EXPERT REPORT

(In Response to Expert Report of Dr. Marsha J. Courchane)

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

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

DR. GARY LACEFIELD

January 13, 2021

I am issuing this report in response to the Expert Report of Marsha Courchane ("Courchane Report"). The paragraph numbers set forth below correspond to those in the Courchane Report and I incorporate by reference my November 9, 2020 Expert Report ("Lacefield Report").

For the reasons and analysis set forth below, I disagree with Ms. Courchane's conclusions and confirm the analysis and conclusions in the Lacefield Report.

My first impression of Dr. Courchane's report completely dismisses the sworn statements of former executives and other managerial staff, as well as the facts as the evidence provided supports the sworn witness statements.

Para 17. Dr. Courchane states that it was the 'macroeconomic' changes that led to the mortgage market crisis creating an adverse economic environment that caused borrowers to default, regardless of any issues with appraisals, origination, and underwriting practices.[1] My opinion is that these three issues 'appraisals, origination, and underwriting practices' are at the heart of Defendant's actions. These actions, disparate treatment, resulting in equity stripping causing a statistically significant disparate impact to the families in predominately minority neighborhoods.

My opinions are based upon direct proof with statistics not academic theories relying on statistics. The direct proof comes in the form of Defendant's former executives, managers, supervisors and employees sworn statements. The delimiters I used to identify potential areas of concern were developed based upon my extensive experience at HUD as the supervisor of lending investigations in the Southwest region, experience as an executive over compliance and quality control for two national mortgage lenders, experience successfully representing several hundred families file fair housing complaints for wrongful foreclosure, and expertise as a Certified Fraud Examiner.

[1] Expert Report of Marsha J. Courchane, Ph.D. in the matter of County of Cook, Plaintiff v. Bank of America Corp, et. al. United States District Court, Northern District of Illinois, Eastern Division 1:14-cv-2280 December 18, 2020 *Confidential; Subject to a Protective Order.* at 17, ("Courchane Report")

Para 17. Continued. I do not disagree with Dr. Courchane that all of the factors she lists had an impact on the high default rate and foreclosures. But I can tie most of those issues back to the appraisal, origination, and underwriting. For example: 1. Borrowers lost home equity as nationwide house prices fell [prices fell for a few key reasons: over-valued collateral and the borrower placed into homes they never really had the ability to repay-or maintain led to multiple foreclosures-reducing the value of the home-not the debt owed] and they found it difficult to sell or refinance homes [couldn't sell because of the foreclosures in the neighborhood, turning some properties into rentals-further depressing the market. People had to refinance because of the tens of thousands of adjustable rate mortgages Defendants 'qualified' borrowers for. Let's say after three years you had to refinance, get new mortgage (home would value less than owed), or get a new mortgage if they wanted if they wanted to stay in the home][the problem with refinancing is the requirement to have 20% equity or money down. Most folks I know wouldn't be able to come up with 1% of the property value much less 20%. See statement above for reasons market depressed.]. when they had loan balances in excess of the market value of the home. The house price declines caused many foreclosures,[most of these foreclosures were from two categories of borrowers: , first group of borrowers were having to refinance out of an ARM product and the second group of borrowers were placed in loans they never had the ability to repay and maintain] the as well as causing some borrowers to turn to short sales (selling homes for less than the outstanding loan balances) [because the homes were overvalued to start with and other foreclosures in the neighborhood]or strategic defaults (choosing not to pay as they owed more than the home was worth). In addition, rising unemployment rates across the country led to high levels of job loss or to moves that were required for job mobility.[Job loss created, in part, because a large number of these families had employment tied in some fashion with the housing and real estate environment].

Para 18. I agree that 'life events' happen in general and can could cause foreclosure. But over time, all of these life experiences will happen to all families regardless of their race and ethnicity, equally. However, the foreclosure rate in predominately minority neighborhoods is significantly higher than the foreclosure rate in white neighborhoods. In my experience its primarily due to 'appraisal, origination, and underwriting' issues that were the direct cause of the foreclosure.

Para. 19. An individualized determination based on loan servicing files is not required.

Para. 20-22. I look for trends and patterns within the whole process from marketing the product, to appraisal, then through origination and underwriting. The expectation is that there would be no difference in results between white census tracts and non-white census tracts, reviewing for the exact same element. However, my analysis of the trends and patterns, supported by sworn statements from former executives, managers, and supervisors revealed that, but for Defendant's actions, these homes would not have gone to foreclosure. In Cook County, almost every category we applied resulted in a significantly higher rate of foreclosure in minority neighborhoods than in white neighborhoods. And in addition, as the proportion of minority residents increased in a neighborhood, the foreclosure rate increased accordingly. One element (depending upon the element) or a combination of elements can be very determinate of the causation.

Para 23-24. In my opinion it is more important to look at the 'type' of loan product and the 'documentation type' associated with the type of product as well as other underwriting guidelines for the type of product not the individual product itself. A 30-year fixed product absolutely can be a risky 'type' of product if the documentation type weakens typical underwriting criteria (such as allowing higher Debt-to-Income (DTI) ratios, lower credit scores allowed, and higher Loan-to-Value (LTV) ratio allowed). Additionally, and this goes to pricing, was APR triggered. Therefore, any individual loan product type, depending upon its documentation requirements, and other underwriting guidelines can be just as risky as a stated income loan.

Para 25. I did not state that 'those' products were discriminatory, I believe the Defendant's application of these products resulting in having a discriminatory disparate impact on minority families living in predominately minority neighborhoods. Also, the evidence linking underwriting to Defendant's policies was based on the Defendant's application and enforced accountability of those policies, as well as sworn statements from Defendant's current and former executives and management team members. Direct evidence based on sworn statements that proved Defendant's systematic disregard for its own underwriting policies and standards include the following:

Michael Winston joined Countrywide Financial Corporation in 2005 as a Managing Director and Enterprise Chief Leadership Officer.[2] 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."[3] Winston stated that Countrywide's rapid growth and lax government practices concerned him,[4] as did a conversation with Andrew Gissinger, President and Chief Operating Officer of Countrywide Home Loans who stated "Countrywide had long abandoned its underwriting standards in order to increase loan volumes."[5] Winston stated that several mid-level employees expressed their concerns with 'lowered underwriting standards.'[6]

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.[7] 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."[8]

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.[9] 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

[2] Declaration of Michael Winston dated October 25, 2020 at ¶ 3.
[3] Id. at ¶ 4.
[4] Id. at ¶ 5.
[5] Id.
[6] Id. at ¶ 6.
[7] Id. at ¶ 10.
[8] Id.
[9] Id. at ¶ 12.

for a loan - that could 'fog a mirror" - received a loan. It was the embodiment of the Company's ''Fund'Em" culture."[10] 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."[11]

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."[12]

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.

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.

[10] Id.
[11] Id.
[12] Id. at ¶ 17.

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.[13] 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.[14]

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.[15]As the national underwriting manager she did not know what 'underwriting standards' were,[16] 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,[17] further stating that "I don't recall anything related to overrides, the term 'overrides.'"[18] Dean was also not familiar with the CMD credit authority and responsibilities document[19] that described what an underwriter can do relative to exceptions.[20] As, the National Underwriting Manager she was not familiar with underwriting subprime loans,[21] nor was she familiar with corporate quality control guidelines.[22]

[13] Id. at ¶ 19.
[14] Id. at ¶ 20.
[15] Dean Tr. at 25:10-14.
[16] Id. at 35:16-19.
[17] *Id.* at 35:20-36:25.
[18] *Id.* at 35:20-36:14.
[19] *Id.* at 46:15-47:11.
[20] *Id.* at 48:6-49:18.
[21] Id. at 51:4-9.
[22] *Id.* at 51:21-52:3.

Additional direct evidence linking the underwriting of mortgage loans originated in Cook County to particular policies of Bank of America or Countrywide according to investigations by the Department of Justice, Bank of America underwrote and insured FHA loans to borrowers who did not qualify. During the period May 1, 2009 through March 31, 2012,[23] 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.[24]

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.[25]

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.[26] In furtherance of these aims, Countrywide's new origination model removed the processes responsible for safeguarding loan quality and preventing fraud. For instance, Countrywide eliminated underwriter[27] 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.

[23] 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
[24] Id. at 17.
[25] CWCC0000007915
[26] CWCC0000007915
[27] 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

Under the Hustle, such instructions on proper underwriting were considered nothing more than unnecessary forms that would slow the swim lane down.[28]

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 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.[29]

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.[30] 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").[31]

In a May 13, 2007 internal memorandum, the same executive wrote: A core principle [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-

[28] 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
[29] DOJ Settlement, Annex 1-Statement of Facts, at 9.
[30] Id. at 9-10.
[31] Id. at 9.

Countrywide originated an increasing number of loans as exceptions to its Loan Program Guides.[32]An internal Countrywide email indicated that during May 2006, for prime loans, exceptions constituted by dollar amount
approximately 30% of funding's for certain fixed loans, 40% for Pay-Option ARMs, and 50% for expanded criteria hybrid loans.[33]

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 level, but the Extreme Alt-A guidelines did not require SLD underwriters to identify compensating factors in connection with underwriting the loans.[34]

Dr. Courchane ignores Defendant's current and former executives sworn statements and the additional direct written evidence linking the underwriting of mortgage loans originated in Cook County to particular policies of Bank of America and Countrywide. Any investigation that I have participated relied on sworn statements particularly if those statements supported corporate documents and statistical data. I believe that Dr. Courchane's opinions are flawed, unsupported, irrelevant, and should be dismissed because she apparently simply relies on statistical data and believes that just because the Defendants had policies and guidelines in place does not mean that the policies and guidelines were followed. Dr. Courchane does not discuss the facts that indicate foreclosures happened more frequently in predominately minority neighborhoods than white neighborhoods.

Para 26-27

I believe, based upon sworn statements, and documentation supported by statistics reveal an inference of a causal connection between the conduct of the Defendants and African Americans or Hispanics suffering defaults or foreclosures at a higher rate than non-minorities and does more than suggest, it factual proves that Defendants' loan origination or servicing conduct (or both combined) caused disparity in minority borrower loan outcomes. Defendant Countrywide's

[32] Id.
[33] Id. at 10.
[34] Id. at 11.

executive leadership announced publicly its intent to target minority families for subprime and risky loan products. Defendants' discretionary pricing policies resulted in predatory mortgage lending on a discriminatory basis by targeting neighborhoods with high concentration of African American and Hispanic families without regard to borrowers' ability to repay their mortgage loans.

For example nationally:
June 13, 2006 Congressional Testimony (is sworn testimony) of Keith S. Ernst, Senior Policy Counsel, Center for Responsible Lending, before the Subcommittee on Financial Institutions and Consumer Credit.[35] Reporting on the Center for Responsible Lending's study of the HMDA data (the Center is a non-profit research organization) Ernst testified: Our findings were striking. We found that race and ethnicity—two factors that should play no role in pricing—are significant predictors of whether a subprime loan falls into the higher-rate portion of the market. Race and ethnicity remained significant predictors even after we accounted for the major factors that lenders list on rate sheets to determine loan pricing. In other words, even after controlling for legitimate loan risk factors, including borrowers' credit score, loan-to-value ratio, and ability to document income, race and ethnicity matter. African American and Latino borrowers continue to face a much greater likelihood of receiving the most expensive subprime loans—even with the same loan type and the same qualifications as their white counterparts. Across a variety of different loan types, African American and Latino borrowers were 30% more likely to receive a higher-rate loan than white borrowers.[36]

February 7, 2007 Hearing Before The Committee On Banking, Housing, And Urban Affairs United States Senate (110th) with the topic of the hearing in the first session: On The Impact Of Exotic Mortgage Products On Homebuyers And Homeowners.[37]Today, the Committee will focus its attention more specifically on predatory lending practices that are found primarily in the

[35] Congressional Testimony of Keith S. Ernst, Senior Policy Counsel, Center for Responsible Lending, before the Subcommittee on Financial Institutions and Consumer Credit (June 13, 2006) at 2.
[36] Congressional Testimony of Keith S. Ernst, Senior Policy Counsel, Center for Responsible Lending, before the Subcommittee on Financial Institutions and Consumer Credit (June 13, 2006) at 2.
[37] February 7, 2007 Hearing Before The Committee On Banking, Housing, And Urban Affairs United States Senate One Hundred Tenth Congress First Session **On The Impact Of Exotic Mortgage** Products On Homebuyers And Homeowners See http: //www.access.gpo.gov /congress /senate/senate05sh.html

subprime market and how these practices may be eroding the foundations of homeownership for millions of American families.[38] We are seeing increasing evidence that this important source of wealth for so many of our fellow citizens is under grave threat from predatory, abusive, and irresponsible lending practices undertaken by too many subprime lenders. The borrowers who are too frequently targeted for these loans are minorities, immigrants, the elderly, and the totally unsophisticated. For these families, failure means the loss of a home, the loss of wealth, the loss of middle-class status, and the loss of the opportunity for financial security. Minority borrowers are being targeted for higher-cost, subprime mortgages, regardless of their financial health.

The 2005 Home Mortgage Disclosure Act data show that over half of African American borrowers and 46 percent of Hispanic borrowers were given high-cost, subprime loans.[39] By comparison, only 17 percent of whites took out such loans. According to the Federal Reserve, borrower-related characteristics such as income could explain only about 20 percent of this difference. About 70 percent of subprime loans have costly prepayment penalties that trap borrowers in high-cost mortgages, mortgages that strip wealth rather than build it, and these penalties keep borrowers from shopping for a better deal.[40]

Impact on Minority Communities and Neighborhoods--According to this 1997 study, 'Cash in Your Face', the evidence, racial and ethnic discrimination in housing continues to be widespread. This paper estimates the cost this discrimination imposes on black and Hispanic households. Building on the work of, the paper develops a housing search model and measures the cost of discrimination by its impact on the gain a household can achieve through housing search. The cost of discrimination is then calculated for a representative sample of households. Black and Hispanic households pay a discrimination "tax" of almost $4,000, on average, every time they search for a house to buy.[41]

[38] Id.
[39] Id.
[40] Id.
[41] **Cash** in Your **Face**: The Cost of Racial and Ethnic Discrimination in Housing; John Yinger, 1997. See www.sciencedirect.com › science › article › abs › pii

An article published in the October 2010 American Sociological Review Racial Segregation and the American Foreclosure Crisis[42] Rugh and Massey revealed "High levels of segregation create a natural market for subprime lending and cause riskier mortgages, and thus foreclosures, to accumulate disproportionately in racially segregated cities' minority neighborhoods".[43] By concentrating underserved, financially unsophisticated, and needy minority group members who are accustomed to exploitation in certain well-defined neighborhoods, segregation made it easy for brokers to target them when marketing subprime loans.

Researchers found that among mortgage lenders who went bankrupt in 2007, black borrowers who received loans in 2006 were three times more likely to receive a subprime than a prime loan (74 versus 26 percent) and Hispanics were twice as likely to receive a subprime than a prime loan (63 versus 37 percent).[44] " By contrast, whites were slightly more likely to get a prime than a subprime loan from the same lenders (46 versus 54 percent)."[45] "Among institutions that did not go bankrupt in 2007, blacks who borrowed in 2006 were just as likely to receive prime as subprime loans (51 versus 49 percent), underscoring the discriminatory nature of predatory lending practices in the United States. Simply put, the greater the degree of Hispanic and especially black segregation a metropolitan area exhibits, the higher the number and rate of foreclosures it experiences."[46]

The Federal Reserve has found that discrimination was pervasive in subprime mortgage lending from 2000 through 2007.[47] Federal Reserve's analysis of 2004 and 2005 HMDA data revealed that "Blacks and Hispanics were more likely . . . to have received higher-priced loans than non-Hispanic whites . . . [which has] increased concern about the fairness of the lending process." Robert B. Avery, Kenneth P. Brevoort and Glenn B. Canner.[48]

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[42] Article published in the American Sociological Review; *Racial Segregation and the American Foreclosure Crisis* by Jacob S. Rugh and Douglas S. Massey; Volume 75 Number 5, October 2010, See https://www.asanet.org/sites/default/files/savvy/images/journals/docs/pdf/asr/Oct10ASRFeature.

[43] Id.p.630

[44] Id.p.631

[45] Id.p.631

[46] Id.p.644

[47] "Higher-Priced Home Lending and the 2005 HMDA Data," Federal Reserve Bulletin, A124, A159 (revised Sept. 18, 2006).

[48] "Higher-Priced Home Lending and the 2005 HMDA Data," Federal Reserve Bulletin, A124, A159 (revised Sept. 18, 2006).

Federal Deposit Insurance Corporation (FDIC) --Martin J. Gruenberg, FDIC Vice Chairman, observed that ‘‘previous studies have suggested higher-priced, subprime lenders are more active in lower income, urban areas and that minority access to credit is dominated by higher cost lenders.”[49]

Unfortunately, living in a minority neighborhood puts a homeowner at significantly higher risk of having a prepayment penalty. Approximately eight in ten subprime loans today are 2/28 adjustable rate mortgages. These mortgages whose monthly payments will spike up by as much as 30 to 50 percent or more. Many of the borrowers who take these loans, unaware of the payment shocks that await them, have no prospects of being able to make the higher payments and are forced to refinance the loan if they have sufficient equity to do so. Each refinance generates new fees for the lenders and brokers and strips more equity from the homeowner. One lender in a discussion with my office called subprime 2/28 loans ‘‘foreclosure loans.’’[50]Late in 2006, Federal financial regulators issued guidance to require the lenders to underwrite borrowers for certain non-traditional mortgages so that even after the payment shock hits, the lender can be reasonably certain that the borrowers will be able to continue to make the mortgage payments.[51]

Study: Abusive Loan Terms Given to Many Low-income Borrowers-End in Foreclosure-- The Center for Responsible Lending, whose CEO, Martin Eakes, released a study saying that nearly one in five subprime loans made in 2005 and 2006 will end in foreclosure, in large part because of the abusive loan terms with which many low-income borrowers are saddled. According to this study, up to 2.2 million families will lose their homes at a cost of $164 billion in lost home equity. Other reports confirm the trend. RealtyTrac announced that there were more than 1.2 million foreclosure filings in 2006, up 42 percent from 2005, blaming the increase on higher payments generated by the resets on option and subprime ARMs.[52]

[49] Martin J. Gruenberg, *Address to the Conference on Hispanic Immigration to the United States: Banking the Unbanked Initiatives in the U.S.* (Oct. 18, 2006).
[50] February 7, 2007 Hearing Before The Committee On Banking, Housing, And Urban Affairs United States Senate One Hundred Tenth Congress First Session On The Impact Of Exotic Mortgage Products On Homebuyers And Homeowners See http: //www.access.gpo.gov /congress /senate/senate05sh.html
[51] Id.
[52] Id.

Para 28-182. Just because Dr. Courchane is not familiar with our methodology does not mean it is invalid. I agree with Dr. Courchane's statement that many factors such as the cost of funds and sale of mortgage loans to the secondary market, credit risk, down payment levels, prepayment risk, and servicing costs can all impact mortgage loan prices. However, my analysis focuses on the primary factors that cause borrowers to default on their mortgages. Criteria, that all underwriters review or should consider on every loan originated. Factors that would impact the ability of borrowers to repay their loan. My analysis looks at the distribution of specific underwriting elements and the resulting geographic application of those elements. In my role as a Certified Fraud Examiner, my goal is to start with the outcomes such as 'foreclosure rate' and identify why there exists a significantly higher foreclosure rate in predominately minority neighborhoods. Based on my results and treated across the board with white and non-white borrowers, patterns identify elements that 'cause' a higher foreclosure rate in certain neighborhoods than others. My research and methodology have identified that predominately minority neighborhoods have been targeted by Defendants' underwriting failures and loan officers' greed (compensation) resulting in disparate impact on predominately minority neighborhoods.

Origination Delimiters

The Federal Reserve Bank of Minneapolis posted an article September 13, 2017 that over 60% of mortgage defaults resulted from "the owner's inability to pay."[53] The owner's inability to repay includes the following delimiters: D1: Income insufficient to support the loan; D2: Amortization Terms that exceed 360 months; D3: Amortization Terms that are less than 180 months (15 years); D4: CLTV -Combined Loan-to-Value Ratio exceeds 100%; D5: High concentration of foreclosures in the same high-density Minority (> 51%) census tract; D7: Amortization Terms of 10y, 15y, 20y, or 25y where borrower's gross income to the note does not support the higher-monthly payments they would have with a 30 year fixed rate loan;

Peer reviewed research article titled "Reducing residential mortgage default: Should policy act before or after home purchases?"[54] The authors opined "In this paper we look at the efficacy of

[53] Federal Reserve Bank of Minneapolis article: https://www.minneapolisfed.org/article/2017/who-defaults-on-their-mortgage-and-why-policy-implications-for-reducing-mortgage-default

[54] Reducing residential mortgage default: Should policy act before or after home purchases? Yifei Wu and Jeffrey H. Dorfman; Published: July 19, 2018; https://doi.org/10.1371/journal.pone.0200476

two potential policy levers: the size of down payment required and the length of time someone who defaults on his mortgage is subsequently excluded from the credit markets." The authors also point out that policies need to take place 'before' the loan closes. Policies should address issues such as:

D6: First Time Homebuyers in complex mortgage schemes; D10: Loans with 'Hard' prepayment penalties (pp) and any loan where prepayment penalty is longer than 12 months; and D11: Loans with an Initial Interest Rate (teaser rate) that changes (or resets) at any time within the first 14 months of origination (equity stripping scheme).

CoreLogic is a national analytical company focused on the trends in the mortgage market. They published an article titled: "Debt-to-Income Is the Number One Reason for Denied Mortgage Applications."[55] Not only is DTI the number one reason for denied applications, but it is also the number one reason consumers defaulted on their loans, primarily due to being approved for loans that the consumer did not have the ability to repay. D15: DTI (Total Debt-to-Income Ratio) over 38%. Credit.com states that lenders consider you 'high risk' if your credit score is lower than 620.[56] Therefore, any credit score below 560 is at a much higher level of risk and subject to predatory and discriminatory conditions. Lower credit scores are also directly proportional to higher interest rates. The lower the credit score, the higher the interest rate. D12: Loans where consumer's FICO < 560.

The riskiest loans are recognized by D8: Loan Program Types or Trading Doc Types that are considered extremely high-risk and historically default at a high rate. The Wall Street Journal indicated as early as 2008 that D8a: Pick-a-pay[57]and D8b: Option arm mortgages were considered one of the riskiest loan products because lenders failed to explain adequately, and borrowers did not understand the terms of the loan until it was too late. The foreclosure rate for these types of risky loan products ultimately took down many lenders including Washington Mutual and Wachovia. The following delimiters all rely on the complete honesty of the consumer and the lender since the underwriting was based upon limited information, if any at all,

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[55] https://www.corelogic.com/blog/2018/10/debt-to-income-is-the-number-one-reason-for-denied-mortgage-applications.aspx
[56] Credit.com; May 21, 2019; What are high risk loans.https://www.credit.com/loans/loan-articles/high-risk-loans/
[57] https://www.wsj.com/articles/SB120952247549655211

regarding their income, assets, and debts to qualify for the loan. The interest rates for these loan products are considerably higher than a conforming loan (for the risk associated with the lender). However, the higher interest rates placed a higher risk factor directly to the detriment of the borrower.

The following loans fall into this category: D8c: Stated Income Only; D8d: Stated Income-Stated Assets (SISA); D8e: Stated Assets Only; D8f: No Income-No Assets (NINA); D8g: No Documentation loans; D8h: Reduced Documentation loans; D8i: Interest Only; D8j: Balloon Only; D8k: Interest Only & Balloon features in the same loan product; and D8l: No Ratio (meaning no debt-to-income ratios and no housing to income ratios among other standard underwriting measurements).

Development of Delimiters by Dr. Lacefield.

The use of minimum qualifying factors helps the agencies and industry reasonably and quickly determine whether the loan will perform with minimal impact to the consumer's ability to be successful homeowners. The 'reasonableness test' is an industry standard used by experienced loan officers, processors, underwriters, and quality control personnel to determine what loan products and what loan amount the consumer may qualify for. If the raw numbers do not make sense, a 'red flag' should go up and question the agents (lender or realtor) about the reasonableness of the loan amount or loan program (including type of underwriting). These 'red flags' or 'delimiters' I am using are based upon the reasonableness test.

All automated underwriting systems (AUSs) used by lenders are obviously more sophisticated since complicated algorithms are involved, but the basis of this type of data is a good starting point or basis to qualify consumers for the loan amount and loan product. The 'purpose' of the reasonableness test is to assure a consumer will have the ability to make their monthly payments. These are the same criteria that loan officers and loan processors use to 'pre-qualify' and/or 'pre-approve' consumers for a loan amount and loan product. Any competent underwriter, compliance or quality control person knows and understands what a reasonableness test is.

Consumers being placed in 'high risk' loan products are one of the primary reasons the default rates of loans increased exponentially from FY 2000 to FY 2010. Since most of the loans that are seriously delinquent or foreclosed were originated between 2005 and 2012, I used the generally accepted underwriting criteria for that time period for originations and servicing.

A 'high risk' loan product is a product that typically had a statistically significant high default and foreclosure rate. For example, with 'job description' employment: if the consumer is in a salaried or fixed income position, they should never be placed in a loan product based on 'stated income'. You know exactly what their income is, therefore, they should provide documentation (pay stubs, tax returns etc.) to prove up their income. Using the previous job description example, lenders placed consumers in any type of stated income-stated assets (SISA) or simply stated income loan products which provided lenders the opportunity to qualify consumers for loan products they never had the ability to repay. Such as any type of 'Pick-a-Pay' loan product which ultimately turned into negative amortization loans because the consumer most frequently 'picked' the lowest monthly payment.

High risk loan products include the type of underwriting such as 'no doc' or any type of reduced underwriting criteria that would allow the loan officer to convince the consumer to apply, knowing full well that if the consumer applied based upon their true income and assets, the consumer would not qualify for the loan product or loan amount or both. This was especially true for 'first time' home buyers who relied on the integrity of the loan officer to place them in a loan product that the consumer would not have the ability to repay. These types of loan products and underwriting standards also made it extremely easy for lenders and experienced borrowers to commit fraud.

Delimiters (red flags) help identify the two primary types of fraud in the origination of single-family mortgages; instances where the reasonableness test would have identified the potential fraud. The first is 'fraud for profit' where the misrepresentation by the applicant (investor posing as an owner-occupied consumer) with full knowledge of the lender, is to qualify for the mortgage for the purpose of 'flipping' it for a quick profit. The second type of fraud is fraud for housing. The consumer or lender make representations to underwriting that on paper would qualify the consumer for a specific loan. However, the consumer never should have qualified but for the coaching of their realtor and/or the fraudulent efforts of the lender. Consumers typically rely on the expertise of their lender and/or realtor to guide them through the process.

Delimiters were developed from the lending audit criteria used by the U.S Department of Housing and Urban Development (HUD) to review the underwriting standards of each lender. The annual HUD Office of Lender Activities and Program Compliance, FHA Quality Assurance Report dated May 29, 2019[58] revealed that of HUD'S audits (31,538 FHA insured loans) in the preceding four quarters: that 63.4% of the loans were unacceptable and 14.3% of these loans were seriously deficient. Only 22.2% of the audited loans conformed to FHA underwriting standards.

The delimiters were designed to identify HUD's highest risk scale consisting of four risk levels of loan audits. The first two levels of risk do not affect the quality or the sale-ability of the loan. Most quality control units combine the first two risk categories as one, which are consider low risk or acceptable risk because the findings are missing paperwork or an (i) not dotted or a (t) not crossed. Typically, low risk factors that will be covered in training. While deficiencies that would cause harm to the consumer or impact the FHA insurance fund (inability to perform and foreclosure) are categorized as a two (Moderate Risk) or three (Material Risk) with a three being the highest risk. The following paragraphs explain the audit assessments in greater detail justifying the developed delimiters.

When a HUD audit is conducted, any deficiencies in the integrity of the loan are typically categorized into one of these three basic risk levels. All quality control companies as well as loan originators and investor guidelines are required to use a ranking/risk assessment system designed after HUD's quality control program described in HUD Handbook 4060.1, REV 1, Chapter 6.4. This system is the basis for measuring the quality control and risk of loans regardless of whether the loans are FHA/VA insured or conventional loans.

"HUD recommends that Quality Control reports to mortgagee management include an assessment of risks. Mortgagees may develop a system of evaluating each Quality Control sample on the basis of the severity of the violations found during the review. The system should

[58] Office of Lender Activities and Program Compliance; FHA Quality Assurance Update May 29, 2019. https://www.hud.gov/sites/dfiles/SFH/documents/sfh_quality_assurance_05_29_19.pdf

enable a documentation. Failure to resolve these issues has created a moderate risk to the mortgagee (lender) and FHA (investor).

The specific delimiters I discuss below have been refined over the years from my standpoint as a compliance and quality control officer with 32 years of experience. I have identified delimiters that could be used to identify potential Category 2 and 3 related issues resulting in predatory and discriminatory loans. It could take several Category 2's or in some cases only one Category 3 rating typically may make the loan uninsurable and therefore unsalable. On all of my significance tests, I applied the same delimiters across the Defendants' loan data to all races and ethnicities.

The origination delimiters were designed to help non-underwriters like mortgage originators, processors working with consumers to help provide the best possible mortgage loan that the borrowers will be able to repay the loan (safely) and not go into foreclosure.

The delimiters developed focused on HUD Category 2 findings defined as "Moderate Risk" and Category 3 findings defined as a "Material Risk." The described issues identified during the review which were moderate and/or material violations of FHA (investor) or HUD mortgagee (lender) requirements and represent an unacceptable level of risk. Examples included: a significant miscalculation of the insurable mortgages amount; the applicant's capacity to repay; failure to underwrite an assumption; and failure to ensure proper valuation and protection from fraud. These risk factors (identified by delimiters) measure the quality of the loan and whether the loan is unsalable or re-purchasable.[59]

Typical Category 3 ratings include but are not limited to:

a. The debt-to-income ratio does not appear acceptable for this loan.

b. The borrower was not qualified at a higher interest rate.

c. It appears the borrower does not have the ability to re-pay the loan.

d. Eligibility/qualification not supported by documentation.

e. Minimum required investment is met, but closing costs and other (e.g., reserves, escrows) not supported by documentation.

[59] HUD Manual 4060.1, Chapter 7; https://www.hud.gov/sites/documents/40601C7HSGH.PDF

f. Credit scores not reflective of a history of loan repayment.

g. Standard employment income amount/stability not supported by docs.

Several Category 2 findings or a single Category 3 finding (depending on the delimiter) should prevent the underwriter from approving the loan without further examination.

Delimiters (Red Flags) for Origination Discrimination

D-1 Income insufficient to support loan amount. The industry general rule of thumb that we as compliance and quality control experts use to identify loans 'set for failure' when the mortgage loan amount should be less than 2.5 times gross income. We flagged loans with terms of >= 360 (months) and loan amounts that are 2.5 times gross income. Loans typically exceeding these criteria are considered higher risk than loans where the loan amount is less than 2.5 times the borrower's gross annual income. [60]

D-2 Amortization Terms that exceed 360 months. [> 360] If the term of the loan exceeds 360 months, the monthly mortgage payment is only slightly lower, but the length of time required to repay these 'slightly' lower payments increases significantly as the term increases. This may prevent the borrower from qualifying for a new loan at a lower interest rate. Additionally, the consumer has to make many more payments before they realize any equity, not to mention the significantly higher amount of interest paid over the longer term. (Examples from the Bank of America data provided multiple i.e. 533, 564, 537, 480, 485 etc.).

D-3 Amortization Terms that are less than 180 months. [< 180] [Note: We did include - Second lien and Refinance loans or Home Improvement loans.] If the term of the loan is less than 180 months, the monthly payment required by the borrower increases significantly. The mortgage payment increases significantly as the term established at origination reduces the number of payments. A higher payment is irrelevant if you do not have the ability to make the lower payments under a longer term.

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[60] The Recommended Ratio of a House Price to Your Yearly Income | Home Guides | SF Gate Yearly Income Estimates: Rules vary for how much house you should buy based on your yearly income. Some lenders, for example, indicate that a home's sale price should not exceed 2.5 times your annual salary. Following this example, if your annual salary is $150,000, you should avoid buying a home that costs more than $300,000.

D-4 Combined Loan-to-Value Ratio (CLTV). CLTVs greater that 100%. The combined loan to value means that there may be a second or third lien in addition to the first lien that the borrowers qualified for. The CLTV is a combination of all mortgage liens tied to the property. A CLTV higher than 100% is problematic for several reasons including: a) makes it more likely that the borrower cannot afford to make the payments, b) makes it less likely that a borrower could qualify for a lower interest rate because of the higher debt-to-income ratios, and c) borrower is less likely to qualify for a refinance to lower the interest rate because typically there has to be 20% equity in the property in order to qualify for a refinance. Therefore, borrowers are forced to stay in their mortgages longer, paying higher rates than they should have to. (Examples from the Bank of America data provided i.e. 285%, 202%, 164% etc.).

D-5 High concentration of FC in the same high-density Minority (> 51%) census tract (CT). We identified the total number of FC flag loans in each CT. The delimiter is based upon any CT with > 5 FC flag loans. When there are a significant number of foreclosures in a small geographic are such as a census tract, home values decrease significantly and proportionately to the number of foreclosures in that tract. With depressed home values, it makes it almost impossible for the borrower to sell their home (because they are now in a negative equity position) or refinance their mortgage. Remember that there has to be at least 20% equity to qualify for most refinances.

D-6 First Time Homebuyers placed in complex mortgage schemes. Basically, any loan that is not a Conforming Fixed 30y or 40y note, Gov Fixed 30 VA or Gov Fixed 15 VA. First time homebuyers are uniquely situated and are subject to being targeted by lenders placing them in loans that they will never be able to repay simply due to the lack of sophistication in the home buying process. A first time homebuyer may qualify for a teaser rate or a low interest short term ARM, but once the initial rate changes to a much higher rate as quickly as 60 days, the borrower may not be able to afford the higher payment. Typically, rates adjust much higher and faster than the growth of your income. For example: an initial ARM rate of 4% could jump as high (and continue to rise) as 8 to 10% in the first year. But the consumer was ‘qualified for the loan by the lender based upon the initial rate-not the higher adjusted rate. Most consumer’s salary will not double in the first year as their rate has doubled or higher. (Example from the Bank of America data provided i.e. Non-conforming ARM LIBOR 6m 2/28 B/C 1.5-1.5-7 45Day—very few people would be able to understand the complexity of the repayment requirements of this loan, much less a first time homebuyer.).

D-7 Amortization Terms of 10y, 15y, 20y, or 25y where borrower's gross income to the mortgage note does not support the higher-monthly payments. Much higher payments than the borrower would have with a 30 or 40 year fixed rate loan. Mortgage loan for these 10y, 15y, 20y, and 25y term products should not exceed 3.25 times the gross income. Flag loans with terms between nine years and 26 years for which the loan amount exceeds 3.25 times the borrower's income. Not only are the monthly payments significantly higher (see delimiter D5), but it should take a larger amount of income to be able to afford to make those payments. Instead of qualifying for a loan amount less than 2.5 times the gross income for a standard 30 or 40 year note, a higher gross income (3.25 times) would be needed for the ability to repay a shorter term note.

D-8 Loan Program Types or Trading Doc Types that are considered extremely high-risk and historically high default rate. As the example I used at the beginning of this section, these types of loans are fraught with land mines, especially for inexperienced home buyers duped by loan officers focused on originating loans rather than assuring the ability of the consumer to have the ability to repay the loan.

• All Pick-a-Pay (PAP) loans or any loan of this type that allows the borrower to pick the payment option every month. This loan gives the consumer the option to pick the payment they want to pay each month with the option of only paying the principle portion (which is next to nothing in the beginning of the note) or the interest only or the regular scheduled payment. This means that every time the consumer fails to pay the regular scheduled payment of principle, interest, taxes, and insurance (PITI) the principle payment is not reduced resulting in no equity creation. Consumers have good intentions but at the end of each month,, history tells us that most borrowers only made the smaller payment resulting in negative amortized loans.

• All 'Option Arms' as a feature of the loan. (See delimiter D8a)

• All Stated Income loans. Stated income loan means the borrower can simply state that he makes 'X' amount to qualify for the loan, but actually makes considerably less than X. This is one of the next five loan types referred to in the mortgage industry as 'liar loans'. These loans have extremely high interest rates due to the risk associated with these loans. Lenders were not supposed to make 'liar loans' to any person whose income is based on a fixed salaried position or retired applicants on a fixed income only basis. The primary beneficiaries of originating these types of loans were the loan officers so it benefitted the loan officers to use these featured loans in order to get a commission.

• All Stated Income-Stated Assets (SISA) loans. These are loans where you do not prove to the lender what your qualifying income and assets are. (See delimiter D8c).

• All Stated Assets only (SA) loans. These are loans where you do not prove to the lender what your qualifying assets are. (See delimiter D8c).

• All No Income-No Assets (NINA) loans. These are loans where you do not prove to the lender that you have any income, or assets, or job etc. Basically, no proof that you have the ability to pay a mortgage note. (See delimiter D8c).

• All No Doc[umentation] loans. Not too much different than the other limited documentation loans but fewer documents required to support the underwriting decision. No Debt-to-Income calculations. (See delimiter D8c).

• Reduced Doc[umentation] loans (other than the specific "reduced" category, this category should include Streamlined, Fast Track, Fast and Easy, and Paper Saver documentation types). We exclude second liens and refinance loans. These loans reduce the amount of diligence the lender requires to get the loan originated. These loans were supposed to require better credit scores, lower LTVs, lower debt-to-income ratios, etc. It was just another channel lenders used to get borrowers approved for the loan with minimal documentation required to underwrite the loan.

• All Interest Only (IO) loans- if IO or I/O (Interest Only) is in the loan program title anywhere. Interest only loans are very risky because it requires a large payment at the end of the note. These loans were intended for high-end consumers who were in very well-paying positions, typically was only going to live in the house for two to three years then sell it because they were relocating. This type of loan was never intended for the everyday consumer who planned on making this their home for the next 15 to 20 years. Extremely high foreclosure rate.

• All Balloon (BLN or BAL) loans- if BLN or BAL (Balloon) is in the loan program title anywhere. Similar to Interest Only loans but with a guaranteed, exceptionally large payment (balloon payment) at the end of the note. Extremely high foreclosure rate.

• All No Ratio loans. Just like it sounds, no qualifying ratios required to be approved--a compliance officer's nightmare. These loans were used, as were most of the other high-risk loan product types in this section, to place consumers into loans they probably did not have the ability to repay.

D-9 Loan programs identified in delimiter D8 given to consumers that are hourly or on fixed salaries. For example, giving a high school teacher, or police officer, or laborer, or nurse etc. (anyone with a fixed salary) a SISA loan-meaning the borrower would not have to disclose their 'real' income with any documentation such as a paystub and therefore would not qualify for the loan if she had provided her actual paystub. We eliminated people identified as owners, presidents, chairman, COO, CFO, CEO, attorneys that are 'members' or 'partners', non-administrative sales positions, etc. because most of these positions have income that is fluid and varies. Therefore, any person in a salaried position should never be placed in any loan unless they can verify their income with pay stubs and tax returns.

D-10 Loans with 'Hard' Prepayment Penalties (pp) and any loan where pp is longer than 12 months. A hard prepayment penalty makes it almost financially impossible to refinance when rates drop, because the consumer would have to pay the penalty before refinancing, especially with a competitive lender who may have better terms and rates than their current lender Prepayment penalties are rare after 2013 but were frequently used during the subject time frame of this suit.

D-11 Loans with an Initial Interest Rate (teaser rate) that changes (or resets) at any time within the first 14 months of origination. Due to data availability we are evaluating the delimiter as follows: Flag ARM loans originated post January 2005 for which the interest rate history provided by the bank shows a positive change in interest rates in the first 6 months regardless of whether one can tell if the interest is a teaser rate or not. Same reasons as delimiter D6. Many loan officers attempt to qualify the borrower based upon the low teaser interest rate rather than the higher interest rate that will be charged, in many cases, within the first year.

D-12 Loans where consumer's FICO < 560. Flag loans with FICO scores > 200 but lower than 560. Credit.com states that lenders consider you a 'high risk' if your credit score is lower than 620.[61] Therefore, any loan approved with a credit score below 560 is at a much higher level of risk and subject to predatory and discriminatory conditions. Also, a lower credit score always results in higher interest rates-making for a higher payment-resulting in a higher default rate. (Examples of loans approved by Bank of America from data provided with i.e. credit scores of 300,408, 549).

D-13 All Loans where APR was triggered (3 pts higher than the prime rate for originations and 5 pts higher than prime for refinanced loans) requiring the posting of the rate spread. Flag any loan with a Rate Spread greater than 0. Lenders are not required to post the APR -Annual Percentage Rate (interest) unless the rate 'triggers' the mandatory regulatory rule (Truth in Lending Act) by charging three percentage points or more than the prime rate. Our analysis revealed that minority applicants statistically triggered the disclosure much more frequently than White applicants. This would indicate that non-white borrowers were charged higher interest rates (based upon the prime rate) than similarly situated white applicants.

D-14 Trading Doc Types: 'Streamlined, Fastrack (Fast and Easy), or Paper Saver' that did not appear justified by having: CLTV < 80% and (1) Debt-to-Income (DTI) ratio < 30% or (2) FICO scores > 725. Same as delimiter D8h but more specific to the typical underwriting requirements needed to be qualified for this type of loan product in these less than rigorous underwriting categories.

D-15 DTI (Total Debt-to-Income Ratio) over 38%. Core Logic has identified the debt-to-income as the number one reason that loans default. Comparing White applicants to non-White applicants, we can show that there is a statistically significant difference between the foreclosure

[61] Credit.com; May 21, 2019; What are high risk loans. https://www.credit.com/loans/loan-articles/high-risk-loans/

rate of whites versus non-Whites to the detriment of the minority population in predominately minority neighborhoods.

D-16 Employment (Unemployed or Retired) All Unemployed Borrowers. This delimiter measures the performance of loans by race where the applicant states that they are unemployed-but were still approved for a loan. Retired Borrowers where the DTI exceeds 48%. Measures the performance of loans where the applicant states that they are retired-but were still approved for a loan.

D-17 All HOEPA loans. The Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 as an amendment to the Truth in Lending Act (TILA) to address abusive practices in refinances and closed-end home equity loans with high interest rates or high fees. HOEPA prohibits the lender from extending credit without regard to a consumer's repayment ability. HOEPA identifies a high-cost mortgage loan through rate and fee triggers, and it provides consumers entering into these transactions with special protections. HOEPA applies to closed-end home-equity loans (excluding home-purchase loans) bearing rates or fees above a specified percentage or amount.[62]

D-18 All Other Section 32 loans. (i.e. HELOCs). [Delimiter not considered due to data availability] A home equity line of credit is a revolving source of funds, much like a credit card, that you can access as you choose. A HELOC is different from a home equity loan; it's a revolving line of credit, and the borrower does not have to use the entire sum available.[63] Instead, they may borrow against it as needed—much like a credit card. The borrower must pay off the HELOC balance by the pay-off date or in the event the property is sold.

D-19 Loans where the same individual has more than one first lien, owner-occupied loan at the same time. These three delimiters identify situations where the consumer has more than one owner-occupied loan at the same time by race. Also measures how frequently loans were 'refinanced' in a relatively short period of time, which could be an indication of equity stripping. Minority communities are impacted at a greater rate than White communities when the borrower

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[62] The Consumer Finance Protection Bureau (CFPB) publishes the Home Ownership and Equity Protection Act (HOEPA) Rule Guide which can be located at: https://files.consumerfinance. gov/f/201603_cfpb_hoepa-compliance-guide.pdf

[63] https://www.bankofamerica.com/home-equity/

is paying multiple refinance fees and taking out -stripping-the equity. Loan officers prey on minority communities with these strategic schemes.

- 19-1: Identifies loans for borrowers with multiple first lien loans owner occupied loans with a purchase purpose.
- 19-2: Identifies loans for borrowers with multiple second lien loans on the same properties.
- 19-3: Identifies loans for borrowers with multiple refinances done on the same property within an 18-month period.

D-20 Action Date is more than 120 days after Application Date for loans Originated by Defendants. (We did not include loans originated by Defendants for purpose of refinance). The delimiter measurement is designed to compare the lender's action time between White and non-White borrowers. The primary issue was the Defendants failed to provide that data across the board.

Analysis of Origination Delimiters on Defendants' Loan Data

Using loan level data provided by Defendants,[64] I determined the presence of these delimiters for any loan regardless of race or ethnicity.[65] I then evaluated whether the prevalence of these delimiters was different for White and minority loans using statistical tests. In other words, I tested whether at a .05 significance level, the proportion of White loans with the delimiter was different than the proportion of minority loans with the delimiter. I considered loans to be discriminatory on the basis of Origination delimiters if the loan for a minority group was flagged with the delimiter more often than the White group and if the test's p-value for the disparity was significant (less than .05) for tests performed within census tracts groups.

The statistical comparisons on proportions conducted and test results revealed that the Defendants' actions relative to the Delimiter(s) indicated a disparate treatment/impact on African American (Black), Hispanic, and for all Other (O) minority families when compared to similarly situated White families. We also identified disparity in census tract minority population >50%

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[64] It must be noted that the Defendants' loan data produced to use had large numbers of loans with missing, incomplete or unusable data. This missing data can be categorized as 'Unknown,' 'Missing,' or 'Blank.' For example, there were approximately 94,522 loans missing the Defendant bank's identification codes and another 78,643 loans missing data so that those loans could be fully analyzed.

[65] For several of the variables in the Defendants' data, codes were provided and in order to interpret them I consulted the 2006 HMDA reporting guidelines to understand the codes.

where race/ethnicity were not proved by the Defendants. Loans were broken into five categories based upon census tract data: <30% minority, 31-50% minority, 51-70% minority, 71-90% minority, and 91-100% minority.[66] Race and ethnicity were divided into Black, Hispanic, and Other. 'Other' minorities represent all other minorities except Black and Hispanic.

To compare the prevalence of the chosen delimiters (and other tests conducted as described below), I divided the loans into Black, Hispanic, and Other. 'Other' minorities represent all other minorities except Black and Hispanic. To make this determination, all variables providing race and ethnicity reported in Defendants' data were considered. Further, loans were broken into five categories based upon census tract data: <30% minority, 31-50% minority, 51-70% minority, 71-90% minority, and 91-100% minority. I generally performed the comparisons between White and minorities within these groups for minority concentrations and across minority concentrations (without regards to minority concentrations).

There were several instances in which Defendants' data did not identify race or ethnicity information for loans. In those, instances, based on the census tracts groupings described above, I made a determination of whether the loan with missing race/ethnicity information was part of a grouping with >50% minority. I then treated the missing race/ethnicity loans in >50% minority census tracts as another category along with Black, Hispanic, and Other as minorities for purposes of evaluating disparity in the presence of these delimiters.

I generally performed the comparisons and tests after dividing the population of loans into three different entities: Bank of America, Countrywide, and Missing IDs. The Missing IDs entity was generated to capture loans for which Defendants did not provide sufficient information to determine which entity originated or acquired the loans originally. For delimiter 19, I evaluated the delimiter across entities only since that delimiter does not look into an individual characteristic of a loan but rather at groups of loans that shared similar characteristics.

The statistical tests performed revealed that for many of the delimiters I considered, the Defendant's actions relative to the Delimiter(s) indicated a statistically significant disparate treatment/impact on minority families when compared to White families.

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[66] A file obtained from the Census 2010 was used to generate these cutoffs "BoA file (See DEC_10_SF1_GCTPH1.CY07_with_ann Cook Cty Census Tracts AAA.xlsx").

For example, for delimiter 1 and Bank of America loans as shown in the table below, the disparity for Hispanic borrowers (as denoted by the column "Difference in Proportions") in census tracts with <30% minority is 8.8%. This number is obtained by taking the difference between the proportion of Hispanic loans with the delimiter (61%) and proportion of White loans with the delimiter (52.2%). This difference, based on the statistical tests, is significant as denoted by a p-value of less than .05 (See column "Fisher Exact Test P-value").

Entity	Minority Population of Census Tracts	Minority	del1			Difference in Proportions	Fisher's Exact Test p
			0	1	Total		
Bank of America	< 30%	Hispanic	598	937	1,535	8.81%	0.000000
		%	38.96%	61.04%			
Bank of America	31-50%	Hispanic	614	1,055	1,669	10.50%	0.000000
		%	36.79%	63.21%			
Bank of America	51-70%	Hispanic	519	1,123	1,642	15.87%	0.000000
		%	31.61%	68.39%			
Bank of America	71-90%	Hispanic	590	1,406	1,996	19.53%	0.000000
		%	29.56%	70.44%			
Bank of America	91-100%	Hispanic	417	1,081	1,498	25.68%	0.000000
		%	27.84%	72.16%			
Bank of America	Any Census Tract	Hispanic	2,746	5,607	8,353	14.91%	0.000000
		%	32.87%	67.13%			

Servicing Delimiters:

Servicing delimiters (SD) identify whether there is any significant impact on the servicing and/or foreclosure action taken by the Defendants on predominantly minority loans as compared to White loans. This includes reviewing delinquency rates, seriously delinquent loans, and foreclosures. Delimiters (Red Flags) for Servicing Discrimination:

SD-1: This delimiter evaluates if delinquent borrowers of any race received the same opportunity to modify their loans as measured by the number of loans considered for modification relative to the number of delinquent loans by race.

SD-2 What was the final loan mod category approved, denied or still in process by race? The first purpose of this servicing delimiter was to identify the distribution by race/ethnicity of the final status of modifications (Approved, Declined, or Still in Process) to determine if minority applications were declined or still in process at a higher rate than White applications. The purpose of this servicing delimiter was to identify the distribution by minority census tract of the final status of modifications to determine if there was a significant difference of the distribution across minority census tracts of approved, declined, and still in process. Modifications resulting in a higher proportion of declinations and still in process status by minority census tract would be adverse if the proportions of declined and still in process increased when the minority population increased. Thirdly, to determine by each of the three modification types (Hamp, non-Hamp, and DOJ) individually, the different proportion by race/ethnicity of approved, declined, and still in process. Referencing servicing delimiter SD-1, if a higher proportion of minorities applications are declined than white applications, the minority applications results may be predatory/discriminatory.

SD-3 What loans were rejected/declined by race for failure to submit completed application? Studies have indicated that the 'failure to submit completed applications' was the most prevalent reason modifications were declined. If 'failure to submit completed applications' were higher for minority populations then those modification applications may be predatory/discriminatory because that could mean that minority applicants were not worked with as vigorously to resolve those issues as were white applicants.

SD-4 Reason for denial (ex. Previous Modification or Trial plan Failure) by race. To determine the specific denial reasons by race/ethnicity. For example the denial reason 'Previous Mod or Trial plan Failure' would show a discriminatory pattern if minorities were declined at a higher rate than whites because minority applicants were not worked with as vigorously to resolve those issues as were white applicants. This also would mean that the 'previous modification or trial plan' established by the lender was not a reasonable solution to the borrower's ability to repay the old mod or new trial plan.

SD-5 What were the fees assessed by race? This is to determine by race the average fees charged by foreclosure. The outcomes and test results are consistent.

SD-6 What was the representative difference by race of 'seriously delinquent' borrowers who lost their homes to foreclosure? The purpose is to determine if there was a significant difference for modifications by race of loans that were "seriously delinquent and foreclosed". This delimiter would show a discriminatory pattern if minorities were declined at a higher rate than whites because minority applicants were not worked with as vigorously to resolve those issues as were white applicants.

SD-7 All HELOC Mod. Applications by action taken and race. A HE application is determined by looking into the TypeofMod categories reported and identifying categories specifically labeled HE. I know that the data presented by Defendants did not represent the total number of HE applications. However, with the limited data provided, we wanted to determine the declination proportion by race/ethnicity.

SD-8 What was the LTV ratio by race and action taken for the following ranges >100%, > 97% to 100%, >90% to <97%, >80% to <90%, <80% for declined modifications? To determine if there was a difference in modification application declinations by race/ethnicity and LTV ratios.

Analysis of Servicing Delimiters on Defendants' Loan Data

To conduct my analyses, I first identify the situations described by each of these delimiters[67] using data from Defendants In addition to relying on the data that was used to conduct the Origination delimiter analysis, I relied on modification, delinquency and fee data provided by Defendants.[68]

[67] Delinquency and interest rate information was obtained from the following files: BANACC0000156107 CONFIDENTIAL, BANACC0000156115 CONFIDENTIAL, BANACC0000244943 CONFIDENTIAL. The set of foreclosure loans used for purposes of this analysis is the same set of foreclosure loans I discussed when performing tests on foreclosures in previous sections.

[68] Modification information was obtained from BANACC0000156116 CONFIDENTIAL and BANACC0000148422-CONFIDENTIAL. For fees I use the file BANACC0000156111 CONFIDENTIAL and additional files identified in BANACC0000244942 CONFIDENTIAL

I note that while Origination data is available for 365,650 loans, Defendants did not provide servicing related data for all of those loans. Instead, the modification data provided by Defendants (which is the basis for several of my delimiters) contained information for 253,571 loans. This is the population that was the subject of my servicing analysis.

Differently from the Origination analysis, my servicing analysis combines all entities considered in the Origination analysis since all of these loans would have been serviced by Bank of America, after the acquisitions of Countrywide and Merrill Lynch.

As described above, for the majority of these delimiters, my main objective was to compare whether the minority borrowers were treated in the same way as White borrowers in terms of providing them with solutions once their loan entered into delinquency.

For SD-1, I evaluate if delinquent borrowers of any race received the same opportunity to modify as measured by the number of loans considered for modification (i.e., exhibiting at least loans[69] one modification application in the modification data) relative to the number of delinquent by race (SD-1). The results of my comparison are contained in Appendix 5 (Table "SD-1"). From that table, for example, we see that for loans in the minority concentration group of 51-70%, 58.5% of loans that were >50% chance of being minority did not have any applications in the modification data. This suggests that they were not given a chance to modify. On the other hand, 54.6% of White loans that became delinquent did not get an opportunity to modify their loan. The difference between this group on whether or not they were given the chance to modify their loans of 3.9% is statistically significant. Outcomes for other comparisons are reported in Appendix 5 (Table "SD-1").

For SD-2, I compared the proportion of declined modification applications between Whites and minorities by modification types. To simplify the analysis, I limit the modification types to HAMP, Non-HAMP, and DOJ modifications. The outcomes of my comparisons are summarized in Appendix 5 (Table "SD-2"). For example, from this table, we see that for the census tract with

[69] I imply the delinquency status from other observed attributes: a loan is considered to be delinquent if (a) it is found to be more than 90 days delinquent, (b) it has modification records, or (c) it is foreclosed.

71-90% minority concentration, applications for Black borrowers get declined at a rate of 57.5% compared to the Whites of 43.1%. The difference of 14.3% in the declined rate observed is significant as indicated by the p-value of less than .05 for a Fisher's exact test.

For SD-3, I compared the proportion of loans with applications declined for "failure to submit complete application". The outcomes of my comparisons are summarized in Appendix 5 (Table "SD-3"). For example, from this table, we see that for the census tract with 91-100% minority concentration, the proportion of loans were rejected for failure to submit a completed application was 22.9% for Hispanic borrowers and 15.3% for White borrowers. The difference in rates of 7.7% is significant as indicated by the p-value of less than .05 reported for a chi-square test.[70]

For SD-4, I compared the prevalence of certain declined reasons within the declined data provided by Defendants within each census tract minority concentration. The outcomes of my comparisons for each of the denial reasons evaluated are summarized in Appendix 5 (Table "SD-4"). For example, from this table, for the denial reason "Application Does Not Meet Program Guidelines" in the census tract with 91-100% minority concentration, this denial reason for blacks represents 8.5% of all denial reasons for blacks compared to 5.7% for Whites. The difference of 2.78% is significant based on the Fisher's exact test p-value of less than .05.

For SD-5, I compared the average amount of fees charged to borrowers. The outcome of my comparisons on fees charged are reported in Appendix 5 (Table "SD-5"). For example, from this table we that in census tracts with 71-90% minority concentration, the average fees charged for Whites was \$583.60 while for Blacks it was \$1,032.80 and for Hispanic it was \$778.60. The difference observed in means of \$449.20 between White and Black loans, and difference of \$194.90.[71] between White and Hispanic loans are significant based on a p-value for a t-test.

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[70] For testing on proportions, I sometimes rely on chi-square tests and other times on Fisher's exact tests. Both Fisher's exact tests and chi-square tests can be used to test data in the contingency tables such in this case. With large samples, chi-squared tests can be used in place of the Fisher's exact tests. Otherwise, the Fisher's exact test is more appropriate. The null hypothesis generally used in this report is that there is no association between delimiters of a loan and the race/ethnicity of the borrower.

[71] A two-sample t-test is a statistical test that compares the means between two groups. The null hypothesis used for two-sample t-tests in this report is generally that the means of variables between white borrowers and minority borrowers are equal.

For SD-6, I compared the proportion of loans that were seriously delinquent and foreclosed. The outcome of my comparisons are reported in Appendix 5 (Table “SD-6”). For example, from this table we that in census tracts with 71-90% minority concentration, the proportion of loans that were seriously delinquent and foreclosed and that are found to have >50% chance of being minority is 84.4% compared to the White seriously delinquent loans which foreclosed at a rate of 81.7%. The difference of 2.7 percentage point is significant as denoted by the p-value of the chi-square test.

For SD-7, I compared the proportion of loans that were declined for “HE” applications identified in the data. The outcome of my comparisons are reported in Appendix 5 (Table “SD-7”). For example, from this table we that in census tracts with 31-50% minority concentration, the proportion of Black borrower **HE applications were denied at a rate of 66.7% compared to 23.1% for Whites.** The difference of 43.6% is significant as denoted by the Fisher’s exact test p-value.

For SD-8, I compared the proportion of loans that were declined for modification applications based upon LTV at origination. The outcome of this comparison is reported in Appendix 5 Table “SD-8”). For example, from this table we see that in census tracts with 31-50% and in the LTV bracket of <=80%, black borrowers were denied modifications at a rate of 64.7% compared to 52.5% for White borrowers. The difference of 12.2% is significant based on a fisher exact test p-value.[72]

I used the comparisons and tests discussed above (for tests within census tracts to identify loans that are predatory or discriminatory on the basis of Servicing. For most of these tables, I select loans as predatory or discriminatory when the difference in the comparison discussed was (a) significant, and (b) reflected worse treatment to Hispanics, Black, and >50% chance of being minority borrowers than to Whites. In those cases, I select as predatory or discriminatory, the loans exhibiting the characteristic being compared (for example “Declined” loans when testing Declines). For the test on the fees, the loans that are identified as predatory are those minority loans (excluding “Other” minorities) for which their fees were higher than the average fees

[72] Note that I also present tests in the aggregate in Appendix 5.

charged on White borrowers for groups for which the tests indicated significantly higher fees charged on minorities. The list of predatory or discriminatory loans identified based on my analysis on servicing are presented in Appendix 6.[73]

Loan Type Analysis-- I have conducted additional analysis of Defendants' loan data using these delimiters on Defendants various loan product types as set forth in the Tables at Appendix 3B. This analysis reveals significant disparities between White and Black or Hispanic borrowers reflecting that Defendants discriminated against Black and Hispanic borrowers in their loan origination activity based on loan product type.

For example, when analyzing Countrywide Defendant's ARM loan types, the above-referenced analysis of the delimiters reveals that Hispanic families in census tract <30% minority received 3.41% more ARM loans than Whites. As shown in the table section, the rate of this disparity increases as the minority concentration in census tracts increase. For 31-50% minority census tracts, Hispanics received 4.61% more ARM loans than Whites, 7.88% more in census tracts of 51-70% minority, 8.50% in census tracts 71-90% minority, and 8.18% in census tracts of 91-100% minority.

Entity	**Minority Population of Census Tracts**	**Minority**	**arm**			**Difference in Proportions**	**Fisher's Exact Test**
			0	**1**	**Total**		**p**
Countrywide	< 30%	Hispanic	2,373	1,062	3,435	3.41%	0.000021
		%	69.08%	30.92%			
Countrywide	31-50%	Hispanic	2,749	1,349	4,098	4.61%	0.000000

[73] I also include a test for loans for which there was no information provided regarding the type of loan or loan documentation type that would have allowed for considering the loan into one of the high-risk categories.

		%	67.08%	32.92%			
Countrywide	51-70%	Hispanic	3,248	1,845	5,093	7.88%	0.000000
		%	63.77%	36.23%			
Countrywide	71-90%	Hispanic	4,266	2,313	6,579	8.50%	0.000000
		%	64.84%	35.16%			
Countrywide	91-100%	Hispanic	3,946	2,284	6,230	8.18%	0.000000
		%	63.34%	36.66%			

Entity	Minority Population of Census Tracts	Minorit y	Conforming			Differenc e in Proportio n s	Fisher's Exact Test p
			0	1	Total		
BoA	51-70%	>50% Chance Being Minority	1,043	752	1,79 5	-19.97%	0.0000 0 0
		%	58.11 %	41.89 %			
BoA	71-90%		1,292	619		-35.22%	

		>50% Chance Being Minority			1,911		0.000000
		%	67.61%	32.39%			
BoA	91-100%	>50% Chance Being Minority	2,533	1,163	3,696	-38.52%	0.000000
		%	68.53%	31.47%			

Conversely, my analysis shows that borrowers whose race is unknown, but who live in high minority concentration census tracts, received disproportionately fewer conventional mortgage loans than Whites. For example, a comparison of the number of conventional loans Bank of America made in low minority census tracts versus high minority census tracts reveals that BoA made 19.97% less conventional loans in 51-70% minority census tracts compared to lower minority census tracts and this disparity increases as the minority concentration in census tracts increases: 35.22% less conventional loans in census tracts of 71-90% minority, and 8.52% less conventional loans in census tract 91-100% minority.

The disparity observed for conventional loans is repeated when examining FHA insured loans. For example, in census tracts with less than <30% minority concentration, Bank of America made 20.55% less FHA insured loans to Blacks than to Whites. This disparity also exists in the higher minority concentration census tracts: 25.44% in census tracts of 51-70% minority and 26.43% in census tracts with 71-90% minorities. Other comparisons showing significant disparities relating to the use of high-risk loan products are provided in Appendix 3B.

Para 183-187 **Defendants' Compensation Practices Fostered & Encouraged Discriminatory & Predatory Mortgage Lending Conduct Impacting Predominately Minority Neighborhoods**

Defendants' compensation policies and practices of providing financial incentives to their mortgage origination employees and brokers was intended to, and had the effect of, steering African American and Hispanic borrowers to subprime residential mortgage loan products in lieu of prime residential mortgage products.

Such compensation policies, while at the same time having a policy and practice of not providing a meaningful review of residential mortgage loan applications to determine if the applicant qualifies for prime residential mortgage products, constitutes facially neutral policies that create a disparate discriminatory impact against African Americans and Hispanic families.

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.[74]

On October 29, 2014 Sig Tarp[75] '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'[76] '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[77], and 32% of Bank of America modifications re-defaulted.[78]

[74] 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
[75] 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
[76] Id. p.21
[77] Id. p.58
[78] Id. p.148

Memo from Doyle dated June 27, 2005 [79]incentivizing origination of pay option arms-$150 per loan.[80] May 31, 2005[81] 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,[82]incentive plan for Pay option Arms,[83]product did not work so well over the phone.[84]Pay option arms were a significant risk.[85] Loan to value is one of the many risk factors inherent in a loan.[86] That loan -- under most loan programs, a loan amount that's more than the value of the property would not be an approvable loan.[87]Countrywide's Full Spectrum Lending Division NCA Mortgage Consultant Incentive Plan,[88]paid higher incentives the lower the FICO score.

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.[89] This was accomplished through Countrywide's practices of originating and servicing predatory subprime and higher cost mortgage loans.[90] 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.[91]

Countrywide's Compensation Policies

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

[79] BANACC0000156496. p.214 lns 15-16
[80] Id. p.215 lns 10-13
[81] Id. p.218 lns 16-19
[82] Id. p.219 lns 14-22
[83] Id. p.220 lns 4-7
[84] Id. p.221 lns 7-13
[85] Id. p.227 lns 16-24
[86] Id. p.231 lns 17-21
[87] Id. p.232 lns 10-15
[88] Id. p.234 lns 16-20
[89] Declaration of Michael Winston dated October 25, 2020 at ¶ 9.
[90] Id. at ¶ 9.
[91] Id. at ¶ 9.

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."[92] 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.[93]

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

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.[94] 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"[95] 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.[96]

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

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.[97] 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.[98] This means that African Americans

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[92] Id. at ¶ 15.
[93] Id. at ¶ 16.
[94] BANACC0000183874; BANACC0000194516.
[95] Steele Tr. at 54:20-55:12.
[96] Miller Tr. at 191:5-192:7.
[97] BANACC0000663199
[98] Id.

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.[99] 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.[100]

The average amount of total points paid (compensation paid to the broker)[101] was 0.48 for Whites, 1.38 for African Americans, and .74 for Hispanics. Therefore, Bank of America 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.[102] African Americans paid .52 points more than White loans, and .26 points more than Whites for Hispanic loans.[103]

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.[104] African Americans paid 1.32 points more than White loans, and .33 points more than Whites for Hispanic loans.[105] This another example of Bank of America incentivizing brokers to target minority neighborhoods. For Conforming Loans,[106] 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.

[99] Id.
[100] Id.
[101] Id.
[102] Id.
[103] Id.
[104] Id.
[105] Id.
[106] Id.

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.[107] 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 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%.[108] The percentage of originations for 'LMI PFUN Underages' was 1.29% for Whites, 2.85% for African Americans, and 5.51% for Hispanic loans.[109] Another example of Bank of America incentivizing brokers to target minority neighborhoods.

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.[110] 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.[111] 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.[112] Therefore, African Americans paid .37 points higher than Whites for broker compensation.[113]

The average amount of total points paid (compensation paid to the broker)[114] 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 brokers to target minority neighborhoods. The average amount of compensation paid for

[107] Id.
[108] Id.
[109] Id.
[110] BANACC0000663214.
[111] Id.
[112] Id.
[113] Id.
[114] Id.

'Priority Brokered loans' was 1.54 points for Whites; 2.07 points for African Americans; and 1.77 points for Hispanics.[115] African Americans paid .53 points more than White loans, and .23 points more than Whites for Hispanic loans.[116]

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.[117] African Americans paid .51 points more than White loans, and .36 points more than Whites for Hispanic loans.[118] This another example of Bank of America incentivizing brokers to target minority neighborhoods. For Conforming Loans,[119] 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.

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.[120] 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 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.[121]

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%.[122] Therefore, broker compensation was 18.75 times higher for African

[115] Id.
[116] Id.
[117] Id.
[118] Id.
[119] Id.
[120] Id.
[121] Id.
[122] Id.

American loans and Hispanic loans 18.5 times higher than for Whites.[123] 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%.[124]

The percentage of originations with a FTHB1 underage was 3.73% Whites, 7.81% for African Americans, and 13.7% for Hispanics.[125]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. [126] Another example of Bank of America incentivizing brokers to target African American and Hispanic neighborhoods.

Bank of America conducted another similar analysis by race and loan product broker compensation period January to June of 2007.[127] 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.[128] 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.[129]

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

[123] Id.
[124] Id.
[125] Id.
[126] Id.
[127] BANACC00004171470.
[128] Id.
[129] Id.

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.[130]

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 points of total points paid, the white non-Hispanic customer is 0.54…for African American 0.99… for Hispanics 1.03.[131]

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. [132]Robinett testified that the previous data came from Corporate Fair Lending[133]…was not aware what 'stat sig.' meant[134]…agrees that a number is statistically significant in an analysis is a mathematical conclusion.[135] Average APR for white non-Hispanic 6.83, for African American 7.03, and for Hispanics 6.99.[136]

Risky Loan Products Originated and Serviced in Chicago MSA

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.[137] For Conforming Fixed, and

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[130] Id.
[131] Id.
[132] Id.
[133] Robinett Tr. at 111:18-22.
[134] *Id.* at 93:4-6.
[135] *Id.* at 96:11-23.
[136] BANACC00004171470
[137] BANACC0000720670

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.[138] For Non-conforming fixed, White originations was 14.6%, while the same category for African Americans 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%.[139]

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.[140] 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.[141] 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%.[142] (African Americans 3.25 times more than Whites).

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.[143] 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. [144] While riskier loan programs revealed that: BC Arms for Whites was 25.4%, for African Americans 37.2%, and

[138] Id.
[139] Id.
[140] BANACC0000720682
[141] Id.
[142] Id.
[143] BANACC0000720694
[144] Id.

Hispanics 46.9%; EA for Whites was 9.0%, for African Americans was 25.6%, and for Hispanics was 15.6%.[145]

The Countrywide Fair Lending HMDA data Analysis for 2004-2007 2ndqtrnationally,[146] revealed that the origination rate for African American applications increased each period at an unusually fast past:[147] 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.[148] 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.[149]

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.[150] These are clear examples of Countrywide targeting predominately minority neighborhoods.

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. [151] 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% in 2006; and 59.7% through 2nd quarter 2007.[152] The analysis makes it clear that Countrywide Bank targeted African American and Hispanic neighborhoods.

[145] Id.
[146] BANACC0000720830
[147] BANACC0000720831
[148] Id.
[149] BANACC0000720832
[150] Id.
[151] Id.
[152] Id.

The Countrywide data indicates that similar increases of 'Home Purchase 'originations nationally for African Americans and Hispanic families.[153] 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. [154] 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.[155]

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.[156]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.[157]

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.[158] 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.[159]

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 quarter of 2007.[160] 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.[161]

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

[153] BANACC0000720834
[154] Id.
[155] Id.
[156] BANACC0000720835
[157] Id.
[158] BANACC0000720837
[159] Id.
[160] BANACC0000720840
[161] Id.

2004; 32.5% in 2005; 42.6% in 2006; to 54.9% in 2nd quarter of 2007.[162] 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.[163]

Yield Spread Premiums

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[164]… 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.[165] Brokers were also compensated directly through fees.[166] 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.[167] Countrywide allowed mortgage brokers to exercise discretion in setting the amount of total broker fees charged to individual borrowers,[168] but Countrywide placed caps on the total broker fees charged by the broker.[169]

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.[170] Between January 2004 and early 2007 Countrywide substantially increased the number of exceptions it granted to its loan underwriting guidelines.[171] Mortgage brokers who submitted mortgage applications funded by Countrywide received higher total broker fees for subprime loans than for non-subprime loans.[172]

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[162] BANACC0000720841
[163] Id.
[164] Id. p.147 lns 3-11
[165] Id. p.147 lns 12-22
[166] Id. p.149 lns 13-18
[167] Id. p.150 lns 13-19
[168] Id. p.151 lns 8-14
[169] Id. p.151 lns 15-19
[170] Id. p.151 lns 22-25, p.152 lns 2-10
[171] Id. p.161 lns 24-25, p.162 lns 2-8
[172] Id. p.162 lns 20-25, p.163 lns 2-5

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

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.[173] As part of the fair lending committee[174]remembers written communication discussing the potential disparate treatment and related fair lending responsibilities[175]but refused to answer what this committee did in connection with its fair lending policy review.[176] Robinett refused to answer how many WLD business partners were terminated as a result of action by the fair lending committee.[177] Additionally, on advice of counsel, Robinett refused to answer what the fair lending committee did with respect to oversight of the remediation process;[178] couldn't remember what the committee did to satisfy its obligation;[179] and didn't remember the committee taking any additional monitoring or additional remediation steps.[180] 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'.[181] WLD based their fair lending policy on the loan amount risk not how minorities were treated.

Risk Appetite Impact

Robinett affirmed that the Countrywide document titled 'Loan Products We Will Not Offer'[182] stated that we did offer subprime, pay option, nonconforming, a version of NINA, and a version of no ratio,[183] for first mortgage originations for 2006, 2007, and 2008.[184] The document Risk

[173] Id. p.164 lns 3-12
[174] Id. p.192 lns 2-6
[175] Id. p.192 lns 23-25, p.193 lns 2-11
[176] Id. p.202 lns 4-21
[177] Id. p.202 lns 22-25, p.203 lns 8-11
[178] Id. p.204 lns 18-22
[179] Id. p.206 lns 20-25, p.207 lns
[180] Id. p.207 lns 15-25, p. 208 lns 2-7
[181] Id. p.222 lns 2-14
[182] Id. p.236 lns 8-25, p.237 lns
[183] Id. p.237 lns 19-24
[184] Id. p. 239 lns 8-12

Appetite Impact[185] goes on to state, "if the product principles had been in place in 2006, eighty-two percent of the delinquencies would have been avoided."[186]

Cindi Graveline-Thomas Administered Compensation Plans for Retail Loan Officers

Deposition of Cindi Graveline-Thomas,[187] administered compensation plans for the Consumer Markets Division, specifically the retail loan officers[188] and Full Spectrum Lending and Wholesale Lending Division.[189] Compensation to loan originators at Full Spectrum Lending (FSL) from 2004-2007 based in part on the number of loans originated.[190] Thomas stated that FICO scores of borrowers affected the compensation of loan originators,[191]the lower the FICO score, the higher the compensation points earned.[192] Compensation to loan originators at Consumer Markets Division (CMD) from 2004-2007 based in part on the dollar volume of loans originated.[193]Loans with higher interest rates resulted in more compensation for loan originators,[194]loan officers would share 'overages'(split 50/50),[195] 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.[196] Regarding 'underages' the loan officers compensation took a 100% hit.[197] Therefore, loan originators were incentivized to never have an underage.

Countrywide's Full Spectrum Lending Division, Account Executive Incentive Plan with an effective November 1st, 2005,[198] expanded approval (EA) loans.[199] Countrywide's Full

[185] Id. p. 240 lns 2-6
[186] Id. p. 240 lns 10-15
[187] Deposition of Cindi Graveline-Thomas, August 26, 2020
[188] Id. p.8 lns 5-10
[189] Id. p.8 lns 14-19
[190] Id. p.16 lns 8-14
[191] Id. p.22 lns 3-7
[192] Id. p.22 lns 12-18
[193] Id. p.25 lns 21-25, p.27 lns 3-14
[194] Id. p.31 lns 13-18
[195] Id. p.31 lns 21-25, p.32 lns 2-6
[196] Id. p.32 lns 12-20
[197] Id. p.32 lns 21-25, p.33 lns 2-10
[198] Id. p.41 lns 10-16
[199] Id. p.41 lns 17-22

Spectrum Lending Division Account Executive Incentive Plan effective December 1st, 2007[200] indicated that the more units funded, the larger the payout,[201] FICO scores less than 639 received twice the payout than loans with FICO scores greater than 639.[202] In document NCA Mortgage Consultant Compensation,[203] as volume increases (firsts and piggy backs), the payout increases,[204]loans with FICO > 700 no bonus, FICO 590 would earn 25 bpts,[205] and FICOs between 660-699 would earn 5 bpts, and FICOs under 570 earned 40 bpts.[206] 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

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,[207] the underwriters were incentivized based upon the number of loans they reviewed.[208] The compensation of CMD underwriters at Countrywide between 2004 and 2007 based in part on the number of loans they underwrote.[209] The compensation of WLD underwriters at Countrywide between 2004 and 2007 based in part on the number of loans they underwrote.[210] Countrywide incentivized to underwrite by volume[211](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

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 independent foreclosure review. Doyle stated that there is a strong relationship between incentives and

[200] Id. p.55 lns 6-16
[201] Id. p.56 lns 3-13
[202] Id. p.56 lns 14-20
[203] Id. p.81 lns 10-16
[204] Id. p.82 lns 6-12
[205] Id. p.83 lns 11-15
[206] Id. p.83 lns 16-22
[207] Id. p.115 lns 4-13
[208] Id. p.116 lns 2-14
[209] Id. p.118 lns 2-10
[210] Id. p.118 lns 11-25
[211] BANACC0000156496.

production.[212] 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.[213] Payment shock can be a contributor to loan default.[214]

Countrywide Sales Incentives Targeted Loans for Multicultural Borrowers

There were sales incentives at Countrywide to originate loans for multicultural borrowers.[215]Doyle stated that some multicultural customers were challenging because they wanted the transaction explained in Spanish,[216] 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.[217]

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.[218] 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…"[219]

Bank of America Wrongfully Denying Homeowners Admission into HAMP

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

[212] Id. p.193 lns 10-19
[213] Id. p.207 lns 4-10
[214] Id. p.210 lns 20-23
[215] Id. p.268 lns 12-20
[216] Id. p.270 lns 1-9
[217] Id. p.270 lns 15-17
[218] Id. p.283 lns 20-24, p.284 lns 1-3
[219] Id. p.286 lns 13-17

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.[220]

Bank of America Miscalculation of Income:

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.[221]

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

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.[222]

Setting modified mortgage payments based on faulty calculations

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.[223]

[220] 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
[221] Id. p.80
[222] Id.
[223] 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

Servicer Mismanagement and Abuse of Homeowners Applying to HAMP

In addition to identifying servicer mismanagement and abuse of homeowners applying to HAMP, SIGTARP[224] 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.[225]

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.[226]

Loan Modification Activity For Countrywide For 2004

A review of the modifications activity for Countrywide for 2004[227] indicated that African Americans were offered 1,583 workout plans; in 2005[228] African Americans were offered 2,222 workout plans, and only 330 in 2006.[229] This document did not separate Hispanic ethnicity from its White population.

The African American delinquency modification status 'First Due' indicated that in 2004[230] : 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[231]:

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[224] 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

[225] Id.

[226] Id.

[227] BANACC0000522887, Workouts offered by year tab.

[228] BANACC0000522887

[229] BANACC0000522887

[230] BANACC0000522887, Delinquency tab.

[231] BANACC0000522887, Delinquency tab.

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[232]: 1,225 loans current, 598 loans in some stage of delinquency, and 125 loans in pre-foreclosure.

The same document[233] 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

Bank of America indicated that the reasons for 4,983 of 15,725[234] loans defaulted by African Americans from 2004 thru 2006 were 2,821 'curtailment of income'; 1,331 for 'improper regard/NSF check'; and 831 for 'unemployment'. This represents about 31.6% of the default reasons.

Bank of America also indicated that the reasons for 10,742 of 15,725[235] 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.

The document from Bank of America indicated that of the African American delinquent modification loans from 2004-2006, 955 loans were inactive.[236] he data also showed that in 2004, 73.11% were paid off or inactive with another 26.89% foreclosed (2005 and 2006 data not provided).[237] The data tab for population[238] 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.[239] There was no explanation provided for the 2,531 loan difference.

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[232] BANACC0000522887, Delinquency tab.
[233] BANACC0000522887, FICO tab
[234] BANACC0000522887, Reason for Default tab
[235] BANACC0000522887, Reason for Default tab
[236] BANACC0000522887, Inactive tab
[237] BANACC0000522887, Inactive tab
[238] BANACC0000522887, Population tab
[239] BANACC0000522887, Reason for Default tab

Bank of America's data reflected additional data in delinquency by race tables.[240] 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.[241]

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.[242]

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.[243] The purpose of the meeting was to identify 'any trends or patterns' 'that might suggest prejudicial 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. [244] 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.[245]

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

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.[246]During this same period, the delinquency and default rate for Whites was only 26.9% with an average FICO of 602.[247]

[240] BANACC0000522890, HMDA Stage 2-327 Analysis tab
[241] BANACC0000522890, HMDA Stage 2-327 Analysis tab
[242] BANACC0000522890, HMDA Stage 2-327 Analysis tab
[243] BANACC0000720362 2007 HMDA Analysis
[244] BANACC0000720362 2007 HMDA Analysis
[245] BANACC0000720366
[246] BANACC0000720367
[247] BANACC0000720367

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%.[248] 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.[249] 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.[250] [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

James Buchanan Deposition, Consumer Marketing Executive, consumer compliance officer at BoA put executives in charge of areas they had no experience in,[251] title of government lending executive,[252]no experience with foreclosed loans,[253]no experience with government backed lending.[254] Buchanan stated that David Doyle managed the fc review on a day-to-day basis.[255] Buchanan stated that 'legacy asset servicing'[256] 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,[257]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"[258] 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

[248] BANACC0000720368
[249] BANACC0000720370
[250] BANACC0000720362
[251] Buchanan Tr. at 15:17-24
[252] Id. p.17 lns 20-23
[253] Id. p.20 lns 4-8
[254] Id. p.20 lns 9-11
[255] Id. p.24 lns 21-25
[256] *Id.* p.26 lns 17-25, p.27 lns 2-8
[257] Id. p.30 lns 8-13
[258] Id. p.32 lns 4-10

for loss mitigation requirements.[259]" Document with heading "Bank of America home loans and insurance, compliance and operational risk - final, advance review"[260] Sabrina Noyola, Underwriting results unacceptable and underlying trends remain negative, which represents a high compliance risk."[261]Fair lending committee met quarterly while other committees met weekly.[262] Buchanan was the consumer compliance officer,[263]yet, did not know what disparate impact was.[264]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."[265]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.

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

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.[266]

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[259] Id. p.32 lns 10-16
[260] Id. p.36 lns 14-22
[261] Id. p.52 lns 2-10
[262] Id. p.54 lns 2-7
[263] Id. p.72 lns 5-7
[264] Id. p.77 lns 17-19
[265] Id. p.94 lns 4-11
[266] 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

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

October 26, 2010 4th Quarter SigTarp[267] 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

October 27, 2011, 4th Quarter SigTarp[268] compliance review directed Bank of America; Stress test conducted indicating that Bank of America among others 'was one of the weaker banks'[269]; BAC Home Loan Servicing (formerly Countrywide) received the $6.344 billion and Bank of America $1.554 billion (SPA -Servicer Participation Agreement- cap limit);[270] 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 in each of the three categories.[271] 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.[272]

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[267] 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

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

[269] Id. p.6

[270] Id. p.59

[271] 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.

[272] 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

Processed Loans Without Quality Checkpoints 'HUSTLE' Program

January 30, 2013, SigTarp[273] Bank of America HUSTLE program defrauded Fannie Mae and Freddie Mac –'processed loans without quality checkpoints;'[274] 'sold toxic mortgages'[275] '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.'[276]

Bank of America Canceled 45,708 Permanent Modifications Applications

126.On April 24, 2013, SigTarp - Bank of America canceled 45,708 permanent modifications applications;[277] '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,[278] 'Bank of America 28% of total modifications.'[279]

HAMP Permanent Modifications Re-Defaulted

On July 24, 2013 Sig Tarp[280] 'More than half of TARP funds that Treasury spent for HAMP permanent modifications that re-defaulted were for mortgages currently serviced by three

[273] SIGTARP, 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
[274] *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.
[275] Id. P.16
[276] Id. p. 16-17
[277] 343SIGTARP, 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.
[278] Id. p. 65
[279] Id. p.70
[280] 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

servicers, Ocwen Loan Servicing, LLC, J.P. Morgan Chase Bank, NA, and Bank of America, N.A'[281]

31% of Bank of America Permanent Modifications Re-Defaulted

On October 29, 2013 Sig Tarp[282] Bank of America, Countrywide, and Rebecca Mairone-found liable for defrauding the U.S.[283] '31% of Bank of America permanent Modifications re-defaulted 34,814 mods'[284]

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

On January 29, 2014 Sig Tarp[285] 'investigation proved that Bank of America before, during and after receiving Tarp funds continued Hustle' program-removed quality controls to feed Hustle'[286] '..constituted serious and significant misrepresentation .. quality of loans'[287] 'permanent modifications re-defaulted 34,669'[288] 'complaints – Bank of America 'proportionately greater' lack of communication, misplaced applications, foreclosures short sales, trial modification problems.[289]

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

On April 30, 2014 Sig Tarp[290] '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

[281] Id. p.170
[282] 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
[283] Id. p.21
[284] Id. p.78
[285] 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
[286] Id. Message from Special Inspector General.
[287] Id. p.7
[288] Id. p.80
[289] Id. p.267
[290] 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

the process of acquiring) and snookered the Federal Government into investing billions of taxpayer dollars into the company through an additional TARP investment'[291] 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.[292] 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.[293]

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

On October 29, 2014 Sig Tarp[294] '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'[295] '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,[296] and 32% of Bank of America modifications re-defaulted.[297]

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

132.On January 28, 2015 Sig Tarp[298] 'as of November 30, 2014 Bank of America had14,736 unprocessed applications for Hamp-average months to process application by Bank of America 4

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[291] Id. p.8
[292] Id. p.9
[293] Id. p.18
[294] 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
[295] Id. p.21
[296] Id. p.58
[297] Id. p.148
[298] 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

months'[299]' 32.6% of Bank of America permanent modifications re-defaulted '[300] report showed Bank of America only provided principle reduction to less than 1% of Hamp Tier 2 mods – lowest amount among top 10 servicers.[301]

Bank of America 32% of Completed Modifications Re-Defaulted

On April 29, 2015 Sig Tarp[302]Bank of America had 43,004 mod apps unprocessed-taking 6.6 months to process[303] 32% of completed mods re-defaulted.[304]

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

On July 29, 2015 Sig Tarp[305] 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.[306] Bank of America denied 842,135[307] 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[308] as of 5/31/2015 Bank of America had 33,569 mods not processed-taking 5.4 months to process apps for mods[309]as of 6/30/2015 32.1% or 33,692 mods re-defaulted[310] Bank of America provided forgiveness for principle reduction less than 1%-fewest of top 10 lenders.[311]

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[299] Id. p.126
[300] Id. p.135
[301] Id. p.151
[302] Id. p.147
[303] Id. p.153
[304] 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
[305] 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
[306] Id. p.107
[307] Id. p.108
[308] Id. p.115
[309] Id. p.144
[310] Id. p.157
[311] Id. p.157

On October 28, 2015 Sig Tarp[312] as of 8/31/2015 Bank of America taking 9.2months to process mod app[313] Bank of America denied 80% of Hamp apps[314] as of 9/30/2015 Bank of America 32.2% of mods re-defaulted (33,485)[315] Bank of America provided forgiveness for principle reduction less than 1%-fewest of top 10 lenders.[316]

Bank of America-Wrongful Termination of Homeowners from Hamp

On January 28, 2016 SigTarp[317]Bank of America-wrongful termination of homeowners from Hamp from 4th quarter 2014 to 3rd quarter 2015[318] According to Treasury's 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[319] re-default errors by Bank of America in Q4 2014, Q1 2015, Q2 2015, Q3 2015[320]total apps not processed 12,353-taking avg 3.2 months to process[321]Bank of America still denying 80% of mod apps.[322]

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[312] 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
314 Id. p.147

[314] Id. p.149
[315] Id. p.164
[316] Id. p.175
[317] 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
[318] Id. p.75
[319] Id. p.75
[320] Id. p.78
[321] Id. p.100
[322] Id. p.103

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

On April 27, 2016 Sig Tarp[323] Bank of America taking 8 months to process mod apps[324]3rd highest denial rate of top 10 servicers at 79%[325] as of 3/31/2016 Bank of America had 34,299 HAMP mods re-default (32.5%) of portfolio.[326]

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

On July 27, 2016 Sig Tarp[327] Bank of America was worst of top 10 servicers-taking9.1 months to process mod app. As of 5/31/2016[328] denies 79% of mod apps[329] Bank of America transferred 33,425 Hamp Trial and Perm mod to non-banks from 2010 to 2016 [330] 32.6% of mods re-default.[331]

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

On October 26, 2016 Sig Tarp[332] 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[333] 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.[334]

[323] 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
[324] Id. p.95
[325] Id. p.98
[326] Id. p.104
[327] 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
[328] Id. p.123
[329] Id. p.125
[330] Id. p.126
[331] Id. p.129
[332] 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
[333] Id. p.88
[334] Id. p.88

BoA Has the Worst Track Record Regarding Inaccurate Homeowner Income Calculations

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.[335] 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; [336] 33% re-default.[337]

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

On January 27, 2017 Sig Tarp[338]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 Department of Justice agreement with Bank of America.[339]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.[340]

Bank of America Wrongfully Denying Homeowners Admission Into HAMP

On April 26, 2017 Sig Tarp[341] ' in 2016 Bank of America Wrongfully denying homeowners admission into HAMP; Miscalculation of income; Failing to reduce principal despite being paid

[335] Id. p.88
[336] Id. p.89
[337] Id. p.117
[338] 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
[339] Id. p.79
[340] Id.
[341] 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

by Treasury to do so;[342] Failure to notify homeowners in their 6th year of HAMP that they can lower their monthly payment.[343]

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

On January 30, 2018 Sig Tarp [344] 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.[345]

Defendants' Underwriting Practices Fostered & Encouraged Discriminatory & Predatory Conduct And Origination Of Higher Risk Mortgage Loan Products That Could Not Be Re-Paid.

Based upon my review and analysis of the evidence obtained during discovery, as well as my knowledge and experience with mortgage origination and servicing related issues, specifically quality control and regulatory compliance regarding single family mortgage loan originations and servicing, government and investor guidelines, and mortgage industry practices and standards, it is my opinion that many of the mortgage loans underwritten, serviced, and sold by Bank of America and Countrywide were seriously flawed and did not meet their own underwriting guidelines or minimum investor policies, regulatory rules, or industry standards.

My review of the loan and servicing data from Bank of America and Countrywide revealed that an exceptionally high number of loans originated and serviced by Defendants' did not meet the minimum federally related underwriting requirements or compliance with investor and industry

[342] Id. p.71
[343] Id. p. 72
[344] 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
[345] Id. p.67

standards. In addition, Bank of America and Countrywide's own underwriting practices and servicing procedures were not followed and did not identify the critical flaws with their processes.

Had Bank of America and Countrywide followed its own underwriting guidelines and quality control procedures, deficiencies in the origination and servicing process would have been detected and corrected before any more loans were originated. Therefore, the identified foreclosures of Bank of America and Countrywide loans caused a disparate discriminatory and predatory effect and had a disparate impact on the Plaintiffs minority neighborhoods saturated with these loans.

In addition, it is my opinion that Bank of America and Countrywide's quality control procedures were not effective, were not addressed, and therefore did not protect the integrity of the mortgage lending process, or the interests of the consumer and Plaintiff County.

Had Bank of America and Countrywide properly underwritten and serviced the subject loans to the minimum standards, the high default rate for minority applicants would never have taken place. Since it is the responsibility of the lender to assure property value, as well as the ability and willingness of the borrowers to pay the note, I believe that the actions of Bank of America and Countrywide placed an unnecessary and unjustifiable risk on minority borrowers.

Countrywide and Bank of America's mortgage origination practices resulted in unnecessary and avoidable discriminatory and predatory foreclosures that negatively impacted susceptible minority neighborhoods.

Defendants' Mortgage Servicing Practices Were Discriminatory & Disparately Impacted Minority Borrowers

Bank of America's predatory and discriminatory servicing practices regarding modifications and foreclosures continue through at least 2018 based upon an annual, federal review (SigTarp) of their servicing practices.

The Defendants' facially neutral mortgage servicing and foreclosure practices resulted in disparate and discriminatory impact in African American and Hispanic neighborhoods.

Defendants 'Countrywide and Bank of America discriminatorily serviced African American and Hispanic loans they originated and/or purchased from other entities. SigTarp's quarterly review of Bank of Americas' servicing practices show that BoA continually denied modifications to qualified African American and Hispanic families. Qualified minority families were forced out of their homes by Defendants' due to discriminatorily foreclosing loans that should have been approved for a loan modification or other repayment options resulting in disparate treatment.

Countrywide and Bank of America's equity stripping schemes based on facially neutral mortgage loan origination, servicing, and foreclosure policies and practices resulted in disparate impact in minority neighborhoods. Defendants' routinely originated loans without consideration of the borrowers' ability to repay and often financed and refinanced loans on the same property multiple times in a short period resulting in the loss of homeowner equity in African American and Hispanic neighborhoods.

Defendants' Conduct and the Evidence Obtained During Discovery Establishes That Defendants Acted Intentionally

Based upon statements and testimony of Defendants' former management employees and executives, the equity stripping scheme was intentional and deliberate. Defendants BoA's and Countrywide's discriminatory and predatory originating and servicing practices, particular relating to subprime and high-risk mortgage loan products sold to minority borrowers, were intentional. Bank of America and Countrywide provided financial incentives to their employees to induce these employees to commit fraud against African American and Hispanic families. These incentives increased based upon the risk level of the mortgage product-the higher the risk, the greater the incentive causing a discriminatory impact of minority families.

Defendants lowered, ignored (shadow underwriting), and abandoned their own underwriting policies, practices, and procedures standards regarding the intentional fraudulent inflation of property values in predominantly African American and Hispanic neighborhoods with the express knowledge of executive and production management. Bank of America and Countrywide management 'punished' appraisers if they failed to value the property at or above contract price. Bank of America and Countrywide management fired, transferred, or demoted employees who challenged these fraudulent practices.

Empirical data evidence Defendants' intentional targeting of African American and Hispanic neighborhoods in Plaintiffs' communities. Defendant's underwriters located in Chicago stated that appraisals were inflated by as much as 6% to 20% to meet the contract sales price; borrower's incomes were inflated from 10% to 50% and on occasion, inflated by as much 100% in order to 'qualify' for the loan; and that the ability to repay the loan was not a consideration.

Defendant Countrywide engaged in predatory & discriminatory mortgage lending for the purpose of increasing Countrywide's position in the industry by production volume not by the quality of the loans. Defendant Bank of America originated predatory and discriminatory subprime and risky loans to families in predominately African American and Hispanic neighborhoods to dramatically increase revenue.

Defendant Countrywide's executive leadership announced publicly its intent to target minority families for subprime and risky loan products. Defendants' discretionary pricing policies resulted in predatory mortgage lending on a discriminatory basis by targeting neighborhoods with high concentration of African American and Hispanic families without regard to borrowers' ability to repay their mortgage loans.

Defendants were well aware of the discriminatory nature of their loan origination practices through their control of the securitization of these 'toxic' loans. Emails from Defendants' executives discussed the specific nature of their 'high risk' (such as pick a payment) loan originations which were securitized in dozens of different 'mortgage pools' of loans. Defendants intentionally over collateralized, referred to as collateralized debt obligations-CDOs, the same loans in multiple tranches at the same time. Defendants' admitted that they knew the securitized loans were not the quality of loans they portrayed in their securitization pool agreements.

Based upon my review of the subject evidentiary material obtained in discovery and my experience as a mortgage finance expert, I would find that Bank of America and Countrywide exhibited a depraved indifference towards the mortgage originating and servicing process by exhibiting a callous disregard for typical industry standards as well as federal regulatory underwriting practices, and their own origination and servicing policies and practices.

Foreclosure Analysis-- I conducted additional analysis of Defendants' loan data using these same origination delimiters on the rates of foreclosure experienced by Black and Hispanic borrowers as compared to White borrowers. The purpose of this analysis was to evaluate the propensity of Defendants to foreclose on loans to minorities and in minority neighborhoods. In evaluating this, I use the same race criteria and census tract groupings I described in the previous section.

To perform this analysis, I used a list of foreclosures that was obtained by combining foreclosure indicators provided in Defendants' data, plus additional foreclosures identified by matching name and addresses to the County's docket database.

I considered loans to be predatory on the basis of foreclosure if loans for a minority group were categorized as foreclosed more often than the White group and if the test's p-value for the disparity was significant (less than .05) for tests performed within census tracts groups.

This analysis, set forth in Appendix 3C, shows that Defendants foreclosed on minority borrowers to greater extent on that White borrowers, revealing a disparate impact on those minorities as a result of Defendants' discriminatory loan origination activity.

For example, Bank of America's foreclosures by minority census tract level for Black borrowers are provided in Appendix 3C. The data revealed that in census tracts of <30% minority (predominately White neighborhoods) Blacks experienced a foreclosure rate 13.88% higher than that of Whites. In census tracts 51-70% minority Blacks experienced a foreclosure rate 15.55% higher than Whites. Further, in census tracts of 71-90% minority, this disparity in foreclosure rates between White and Black borrowers is 15.98%. The full table showing <u>on Black and Hispanic.</u>

disparities in foreclosure rates for minority borrowers relative to white borrowers are provided in Appendix 3C.

The list of loans that I identified as predatory based on my foreclosure analysis is presented in combination with the discriminatory loans in Appendix 4 (I exclude loans from the "Other" minority category from this list).

Causation:

Defendant's Discriminatory Origination of Loans Where the Borrower Does Not Have the Ability to Repay Based Upon Disparate Discriminatory 'Policies and Practices' Caused Disparate Impact in Predominately Minority Neighborhoods and Stripped Earned Equity from the Families in these Communities.

Ability to Repay

Defendant 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. 'If they could fog a mirror, they were approved.' This was intended to increase Countrywide's volume of loan originations by market share and revenue. Data also indicated that Defendant Bank of America also exhibited disparity with the ability to repay.

Delimiter 1 measured: Income insufficient to support loan amount (largest issue to determine the ability to repay) and revealed that during the subject time period that Bank of America exhibited disparity based upon a difference in proportion compared to white borrowers; Hispanic borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 15.87%; 71-90% minority by 19.53%; and 91 to 100% minority by 25.68%. African American borrowers had a difference in proportion in any census tract by 3.02. Countrywide's difference in proportion compared to white borrowers revealed that Hispanic borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 15.34%; 71-90% minority by 21.82%; and 91 to 100% minority by 29.44%. African American borrowers had a difference in proportion in predominately minority census tracts of 91 to 100% minority by 7.31%. Also Missing I.D.s populations where > 50% chance of being minority had a difference in proportion in predominately minority census tracts of 91 to 100% minority by 3.17%.

Another ability to repay issue is Delimiter 2: D-2 Amortization Terms that exceed 360 months. [> 360] If the term of the loan exceeds 360 months, the monthly mortgage payment is only slightly lower, but the length of time required to repay these 'slightly' lower payments increases significantly as the term increases. This may prevent the borrower from qualifying for a new loan at a lower interest rate. Additionally, the consumer has to make many more payments before they realize any equity, not to mention the significantly higher amount of interest paid over the longer term. We are stating that there is a difference in proportions comparing white to Hispanic and African American borrowers based upon the predominately minority census tracts where the term exceeds 360 months: Bank of America: Hispanics borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 3.44%; and 71-90% minority by 5.21%. African American borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 8.42%; 71-90% minority by 10.75%; and 91 to 100% minority by 7.14%. In addition, for minority census tracts with >50% being minority proportional difference in predominately minority census tracts of 51-70% minority by 9.63%; 71-90% minority by 13.02%; and 91 to 100% minority by 10.60%. Countrywide: Hispanic borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 4.21%; 71-90% minority by 19.53%; and 91 to 100% minority by 5.08%. African American borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 1.60%; 71-90% minority by 1.21%; and 91 to 100% minority by 2.20%.

Delimiter 7 also is a consideration for the ability to repay. D-7 Amortization Terms of 10y, 15y, 20y, or 25y where borrower's gross income to the mortgage note does not support the higher-monthly payments. Much higher payments than the borrower would have with a 30 or 40 year fixed rate loan. Mortgage loan for these 10y, 15y, 20y, and 25y term products should not exceed 3.25 times the gross income. Flag loans with terms between nine years and 26 years for which the loan amount exceeds 3.25 times the borrower's income. Not only are the monthly payments significantly higher, but it should take a larger amount of income to be able to afford to make those payments. Instead of qualifying for a loan amount less than 2.5 times the gross income for a standard 30 or 40 year note, a higher gross income (3.25 times) would be needed for the ability to repay a shorter term note.

Bank of America exhibited disparity based upon a difference in proportion compared to white borrowers; Hispanic borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 9.01%; 71-90% minority by 11.14%; and 91 to 100% minority by 15.65%. Countrywide's difference in proportion compared to white borrowers revealed that Hispanic borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 13.84%; 71-90% minority by 13.35%; and 91 to 100% minority by 17.97%. For >50% chance of being minority borrowers had a difference in proportion in predominately minority census tracts of 51-70% minority by 12.92%; 71-90% minority by 12.04%; and 91 to 100% minority by 14.53%.

Defendants exhibited disparity for minority borrowers based upon a statistically significant difference in proportion when compared to similarly situated white borrowers are compared with Delimiters 1, 2, and 7; proportion in predominately minority census tracts of 51-70% minority, 71-90% minority, and 91 to 100% minority. Loans originated to borrowers that did not have the ability to repay, could be characterized as the beginnings of equity stripping. When borrowers do not have the ability to repay the loan because proportionally, causes the loan to default and foreclosed.

The statistically significant race and national origin-based disparities in Delimiters 1, 2, and 7 for African American and Hispanic borrowers who Defendants determined that the ability to pay characteristics of these delimiters to qualify for a home mortgage loan resulted from the implementation and interaction of Defendant's policies and practices that: routinely allowed or encouraged the use of subjective and unguided exceptions not based on borrower risk by its own employees in selecting whether the borrower has sufficient income requirements for its loan products and determined length of amortized term, either over 360 months or under 300 months (25 years amortized) going outside the normal debt-to-income requirement and deciding on the length of amortized term after the percentage of loan amount and term length had been established by reference to credit risk and loan characteristics in the terms and conditions of loans Defendant Countrywide and Bank of America originated; (b) did not require its employees to justify or document the reasons for exceptions not based on borrower risk of the ability to repay, but for the purpose of originating the loan at any cost; (c) failed to adequately monitor for and fully remedy the effects of racial and national origin disparities in those exception adjustments; and (d) linked loan officer compensation in part to the changes in exceptions in order the close the loan. Defendants continued to use this non-risk-based component of its overall retail loan approval policy, to inadequately document and review the implementation of that origination component, and to link loan officer compensation.

Defendants' policies and practices identified were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Countrywide than these policies or practices.

Defendant's Appraisal Disparate Discriminatory 'Policies and Practices' Caused Disparate Impact in Predominately Minority Neighborhoods and Stripped Earned Equity from the Families in these Communities.

- Appraisals were deliberately discriminatorily inflated (over-valued) Causing Disparate Impact in predominately non-white neighborhoods.
    - Created false equity—Creates the false illusion that the property you bought using an appraisal that over-valued the property simply to meet the seller's contract price
        - The false equity gives the borrower's the feeling that they could refinance their property at the earliest opportunity and use the proceeds (false or unearned equity) to pay down bills, take a vacation, or simply spend money that has not been earned.
            - When the borrower can no longer make their mortgage payment and the borrower defaults, leading to a foreclose, the new valuation from an appraiser, not influenced by Defendant's and disparate discriminatory policies and practices, may be anywhere from 10% to 50% (or higher) lower than an amount still owed by the borrower.
            - This new significantly lower property valuation makes it very difficult if not impossible to refinance the note to a lower rate in an attempt to reduce monthly payments and stay in the home.
                - In order to refinance, one of the Defendant' policies and practices required the borrower to have 20% equity in the

property or 20% cash down or a combination that would result in twenty percent placed down in order to qualify for a refinance. Very few borrowers have the ability to come up with 20% of their property value, for the opportunity to refinance to a lower rate.

  - Another borrower option to stave off foreclosure is to complete a short sale. The issue is that the borrower will not be able to sell the property for what is owed. The difference between the short sell price and what is owed is just the opposite of earned equity.
  - The short sale option is limited because new home buyers may be able to purchase a newly constructed home in the area for about the same amount or less than what is owed on their homes, typically substantially lower than their short sale price. The new home prices have been market driven down to match the foreclosed homes in a neighborhood.

- This new significantly lower property valuation makes it very difficult if not impossible to qualify for a Home Equity loan, because there is not enough equity in the home for loan approval.
  - The inability to borrow money from the equity in the home limits the ability of homeowners to make needed and necessary repairs and maintenance i.e. repainting, fence repair etc.
  - If repairs and home maintenance are not done, the condition of the home results in reduced property values—resulting in more foreclosures, resulting in more foreclosure etc
  - Crime increases in the neighborhood --Broken Windows theory
  - In order to qualify for a Home Equity loan, one of the Defendant' policies and practices, require the borrower to have a minimum of 20% equity in the property.

The Evidence reveals:

- HUD's Fair Lending Guide, among other ways, a lender commits a discriminatory lending practice when, on the basis of race, color, or national origin, they refuse to provide information regarding mortgage loans; steer an applicant toward an inferior mortgage loan product; impose different terms or conditions on a mortgage loan; discriminate in appraising property; or provide inferior servicing of a mortgage loan.[346]

- Empirical data evidence Defendants' intentional targeting of African American and Hispanic neighborhoods in Plaintiffs' communities. Defendant's underwriters located in Chicago stated that appraisals were inflated by as much as 6% to 20% to meet the contract sales price; borrower's incomes were inflated from 10% to 50% and on occasion, inflated by as much 100% in order to 'qualify' for the loan; and that the ability to repay the loan was not a consideration.

- Michael Winston[347] a former top executive with Defendant Countrywide, stated in a declaration submitted in this case regarding 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.[348] 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,

[346] FHA Fair Lending Guide; https://www.hud.gov/sites/documents/FAIR_LENDING_GUIDE.PDF p.7-8
[347] Declaration of Michael Winston dated October 25, 2020 at ¶ 3. Michael Winston joined Countrywide Financial Corporation in 2005 as a Managing Director and Enterprise Chief Leadership Officer.[347]
[348] Id. at ¶ 19.

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.[349]

- Defendants lowered, ignored (shadow underwriting), and abandoned their own underwriting policies, practices, and procedures standards regarding the intentional fraudulent inflation of property values with the express knowledge of executive and production management in predominantly African American and Hispanic neighborhoods. Bank of America and Countrywide management 'punished' appraisers if they failed to value the property at or above contract price. Bank of America and Countrywide management fired, transferred, or demoted employees who challenged these fraudulent practices.
- Courthouse News Service, May 13, 2008, Mark Zachary, a former Regional Vice President of Countrywide, who under oath, claims he was fired for airing his concerns about Countrywide's underwriting practices.[350] Countrywide Financial fired a regional vice president because he refused to condone its illegal acts, including inflating appraisals of homes built by Countrywide's business partner KB Homes, falsifying documents for borrowers who should not have qualified for loans, and approving 10 percent of backlogged loan applications daily so KB Homes could begin construction, Mark Zachary claims in Federal Court.
- Appraisal Scoop.com January 30, 2008 Mark Zachary, Former Countrywide VP, Describes Countrywide's Tricks To Inflate Home Values[351] A regional vice president

[349] Id. at ¶ 20.
[350] Courthouse News Service, May 13, 2008, Mark Zachary, a former Regional Vice President of Countrywide, who claims he was fired for airing his concerns about Countrywide's underwriting practices
[351] Jan 30, 2008, Brian Davis with Appraisal Scoop.com; *Mark Zachary, Former Countrywide VP, Describes Countrywide's Tricks To Inflate Home Values*; See https://appraisalnewsonline.typepad.com/appraisal_news_for_real_e/2008/01/mark-zachary-fo.html

claims Countrywide Home Loans fired him for objecting to its illegal tricks that included using an (un-named) appraiser that it knew inflated the value of homes.

- Zachary also told of a pattern of: 1) inflating home appraisals so buyers could borrow enough to cover closing costs, but leaving the borrower owing more than the house was truly worth; 2) employees steering borrowers who did not qualify for a conventional loan into riskier mortgages requiring little or no documentation, knowing they could not afford it; and 3) employees coaching borrowers to overstate their income in order to qualify for loans.[352]
- Dec 1, 2008 In a decision (the "Countrywide Decision") throughout the Class Period, appraisals were inflated [353],
- According to a confidential witness relied on by plaintiffs in other actions, as much as 80% of the loans originated by Countrywide out of its Jacksonville processing center between June 2006 and April 2007- i.e., when many of the loans at issue here were being generated-had significant variations from Countrywide's theoretical underwriting standards. (2) Former employee confirms Countrywide knew appraisals were being inflated.[354] Zachary brought his concerns to executives of the Countrywide/KB Homes joint venture, as well as Countrywide executives in Houston, Countrywide's Employee Relations Department and Countrywide's Senior Risk Management Executives. According to Zachary, Countrywide performed an audit investigating these matters in January 2007, and the findings of the audit corroborated his story. According to Zachary, the findings of this audit were brought to the attention of Countrywide executives.
- Kyle Lagow an Appraiser joined LandSafe in 2004, a Plano-based appraisal subsidiary of Countrywide Financial, then the nation's largest mortgage lender. Lagow, who had been running his own appraisal business for fourteen years, was tasked with hiring and training appraisers to determine whether properties were worth the amount that Countrywide was

[352] Ibid.
[353] Dec 1, 2008 In a decision (the "Countrywide Decision"), Judge Mariana Pfaelzer of the U.S. District Court of the Central District of California upheld the bulk of the 416-page Lead Case No. CV-07-05295-MRP (MANx) Countrywide Complaint, which detailed a massive fraud involving Countrywide See http://securities.stanford.edu/filings-documents/1038/CFC_01/2008121_r01c_0705295.pdf. p.13-14
[354] Oct 24, 2010 Case 1:10-cv-07549-WHP Landesbank v Goldman Sachs See http://www.tavakolistructuredfinance.com/LBBW.pdf

lending against them. [355]At LandSafe, Lagow quickly began noticing a pattern in which appraisers were pressured to meet the often-inflated values that Countrywide's lenders were placing on mortgages.[356]

- In 2005 Countrywide began ramping up its lending by loosening guidelines, underwriting riskier loans, and hiding a rising default rate from investors. If appraisers determined that homes weren't worth as much as Countrywide was claiming, they were told to take another look. Some were encouraged to rubber-stamp their reviews. One, according to Lagow, handled more than four hundred cases in a single month, far too many to carefully assess each property's value. Another appraiser, Lagow discovered, had scheduled property inspections one minute apart. "It became obvious that in certain markets, we were driving values up," Lagow says. "We were employed in a scheme of defrauding investors."[357]
- Lagow encouraged his appraisers to resist the pressure, but it only intensified. When Countrywide set up a joint venture with KB Home, the publicly traded homebuilder told Lagow that it wouldn't be using his team. "If anybody squawked, they were punished," Lagow says. Sometimes his employees were removed from Countrywide's list of approved appraisers. Other times, he says, LandSafe filed complaints against his appraisers with the state licensing board. [358]
- Lagow sent dozens of emails to Countrywide executives, warning them that they were possibly committing RICO violations by selling products to investors who didn't know what they were buying. His bosses did not act on his warnings, but that doesn't mean they weren't paying attention to what he was doing. Over the next few years, with no explanation, his territory shrank. Instead of being responsible for half the country, he eventually oversaw only Texas, Oklahoma, and part of New Mexico. Some of his co-workers openly mocked him as "the black-helicopter guy." [359]

[355] July 2015, *Behind the Curtain*, Texas Monthly, by Loren Steffy; See https://www.texasmonthly.com/articles/behind-the-curtain/
[356] Ibid.
[357] Ibid.
[358] Ibid.
[359] Ibid.

Origination Causation
Loan Officers and Broker Compensation

Defendants' Origination Disparate Treatment of their 'Policies and Practices' Caused Disparate Impact in Predominately Minority Neighborhoods with Loan Officers and Broker Compensation disparately Impacting the Families in these Communities.

The origination policies and practices reflect the disparate treatment of minority borrowers resulting in disparate impact of minority neighborhoods. These policies and practices included but not limited to: pricing, broker compensation, steering minority borrowers into subprime loans, steering borrowers into 'risky loan products', eliminating or substantially reducing quality control, permitting brokers and Defendants' own employees to profit from these activities, all causing Defendants to engage in disparate discriminatory treatment resulting in a disparate impact on families living in predominately minority neighborhoods. The discriminating disparate impact was caused by the discriminating treatment improperly steering borrowers living in predominately minority applicant in a subprime loan product even if the applicant could qualify for a prime loan product. Defendants did not require brokers and employees to justify reasons for placing an applicant in a subprime loan. Defendants did not require brokers to notify applicants that they could qualify for a prime loan product, Defendants' created and promoted policies, knowing that the policies and practices would have a disparate impact that impacted predominately minority neighborhoods. This discriminatory disparate treatment, among other issues, created a financial incentive for brokers and Defendant employees to place loan applicants in subprime products, allowed brokers and employees to grant subjective exceptions and failed to monitor these subjective practices, all causing harm to the borrower.

Defendants' policies and practices identified were not justified by business necessity or legitimate business interests. There were other alternatives available to Defendants than these policies or practices.

Servicing Causation

Defendants' Servicing Disparate Treatment of its 'Policies and Practices' Caused Disparate Impact in Predominately Minority Neighborhoods: Servicing Mortgages Disparately Impacting the Families in these Communities.

The servicing policies and practices reflect the disparate treatment of minority borrowers resulting in disparate impact of minority neighborhoods. These servicing policies and practices that have a disparate impact have been identified using data that is statistically significant, including but not limited to: loss mitigation, and securitization, foreclosures, modifications and the modification process, reasons for denial and modification termination, servicing fees, short sale process, modification failures, and eliminated or substantially reduced quality control. These discriminatory practices, including other servicing related issues, resulted in servicing policies and practices disparate treatment having a disparate impact on predominately minority neighborhoods. Defendants created and promoted policies, knowing that the policies and practices had a disparate impact on the predominately minority neighborhoods, yet took little or inadequate action. This discriminatory disparate treatment, among other servicing issues, continued the subjective discriminatory practices, and the failure to monitor these subjective practices caused the damages suffered by Plaintiff.

January 13, 2021

Respectfully Submitted,

Gary E. Lacefield