly housing expenses and other financial obligations and to meet the borrower's monthly obligations on the proposed mortgage loan."[3]

3. Bank of America underwrote and insured FHA loans to borrowers who did not qualify. During the period May 1, 2009 through March 31, 2012,[4] Bank of America underwrote and insured for FHA insurance loans to borrowers who did not qualify for loans under the criteria set by HUD. In certain cases, Bank of America, inter alia, did not properly verify borrowers' income, did not adequately verify the source of gift funds borrowers used to make the statutory minimum down payment, and approved borrowers that may have lacked the ability to make monthly mortgage payments.[5]

Quality Control Testing as an Industry Tool for Identifying Discriminatory and Disparate Lending Activity

4. Quality control, in theory and practice, is the process of reviewing and analyzing a loan portfolio to ensure that the borrower has met the terms of the note and that the risk is mitigated for the investors. The federal government has established very strict guidance regarding the origination of government insured loans under FHA and VA mortgage loan programs. Quasi-

[3] August 21, 2014 Department of Justice, Settlement Agreement, Annex 1-Statement of Facts, *Bank of America to Pay $16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis*; See https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading. p.8

[4] Bank of America to Pay $16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis; August 21, 2014 Department of Justice, Settlement Agreement , Annex 1-Statement of Facts, See https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading. p.1

[5] *Id.* at 17.

governmental bodies such as Fannie Mae and Freddie Mac and other non-governmental investor groups including Countrywide, Wells Fargo, Washington Mutual and Bank of America have established quality assurance standards requiring that certain standards be met regarding the origination of owner occupied residential mortgage loans.

5. Quality control has been valued as the most effective investigative tool to assist in identifying risk characteristics of loans and to ensure that the loans conform to the minimum standards as established by investor groups. Investors typically require a minimum of ten percent [6]quality control reviews for conforming loan packages. However, the higher the risk for the mortgage portfolio, the greater the percentage of audits that should be performed to maintain a level of confidence that the financial Quality control is typically conducted through pre and post-closing audits that meet the requirements of Fannie Mae, Freddie Mac, FHA, and VA and are performed by experienced staff or outside third party auditors. These auditors are experienced underwriters, processors, closers, and appraisal specialists. The auditors review certain significant elements of the mortgage loan file that would determine whether the loan would perform and identify measurable risk characteristics of the financial portfolio. The primary purpose of these pre and post funding audits is to check the accuracy and quality of the loan application.

6. These pre and post-closing audits would specifically review the mortgage loan files for conformance with industry and investor product guidelines and portfolio products; all local, state, and federal disclosures and loan origination practices were followed; underwriting guidelines reviewed; desk review of appraisals; compliance and closing reviews; early payment default reviews; and for fraud detection. The audit also ensures the accuracy, validity and quality of the

[6] HUD Handbook 4060.1, REV-1, Chapter 6, all approved lenders and loan correspondents are required to conduct post-closing reviews of 10% of all loans funded each month. HUD requires that these reviews be done by personnel that are not involved in the loan origination process.

loan application through reverification of borrower's employment; ownership records reviewed; employer's business status verified with state records; research ownership and current seller's title; determine validity and issuance of social security numbers used by the borrower; check borrower liability data verification through an in-file credit report; previous sale and market value researched to identify potential property flips or significant value issues.

Bank of America's Conventional Technical Manual for First Mortgage Products [7]

7. A review of Bank of America's (BANK OF AMERICA) Conventional Technical Manual (CTM) for 'First Mortgage Products' stated that, "Conforming and Non-Conforming product lines are subgroups of the Conventional Prime area. They are not treated separately within this manual since the majority of our underwriting guidelines apply to both product lines. Home Equity guidelines are also included in the CTM."[8] Bank of America and Countrywide government mortgage products follow the underwriting guidelines specific to those agencies [such as FHA, VA, FNMA, FHLMC, etc.].[9]

Countrywide's Conventional Technical Manual for First Mortgage Products[10]and Bank of America and Countrywide's Management Philosophy[11]

8. A review of Countrywide's Conventional Technical Manual (CTM) for First Mortgage Products state in part their [Bank of America and CW] Management Philosophy is:

> Bank of America is committed to originating loans that help borrowers achieve their dreams of homeownership. Part of our responsibility as an ethical lender is to ensure that if we make the loan, it helps the borrower meet his or her goals. This

[7] CWCC0000007892; Introduction: 0.0.0 Bank of America's (BANK OF AMERICA) Conventional Technical Manual for First Mortgage Products; Effective date: 01/30-2009.
[8] CWCC0000007892; Introduction: 0.0.0 Bank of America's (BANK OF AMERICA) Conventional Technical Manual for First Mortgage Products; Effective date: 01/30-2009.
[9] *Id.*
[10] *Id.*
[11] *Id.*

objective must be met by offering consumers responsible products with measured corporate risk and return profiles.[12]

9. The CTM states that Bank of America manages this philosophy by following these principles: a) only offer products that provide benefit to all parties related to the loan; b) products should benefit the consumers who choose them and can service the debt [ability to pay]; c) products should not cause high risk, abusive, or discriminatory practices and would not expose the company to potential negative customer, market, or regulatory perception, and they should not cause publicity that could negatively affect the company's reputation; d) to only offer products with acceptable credit, interest rate, operational, and compliance risk profiles; and e) seek to only offer products that comply with all applicable laws and regulations and that Bank of America will not originate high cost loans as defined under federal, state or local laws, regulations or ordinances.[13]

10. The Bank of America Management Philosophy's focus must be on the borrower's demonstrated desire and ability to repay his or her obligations as well as on informing the borrower of various loan options.[14] Countrywide states that the following guidelines must be considered when reviewing an application for approval or denial:[15]

a. Capacity to pay – What is the gross income, debt ratio, and disposable income?
b. Credit – What is the history of mortgage credit, consumer credit, and public records?
c. Common Sense – Does the loan benefit the borrower? Does the entire loan package make sense and meet the borrower's objectives?
d. Customer Intent – Does the borrower demonstrate intent to repay the loan?

[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*

e. Current Situation – Does the borrower show the ability and willingness to repay the loan at this time?

f. Collateral – What is the property type, condition, and marketability?

11. The management philosophy also stated that Bank of America ensures that they originate only loans that offer a tangible benefit to their borrowers including the fact that they will not approve a loan based solely on the equity available in the collateral property.[16]

12. The management philosophy states that Bank of America will not engage: in churning (i.e. four refinances within 24 months with minimal borrower benefit leads to equity stripping); equity stripping (which is considered a predatory lending practice), or pyramiding (a rapid increase in mortgage debt within a relatively short time.[17]

Countrywide's management philosophy includes a 'Clarity Commitment'

13. Countrywide's management philosophy includes a 'Clarity Commitment.' ™ [18]Countrywide states that this commitment 'is at the core of our brand', 'drives demand,' and this Clarity Commitment 'promise represents our commitment to being a responsible lender who will help enable sustainable homeownership for our customers.'[19]

14. However, this management philosophy "Our brand promise represents our commitment to being a responsible lender who will help enable sustainable homeownership for our customers." This philosophy applies to '<u>all mortgage products and programs' except</u>: 6-Month Fully Amortized ARMs; 1-Year Fully Amortized ARMs; Conforming ARM LIBOR 3/1

[16] CWCC0000007895; Tangible benefits to the borrower.
[17] CWCC0000007895; Bank of America will not engage in churning, equity stripping, or pyramiding.
[18] CWCC0000007901; Clarity Commitment.
[19] CWCC0000007901; Clarity Commitment.

2-2-6; Conforming ARM LIBOR 3/1 2-2-6 with 10 year IO; Conforming ARM LIBOR 5/1 2-2-6, and Conforming ARM LIBOR 5/1 2-2-6 with 10 year IO; Non-Conforming ARM LIBOR 3/1 and Non-Conforming ARM LIBOR 3/1 2-2-6 with 10 year IO; Construction to Permanent (new and rehabilitation); HomeStyle Mortgage; Loans with temporary buydown features; Secondary financing; Texas (a)(6);[20] Conforming 30/7 Year Balloon Mortgage with 23-Year Refinance Option; and Conforming 30/5 Year Balloon Mortgage with 25-Year Refinance Option'.[21]

Bank of America's Technical Manual & Loan Program Guidelines: Underwriting Philosophy[22]

15. Bank of America suggests that the most effective way to originate an investment quality loan is through the use of Countrywide's proprietary automated underwriting system, CLUES. However, Bank of America will accept loans that have been approved through both Fannie Mae's Desktop Underwriter (DU) and Freddie Mac's Loan Prospector (LP). Countrywide states that even though the loans have been approved by the automated underwriting systems, that underwriters should review the file carefully to determine that[23]: all income, assets, and liabilities have been accurately recorded and disclosed by the borrower; the information in the credit report accurately represents the borrower's credit history; and there is no information outside of the data submitted to the AUS that would have an effect on the underwriting decision.[24]

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[20] CWCC0000007897 and CWCC0000007898.

[21] CWCC0000007899 Bank of America Conventional Technical Manual: Introduction: 0.1.2 Effective date 05/07/2009.

[22] CWCC0000007903 Bank of America Conventional Technical Manual: Introduction: 0.2.1 Bank of America Underwriting Philosophy; Effective date 05/07/2009.

[23] CWCC0000007903 Bank of America Conventional Technical Manual: Introduction: 0.2.1 Bank of America Underwriting Philosophy; Effective date 05/07/2009.

[24] CWCC0000007903 & 7904 Bank of America Conventional Technical Manual: Introduction: 0.2.1 Bank of America Underwriting Philosophy; Effective date 05/07/2009.

16. Countrywide underwriting philosophy also states that '*Credit score exceptions are not allowed for loans with scores< 620. Loans with credit scores < 620 may be considered under FHA, if eligible'* and this guidance applies to all divisions.[25]Countrywide's rules state that **underwriting exceptions, except for LTV, credit score, and loan amount**, may be evaluated and approved with appropriate compensating factors.[26]

17. Countrywide and Bank of America Selected Underwriting Exception Guidelines per Product or Program:[27]

a. Minimum Credit score 620-No exceptions;[28]
b. Debt-to-Income: Conforming: LTV> 80%: Loans with DTI > 41% require non-delegated manual Ml; Manually underwritten loans: Maximum DTI is 45%. No exceptions allowed;[29]
c. For CMD/FSL: For Non-Conforming 6-Month LIBOR and 1-Year Treasury ARMs: Full/Alt Doc, Owner-occupied, 1 unit only; Maximum LTV: 80%, Minimum credit score: 740, Risk Tier 1 or 2 only, and Secondary financing: Not allowed.[30]

Countrywide's First Lien Conforming Exception Guidance.

18. The data below provides the minimum credit score floors for Conforming Loan Programs. Interest Only loans are not eligible to be manually underwritten (this includes AUS refers); exceptions to this restriction cannot be approved.[31]The following requirements only

[25] CWCC0000007909 Bank of America Conventional Technical Manual: Introduction: 0.2.10 Bank of America Requirements for loan Exception and Approval; Effective date 05/15/2009.
[26] CWCC0000007910 Underwriting exceptions, except for LTV, credit score, and loan amount.
[27] CWCC0000007911 Bank of America Conventional Technical Manual: Introduction: 0.2.10 Bank of America Underwriting Philosophy; Effective date 05/15/2009.
[28] CWCC0000007911; "Minimum Credit Score
[29] CWCC0000007912' Debt to Income
[30] CWCC0000007912
[31] CWCC0000007915

focuses on Owner-occupied, Single Family Residences (SFR) with standard amortization.[32]For purchase, rate and term, an owner-occupied, SFR: maximum LTV 95, maximum CLTV 95, and Credit Score 680.[33] If the credit score is 620, the maximum LTV 80 and CLTV 95. For WLD only: purchase, rate and term, an owner-occupied, SFR: Maximum LTV 90, Maximum CLTV 95, and Credit Score 700.[34]

19. Countrywide's underwriting philosophy regarding low documentation and stated income loans states that the application is the primary source of information therefore, a full application is required. The guidance also requires that the income must appear reasonable for the applicant's location, occupation, length of experience, and assets. [35]

Countrywide implemented the "Hustle"

20. In early 2007, however, when the subprime market collapsed, Countrywide responded to its resulting revenue shortfall in two ways. First, Countrywide shifted the focus of FSL to originating prime, conforming loans that qualified for sale to the GSEs. Second, Countrywide implemented the "Hustle" in FSL, which reduced the amount of time spent processing and underwriting conventional loans, thereby boosting loan volume and revenue.

21. According to internal Countrywide documents, the aim of the Hustle (or "HSSL," for "High Speed Swim Lane") was to have loans "move forward, never backward" and to remove unnecessary "toll gates" slowing down the loan origination process. In furtherance of these aims, Countrywide's new origination model removed the processes responsible for safeguarding loan

[32] CWCC0000007915
[33] CWCC0000007915
[34] CWCC0000007915
[35] CWCC0000007915

quality and preventing fraud. For instance, Countrywide eliminated underwriter[36] review even from many high risk loans. In lieu of underwriter review, Countrywide assigned critical underwriting tasks to loan processors who were previously considered unqualified even to answer borrower questions. At the same time, Countrywide eliminated previously mandatory checklists (or "job aids") that provided instructions on how to perform these underwriting tasks. Under the Hustle, such instructions on proper underwriting were considered nothing more than unnecessary forms that would slow the swim lane down.[37]

Countrywide also eliminated the position of compliance specialist

22. Countrywide also eliminated the position of compliance specialist, an individual previously responsible for conducting a final, independent check on a loan to ensure that all conditions on the loan's approval were satisfied prior to funding. Finally, to further ensure that loans would proceed as quickly as possible to closing, Countrywide revamped the compensation structure of those involved in loan origination, basing performance bonuses solely on volume.[38]

23. Under Countrywide's Expanded Underwriting Guidelines, loans could be originated under additional documentation programs, namely "Stated Income/Stated Assets," "No Income/No Assets," and "No Ratio." Under the "Stated Income/Stated Asset" program, borrowers stated their incomes on a loan application without providing supporting documentation that could then be verified. The Offering Documents disclosed that in connection with the Stated Income/Stated Assets program, the loan application was reviewed to determine whether the

[36] June 30, 2013, America Lost: Remember PennyMac is also known as Countrywide, See http://saveourdream.blogspot.com/2013/06/remember-penny-mac-is-also-know-as.html
[37] June 30, 2013, America Lost: Remember PennyMac is also known as Countrywide, See http://saveourdream.blogspot.com/2013/06/remember-penny-mac-is-also-know-as.html
[38] *Id.*

income as stated by the borrower was reasonable for the borrower's stated employment. The description of the Expanded Underwriting Guidelines also stated that they generally permitted DTI ratios up to 36% on the basis of housing debt and up to 40% on the basis of total debt.[39]

Supermarket Strategy

24. In furtherance of its goal to obtain a 30% market share and its "Supermarket Strategy," Countrywide began to offer products that featured more permissive lending criteria.[40] Examples of these more permissive lending criteria included loans with higher combined-loan-to-value ratios (CLTVs) or with lower credit scores. Countrywide also began to offer products that required less documentation from borrowers or offered flexible payment options. Examples of these mortgage products included "Stated Income" loans and PayOption Adjustable Rate Mortgages ("ARMs").[41]

'If we can price it, then we will offer it.'

25. Country approved loans regardless of whether the consumer had the ability to repay the note. Stated Income loans did not require borrowers to substantiate their claimed incomes with tax forms or other documentary proof. Pay-Option ARMs featured variable interest rates and flexible repayment options, including the ability to pay only the interest due for a certain period of time. In a memo sent in October 2004, CFC's then Chief Credit Officer wrote: "my impression since arriving here is that the Company's standard for products and Guidelines has been: 'If we can price it, then we will offer it.'" [42]

Countrywide's Core Principal Underlying Product Guidelines is Salability.

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[39] DOJ Settlement, Annex 1-Statement of Facts, at 9.
[40] *Id.* at 9-10.
[41] *Id.* at 9.
[42] *Id.* at 10.

26. In a May 13, 2007 internal memorandum, the same executive wrote: A core principal [sic] underlying product guidelines is salability. The only exception to this principle is specific 'Bank only' programs where loans are originated or purchased for the Bank portfolio. Similarly, in an email dated June 7, 2007, CFC's Chief Investment Officer wrote to CFC's President, "[W]hen credit was easily salable, SLD was a way to take advantage of the 'salability' and do loans outside guidelines and not let our views of risk get in the way." Increase in Exception Loans Countrywide originated an increasing number of loans as exceptions to its Loan Program Guides.[43]

Countrywide's Credit Risk Committee

27. A June 28, 2005, a Countrywide Financial Corporate Credit Risk Committee presentation noted that approximately 15% of nonconforming loans that Countrywide was originating through CMD were exception loans. On July 28, 2005, a Countrywide executive sent an email informing the SLD that it could begin to expand the programs for which it could approve "exception" loans to programs other than the 30 year fixed and 5/1 ARM loan products. He wrote: [T]o the widest extent possible, we are going to start allowing exceptions on all requests, regardless of program, for all loans less than $3 million, effective immediately. The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. We will assume securitization in all cases. By June 7, 2006, less than a year later, an internal Countrywide email indicated that during May 2006, for prime loans, exceptions constituted by dollar amount

[43] *Id.*

approximately 30% of funding's for certain fixed loans, 40% for Pay-Option ARMs, and 50% for expanded criteria hybrid loans.[44]

Countrywide Conducted Stress Tests to Model Loans' Expected Performance

28. In connection with approving the Extreme Alt-A guideline expansion, Countrywide conducted various stress tests to model the loans' expected performance. Under certain adverse economic assumptions, Countrywide's models predicted that certain bands of Extreme Alt-A loans could perform more like subprime loans than like Alt-A loans. In or around late March 2006, the Extreme Alt-A program was presented to Countrywide's Responsible Conduct Committee ("RCC") for consideration. The presentation included Model Foreclosure Frequency Estimates which projected that, under stressed economic conditions, certain bands of the loans originated under Extreme Alt-A guidelines could exceed a 21.62% foreclosure frequency. The model described in the presentation predicted that a number of categories of loans within the Extreme Alt-A program could experience default percentages into the high 30's or low 40's, and even a few in the 50's. The presentation indicated that "poor performance should be expected." On April 5, 2006, a Countrywide executive sent an email regarding the Extreme Alt-A program that read, "[b]ecause this is a 'hazardous product' (direct quote from [another Countrywide executive]), ... [that Countrywide executive] wants to see a detailed implementation plan which addresses the process for originating and selling these loans such that we are not left with credit risk." [45]

29. Countrywide began offering the Extreme Alt-A program in 2006 and began originating and selling loans under its expanded underwriting guidelines. As with most exception loans, the Extreme Alt-A guidelines called for Extreme Alt-A loans to be processed at the SLD

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[44] *Id.* at 10.
[45] *Id.* at 11.

level, but the Extreme Alt-A guidelines did not require SLD underwriters to identify compensating factors in connection with underwriting the loans.[46]

30. Using its SLD and SMSLD processes, Countrywide originated a substantial number of loans as exceptions to its Loan Program Guides. Internal reporting indicated that certain categories of exception loans performed poorly compared to loans originated within the parameters set out in Loan Program Guides. For example, a June 28, 2005 CFC Credit Risk Committee report indicated that certain exception loans greater than $650,000 were “performing 2.8 times worse overall” than non-exception loans.[47]

Pay-Option ARM Loans Concerns[48]

31. Countrywide began issuing Pay-Option ARM loans around 2000, and by 2004 they were a large part of Countrywide’s loan originations. In some instances, Pay-Option ARM borrowers were able to make payments that were less than the interest that accrued on the principal balance each month. The difference between the amount of interest that accrued on the loan and that lower payment is called “negative amortization” and was added to the principal balance of the loan. If the loan’s principal balance reached a certain amount, frequently 110% or 115% of the original loan amount, the loan payment “reset” to the amount necessary to amortize the principal balance. This “reset” could result in substantially higher payments for borrowers, resulting in a form of what became known in the industry as “payment shock.”[49]

32. Starting in mid-2005,[50] Countrywide received information indicating, among other things, that a majority of Pay-Option ARM borrowers were opting to make the minimum payment

[46] *Id.*
[47] *Id.* at 11-12.
[48] *Id.* at 12.
[49] *Id.*
[50] *Id.*

on their loans. In response to certain information, CFC and CB decided to limit the types of PayOption ARM loans that CB held for investment. On August 1, 2005, CFC's Chairman sent an email to CHL's President and head of loan production and CB's President stating:

> I am becoming increasingly concerned about the environment surrounding the borrowers who are utilizing the pay option loan and the price level of real estate in general but particularly relative to condos and specifically condos being purchased by speculators (non-owner occupants). I have been in contact with developers who have told me that they are anticipating a collapse in the condo market very shortly simply related to the fact that in Dade County alone 70% of the condos being sold are being purchased by speculators. The situation being reported in Broward County, Las Vegas as well as other so called "hot" areas of the Country. We must therefore re-think what assets [we] should be putting in the bank. For example you should never put a non-owner occupied pay option Arm on the balance sheet. I know you have already done this, but it is unacceptable. Secondly only 660 fico's and above, owner occupied should be accepted and only on a limited basis. The focus should be on 700 and above (owner occupied) for this product. The simple reason is that when the loan resets in five years there will be enormous payment shock and the borrower is not sufficiently sophisticated to truly understand the consequences then the bank will be dealing with foreclosure in potentially a deflated real estate market. This would be both a financial and reputational catastrophe.[51]

33. On August 2, 2005, [52] CHL's president responded to this email, writing that this approach had "securitization implications": We need to analyze what remains if the bank is only cherry picking and what remains to be securitized/sold is overly concentrated with higher risk loans. The concern and issue gets magnified as we put a bigger percentage of our pay option production into the Bank because the remaining production then increasingly looks like an adversely selected pool.

34. On August 2, 2005, CFC's Chairman responded to this email, saying "I absolutely understand your position however there is a price no matter what we do. The difference being that by placing less attractive loans in the secondary market we will know exactly the economic price

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[51] *Id.* at 12.
[52] *Id.*

we will pay when the sales settle. "[53] In accordance with the direction of CFC's Chairman, CB later limited the Pay-Option ARM loans that it held for its own investment to loans with relatively higher credit characteristics. Beginning in October 2005, Countrywide tracked its Pay-Option ARM portfolio through monthly "Flash Reports."[54] Countrywide's analysis showed that the percentage of borrowers who chose to make the minimum mortgage payment each month was trending higher than predicted and, thus, certain loans were at risk of "resetting" earlier than anticipated. This "resetting," which was an inherent risk of the Pay-Option ARM product, could result in higher payments and, thus, could cause "payment shock" for borrowers.[55]

35. On April 3, 2006, CFC's Chairman sent to CHL's President and head of loan origination an email observing that there was "important data that could portend serious problems with [PayOption ARMs]. Since over 70% have opted to make the lower payments it appears that it is just a matter of time that we will be faced with a substantial amount of resets and therefore much higher delinquencies. We must limit [CB's retained investment in] this product to high ficos otherwise we could face both financial and regulatory consequences."[56] On May 18, 2006, CFC's Chairman sent to CFC's CFO, CHL's President, and others an email in which he warned: "As for pay options the Bank faces potential unexpected losses because higher rates will cause these loans to reset much earlier than anticipated and as [a] result caus[e] mortgagors to default due to the substantial increase in their payments."[57]

[53] *Id.* at 13.
[54] *Id.*
[55] *Id.*
[56] *Id.* at 13.
[57] *Id.*

36. On June 7, 2006, a Countrywide executive sent an email, observing that "exceptions" constituted 40% of prime Pay-Option ARM loans by dollar amount.[58] On September 13, 2006, CFC's Chairman spoke at a Countrywide Fixed Income Investor Forum and disclosed that, with respect to Pay-Option ARMs, "in the first year 78% of the borrowers employ the lower payment." On September 26, 2006, CFC's Chairman sent an internal email in which he described Pay-Option ARM loans as "the lightening [sic] rod of 'exotic loans'" and then described his concern with how the product would perform in stressed market conditions: The bottom line is that we are flying blind on how these loans will perform in a stressed environment of higher unemployment, reduced value and slowing home sales . . . It [sic] therefore I [sic] believe the timing is right for us to sell all newly originated pay options and begin rolling off the bank balance sheet, in an orderly manner, pay options currently on their port[folio]. [59]

37. Throughout 2006 and 2007,[60] Countrywide continued to originate Pay-Option ARMs, including as exceptions to its Loan Program Guides, and to securitize these Pay-Option ARMs into RMBS. As disclosed in Offering Documents, in certain RMBS backed by Pay-Option ARMs, as many as 90% of the loans that backed the certificates were originated under reduced documentation programs. Stated Income Loans Countrywide also received information indicating that some borrowers who applied for loans in which they stated their incomes without providing verification may have been overstating their incomes on their loan applications.[61]

38. In a May 26, 2006, CB Credit Risk Committee Report,[62] CB presented the results of a review of the tax returns of a sample of borrowers who had filled out IRS Form 4506-Ts in

[58] *Id.*
[59] *Id.* at 14.
[60] *Id.*
[61] *Id.*
[62] *Id.*

connection with their mortgage applications. A form 4506-T allows a mortgage lender to request a borrower's previous year's income tax return from the IRS. The audit described in the CB Credit Risk Committee Report compared the income a borrower provided in connection with a mortgage application to the income reported on the borrower's income tax return in the prior tax year. The presentation, assuming that borrowers correctly reported (and did not understate) their income on their tax returns, suggested: that approximately 40% of the Bank's reduced documentation loans in the portfolio could potentially have income overstated by more than 10% and a significant percent of those loans would have income overstated by 50% or more. The study further suggested that, among the group of borrowers who may have overstated their income by more than 10%, 68% had a variance of greater than 50%, 25% had a variance between 25% and 50%, and 7% had a variance between 10% and 25%. For Pay-Option ARM loans, the overwhelming majority of which were stated income loans, the study indicated that 72% of the Pay-Option ARM loans that showed greater than 10% variance showed greater than 50% variance.[63]

39. In a June 2, 2006, email drafted in response to this presentation, CFC's Chief Risk Officer wrote:

> These results are basically identical to what I've seen other times (both here and other places) this type of analysis has been done. You will observe similar results for other types of consumer loans (e.g., credit cards, installment loans) where income is not documented. While I am no fan of reduced doc, we should also keep in mind: 1) Any income growth since the last tax return won't be reflected in this type of analysis .... 2) Borrowers are not underwriters. Some of what we would not count as income (e.g., support from relatives) would be considered by most borrowers. Most borrowers are not going to knowingly take on an obligation they don't believe they can afford. 3) Many (most?) borrowers seek to report as little income as possible on their tax return. 4) Unlike many loan programs, the reduced doc is not differentially priced for most PayOption loans. So we may not have as much adverse selection here as other programs. We need to be careful painting all of this as a "misrep." Although that is obviously the case in some (perhaps many) instances, it won't be the case in all cases. If a borrower overstated his or her

[63] *Id.*

> income, it would affect the accuracy of DTI calculations, and also could affect an underwriter's ability to evaluate a borrower's repayment ability.[64]

Pay Option ARMs

40. Countrywide sold a product called the "Pay Option ARM." This loan was a 30-year adjustable rate mortgage that allowed the borrower to choose between various monthly payment options, including a set minimum payment. In a June 2, 2006 e-mail from Angelo Mozilo, Countrywide's former Chairman, President, and CEO, to Carlos Garcia, Countrywide's former CFO and Jim Furash, former President of Countrywide, Mozilo noted that most of Countrywide's Pay Option ARMs were based on stated income and admitted that "[t]here is also some evidence that the information that the borrower is providing us relative to their income does not match up with IRS records."[65] Mozilo then admitted that:

> As rates continue to climb it is evident that two things are going to happen relative to the loans on the Bank's balance sheet:
>
> 1. That the time of reset is going to accelerate because the 115% of the original loan amount will be reached must sooner that scheduled.
> 2. That the reset payments are going to be substantially higher than the buyer expects and what was used in the initial qualification.[66]

41. In that same November 2 email, Mozilo also revealed that "We have at least 20% or more of the Bank's pay option loans at a fico of 700 or less. It is clear that the lower fico borrowers are going to experience a payment shock which is going to be difficult if not impossible for them to manage."[67]

Lowered or Nonexistence Underwriting Standards

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[64] *Id.* at 14-15.
[65] BANACC0000454668.
[66] *Id.*
[67] *Id.*

42. Michael Winston joined Countrywide Financial Corporation in 2005 as a Managing Director and Enterprise Chief Leadership Officer.[68] In his declaration submitted in this case, Michael Winston stated in part "…gained extensive insight into various different operations of the organization and valuable insight into Countrywide's improper financial incentives to employees that caused the illegal and predatory lending and other misconduct alleged in the above-captioned matters."[69] Winston stated that CW rapid growth and lax government practices concerned him,[70] as did a conversation with Andrew Gissinger, President and Chief Operating Officer of Countrywide Home Loans[71] who stated "Countrywide had long abandoned its underwriting standards in order to increase loan volumes."[72] Winston stated that several mid-level employees expressed their concerns with 'lowered underwriting standards'.[73]Winston stated that he had observed Countrywide's inappropriate pressure on employees firsthand during his experience at Countrywide's Headquarters in California,[74]CW motivated people through fear and incentives.[75]

Foreclosures and Equity Stripping

43. Winston's declaration concluded that "…it is my understanding and belief that increased foreclosures were the result of the Defendants' equity stripping schemes such as originating higher cost first lien home mortgage loans and second lien home equity mortgage loans

[68] Declaration of Michael Winston dated October 25, 2020 at ¶ 3.
[69] *Id.* at ¶ 4.
[70] *Id.* at ¶ 5.
[71] *Id.*
[72] *Id.*
[73] *Id.* at ¶ 6.
[74] *Id.*
[75] *Id.*

and lines of credit and servicing those loans in a manner designed to extract maximum revenue on the resulting defaults and foreclosures."[76]

Exploitation of Borrowers-Improper Credit Approval-Steering

44. Winston stated that, "Based on my experience I can confirm the allegations that Countrywide's entire subprime and higher cost mortgage lending, securitization and servicing operations were geared to exploit borrowers to maximize corporate profits and management's compensation.[77] This was accomplished through Countrywide's practices of originating and servicing predatory subprime and higher cost mortgage loans.[78] Among other things, Countrywide encouraged unchecked or improper credit approval decisions for borrowers. Additionally, Countrywide steered borrowers into higher cost loan products increasing the likelihood of delinquency or default of such loans.[79]

Predatory Lending

45. Winston stated that, Countrywide was predatory to an infinite degree, constantly pushing for more fees, more products, more pressure, and using relaxed underwriting standards and lax control.[80] Countrywide's former Chief Fraud Investigator, Eileen Foster, once informed me that Countrywide's mortgage originators knew that many borrowers would not qualify for the loans they were seeking. so the mortgage originators would cut and paste new information into the loan documents to elevate income and assets. She explained to me that there was a running joke that the office supply item most needed in the mortgage originators office was "White-Out."[81]

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[76] *Id.* at ¶ 8.
[77] *Id.* at ¶ 9.
[78] *Id.* at ¶ 9.
[79] *Id.* at ¶ 9.
[80] *Id.* at ¶ 10.
[81] *Id.*

Countrywide Ignored a Borrower's Ability to Repay a Loan

46. Winston stated "Countrywide's originators, underwriters and management knew that certain borrowers had a high probability of defaulting on loans and used shadow guidelines to approve loans to riskier borrowers that would normally not be approved under the Company's regular guidelines.[82] The Company was motivated by salability of loans and not whether a borrower could repay them. Thus, Countrywide would originate exception loans as long as the risk could be passed off to investors - by selling the loans to them."[83]

Countrywide's Supermarket Strategy

47. Winston continued, "Countrywide's "supermarket" strategy was widely known in the Company. The strategy was to match any product offered by competitors and ensure that every possible borrower for a mortgage loan would receive a loan, regardless of their ability to repay that loan and regardless of their personal financial condition and credit worthiness.[84] This was intended to increase Countrywide's volume of loan originations by market share and revenue. The primary criteria to issue a loan was whether Countrywide could find a buyer for the loan. The result was that the Company further loosened its underwriting guidelines to make sure anyone that applied for a loan - that could 'fog a mirror" - received a loan. It was the embodiment of the Company's ''Fund'Em" culture."[85] Winston claimed that "Because the quality of these loans was so poor and the risk so high that borrowers could not repay them, the strategy inevitably led to very high rates of default among Countrywide loans."[86]

Countrywide's Predatory Practices were Intentional

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[82] *Id.*
[83] *Id.* at ¶ 11.
[84] *Id.* at ¶ 12.
[85] *Id.*
[86] *Id.*

48. Winston stated that CW predatory loan practices were predator and intentional,[87] "It was common practice for Countrywide to place their interests above their borrowers' interests by an order of magnitude. Countrywide engaged in nefarious behavior such as: steering borrowers into more costly loans, incorporating unreasonable terms, excessive fees, yield spread premiums to the loan broker, and pre-payment penalties into mortgage loans, and basing loan values on inflated or fraudulent appraisal values of properties. All of this was designed to increase the Company's revenue and profits and enrich its most senior executives.[88]

Countrywide Pushed Subprime Loans over Prime Loans

49. Winston stated, "Countrywide continuously pushed subprime loans even if the borrower could afford a prime loan. This was to drive both companies' business of pooling, securitizing and selling higher risk mortgage loans in mortgage backed securities to various investors, including public pension funds.[89] The vertical integration of these companies enabled them to quickly originate, securitize and sell these loans very efficiently, creating revenue every step of the way and control over the entire process. Countrywide had practical abilities to direct and control the activities of each and every subsidiary."[90] "Countrywide and Merrill Lynch made a lot of money on subprime and higher cost mortgage and servicing strategies, and the Companies routinely conspired together to generate a high volume of higher risk loans that could be profitably packaged as mortgage back securities. This willful conduct inevitably wreaked havoc on borrowers and the financial markets."[91]Winston stated he had lunch with Merrill Lynch Chairman of ML

[87] *Id.* at ¶ 13.
[88] *Id.*
[89] *Id.*
[90] *Id.* at ¶ 14.
[91] *Id.* at ¶ 14.

International Winthrop Smith III who stated that he was concerned with the new President which would no longer ensure ML was honest and customer focused.[92]

Countrywide's Origination and Servicing Scheme

50. Countrywide's conduct was designed to ensure that Countrywide could profit at every step of the mortgage loan origination, securitization and sale, and servicing processes on both a bulk loan sale and individual loan basis. This required the origination of as many higher cost mortgage loans as possible. [93]Higher risk loans could be charged higher interest rates and fees and, the continued servicing of those loans after their sale, generated tremendous loan servicing income to Countrywide. However, through the securitization and sale process, Defendants could pass the risk of loss of bad loans to others and obtain back their capital to make more loans.[94]

Countrywide's Compensation Policies

51. Winston stated that he was familiar with "Company's compensation policies and how they fostered this conduct. Countrywide's loan originators' compensation was tied to the profitability of the loans the originated. Loans with less documentation were much more profitable. The more fees added to a loan, and the larger the loan amount, the more profitable the loan was. As a result, Countrywide often increased borrower loan amounts and fees immediately prior to closing."[95] Countrywide's discretionary pricing policies authorized and encouraged home mortgage loan originators to make larger, riskier loans (in terms of loan documentation and quality), work in additional add-on fees, and set higher fees at closing.[96]

Countrywide's improper lowering and circumvention of underwriting standards.

[92] *Id.*
[93] *Id.* at ¶ 15.
[94] *Id.* at ¶ 15.
[95] *Id.* at ¶ 16.
[96] *Id.*

52. Winston stated "Countrywide's improper lowering and circumvention of underwriting standards. Countrywide virtually abandoned underwriting, only caring about the quantity of loans they were issuing not the quality of the loans they were providing to borrowers. In fact, Countrywide placed immense pressure on underwriters to approve all mortgage loans and even required underwriters to provide justifications for any rejections they made. It was common to overhear Countrywide employees bragging about their lowered underwriting standards and the poor quality of loans that they were issuing to borrowers. They referred to it as being like "putting lipstick on a pig." Similarly, Countrywide routinely approved exception loans, to the point it seemed that everything at Countrywide was an exception. Customers - i.e. borrowers - did not matter to Countrywide, only revenue and profit share mattered."[97]

Countrywide's 'low' 'no doc, NINJA (no income no job no assets) Loan Products

53. Winston described "an example of poor-quality loans that were commonplace at Countrywide were the "low doc" or "no doc" loans. As part of my focus on building a quality organization, I was aware that the Company routinely failed to confirm that the information provided by applicants was accurate and failed to verify asset and income information as required. These loans were often referred to as "ninja" loans: no income no job no assets. It was known that inside the company that only 3-5% of loans were ever checked at Countrywide. Similar to the witnesses' accounts alleged in (second amended complaint) 281-284, in my experience Countrywide issued loans to borrowers that simply should not have been made. Indeed, Countrywide's loan originators were often known to get together and laugh about the poor quality of their loans.

Countrywide's Inflation of Appraisals of Property Values Policy & Practice

[97] *Id.* at ¶ 17.

54. Winston confirmed appraisal related issues, "I can attest both professionally and personally to the allegations in the SAC relating to Countrywide's inflation of appraisals of property values. Countrywide ignored low appraisals and fostered the fraudulent inflation of property appraisals. The Company engaged in this abuse of the appraisal process so they could increase the amount of the loans they were able to make to a particular borrower and approve, and thereby increase their revenue and profits on each such loan. This practice was widespread at the Company and it served to increase the Countrywide's revenues and profits.[98] Winston also confirmed, Appraisers are supposed to perform assignments with impartiality and no interest in the outcome, and they are not supposed to perform as an advocate for any parity. It was commonplace and well-known to the Company's mid and senior level management, however, that Countrywide employees encouraged the undisclosed inflation of appraisal values to support inflated loan amounts to borrowers. Many Countrywide loan officers had close relationships with appraisers that allowed them to pressure appraisers to inflate appraisals in order to allow borrowers to take out the loans for which they applied. Accordingly, appraisers systematically abandoned applicable guidelines and overvalued properties in an effort to enable the issuance of mortgages to be transformed to mortgage-backed securitizations.[99]

Countrywide's Senior Management was Aware of Inflated Appraisals

55. Countrywide's most senior management clearly knew that appraisers often fraudulently increased the values of the properties they appraised, instead of objectively appraising the true fair market value of the properties. It also was well known throughout the Company, including its senior management, that if an appraiser would not approve a property value inflated

[98] *Id.* at ¶ 19.
[99] *Id.* at ¶ 20.

by over 5%, Countrywide would blacklist them. Thus, if an appraiser tried to be honest they might never be able to find work again.[100] Neither Countrywide nor Landsafe followed the rules. In fact, they continuously bragged about the rules they got around, often loudly and in public places.[101]

Countrywide's Quality Control Appraisal Review was a 'Sham'

56. Winston stated, "Countrywide retail mortgage loans were sent to outside fee appraisers or staff appraisers. These appraisers would generate whatever appraisal was necessary to close the deal. Countrywide claimed it would review all appraisals for quality control, but in reality the review mechanism was a sham intended to create the illusion of quality control and instead allowed an opportunity for the rewriting of appraisals to inflate value. This allowed Countrywide to market its review mechanism and mislead regulators into believing their loan assets were more secure than competitors' products. It also enabled Countrywide and Landsafe to exert control over the home valuation process which routinely led to inflated mortgages. This, in turn, led to increased foreclosures. I spoke with Steve Boland multiple times about this issue because it was yet another impediment to my job description of trying to build a quality financial institution."[102]

Winston's Personal Experience – Countrywide's Appraisal Fraud

57. Winston discussed his personal experience with the process, "Even in my personal affairs I experienced this same misconduct first-hand. After relocating to California to work for Countrywide in 2005, I purchased a home with a mortgage through Countrywide. I was talked into an adjustable-rate mortgage with aggressive resets. For most borrowers, the terms of the loan would have caused them to be unable to make their payments. While I was always able to make

[100] *Id.* at ¶ 21.
[101] *Id.*
[102] *Id.* at ¶ 22.

my payments, at times after the interest rate reset I struggled to be able to do so despite my six-figure income.[103]Winston described what he considered fraud, "During my loan approval process the Company mandated that I use Landsafe to value my home. One of the primary factors in residential real estate valuations is a home's square footage. Based on similar homes and recent sales, and after applying various adjustments, an appraiser can provide a valuation based on the square footage of the home and the average price per square foot. I later found out that the square footage on my home was falsified, apparently causing a significantly inflated home appraisal of which I was not aware. I have owned several homes but never before was exposed to appraisal fraud.[104] Winston stated, "Countrywide employees were instructed to lie to borrowers and claim that Countrywide had never received loan modification documents, despite Countrywide's systems showing it had received the documents."[105]

Countrywide's Predatory Servicing Practices

58. Winston stated, "I can personally attest to Countrywide's predatory servicing practices. Every time I tried to pay off my mortgage loan, Countrywide would invent new costs or tack on additional fees at the last second. This experience fit with Countrywide's goal to maximize revenue and profit in every possible way, and to do so in disregard of its customers' interests."[106]

Attempts to bring Countrywide's Malfeasance to light and Cover-up

59. Winston stated, "I tried multiple times during my tenure to bring Countrywide's malfeasance to light. As I mentioned above, l spoke to Andrew (Drew) Gissinger, Countrywide Home Loans then-Chief Operating Officer, who managed around 50,000 Countrywide employees.

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[103] *Id.* at ¶ 23.
[104] *Id.* at ¶ 24.
[105] *Id.* at ¶ 25.
[106] *Id.* at ¶ 26.

I tried to persuade him to change course, giving him examples of how to redirect the Company's polices toward loan quality and building a quality institution. Drew listened to my ideas, took numerous notes about my proposals, agreeing to several of my suggestions, and on at least one occasion conveyed those notes to Countrywide Financial Corporation's and Chief Operating Officer, David Sambol. Shortly after that, David called me into a board room for a meeting, after which he asked me to accompany him to a meeting on Wall Street.[107] Winston stated that Sambol suggested that he needed to play ball by lying to the rating agency Moody's, [108]he refused to lie resulting in Sandor Samuels, the Chief Legal Officer called me into his office and asked me how much it would cost for me to just "walk away" from Countrywide and "forget about what I had seen."[109]

CW's Discriminatory Treatment of African American employees and Affirmative Action

60. Winston stated that he was personally aware of CW's discriminatory treatment of African American employees,[110]met with two African American executives,[111]one later promoted and the other left the company, explained to Drew Gissinger about his concerns regarding lack of African American executives and affirmative action guidelines, Drew replied that it was nothing for us to consider.[112] When Winston reminded Drew that affirmative action was the law Drew responded ,"it was not the law for Countrywide."[113]

Defendant's Executives Not Familiar with Basic Compliance, HMDA, or Fair Lending Principles

[107] *Id.* at ¶ 27.
[108] *Id.* at ¶ 28.
[109] *Id.* at ¶ 29.
[110] *Id.* at ¶ 31.
[111] *Id.*
[112] *Id.*
[113] *Id.*

61. Adam Gadsby, who served as a transaction manager in Countrywide's Capital Markets Division and presently serves in a similar capacity for Bank of America, testified that he did not know what the term 'disparate impact' meant.[114] The term disparate impact has been part of fair lending training since 1995-so he should be familiar with the term. Asked about third parties and Gadsby stated in part "….Correspondent Lending Division normally did not engage an outside third party for their due diligence reviews."[115] Gadsby stated that it would be difficult identify '…any steering in the loan files that were presented..' was not correct, any due diligence of the loan files could include looking at the FICO score, CLTV, and DTI, three data points to question why a borrower was placed in a subprime loan when they clearly qualified for a prime product. [116] Gadsby also confided that he was not sure that there was a review using HMDA data to uncover steering.[117] It has been industry practice and HUD requirement to conduct an annual HMDA analysis to uncover this type of discrimination. When asked about the type of loan product CW decision to purchase, Gadsby testified, "No, we were purchasing loans that met the underwriting criteria. So it was not just limited to ARM or payout or fixed. It was whatever loan products that Countrywide, you know, had at the time."[118]

62. Sue Haumesser presently serves as a Mortgage Servicing Manager for Bank of America's Loss Mitigation Department. During her July 29, 2020 deposition, when asked if she knew what disparate impact means, she responded with a description of intentional disparate treatment, not disparate impact, saying, "I understand [disparate treatment] to mean that I might not give a person a solution when another person that looks different, a different color, different

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[114] *Id.* at 16.
[115] Gadsby Tr. at 48:3-12.
[116] *Id.* at 49:7-21.
[117] *Id.* at 50:24-51:16.
[118] *Id.* at 55:19-56:13.

sex, a different race, would have the exact same income and debt[.].[119] She again brushed aside the issue of disparate impact: "Q: Do you believe that all employees in the loss mitigation department must understand what disparate impact means in order to do their job properly? A: I believe they have to understand disparate treatment to do their job properly, yes."[120]

63. Rebecca Mairone (Steele), who served as the Chief Operating Officer of Countrywide's Full Spectrum Lending Division, similarly did not demonstrate any understanding as to what disparate impact is apart from intentional disparate treatment, testifying as follows: "Q: And what is your understanding of the phrase 'disparate impact?' A: Disparate impact would be theoretically a case where a black or minority race would be either charged higher prices or denied at a higher rate or, you know, generally not treated the same or in equivalent as a white borrower."[121]

64. Anne Marie Dean, who has served in the role of National Underwriting Manager in charge of leading teams of underwriters for Countrywide and, presently for Bank of America, testified that the underwriters reference the Countrywide Technical Manual for specific guidelines.[122] As the national underwriting manager she did not know what 'underwriting standards' were,[123] nor was she familiar with the phrase 'overrides' when used in the context of overriding AUS and manual underwriting procedures decisioning. Indeed, Dean testified flat out "no" she did not know what overrides meant in that context,[124] further stating that "I don't recall anything related to overrides, the term 'overrides.'"[125] Dean also claimed that every loan went

[119] Haumesser Tr. at 77:22-78:5.
[120] *Id.* at 81:16-23.
[121] Steele Tr. at 136:7-7.
[122] Dean Tr. at 25:10-14.
[123] *Id.* at 35:16-19.
[124] *Id.* at 35:20-36:25.
[125] *Id.* at 35:20-36:14.

through the AUS,[126] underwriters input all of the factual data such as income and bank statements,[127] therefore the underwriter would know if an applicant with a fixed income should not qualify for any stated income/assets or reduced documentation product. Dean was also not familiar with the CMD credit authority and responsibilities document[128] that described what an underwriter can do relative to exceptions.[129] As, the National Underwriting Manager she was not familiar with underwriting subprime loans,[130] nor was she familiar with corporate quality control guidelines.[131]

Defendants' Employees and Brokers Were Incentivized to Generate Lower FICO Score Loan Volume and Subprime/'Risky' Loans

65. Countrywide's commission structure and written incentive plans, rewarded sales representatives and third-party brokers with whom Countrywide did business for generating loans from borrowers with lower FICO scores and getting borrowers to accept riskier, higher-cost loans.[132] For example, Rebecca Steele's testimony confirmed that Countrywide rewarded employees with higher compensation based on generating lower FICO score loans because, as she acknowledged "subprime volume is critical"[133] In addition, Joseph Miller, former Managing Director of National Operations of Countrywide's Wholesale Lending Division and member of its Fair Lending Committee, testified that Countrywide had a higher cap on compensation brokers could earn for generating subprime/nonprime loans versus prime loans.[134]

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[126] *Id.* at 38:17-39:15.
[127] *Id.* at 41:21–42:5.
[128] *Id.* at 46:15-47:11.
[129] *Id.* at 48:6-49:18.
[130] *Id.* at 51:4-9.
[131] *Id.* at 51:21-52:3.
[132] BANACC0000183874; BANACC0000194516.
[133] Steele Tr. at 54:20-55:12.
[134] Miller Tr. at 191:5-192:7.

Bank of America's Analysis of its HMDA Data Evidences its Disparate Treatment

66. Defendants produced a document titled "2006 HMDA Data for Disparity," which shows a discrimination analysis conducted by Bank of America of its own 2006 HMDA loan origination data.[135] I reviewed the data in the document listed for the State of Illinois, which would include Cook County. I find that this document provides direct evidence, known to Defendants at the time, of Bank of America's disparity in its treatment of minority borrowers in its loan origination activity, and in the impact of that disparity on minorities in Cook County. However, Bank of America redacted the information from the document that would enable the reader to determine which specific discrimination trigger event Bank of America had identified.[136]

67. For example, in Table 1, "White Non-Hispanic" was the control group for Bank of America's race and ethnicity disparity testing. The Table indicated that, for White, non Hispanic, borrowers, there was an incidence rate in the Trigger event (which Bank of America had concealed in the produced document) of 3.33%. In comparison, that concealed Trigger event was reported in the document to have a substantially increased incidence rate for African American borrowers of 9.05% and for Hispanic borrowers of 4.41%. The means that, for whatever the discrimination Trigger event Bank of America was measuring in Table 1, African Americans borrowers experienced a 2.72 times greater incidence in the Trigger than White, Non-Hispanic, borrowers experienced. Similarly, Hispanic borrowers experienced a 1.32 times greater incidence in the

[135] BANACC0000663200.

[136] The term 'Trigger' is specific to Defendant's disparity model and the definition of 'Trigger' is in footnote one of each table. However, footnote 1 describing the 'Trigger' was redacted on every chart.

Trigger than White, Non-Hispanic, borrowers experienced. Similar patters can be seen in the other Tables that contain any data.[137]

Bank of America's Analyses Comparing Borrower Race and Loan Product Broker Compensation Evidence Disparate Treatment

68. Bank of America provided an analysis by race and loan product Broker Compensation and overage/underage for the period January 1, 2006 through June 30, 2006.[138] This document indicates the average amount of total broker compensation expressed as points was: Whites was 1.49; for African Americans 1.83; and for Hispanics 1.79. [139] This means that African Americans and Hispanics paid (or were charged) .34 points and .30 points respectively higher than Whites. The average amount of broker fees was 0.42 points for Whites and 0.78 points for African Americans.[140] Therefore, African Americans paid .35 points higher than Whites for broker compensation. Points paid by the broker to the bank for a lower rate was 0.05 for White applicants, and 0.60 points for African Americans. The points paid by the brokers to the bank for African American loans was 12 times higher than the same fee paid for White loans.[141]

69. The average amount of total points paid (compensation paid to the broker)[142] was 0.48 for Whites, 1.38 for African Americans, and .74 for Hispanics. Therefore, Bank of America

[137] Of the 36 Tables included in its own disparity analysis only 22 tables contained any discernable data, the other 14 tables were mostly blank. Twenty of the 22 tables with data indicated a disparity against African Americans compared to Whites. And 11 of the 22 tables with data indicated a disparity towards Hispanic families compared to Whites. There were 9 tables that identified both Black and Hispanic disparity in the same table. Tables that did not have any data were not included: Tables 22, 24, 26, 27, 37, 38, 39, and 40. Tables where all data was redacted were not included: Tables 28, 29, and 30. Tables that did not indicate a significance negatively impacting minorities were not included: 5, 10, 17, 25, 31, 32, and 34.

[138] BANACC0000663199.

[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] *Id.*

paid brokers for African Americans loans 0.9 points more than Whites and Hispanics paid 0.26 more than Whites. for African. This another example of Bank of America incentivizing brokers to target minority neighborhoods. The average amount of compensation paid for ‘Priority Brokered loans’ was 1.46 points for Whites; 1.98 points for African Americans; and 1.72 points for Hispanics. [143] African Americans paid .52 points more than White loans, and .26 points more than Whites for Hispanic loans.[144]

70. The average amount of compensation paid to the broker for ‘Non-Priority Brokered loans’ was 0.56 points for Whites; 1.88 points for African Americans; and 0.89 points for Hispanics.[145] African Americans paid 1.32 points more than White loans, and .33 points more than Whites for Hispanic loans.[146] This another example of Bank of America incentivizing brokers to target minority neighborhoods. For Conforming Loans,[147] the average amount of total points the bank compensated the broker for White loans was 0.48, for African Americans loans 1.40, and for Hispanic loans 0.75. Therefore, the broker compensation for conforming loans was almost a full point more for African American loans than White loans. This another example of Bank of America incentivizing brokers to target minority neighborhoods.

71. For Non-conforming loans, the compensation paid to brokers for White loans was 0.41, for African American loans 0.83, and for Hispanic loans 0.62.[148] Therefore, the compensation paid to brokers was more than twice the cost for African American loans than White loan compensation. Another example of Bank of America incentivizing brokers to target minority

[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.*

neighborhoods. The document indicated that the Net Overages/Underages for net pricing differential was 0.27 for White loans, 0.32 for African American loans, and 0.36 for Hispanic loans. The percentage of 'PFUN ' originations in excess of the cap for underages was 4.27% for Whites, and 5.65% for African Americans; with the percentage of originations for underages in excess of the cap was 1.38%.[149] The percentage of originations for 'LMI PFUN Underages' was 1.29% for Whites, 2.85% for African Americans, and 5.51% for Hispanic loans.[150] Another example of Bank of America incentivizing brokers to target minority neighborhoods.

72. Bank of America provided a similar analysis by race and loan product Broker Compensation and overage/underage for the period July 1, 2006 through December 31, 2006.[151] This document indicates the average amount of total broker compensation expressed as points was: Whites was 1.54; for African Americans 2.07; and for Hispanics 1.77.[152] This means that African Americans and Hispanics paid (or were charged) .53 points and .23 points respectively higher than Whites. The average amount of broker fees was 0.39 points for Whites and 0.76 points for African Americans.[153] Therefore, African Americans paid .37 points higher than Whites for broker compensation.[154]

73. The average amount of total points paid (compensation paid to the broker)[155] was 0.46 for Whites, 0.92 for African Americans, and .73 for Hispanics. Therefore, Bank of America paid brokers for African Americans loans 0.46 points more than they were paid for Whites and Hispanics paid 0.27 more than Whites. This another example of Bank of America incentivizing

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149 *Id.*
150 *Id.*
151 BANACC0000663214.
152 *Id.*
153 *Id.*
154 *Id.*
155 *Id.*

brokers to target minority neighborhoods. The average amount of compensation paid for 'Priority Brokered loans' was 1.54 points for Whites; 2.07 points for African Americans; and 1.77 points for Hispanics.[156] African Americans paid .53 points more than White loans, and .23 points more than Whites for Hispanic loans.[157]

74. Moreover, the average amount of total compensation paid (in points) to the broker for 'Non-Priority Brokered loans' was 1.61 points for Whites; 2.12 points for African Americans; and 1.97 points for Hispanics.[158] African Americans paid .51 points more than White loans, and .36 points more than Whites for Hispanic loans.[159] This another example of Bank of America incentivizing brokers to target minority neighborhoods. For Conforming Loans,[160] the average amount of total points the bank compensated the broker for White loans was 0.48, for African Americans loans 0.93, and for Hispanic loans 0.74. Therefore, the broker compensation for conforming loans was almost a half point more for African American loans than White loans and Hispanics paid 0.26 (quarter of a point) more than Whites. This another example of Bank of America incentivizing brokers to target minority neighborhoods.

75. Furthermore, for non-conforming loans, the compensation paid (in points) to brokers for White loans was 0.35, for African American loans 0.62, and for Hispanic loans 0.64.[161] Therefore, the compensation paid to brokers for African American loans was 0.27 and Hispanic loans was 0.29 more than White loan compensation. For Broker compensation in excess of caps (3.5 points), the document indicated that for conforming loans, broker compensation for Whites

[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*

was 0.07%, for African Americans 0.45, and for Hispanic loans 0.21%. Therefore, broker compensation was 6.42 times higher for African Americans and Hispanic loans 3.0 times higher than Whites.[162]

76. For Broker compensation in excess of caps (3.0 points) the document indicated that for non-conforming loans, broker compensation for Whites was 0.04%, for African Americans 0.75, and for Hispanic loans 0.74%.[163] Therefore, broker compensation was 18.75 times higher for African American loans and Hispanic loans 18.5 times higher than for Whites.[164] Another example of Bank of America incentivizing brokers to target minority neighborhoods. The document indicated that the Net Overages/Underages for net pricing differential was 0.32 for White loans, 0.43 for African American loans, and 0.54 for Hispanic loans. The percentage of 'PFUN' originations in excess of the cap for underages was 1.67% for Whites, and 2.78% for African Americans; with the percentage of originations for underages in excess of the cap was 1.11%.[165]

77. The percentage of originations with a FTHB1 underage was 3.73% Whites, 7.81% for African Americans, and 13.7% for Hispanics.[166] Therefore, the percentage of originations with FTHB1 underage for African Americans was 2.1 times and Hispanic originations were 3.67 times more than Whites. The average broker compensation for originations for 'LMI Incentive Pricing' (in points) was 2.22 for Whites, 2.58% for African Americans, and 2.45 for Hispanic loans. [167] Another example of Bank of America incentivizing brokers to target African American and Hispanic neighborhoods.

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[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*

78. Bank of America conducted another similar analysis by race and loan product broker compensation period January to June of 2007.[168] That analysis showed that the average amount in total broker compensation for white non-Hispanics was 1.55 points, 2.07 points for African American and 1.83 points for Hispanics.[169] This spreadsheet also indicated that the average amount of compensation for broker fees… white non-Hispanic 0.52 points… for African American 0.94 points… Hispanic was 0.84 points… average amount in points of the total points paid… for White-non-Hispanic 0.59… for African American 1.02… for Hispanic 0.93.[170]

79. The average amount in points of total broker compensation… for white non-Hispanic 1.5… for African Americans 2.01… for Hispanic 1.82. For average amount of points in broker fee… for white non-Hispanic 0.46… for African American 0.84… for Hispanics 0.74. The spreadsheet indicated that for average amount in points of total points paid for white non-Hispanic 0.52… African American 0.92… Hispanic 0.83. For conforming loans total broker compensation for white non-Hispanics 1.63… for African Americans 2.1… for Hispanics 1.9 for average amount of points in broker fee for white non-Hispanic 0.54… African American 0.94… for Hispanics 0.84.[171]

80. For non-conforming loans the average amount of points in total broker compensation for white non-Hispanic 1.06… for African Americans 1.43 for Hispanics 1.32… and average amount in points of broker fee, for the white non-Hispanic customer it's 0.41… for African American 0.85… for Hispanics 0.81. Under nonconforming loans, the average amount in

[168] BANACC00004171470.
[169] *Id.*
[170] *Id.*
[171] *Id.*

points of total points paid, the white non-Hispanic customer is 0.54…for African American 0.99… for Hispanics 1.03.[172]

81. The spread sheet for broker compensation in excess of caps "percentage performing loan originations that exceeded the broker compensation cap of 3.5 points for white non-Hispanic .08…for African Americans .19…for Hispanics 0.27… percentage of nonconforming originations that exceeded the broker compensation cap of 3.0 points for white non-Hispanic 0.13… for African American 1.74 and for Hispanics 1.36. [173] Robinett testified that the previous data came from Corporate Fair Lending[174]…was not aware what 'stat sig.' meant[175]…agrees that a number is statistically significant in an analysis is a mathematical conclusion.[176] Average APR for white non-Hispanic 6.83, for African American 7.03, and for Hispanics 6.99.[177]

Risky Loan Products Originated and Serviced in Chicago MSA

82. Countrywide's HMDA Rate Spread Analysis 2007 2nd quarter for First Lien Home Purchases indicated that in Chicago-Naperville-Joliet, Illinois MSA, Countrywide targeted minority applicants with a much higher percentage of 'risky' loan products.[178] For Conforming Fixed, and Non-Conforming Fixed loan programs (minimal risk) as a percentage of all originations to the same race, White originations for Conforming fixed was 45.6% while the same category for African Americans was 19.5% and Hispanics was 35.5% of total production.[179] For Non-conforming fixed, White originations was 14.6%, while the same category for African Americans

[172] *Id.*
[173] *Id.*
[174] Robinett Tr. at 111:18-22.
[175] *Id.* at 93:4-6.
[176] *Id.* at 96:11-23.
[177] BANACC00004171470.
[178] BANACC0000720670
[179] *Id.*

was 21.1% and for Hispanics was 16%. However, for 'riskier' loan programs such as: Conforming fixed 'high' LTV, Whites 1.8%, African Americans 13%, and Hispanics 7.1% of their total originations; and EA White 0.5%, for African Americans 4.9%, and Hispanics 3.0%. [180]

83. The Countrywide Wholesale Lending Division (WLD) HMDA Rate Spread Analysis 2007 2nd quarter for First Lien Home Purchases indicated that in Chicago-Naperville-Joliet, Illinois MSA, Countrywide targeted minority applicants with a much higher percentage of 'risky' loan products.[181] For Conforming Fixed loan programs (minimal risk) as a percentage of all originations to the same race, White originations for Conforming fixed was 37.7% while the same category for African Americans was 8.3% and Hispanics was 25.5% of total production. [182] While, riskier loan programs revealed that: BC Arms (very risky) for Whites was 8.3%, for African Americans 40.4%, and Hispanics 18.7%; EA (very risky) for Whites was 0.40%, for African Americans was 1.3%.[183] (African Americans 3.25 times more than Whites).

84. The FSL HMDA Rate Spread Analysis 2007 2nd quarter for First Lien Home Purchases indicated that in Chicago-Naperville-Joliet, Illinois MSA, Countrywide targeted minority applicants with a much higher percentage of 'risky' loan products.[184] For Conforming Fixed, and Non-Conforming Fixed loan programs (minimal risk) as a percentage of all originations to the same race, White originations for Conforming fixed was 23.9% while the same category for African Americans was 4.7% and Hispanics was 6.3% of total production. [185] While, riskier loan programs revealed that: BC Arms for Whites was 25.4%, for African Americans 37.2%, and

[180] *Id.*
[181] BANACC0000720682
[182] *Id.*
[183] *Id.*
[184] BANACC0000720694
[185] *Id.*

Hispanics 46.9%; EA for Whites was 9.0%, for African Americans was 25.6%, and for Hispanics was 15.6%.[186]

85. The Countrywide Fair Lending HMDA data Analysis for 2004-2007 2nd qtr nationally,[187] revealed that the origination rate for African American applications increased each period at an unusually fast past:[188] 24.2% in 2004; 29.4% in 2005; 43.3% in 2006; and 55.6% through 2nd quarter 2007. The origination rate for Hispanic applications also increased each period at an unprecedented and unusually fast past: 26.4% in 2004; 27.4% in 2005; 41.6% in 2006; and 56.3% through 2nd quarter 2007.[189] The census tract data for the same time period shows in minority neighborhoods of 50% to 79%, the origination rate increased from 29.9% in 2004 to 54.9% in 2nd quarter of 2007.[190] Additionally, in **minority neighborhoods of 80% to 100%,** the Countrywide Bank origination rate increased from 25.5% in 2004; to 27.2% in 2005; to 40.6% in 2006; to 57.1% in the 2nd quarter of 2007.[191] These are clear examples of Countrywide targeting predominately minority neighborhoods.

86. The Countrywide data also is consistent with the increase in origination rate for 'low income' (<50% AMI) families from: 23.8% in 2004; 29.1% in 2005; 44.0% in 2006; and 56.4% through 2nd quarter 2007. [192] The data also revealed that origination rate for 'moderate income' (50% to 79.99% AMI) families increased from: 30.6% in 2004; 34.8% in 2005; 48.6%

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[186] *Id.*
[187] BANACC0000720830
[188] BANACC0000720831
[189] *Id.*
[190] BANACC0000720832
[191] *Id.*
[192] *Id.*

in 2006; and 59.7% through 2nd quarter 2007.[193] The only reasonable explanation is that Countrywide Bank targeted African American and Hispanic neighborhoods.

87. The Countrywide data indicates that similar increases of 'Home Purchase' originations nationally for African Americans and Hispanic families.[194] African American home purchase originations increased from: 23.9% in 2004; 24.5% in 2005; 40.8% in 2006; to 52.5% in 2nd quarter 2007. [195] Hispanic home purchase originations increased each year [with the exception of 2005 (23.6%)] from: 27.3% in 2004; 39.6% in 2006; to 57.0% in 2nd quarter 2007. [196]

88. The Countrywide census tract data for the same time period shows the origination rate for home purchases in neighborhoods of 50% to 79% minority, the rate increased from 31.4% in 2004 to 54.3% in 2nd quarter of 2007.[197] Additionally, in minority neighborhoods of 80% to 100%, the origination rate increased from 25.9% in 2004; to 56.2% in the 2nd quarter of 2007.[198]

89. The Countrywide data for 'Home Improvement' originations increased dramatically for African Americans from: 31.1% in 2004; 33.8% in 2005; 50.5% in 2006; and 64.7% through 2nd quarter of 2007.[199] The Countrywide data for 'Home Improvement' originations increased dramatically as well for Hispanic families from: 30.6% in 2004; 34.7% in 2005; 47.6% in 2006; and 59.8% through 2nd quarter of 2007.[200]

90. The Countrywide data for 'Refinance' originations increased dramatically for African Americans from: 23.6% in 2004; 33.1% in 2005; 44.2% in 2006; and 56.8% through 2nd

[193] *Id.*
[194] BANACC0000720834
[195] *Id.*
[196] *Id.*
[197] BANACC0000720835
[198] *Id.*
[199] BANACC0000720837
[200] *Id.*

quarter of 2007.[201] The Countrywide Bank data for 'Refinance' originations increased dramatically as well for Hispanic families from: 24.1% in 2004; 31.8% in 2005; 43.1% in 2006; and 55.0% through 2nd quarter of 2007.[202]

91. The Countrywide census tract data for the same time period shows the origination rate for refinance loans in neighborhoods of 50% to 79% minority, the rate increased from 26.8% in 2004; 32.5% in 2005; 42.6% in 2006; to 54.9% in 2nd quarter of 2007.[203] Additionally, in minority neighborhoods of 80% to 100%, the origination rate increased from 24.6% in 2004; 31.6% in 2005; 43.1% in 2006; and 57.4% in the 2nd quarter of 2007.[204]

Yield Spread Premiums

92. Countrywide entered into broker agreements with third-party brokers to whom Countrywide often referred as "Business Partners." One of the ways these brokers were compensated for loans they generated was through yield spread premiums[205]… defined as an amount paid by Countrywide to the brokers based on the extent to which the interest rate charged on a loan exceeded the base rate for that loan to a borrower with particular credit risk characteristics fixed by Countrywide and listed on its rate sheets.[206] Brokers were also compensated directly through fees.[207] Countrywide wholesale broker agreement required the broker to inform a customer of all fees and charges including with the application including yield spread premium and direct fees.[208] Countrywide allowed mortgage brokers to exercise discretion in setting the amount of total

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[201] BANACC0000720840
[202] *Id.*
[203] BANACC0000720841
[204] *Id.*
[205] Id. p.147 lns 3-11
[206] Id. p.147 lns 12-22
[207] Id. p.149 lns 13-18
[208] Id. p.150 lns 13-19

broker fees charged to individual borrowers,[209] but Countrywide placed caps on the total broker fees charged by the broker.[210]

93. Other than the caps, Countrywide did not set any guidelines or procedures to be followed by brokers in setting the amount of direct fees they could charge to the customers.[211] Between January, 2004 and early 2007 Countrywide substantially increased the number of exceptions it granted to its loan underwriting guidelines.[212] Mortgage brokers who submitted mortgage applications funded by Countrywide received higher total broker fees for subprime loans than for non-subprime loans.[213]

Countrywide's Compensation policy & Practice Created a Financial Incentive for Mortgage Brokers

94. Countrywide's compensation policy and practice created a financial incentive for mortgage brokers to submit subprime loans to Countrywide rather than any other type of residential loan product.[214] As part of the fair lending committee[215]remembers written communication discussing the potential disparate treatment and related fair lending responsibilities[216]but refused to answer what this committee did in connection with its fair lending policy review.[217] Robinett refused to answer how many WLD business partners were terminated as a result of action by the fair lending committee.[218] Additionally, on advice of counsel, Robinett

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[209] Id. p.151 lns 8-14
[210] Id. p.151 lns 15-19
[211] Id. p.151 lns 22-25, p.152 lns 2-10
[212] Id. p.161 lns 24-25, p.162 lns 2-8
[213] Id. p.162 lns 20-25, p.163 lns 2-5
[214] Id. p.164 lns 3-12
[215] Id. p.192 lns 2-6
[216] Id. p.192 lns 23-25, p.193 lns 2-11
[217] Id. p.202 lns 4-21
[218] Id. p.202 lns 22-25, p.203 lns 8-11

refused to answer what the fair lending committee did with respect to oversight of the remediation process;[219] couldn't remember what the committee did to satisfy its obligation;[220] and didn't remember the committee taking any additional monitoring or additional remediation steps.[221] Robinett stated that they 'did not see a lot of risk from a fair lending perspective from someone that could afford a property at a million or more'.[222] The only inference that one could make is that the WLD based their fair lending policy on the loan amount risk not how minorities were treated.

Risk Appetite Impact

95. Robinett affirmed that the Countrywide document titled 'Loan Products We Will Not Offer'[223]stated that we did offer subprime, pay option, nonconforming, a version of NINA, and a version of no ratio,[224] for first mortgage originations for 2006, 2007, and 2008.[225] The document Risk Appetite Impact[226] goes on to state, "if the product principles had been in place in 2006, eighty-two percent of the delinquencies would have been avoided."[227]

Cindi Graveline-Thomas Administered Compensation Plans for Retail Loan Officers

96. Deposition of Cindi Graveline-Thomas,[228] administered compensation plans for the Consumer Markets Division, specifically the retail loan officers[229] and Full Spectrum Lending and Wholesale Lending Division.[230]Compensation to loan originators at Full Spectrum Lending (FSL)

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[219] Id. p.204 lns 18-22
[220] Id. p.206 lns 20-25, p.207 lns
[221] Id. p.207 lns 15-25, p. 208 lns 2-7
[222] Id. p.222 lns 2-14
[223] Id. p.236 lns 8-25, p.237 lns
[224] Id. p.237 lns 19-24
[225] Id. p. 239 lns 8-12
[226] Id. p. 240 lns 2-6
[227] Id. p. 240 lns 10-15
[228] Deposition of Cindi Graveline-Thomas, August 26, 2020
[229] Id. p.8 lns 5-10
[230] Id. p.8 lns 14-19

from 2004-2007 based in part on the number of loans originated.[231] Thomas stated that FICO scores of borrowers affected the compensation of loan originators,[232]the lower the FICO score, the higher the compensation points earned.[233] Compensation to loan originators at Consumer Markets Division (CMD) from 2004-2007 based in part on the dollar volume of loans originated.[234]Loans with higher interest rates resulted in more compensation for loan originators,[235]loan officers would share 'overages'(split 50/50),[236] the compensation plan for the retail section of Consumer Markets Division in the period of 2004 to 2007 provided an incentive for a loan originator to make a price adjustment in the loan, the loans they generated.[237] Regarding 'underages' the loan officers compensation took a 100% hit.[238] Therefore, loan originators were incentivized to never have an underage.

97. Countrywide's Full Spectrum Lending Division, Account Executive Incentive Plan with an effective November 1st, 2005,[239] expanded approval (EA) loans.[240] Countrywide's Full Spectrum Lending Division Account Executive Incentive Plan effective December 1st, 2007[241]indicated that the more units funded, the larger the payout,[242]FICO scores less than 639 received twice the payout than loans with FICO scores greater than 639.[243]In document NCA

[231] Id. p.16 lns 8-14
[232] Id. p.22 lns 3-7
[233] Id. p.22 lns 12-18
[234] Id. p.25 lns 21-25, p.27 lns 3-14
[235] Id. p.31 lns 13-18
[236] Id. p.31 lns 21-25, p.32 lns 2-6
[237] Id. p.32 lns 12-20
[238] Id. p.32 lns 21-25, p.33 lns 2-10
[239] Id. p.41 lns 10-16
[240] Id. p.41 lns 17-22
[241] Id. p.55 lns 6-16
[242] Id. p.56 lns 3-13
[243] Id. p.56 lns 14-20

Mortgage Consultant Compensation,[244] as volume increases (firsts and piggy backs), the payout increases,[245]loans with FICO $\geq$ 700 no bonus, FICO 590 would earn 25 bpts,[246]and FICOs between 660-699 would earn 5 bpts, and FICOs under 570 earned 40 bpts.[247] There for the loan officer was incentivized 8 times higher based on the lower the credit score.

Compensation and Incentive Plan for Underwriters Based on Volume Not Quality

98. Ms. Thomas stated that underwriters at Full Spectrum Lending, and during the period 2004 to 2007, the compensation of those underwriters were based in part on the volume of loans they underwrote,[248]the underwriters were incentivized based upon the number of loans they reviewed.[249] The compensation of CMD underwriters at Countrywide between 2004 and 2007 based in part on the number of loans they underwrote.[250] The compensation of WLD underwriters at Countrywide between 2004 and 2007 based in part on the number of loans they underwrote.[251] Countrywide incentivized to underwrite by volume[252](plan only applies to underwriting centers in Chicago, Phoenix, Plano, and Ft. Worth). The underwriter bonus pays four times more for a 'Clues' refer (8 points) versus only 2 points for an accept.

Relationship Between Incentives and Production

99. Deposition of David Doyle, strategic initiatives executive for consumer lending, head of product and pricing for consumer lending, chief operating officer for consumer lending, underwriting and fulfillment executive for the central division, operations executive for the

[244] Id. p.81 lns 10-16
[245] Id. p.82 lns 6-12
[246] Id. p.83 lns 11-15
[247] Id. p.83 lns 16-22
[248] Id. p.115 lns 4-13
[249] Id. p.116 lns 2-14
[250] Id. p.118 lns 2-10
[251] Id. p.118 lns 11-25
[252] BANACC0000156496.

independent foreclosure review. Doyle stated that there is a strong relationship between incentives and production.[253]Doyle stated that pay option arms would not be a good product for inexperienced mortgage borrowers because the product is complicated with lots of different features, and how to take advantage of those features and make the best use of those features could be confusing to someone who's never lived with a mortgage before.[254] Payment shock can be a contributor to loan default.[255]

100. Memo from Doyle dated June 27, 2005 [256]incentivizing origination of pay option arms-$150 per loan.[257] May 31, 2005[258] a customized level of compensation for pay-option ARM originations, say, 25 bps purchases and 12 bps purchases" -- "say 25 bps on purchases and 12 bps on refis, can you administer that,[259]incentive plan for Pay option Arms,[260]product did not work cowell over the phone.[261]Pay option arms were a significant risk.[262] Loan to value is one of the many risk factors inherent in a loan.[263] That loan -- under most loan programs, a loan amount that's more than the value of the property would not be an approvable loan.[264] Countrywide's Full Spectrum Lending Division NCA Mortgage Consultant Incentive Plan,[265]paid higher incentives the lower the FICO score.

Countrywide Sales Incentives Targeted Loans for Multicultural Borrowers

[253] Id. p.193 lns 10-19
[254] Id. p.207 lns 4-10
[255] Id. p.210 lns 20-23
[256] Id. p.214 lns 15-16
[257] Id. p.215 lns 10-13
[258] Id. p.218 lns 16-19
[259] Id. p.219 lns 14-22
[260] Id. p.220 lns 4-7
[261] Id. p.221 lns 7-13
[262] Id. p.227 lns 16-24
[263] Id. p.231 lns 17-21
[264] Id. p.232 lns 10-15
[265] Id. p.234 lns 16-20

101. There were sales incentives at Countrywide to originate loans for multicultural borrowers.[266]Doyle stated that some multicultural customers were challenging because they wanted the transaction explained in Spanish,[267] that many-- some were relatively new to the country and didn't have a great facility with the U.S. banking system and may, in fact, be a little bit intimidated by it. So, you know, the notion of applying for a mortgage and going through the process was challenging for them.[268]

102. A Countrywide mortgage program called Optimum Program's motto "Anyone who walks into Countrywide should realize" -- "who wants to own a home should be able to own a home." It's completely impractical. And, frankly, worse than impractical, it's ridiculous-Doyle.[269] Doyle stated regarding the 'mission statement' for the Optimum Loan Program, "…And so, you know, the statement that's here in the memo about, you know, every -- helping every borrower who walks into Countrywide realize their dream of owning a home is aspirational puffery…"[270]

Bank of America Wrongfully Denying Homeowners Admission into HAMP

103. Wrongfully denying homeowners admission into HAMP: Bank of America denied 79% of all who applied for HAMP, which requires deeper Treasury scrutiny on whether Bank of America is properly evaluating homeowners. In the second quarter 2016, Treasury found more instances of Bank of America wrongfully denying homeowners for HAMP. With a backlog of 29,075 applications and a process rate of only 3,285 applications per month, Bank of America will be rushing to review applications through the September 2017 deadline, which could lead to improper evaluation of homeowner applications.[271]

Bank of America Miscalculation of Income:

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[266] Id. p.268 lns 12-20
[267] Id. p.270 lns 1-9
[268] Id. p.270 lns 15-17
[269] Id. p.283 lns 20-24, p.284 lns 1-3
[270] Id. p.286 lns 13-17
[271] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 27, 2017. See https://www.sigtarp.gov/Quarterly Reports/January_27_2017_Report_To_Congress.pdf p.79-80

104. Bank of America has one of the worst track records of any large servicer on miscalculating homeowner income. Miscalculation can lead to Bank of America denying a qualified homeowner for HAMP or set a higher mortgage payment for people in HAMP.[272]

Bank of America Failed to Reduce the Principal Despite Being Paid by Treasury

105. Failing to reduce principal despite being paid by Treasury to do so: In the HAMP principal reduction program, Treasury pays servicers typically several thousand tax dollars per loan to reduce the outstanding balance of underwater mortgages. Treasury found that Bank of America failed to reduce the principal despite being paid by Treasury about $4,500 on average to do so. Bank of America did not reduce these homeowners' underwater balances until Treasury later inquired about the status of these loans, showing the risk of waste, and the power of oversight.[273]

Setting modified mortgage payments based on faulty calculations

106. SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Semiannual report to Congress OCTOBER 1, 2019 – MARCH 31, 2020, Bank of America Findings by Treasury include: Setting modified mortgage payments based on faulty calculations, errors in reporting to Treasury, and wrongfully denying homeowners for HAMP.[274]

Servicer Mismanagement and Abuse of Homeowners Applying to HAMP

107. In addition to identifying servicer mismanagement and abuse of homeowners applying to HAMP, SIGTARP[275] has identified the following servicer mismanagement and abuse by servicers of homeowners already in HAMP: Wrongfully terminating people out of HAMP even though homeowners made timely payments; Lost paperwork; Misapplying mortgage payments made in HAMP which causes delinquency that incur late fees; Transferring the mortgage without transferring the HAMP paperwork.[276]

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[272] *Id.* p.80
[273] *Id.*
[274] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program , Semiannual Report to Congress: Oct 1-2019 – March 31, 2020. See https://www.oversight.gov/report/sigtarp/semiannual-report-congress-october-1-2019-march-31-2020
[275] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 30, 2018. https://www.sigtarp.gov/Quarterly Reports/January_30_2018_Report_To_Congress.pdf p.48
[276] *Id.*

108. The new servicer does not know the person is in HAMP so only sees underpayment, or fails to honor the HAMP lowered interest rate; Failing to notify homeowners, as Treasury requires, when their interest rate and monthly payment is going to rise after 5 years; Failing to notify homeowners, as Treasury requires, that after 6 years in HAMP they can lower their mortgage payment by re-amortizing the mortgage; Overcharging Treasury for extinguishing second liens when those liens were not extinguished; Failing to reduce principal on mortgages despite being paid by Treasury.[277]

Loan Modification Activity For Countrywide For 2004

109. A review of the modifications activity for Countrywide for 2004[278]indicated that African Americans were offered 1,583 workout plans; in 2005[279] African Americans were offered 2,222 workout plans, and only 330 in 2006. [280] This document did not separate Hispanic ethnicity from its White population.

110. The African American delinquency modification status ‘First Due’ indicated that in 2004[281]: 2,379 loans current, 1,384 loans in some stage of delinquency, and 233 loans in pre-foreclosure. The African American delinquency modification status ‘First Due’ indicated that in 2005[282]: 5,133 loans current, 2,618 loans in some stage of delinquency, and 487 loans in pre-foreclosure. The African American delinquency modification status ‘First Due’ indicated that in 2006[283]: 1,225 loans current, 598 loans in some stage of delinquency, and 125 loans in pre-foreclosure.

111. The same document[284] indicated that the average credit score for African Americans in 2004 was 593, in 2005 was 597, and in 2006 the average was 602.

Bank of America Indicated the Reasons for Default

112. Bank of America indicated that the reasons for 4,983 of 15,725[285] loans defaulted by African Americans from 2004 thru 2006 were 2,821 ‘curtailment of income’; 1,331 for

[277] *Id.*
[278] BANACC0000522887, Workouts offered by year tab.
[279] BANACC0000522887
[280] BANACC0000522887
[281] BANACC0000522887, Delinquency tab.
[282] BANACC0000522887, Delinquency tab
[283] BANACC0000522887, Delinquency tab
[284] BANACC0000522887, FICO tab
[285] BANACC0000522887, Reason for Default tab

'improper regard/NSF check'; and 831 for 'unemployment'. This represents about 31.6% of the default reasons.

113. Bank of America also indicated that the reasons for 10,742 of 15,725[286] loans defaulted by African Americans from 2004 thru 2006 were: 2,388 'no reason documented'; 2,718 'refused or declined'; 760 'oversight'; 731 'illness of Borrower'; 572 'pay period conflict'; and 3,573 'other' reasons for default.

114. The document from Bank of America indicated that of the African American delinquent modification loans from 2004-2006, 955 loans were inactive.[287] The data also showed that in 2004, 73.11% were paid off or inactive with another 26.89% foreclosed (2005 and 2006 data not provided).[288] The data tab for population[289] indicated that from 2004-2006, first due African American population was 18,256 files as opposed to the data tab- reason for default-for African Americans was 15,725[290]. There was no explanation provided for the 2,531 loan difference.

115. Bank of America's data reflected additional data in delinquency by race tables.[291]This table indicated that the number of African Americans whose delinquency modification status were 'first time homebuyers' on March 27 (1st quarter) was: 1,132 in 2004; 2,155 in 2005; and 485 in 2006. The same data indicated for African Americans under reasons for default that Countrywide was 'unable to contact 54 in 2004; 92 in 2005; and 19 in 2006.[292]

116. The same document indicated that the credit scores for African Americans loans were: 2,623 < 540; 3,970 loans were between 540 – 579; and 11,637 >579.[293]

117. An email stream on July 30, 2007 from Vincent Gangi, Strategic Project Management to Koen Vermosen, VP Data Integrity Operations and Laura Bartolomea to discuss the HMDA Analysis for 3/27 Arm products with first payments due in 2004, 2005, and 2006.[294] The purpose of the meeting was to identify 'any trends or patterns' 'that might suggest prejudicial

[286] BANACC0000522887, Reason for Default tab
[287] BANACC0000522887, Inactive tab
[288] BANACC0000522887, Inactive tab
[289] BANACC0000522887, Population tab
[290] BANACC0000522887, Reason for Default tab
[291] BANACC0000522890, HMDA Stage 2-327 Analysis tab
[292] BANACC0000522890, HMDA Stage 2-327 Analysis tab
[293] BANACC0000522890, HMDA Stage 2-327 Analysis tab
[294] BANACC0000720362 2007 HMDA Analysis

or discriminating servicing practices. The document indicated that for the three years (2004 thru 2006) that 18,256 African American loans were serviced with 3/27 Arm product with an average credit score of 598. [295] This document stated that race code 3 (African Americans) and race code 6 (information not provided by applicant in mail, internet, or telephone applications) had the lowest average FICO scores with both under 600.[296]

Delinquency and Default 'Year over Year' (2004-2006)

118. The Delinquency and Default 'Year over Year' (2004-2006) as of May 2007 by race table identified African Americans as having the highest delinquency percentage of 35.1% with the second lowest average FICO of 598. The only race category with an average FICO lower than African Americans at 593 was category 6 where applicants failed to provide the race information.[297]During this same period, the delinquency and default rate for Whites was only 26.9% with an average FICO of 602. [298]

119. Bank of America servicing 'observed' that the highest average number of attempts and contacts for African Americans for 2004-2006 'supports' the lower average FICO score of 598 with average delinquency of 35.1%.[299] However, there was no explanation of how the data justifies this rate. This document stated that African Americans were offered the lowest percentage by race of repayment plan workouts.[300] Also, Bank of America 'observed' as of May 2007, that African Americans had the largest share of total foreclosures based upon comparisons of the percentage of population (13%) and total foreclosures by race (18.9%) at six percent.[301] [Bank of America also posted a race category of '9', which does not show up in the HMDA regulations anywhere that I am familiar with.]

Bank of America Loss Mitigation Process Does Not Comply with Servicing Requirements Mandated by HUD

120. James Buchanan Deposition, Consumer Marketing Executive, consumer compliance officer at BoA put executives in charge of areas they had no experience in,[302]title of

[295] BANACC0000720362 2007 HMDA Analysis
[296] BANACC0000720366
[297] BANACC0000720367
[298] BANACC0000720367
[299] BANACC0000720368
[300] BANACC0000720370
[301] BANACC0000720362
[302] Buchanan Tr. at 15:17-24

government lending executive,[303]no experience with foreclosed loans,[304]no experience with government backed lending.[305] Buchanan stated that David Doyle managed the fc review on a day-to-day basis.[306]Buchanan stated that 'legacy asset servicing'[307] mission in part was to resolve government fc loans. Buchanan confirmed email discussing delays with converting trial payment plans to permanent modifications in FHA HAMP,[308]email from Elizabeth Smith continues "In home loans and insurance, the current loss mitigation process does not comply with all the requirements mandated by HUD or loans guaranteed by HUD programs"[309] The gaps are in the monthly evaluation process required for delinquent loans, scenarios of inconsistent and potentially disparate information provided to the customer, and lack of clearly defined policies for loss mitigation requirements."[310] Document with heading "Bank of America home loans and insurance, compliance and operational risk - final, advance review"[311] Sabrina Noyola, Underwriting results unacceptable and underlying trends remain negative, which represents a high compliance risk."[312]Fair lending committee met quarterly while other committees met weekly.[313] Buchanan was the consumer compliance officer,[314]yet, did not know what disparate impact was.[315]Buchanan held the title of executive "Oversight of all servicing relationships with HUD, FHA, VA and USDA; manages relationship with the independent firm that is conducting a review of the bank's foreclosure process."[316]Throughout the deposition, Buchanan rarely remembered, if at all, any compliance measures taken by CW or BoA to address fair lending relative to disparities impacting minority borrower

[303] *Id.* p.17 lns 20-23
[304] *Id.* p.20 lns 4-8
[305] *Id.* p.20 lns 9-11
[306] *Id.* p.24 lns 21-25
[307] *Id.* p.26 lns 17-25, p.27 lns 2-8
[308] *Id.* p.30 lns 8-13
[309] *Id.* p.32 lns 4-10
[310] *Id.* p.32 lns 10-16
[311] *Id.* p.36 lns 14-22
[312] *Id.* p.52 lns 2-10
[313] *Id.* p.54 lns 2-7
[314] *Id.* p.72 lns 5-7
[315] *Id.* p.77 lns 17-19
[316] *Id.* p.94 lns 4-11

121. Jim Buchanan testified that BoA put executives in charge of areas they had no experience in,[317]title of government lending executive,[318]no experience with foreclosed loans,[319]no experience with government backed lending.[320]Buchanan stated that David Doyle managed the fc review on a day-to-day basis.[321]Buchanan stated that 'legacy asset servicing'[322] mission in part was to resolve government fc loans. Buchanan confirmed email discussing delays with converting trial payment plans to permanent modifications in FHA HAMP,[323]email from Elizabeth Smith continues "In home loans and insurance, the current loss mitigation process does not comply with all the requirements mandated by HUD or loans guaranteed by HUD programs"[324] The gaps are in the monthly evaluation process required for delinquent loans, scenarios of inconsistent and potentially disparate information provided to the customer, and lack of clearly defined policies for loss mitigation requirements."[325] Document with heading "Bank of America home loans and insurance, compliance and operational risk - final, advance review"[326] Sabrina Noyola, Underwriting results unacceptable and underlying trends remain negative, which represents a high compliance risk."[327]Fair lending committee met quarterly while other committees met weekly.[328] Buchanan was the consumer compliance officer,[329]yet, did not know what disparate impact was.[330]Buchanan held the title of executive "Oversight of all servicing relationships with HUD, FHA, VA and USDA; manages relationship with the independent firm that is conducting a review of the bank's foreclosure process."[331]Throughout the deposition, Buchanan rarely remembered, if at all, any compliance measures taken by CW or BoA to address fair lending relative to disparities impacting minority borrowers.

[317] *Id.* at 15:17-24
[318] *Id.* at 17:20-23
[319] *Id.* at 20:4-8
[320] *Id.* at 20:9-11
[321] *Id.* at 24:21-25
[322] *Id.* at 26:17-25-27:2-8
[323] *Id.* at 30:8-13
[324] *Id.* at 32:4-10
[325] *Id.* at 32:10-16
[326] *Id.* at 36:14-22
[327] *Id.* at 52:2-10
[328] *Id.* at 54:2-7
[329] *Id.* at 72:5-7
[330] *Id.* at 77:17-19
[331] *Id.* at 94:4-11

Countrywide & Bank of America Were Aware that Many Residential Mortgages Were Defective

122. The U.S. Attorney's Office for the Southern District of New York (USAO SDNY), SIGTARP investigated the origination of defective residential mortgage loans by Countrywide and Bank of America and the fraudulent sale of the loans to Fannie Mae and Freddie Mac. This investigation uncovered that Countrywide and Bank of America were aware that many of the residential mortgage loans they made to borrowers were defective, and that many of the representations and warranties they made to the GSEs about the quality of the loans were inaccurate.[332]

Treasury Required Bank of America to Make Changes to Their Servicing Processes

123. October 26, 2010 4th Quarter SigTarp[333] compliance review directed Bank of America: Treasury indicated that it will require to make changes to their servicing processes for solicitation and evaluating borrower's eligibility for participation in HAMP to review its foreclosure procedures.

Bank of America Among Others 'Was One of the Weaker Banks' for Servicing

124. October 27, 2011, 4th Quarter SigTarp[334] compliance review directed Bank of America; Stress test conducted indicating that Bank of America among others 'was one of the weaker banks' [335] ; BAC Home Loan Servicing (formerly Countrywide) received the $6.344 billion and Bank of America $1.554 billion (SPA -Servicer Participation Agreement- cap limit); [336] second quarter report 2011 assessment- Tarp withheld incentives to Bank of America 'required substantial improvement' The servicers are also rated on the effectiveness of their internal controls

[332] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 27, 2017. p.44 See https://www.sigtarp.gov/Quarterly Reports/January_27_2017_Report_To_Congress.pdf

[333] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress October 26, 2010. p.172https://www.sigtarp.gov/Quarterly%20Reports/October2010_Quarterly_Report_to_Congress.pdf

[334] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress October 27, 2011; See https://www.sigtarp.gov/Quarterly%20Reports/October2011_Quarterly_Report_to_Congress.pdf

[335] *Id.* p.6

[336] *Id.* p.59

in each of the three categories.[337] Program results are reported for four quantitative metrics: Aged Trials as a Percentage of Active Trials; Conversion Rate for Trials Started On or After June 1, 2010; Average Calendar Days to Resolve Escalated Cases; and Percentage of Missing Modification Status Reports. The servicer's performance in each of the four metrics is not scored, but instead is compared with the best and worst performances of all evaluated MHA servicers. The servicers are also rated on the effectiveness of their internal controls in each of the three categories.[338]

Processed Loans Without Quality Checkpoints 'HUSTLE' Program

125. January 30, 2013, SigTarp[339] Bank of America HUSTLE program defrauded Fannie Mae and Freddie Mac –'processed loans without quality checkpoints;'[340] 'sold toxic mortgages'[341] 'Countrywide executives allegedly eliminated certain internal quality control processes and fraud prevention measures that had been in place to ensure that its loans were sound. Countrywide executives allegedly ignored repeated warnings that the quality of loans originated under the Hustle would suffer.' [342]

Bank of America Canceled 45,708 Permanent Modifications Applications

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337 Treasury, "Obama Administration Releases August Housing Scorecard Featuring Making Home Affordable Servicer Assessments," 9/1/2011, www.treasury.gov/press-center/press-releases/Pages/tg1286.aspx, accessed 10/17/2011.
338 SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress October 27, 2011; p.69 See https://www.sigtarp.gov/Quarterly%20Reports/October2011_Quarterly_Report_to_Congress.pdf
339SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress, January 30, 2013 https://www.sigtarp.gov/Quarterly%20Reports/January_30_2013_Report_to_Congress.pdf
340 *Id.* p10 The U.S. Attorney for the Southern District of New York filed a civil mortgage fraud lawsuit alleging that TARP recipient Bank of America Corporation and its predecessors, Countrywide Financial Corporation and Countrywide Home Loans, Inc. ("Countrywide"), used a process known as the "Hustle" that was intentionally designed to process loans at high speed and without quality checkpoints to defraud Fannie Mae and Freddie Mac into buying thousands of fraudulent or defective loans on which the borrowers subsequently defaulted causing over $1 billion in losses and countless foreclosures. The misrepresentations allegedly made by Bank of America occurred before and during the time taxpayers invested $45 billion in TARP funds in the bank.
341 *Id.* P.16
342 *Id.* p. 16-17

126. On April 24, 2013, SigTarp - Bank of America canceled 45,708 permanent modifications applications;[343] 'and removed from the HAMP program' 'Notes: Cancellations include borrowers that: fail to finish a three-month trial, re-default after successfully completing the trial process or after receiving a permanent modification, are disqualified from the program or paid off their mortgage,[344] 'Bank of America 28% of total modifications.'[345]

HAMP Permanent Modifications Re-Defaulted

127. On July 24, 2013 Sig Tarp[346] 'More than half of TARP funds that Treasury spent for HAMP permanent modifications that re-defaulted were for mortgages currently serviced by three servicers, Ocwen Loan Servicing, LLC, J.P. Morgan Chase Bank, NA, and Bank of America, N.A'[347]

31% of Bank of America Permanent Modifications Re-Defaulted

128. On October 29, 2013 Sig Tarp[348] Bank of America, Countrywide, and Rebecca Mairone-found liable for defrauding the U.S.[349] '31% of Bank of America permanent Modifications re-defaulted 34,814 mods'[350]

Treasury Investigation Revealed Bank of America's Quality of Loans 'Constituted Serious and Significant Misrepresentation'

129. On January 29, 2014 Sig Tarp[351] 'investigation proved that Bank of America before, during and after receiving Tarp funds continued Hustle' program-removed quality controls

[343]SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress on April 24, 2013; p.70; See https://www.sigtarp.gov/Quarterly%20Reports/April_24_2013_Report_to_Congress.pdf
[344] *Id.* p. 65
[345] *Id.* p.70
[346] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress, July 24, 2013 See https://www.sigtarp.gov/Quarterly%20Reports/July_24_2013_Report_to_Congress.pdf
[347] *Id.* p.170
[348] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress, October 29, 2013 See https://www.sigtarp.gov/Quarterly%20Reports/October_29_2013_Report_to_Congress.pdf
[349] *Id.* p.21
[350] *Id.* p.78
[351] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress, January 29, 2014 See https://www.sigtarp.gov/Quarterly%20Reports/January_29_2014_Report_to_Congress.pdf

to feed Hustle' [352] '..constituted serious and significant misrepresentation .. quality of loans' [353] 'permanent modifications re-defaulted 34,669' [354]'complaints – Bank of America 'proportionately greater' lack of communication, misplaced applications, foreclosures short sales, trial modification problems.[355]

Bank of America Eliminating Toll Gates for Quality Control & Fraud Prevention & Still Compensating Loan Processors Based on Volume

130. On April 30, 2014 Sig Tarp [356] 'Our investigation with the NYAG revealed that Bank of America and two of its top executives, former CEO Kenneth Lewis and former CFO Joe Price, duped shareholders by not disclosing massive losses at Merrill Lynch (which Bank of America was in the process of acquiring) and snookered the Federal Government into investing billions of taxpayer dollars into the company through an additional TARP investment'[357] Senior management responsible for this program made no changes to the "Hustle," despite repeated warnings that eliminating toll gates for quality control and fraud prevention and compensating loan processors based on volume would result in disastrous results.[358] withheld from investors forecasted losses in excess of $9 billion at Merrill Lynch & Co., Inc. ("Merrill") for its 2008 fourth quarter, while at the same time asking shareholders to approve a merger with Merrill. Despite concealing these forecasted losses from investors, Bank of America then immediately sought massive financial assistance from the Federal Government in the form of $20 billion in TARP funds claiming that there had been a "material adverse change" in Merrill's financial [359]

"Brazen" Fraud by Bank of America, N.A., CW Financial Corporation and CW Home Loans

[352] *Id.* Message from Special Inspector General.
[353] *Id.* p.7
[354] *Id.* p.80
[355] *Id.* p.267
[356]SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress April 30, 2014
https://www.sigtarp.gov/Quarterly%20Reports/April_30_2014_Report_to_Congress.pdf
[357] *Id.* p.8
[358] *Id.* p.9
[359] *Id.* p.18

131. On October 29, 2014 Sig Tarp[360] 'TARP Recipient Bank of America Ordered to Pay $1.27 Billion in Civil Penalties for "Brazen" Fraud Against the United States – Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, Inc., and Rebecca Mairone' [361] 'Bank of America Corporation and Citigroup Inc. told SIGTARP that the limits on executive compensation motivated them to get out of TARP's exceptional assistance programs as soon as they could in 2009,[362] and 32% of Bank of America modifications re-defaulted.[363]

Bank of America Provided Principle Reduction –Lowest Amount Among Top 10 Servicers

132. On January 28, 2015 Sig Tarp[364] 'as of November 30, 2014 Bank of America had 14,736 unprocessed applications for Hamp-average months to process application by Bank of America 4 months'[365]' 32.6% of Bank of America permanent modifications re-defaulted '[366] report showed Bank of America only provided principle reduction to less than 1% of Hamp Tier 2 mods –lowest amount among top 10 servicers[367]

Bank of America 32% of Completed Modifications Re-Defaulted

133. On April 29, 2015 Sig Tarp[368]Bank of America had 43,004 mod apps unprocessed-taking 6.6 months to process[369] 32% of completed mods re-defaulted[370]

Bank of America Denied 80% of Homeowners Who Applied for HAMP

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[360] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress October 29, 2014 See https://www.sigtarp.gov/Quarterly%20Reports/October_29_2014_Report_to_Congress.pdf

[361] *Id.* p.21

[362] *Id.* p.58

[363] *Id.* p.148

[364]SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 28, 2015 See https://www.sigtarp.gov/Quarterly%20Reports/January_28_2015_Report_to_Congress.pdf

[365] *Id.* p.126

[366] *Id.* p.135

[367] *Id.* p.151

[368] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress April 29, 2015 See https://www.sigtarp.gov/Quarterly%20Reports/April_29_2015_Quarterly_Report_to_Congress.pdf

[369] *Id.* p.153

[370] *Id.* p.163

134. On July 29, 2015 Sig Tarp[371] Bank of America denied 80% of homeowners who applied for HAMP, denying 685,364 homeowners. Only 20% of homeowners who applied through Bank of America got into HAMP trial modifications.[372] Bank of America denied 842,135 [373] During the last six quarters, Treasury continued to find errors with the way servicers calculated homeowners' incomes: Bank of America was rated as needing "moderate" improvement once, and Select Portfolio Servicing as needing "substantial" improvement twice and "moderate" improvement three times[374] as of 5/31/2015 Bank of America had 33,569 mods not processed-taking 5.4 months to process apps for mods[375]as of 6/30/2015 32.1% or 33,692 mods re-defaulted[376] Bank of America provided forgiveness for principle reduction less than 1%-fewest of top 10 lenders.[377]

135. On October 28, 2015 Sig Tarp[378] as of 8/31/2015 Bank of America taking 9.2 months to process mod app[379] Bank of America denied 80% of Hamp apps[380] as of 9/30/2015 Bank of America 32.2% of mods re-defaulted (33,485)[381] Bank of America provided forgiveness for principle reduction less than 1%-fewest of top 10 lenders[382]

Bank of America-Wrongful Termination of Homeowners from Hamp

136. On January 28, 2016 SigTarp[383]Bank of America-wrongful termination of homeowners from Hamp from 4th quarter 2014 to 3rd quarter 2015[384] According to Treasury's

[371] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress July 29, 2015 See https://www.sigtarp.gov/Quarterly%20Reports/July_29_2015_Report_to_Congress.pdf
[372] *Id.* p.107
[373] *Id.* p.108
[374] *Id.* p.115
[375] *Id.* p.144
[376] *Id.* p.157
[377] *Id.* p.175
[378]SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress October 28, 2015 See https://www.sigtarp.gov/Quarterly%20Reports/October_28_2015_Report_to_Congress.pdf
[379] *Id.* p.147
[380] *Id.* p.149
[381] *Id.* p.164
[382] *Id.* p.175
[383] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 28, 2016 See https://www.sigtarp.gov/Quarterly%20Reports/January_28_2016_Report_to_Congress.pdf
[384] *Id.* p.75

compliance reports provided to SIGTARP, the wrongful terminations often involved homeowners who in fact had conformed to HAMP rules. Homeowners who make their modified mortgage payments on time, or who do not fall three months behind on those payments, are entitled to remain in HAMP[385] re-default errors by Bank of America in Q4 2014, Q1 2015, Q2 2015, Q3 2015[386]total apps not processed 12,353-taking avg 3.2 months to process[387]Bank of America still denying 80% of mod apps.[388]

Bank of America Third Highest Denial Rate of Top 10 Servicers at 79%

137. On April 27, 2016 Sig Tarp[389] Bank of America taking 8 months to process mod apps[390]3rd highest denial rate of top 10 servicers at 79%[391] as of 3/31/2016 Bank of America had 34,299 HAMP mods re-default (32.5%) of portfolio[392]

Bank of America Was Worst of Top 10 Servicers to Process Mod Applications

138. On July 27, 2016 Sig Tarp[393] Bank of America was worst of top 10 servicers-taking 9.1 months to process mod app. As of 5/31/2016[394] denies 79% of mod apps[395] Bank of America transferred 33,425 Hamp Trial and Perm mod to non-banks from 2010 to 2016 [396] 32.6% of mods re-default[397]

Treasury States Bank of America Has the Worst Track Record in HAMP

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385 *Id.* p.75
386 *Id.* p.78
387 *Id.* p.100
388 *Id.* p.103
389 SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress April 27, 2016 See https://www.sigtarp.gov/Quarterly%20Reports/April_27_2016_Report_to_Congress.pdf
390 *Id.* p.95
391 *Id.* p.98
392 *Id.* p.104
393 SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress July 27, 2016 See https://www.sigtarp.gov/Quarterly%20Reports/July_27_2016_Report_To_Congress.pdf
394 *Id.* p.123
395 *Id.* p.125
396 *Id.* p.126
397 *Id.* p.129

139. On October 26, 2016 Sig Tarp[398] Right now, Bank of America has the worst track record in HAMP, with Treasury reporting for more than a year that Bank of America needs substantial improvement in complying with HAMP's rules. This should be unacceptable given that Bank of America has already received more than $1 billion from Treasury for HAMP[399] Treasury requires that a servicer review a completed application within 30 days, but found that Bank of America violated that rule by taking 40 or 50 days, even 125 days to review a completed application.[400]

BoA Has the Worst Track Record Regarding Inaccurate Homeowner Income Calculations

140. It will take up to approximately 8 months for a homeowner who has applied for HAMP to get a decision on their application from Bank of America This is a clear sign of a bank that is not committing the resources needed to get the job done to review these applications despite being paid significant funds by Treasury. [401] Bank of America has one of the highest denial rates for homeowners in HAMP, having denied 79% of all homeowners who applied; Miscalculation of income: Bank of America has the worst track record of any large servicer regarding inaccurate homeowner income calculations; Failing to reduce principal despite being paid by Treasury to do so: In the HAMP principal reduction program, Treasury pays servicers typically several thousand tax dollars per loan to reduce the outstanding balance of underwater mortgages. In 80% of these types of HAMP modifications that Treasury looked at in its 2nd quarter 2015 review of Bank of America; [402] 33% re-default.[403]

Bank of America Continues to Have One of the Worst Track Records in HAMP

141. On January 27, 2017 Sig Tarp[404] Bank of America also has one of the worst track records in HAMP. SIGTARP's investigation of Bank of America defrauding HAMP led to a 2012

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[398] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress October 26, 2016 See https://www.sigtarp.gov/Quarterly%20Reports/October_26_2016_Report_To_Congress.pdf

[399] *Id.* p.88

[400] *Id.* p.88

[401] *Id.* p.88

[402] *Id.* p.89

[403] *Id.* p.117

[404] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 27, 2017 https://www.sigtarp.gov/Quarterly%20Reports/January_27_2017_Report_To_Congress.pdf

Department of Justice agreement with Bank of America.[405]Treasury found that Bank of America needed substantial improvement in complying with HAMP's rules in 5 of the last 6 quarters. This should be unacceptable given that Bank of America has already received about $2 billion from Treasury for HAMP.[406]

Bank of America Wrongfully Denying Homeowners Admission Into HAMP

142. On April 26, 2017 Sig Tarp[407] ' in 2016 Bank of America Wrongfully denying homeowners admission into HAMP; Miscalculation of income; Failing to reduce principal despite being paid by Treasury to do so;[408] Failure to notify homeowners in their 6th year of HAMP that they can lower their monthly payment[409]

41% of All Illinoians (40,176) Have Been Canceled Out of the [HAMP] Program

143. On January 30, 2018 Sig Tarp [410] MHA in Illinois • 50,298 Illinois homeowners are currently in the HAMP program. • The following financial institutions receive the vast majority of TARP dollars for HAMP in Illinois: Ocwen Loan Servicing LLC, Nationstar Mortgage LLC, JPMorgan Chase Bank NA, Select Portfolio Servicing Inc., Wells Fargo Bank N.A., Ditech Financial LLC, Bank of America N.A., Seterus Incorporated, Specialized Loan Servicing LLC, and CitiMortgage Inc. • 41% of all Illinoians (40,176) have been canceled out of the [HAMP] program.[411]

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[405] *Id.* p.79

[406] *Id.*

[407] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress April 26, 2017 See https://www.sigtarp.gov/Quarterly%20Reports/April_26_2017_Report_to_Congress.pdf

[408] *Id.* p.71

[409] *Id.* p. 72

[410] SIGTARP, Office of Special Inspector General for The Troubled Asset Relief Program, Quarterly report to Congress January 30, 2018 See https://www.sigtarp.gov/Quarterly%20Reports/January_30_2018_Report_to_Congress.pdf

[411] *Id.* p.67