

**Whistleblowers Reveal How  
Bank of America Defrauded Homeowners  
and Paid for a Cover Up—  
All With the Help of “Regulators”**



**naked capitalism**



**Based on an investigative series published at Naked Capitalism**

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# Introduction



**THE SCANDAL THAT THIS BOOK DESCRIBES** began not in late 2010, when the term “robosigning” became national news, or in early 2013, when the abrupt shutdown of OCC and Fed mandated foreclosure reviews were shut down in abrupt, embarrassed haste, but gradually in the years before the crisis.

I first became aware of foreclosure-related abuses in February 2010 when I got an e-mail from an Alabama attorney named Bubba Grimsley looking for an expert witness. Bizarrely, his spec list matched to a T that of a lawyer and securitization expert I’d gotten to know through my blog that we’ll call MBS Guy. MBS Guy helped piece together the account of how a secretive Chicago-based hedge fund, Magnetar, had devised a strategy for creating and betting against toxic CDOs and executed it on such a large scale that it drove the demand for over half the subprime bonds issued in the toxic phase of mortgage issuance.

MBS Guy, who’d sat in on dozens of mortgage securitization closings and visited servicers hundreds of times over his career, told me he was stunned by the implication of the cases that Bubba and his partner Nick Wooten showed him: that the parties to mortgage originations had neglected, on what appeared to be a widespread basis, to convey ownership of the mortgage to the securitization trust by legally-mandated cutoff dates that had taken place years ago. Normally, when a party to a contract fails to perform some of its duties, the parties can simply write waivers to remedy this lapse. But these securitizations were so carefully constructed, and rigid in their design that no legal retroactive fixes were possible. The worst-case scenario was what Georgetown law professor Adam Levitin called “securitization fail,” in which securities that were supposedly backed by mortgages really weren’t. If this turned out to be true on as pervasive a basis as it appeared to be in the post 2004 period, it would inflict massive losses on banks as a result of litigation and had the potential to create a new financial crisis.

There was a second, more mundane but no less damaging failure with the design of these securitizations: they’d never allowed for the fact that more than

a very small portion of borrowers would default. Servicing a mortgage when someone is paying on time is simple and cheap. Servicing a delinquent mortgage is costly. Foreclosing produces bigger losses than modifying a mortgage if the borrower isn't hopelessly upside down. But perversely, the designers of these securitizations provided for servicers to be paid to foreclose and not paid to modify, so they would steam ahead with foreclosures. But the foreclosure process had the potential to expose the defects in the securitization, that the party trying to foreclose really didn't have the right to. Somebody clearly did, but that "somebody" would be a party earlier in the securitization chain, and no one dared admit that might be the case. The systemic implications were too damaging.

So the remedy for this problem wasn't the one that would have been best for the borrowers, investors, and the economy, namely, do favor modifications and have servicers eat the costs. For securitized loans, the servicers went full steam ahead with foreclosures even if they didn't necessarily have the right to do so. Borrowers, who either felt they were victims of bank errors and abuses, or felt they were good candidates for a modification, started challenging foreclosures, often as their only way to get a hearing.

I saw how this often played out when I looked up Bubba on a trip to Alabama and he invited me to a trial where MBS Guy was serving as an expert witness. It was a rude introduction to what was to become staples of foreclosure fights: the bank side producing documents that were clear fabrications to fix the ownership problem; a servicer employee sternly insisting that the documents had only been in certain locations when Fedex tracking codes showed him to have perjured himself; a lawyer for the foreclosure mill admitting to conduct that should have gotten her disbarred. But instead of finding for the borrower, the judge issued a strained ruling for the bank (later overturned on appeal), unwilling to acknowledge that the bank might have been engaging in worse conduct than a delinquent homeowner.

The idea that banks were engaging in systematic foreclosure related abuses seemed like a lunatic fringe idea in the summer of 2010. But in September, the robo-signing scandal broke, revealing that banks had engaged in systematic fraud on courts across the country. While some judges remained bank friendly, others were stunned at the level and scale of bank misconduct and began to give borrowers facing foreclosure a more sympathetic hearing. But even then, the banks were largely successful in spinning the issue as one of mere "sloppiness" or "paperwork errors" rather than symptoms of widespread defects in the mortgage securitization process.

The Administration swung forcefully into "defend the banks" mode, launching an eleven-agency, deliberately superficial but meant-to-be-convincing review of 2300 loans files, only 100 of which were foreclosures. Needless to say, they found pretty much nothing amiss. States attorneys general took the matter a bit more seriously and formed a combined effort. The Federal government decided to try to get in front and call this initiative a parade by having banking and housing regulators plus the Department of Justice join. This combined effort took the unheard of approach of negotiating a settlement without investigating, meaning they had little knowledge and even less bargaining leverage.

But that was too much for the most bank-cronyistic regulator, the Office of the Comptroller of the Currency. It broke from the negotiations and tried, unsuccessfully, to make them irrelevant by issuing its own consent orders to 14 mortgage servicers. For the most part, these decrees reiterated existing law. But in an apparent effort to prove the banks right, the OCC also required these servicers to engage independent reviewers that they would pay for and give borrowers who had foreclosures underway or completed in 2009 and 2010 to have their foreclosure reviewed and receive compensation, up to \$125,000, if certain types of wrongful activity were found to have taken place.

It was easy to see what was wrong with this so-called Independent Foreclosure Review process. The biggest servicers were part of large commercial banks,

making them extremely attractive clients. Why would anyone annoy them by presenting a large bill from homeowners? And the “please the bank” intent was made even more explicit by having the consultants engaged by and reporting to the banks, rather than have them working for the OCC with their charges reimbursed by the banks.

As this sham moved forward, it turned out everyone had gotten too clever for his good. The GAO determined that the banks had not taken adequate steps to reach homeowners and required them to extend the process and make more serious efforts. Whistleblowers at some of the major banks reported that the consultants were going to extreme length to design the process to make sure no borrower cases would get through the gauntlet. And the consultants themselves were throwing more and more resources in their efforts to make the reviews look serious.

The OCC and the servicers shut down the reviews abruptly in January 2013, offering inadequate, unconvincing explanations. The regulator embarrassingly had no idea how to compensate borrowers since the reviews were, by some measures, less than 20% completed. The OCC also made the not-credible claim that hardly any borrowers had been hurt, contradicting widespread reports of wrongful foreclosures from the failed HAMP modification program alone.

Like many others who had been watching the foreclosure coverups in many forms, I criticized the shambolic shutdown of the IFR. In the comments section on that post, someone who had worked on the reviews for Bank of America provided some details on what went wrong there and contacted me by e-mail a couple of days later, offering to provide more information. The borrower reviews at Bank of America, supposedly conducted by an influential firm called Promontory Financial Group, were in fact executed almost in their entirety by temps like him. Ultimately, seven reviewers for Bank of America and two contractors to Promontory at another bank, PNC, came forward to describe the nature and extent of a massive, costly, and incompetently managed cover-up.

Many of these spent hours with me going over documents and procedures and clarifying details of what they saw that was wrong. And they were well qualified to make these judgments. For instance, the whistleblowers at Bank of America all had considerable experience in mortgage and foreclosure procedures, with the least experienced having spent five years as a paralegal in a real-estate-focused law firm.

The most damning part of their accounts was that all saw evidence of systematic, illegal conduct by the banks that hurt borrowers and investors, in many cases, producing wrongful foreclosures. Yet the purpose of the exercise was clearly not to compensate borrowers for the damage they had suffered, but to protect the miscreant banks.

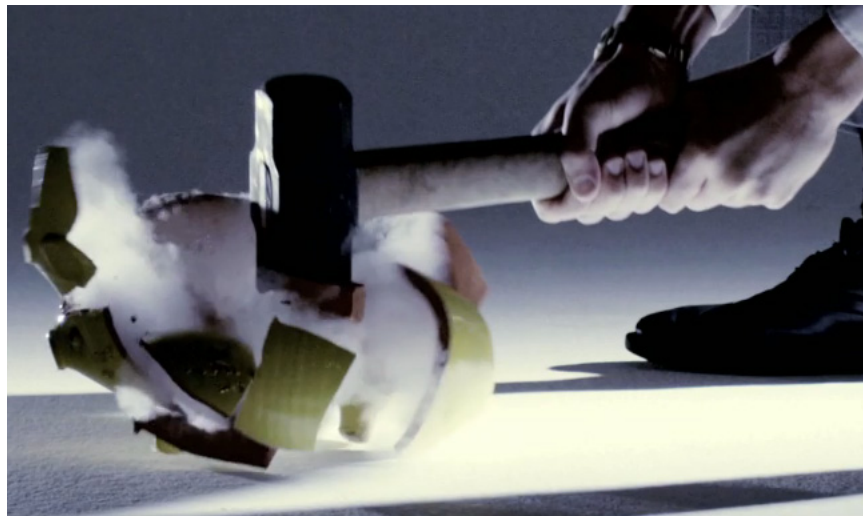
Our hope in presenting their reports is that it will stir legislators and the public to demand that regulators finally get serious about servicing abuses and separately require regulators to do their job rather than rely on self regulation, and now, through blatantly conflicted review processes like the IFR, to engage in what amounts to self enforcement. And the OCC has established that it is so deeply on the side of banks that it may be better to shut it down than try to reform it.

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I would like to thank the people who contributed to the original post series and helped turn it into this ebook: our anonymous transcriptionist, Lisa Epstein, Kim Kaufman, Lambert Strether, Matt Stoller, Jessica Ferrer, and MBS Guy. And most important, the whistleblowers whose courage and candor will hopefully help pave the way for badly needed reforms.

## CHAPTER I

# Executive Summary of the Foreclosure Review Process, Whistleblower Revelations, and Findings of Fact



ON JANUARY 7, 2013, ten mortgage servicers entered into an \$8.5 billion settlement with the Office of the Comptroller of the Currency and the Federal Reserve, terminating the Independent Foreclosure Review process which was set forth in consent orders issued in April 2010. Those consent orders stipulated that borrowers who had foreclosures pending or had completed foreclosure sales in 2009 and 2010 could request an investigation by independent reviewers to determine if they had been harmed and if so, could receive as much as \$125,000 in restitution. The independent reviewers would be selected and paid for by the servicers but subject to approval by the OCC.

Some experts argued that the 2009 and 2010 time range was too narrow because it excluded many borrowers who had been treated improperly by the servicers. These professionals also questioned whether the investigators hired by wrongdoers would operate independently and fairly. Nevertheless, the reviews were touted as delivering a measure of justice to abused homeowners, since any found to have suffered wrongful foreclosures were to receive sizable monetary awards, and smaller payments would be made to those who experienced other forms of abuse. HUD Secretary Shaun Donovan proclaimed:

For families who suffered much deeper harm — who may have been improperly foreclosed on and lost their homes and could therefore be owed hundreds of thousands of dollars in damages — the settlement preserves their ability to get justice in two key ways.

First, it recognizes that the federal banking regulators have established a process through which these families can receive help by requesting a review of their file. If a borrower can document that they were improperly foreclosed on, they can receive every cent of the compensation they are entitled to through that process.

Second, the agreement preserves the right of homeowners to take their servicer to court. Indeed, if banks or other financial institutions broke

the law or treated the families they served unfairly, they should pay the price — and with this settlement they will.

Yet the foreclosure investigation was halted abruptly with the OCC and the Fed failing to identify any methodology for how the portion of the settlement allotted to cash awards, \$3.3 billion, would be distributed to homeowners who might have been harmed in 2009 to 2010. This was an astonishing lapse that will almost certainly result in small payments being made to large numbers of borrowers, irrespective of whether they deserved vastly more or nothing at all.<sup>1</sup>

But except for its ham handedness, this outcome was no surprise to astute observers. The OCC consent orders had been launched in an unsuccessful effort to render the ongoing 50 state attorney general/Federal negotiations moot. Critics described how these orders were regulatory theater. Georgetown law professor, Adam Levitin, compared them to promising in public to spank a child, then taking him indoors and giving him a snuggle. During the course of the reviews, leaks confirmed these concerns, revealing deep-seated conflicts, limited competence among the review firms, half-hearted efforts to reach eligible homeowners, and aggressive efforts by the banks to suppress any findings of harm.

As grim as this sounds, the conduct was worse than the leaks suggested. After extensive debriefing of Bank of America whistleblowers, we found overwhelming evidence that the bank engaged in certain abuses frequently, in some cases pervasively, in its servicing of delinquent mortgages. This is particularly important because Bank of America has been identified in previous

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1 Bank of America reported that 1750 employees were working on the reviews as of October 2012. Our whistleblowers say that the number of participants on periodic project-wide conference calls prior to that date were roughly 2500. It is highly unlikely staffing was smaller in October. It is thus likely that the discrepancy results from the number of contractors working on the project, which were an estimated 750 in Tampa Bay alone.

settlements as far and away the biggest mortgage miscreant, paying over 40% of last year's state/federal mortgage settlement among the five biggest servicers.

This settlement, as intended, was yet another significant bailout to predatory servicers. Conservative estimates of damages due to borrowers under the consent order who suffered improper foreclosures from Bank of America exceed \$10 billion. That contrasts with the cash portion of the settlement amount for Bank of America of \$1.2 billion.<sup>2</sup> The amount owing for other abusive practices would have increased this total further.

The OCC gave two rationales for shutting down the reviews. The first was that they were costly to Bank of America and other servicers, potentially diverting funds from borrowers. This argument is spurious. Those expenses were always contemplated as being in addition to compensating borrowers for the considerable damage they suffered. Moreover, as we will demonstrate, the high price tag for undertaking the reviews was due not only to fragmented and poorly documented borrower records and the servicers' long-standing disregard for legal requirements, but significantly to an inefficient, poorly designed review process. The fees to the major firms engaged to conduct the reviews are so patently out of line that Caroline Maloney, a senior member of the House Financial Services Committee, has launched an inquiry.

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2 We attribute very little value to the "required other amount of assistance" of \$1.6 billion, which Bank of America can satisfy by extremely low cost actions, such as writing off deficiency judgments on foreclosed borrowers. A deficiency judgment occurs when, after a foreclosure, the borrower is still liable for the difference between the amount owed on the mortgage when it exceeds the amount recovered in the foreclosure sale. People who undergo foreclosures are almost always under severe financial stress (we have discussed elsewhere that the incidence of "strategic defaults", ex on second homes, is greatly exaggerated). Banks historically have not pursued deficiency judgments; the cost of going after the borrower greatly exceeds what they might collect. At best, Bank of America might be able to sell them to debt collectors for a few cents on the dollar.

Professional service firm clients, particularly ones as powerful as major banks, when faced with such egregious levels of cost overruns, would normally demand significant reductions in the bills from their vendors. Instead, the Fed and the OCC let Bank of America make its cost problem their cost problem.

The second reason given for shutting down the reviews is that the regulators claim few borrowers were harmed by impermissible foreclosure practices. An American Banker article [quoted Morris Morgan](#) of the OCC, who was overseeing the reviews from the regulators' side:

Do I think there were a significant number of people who were foreclosed on where the banks did not have a legal right to foreclose on them? At this point in time I don't think that was a significant number," he said. "But I would go further to say a very few number, and you could even argue one of those, is too many.

This is both disingenuous and, as we will demonstrate over our series, patently false. Borrowers could suffer wrongful foreclosures due to predatory or negligent foreclosure practices for reasons well beyond the servicer not having the "legal right to foreclose." Moreover, the servicers were ordered to look well beyond that issue. The whistleblowers saw ample evidence of abuses that could and typically did result in the loss of home within the scope of the reviews they performed. Moreover, they also presented evidence of persistent, sometimes pervasive, impermissible conduct at Bank of America which was simply not addressed in the tests or captured in related information gathering, yet clearly fell within the scope of the consent orders. As we will discuss, some of these abuses would likely result in an impermissible foreclosure or serious borrower harm.

Turn the issue around: why would the banks be willing to down the reviews if indeed they were finding so little in the way of damage to borrowers? They would be well served to spend a few billion dollars to be able to say that with

a fair and exhaustive process, hardly any borrowers were harmed. If this claim was true, the costs of finishing the reviews would still have been lower than the cost of the settlement plus the expenses of the reviews to date.

The settlement is also a bailout for the "independent" foreclosure reviewer, Promontory Financial Group, which also played this role for Wells Fargo and PNC. Promontory occupies a unique role in Washington, DC. The firm, headed by former Comptroller of the Currency Gene Ludwig, is heavily staffed with former senior and middle level banking and securities regulators. For instance, former OCC chief counsel Julie Williams (who Ludwig hired when he was at the OCC) has just joined Promontory, and her replacement, Amy Friend, [came directly from Promontory](#).

As we will demonstrate in later chapters, even making the most generous interpretation possible of the role played by Promontory, Promontory's review at Bank of America completely omitted significant categories of borrower harm that were explicitly discussed both in the OCC consent order and Promontory's engagement letter with Bank of America.

### **Scope of Our Investigation**

We interviewed a total of seven contract workers at the largest Bank of America site where the foreclosure review work took place, Tampa Bay, Florida. Five came forward initially and the early chapters reflect their input. We highlighted additional issues based on the input of two more who came forward after we started publishing this series. We obtained further corroboration of the considerable failings of Promontory from two additional whistleblowers who worked for Promontory at a different servicer, PNC, on the foreclosure reviews.

All seven Bank of America reviewers had worked on the project from relatively early on, and all had considerable knowledge of mortgage and foreclosure processes and documentation, with the least experienced having worked five



years as a paralegal in a small real estate-focused law firm. The majority had over ten years of relevant experience. Together they performed significant tests on over 2000 borrowers in a “live” mode, and ran preliminary versions of the tests on hundreds of additional borrower files (actual customer records from Bank of America systems, not dummied-up data) in the attenuated start-up phase.

The reviewers also provided comprehensive documentation from some of the major tests designed by Promontory and operated on its CaseTracker software program as well as other documents provided by Bank of America. We provide a brief overview of the various roles in the Tampa Bay and other Bank of America locations at the end of this post, in Appendix I, and a description of the major tests in Appendix II. We have reviewed the information and documents presented by the whistleblowers with recognized legal experts in foreclosures and securitizations and have also reviewed relevant OCC materials and Bank of America disclosures.

### Overview of Findings

The foreclosure reviews showed persistent, widespread efforts by Bank of America to avoid any finding of borrower harm. These efforts were supported and enabled by Promontory. The whistleblowers, told their role would be to act as investigators and help borrower get compensation they deserved, all described the review process as seriously flawed. Yet even with those obstacles, they saw abundant evidence of serious damage to borrowers.

We asked our initial five whistleblowers to estimate the amount of borrower harm they saw for the borrowers whose cases they reviewed, and what portion of that was serious harm (all reviewers will be described as male throughout, irrespective of gender):

**Reviewer A:** 90% harmed, with 30% to 40% suffering serious harm

**Reviewer B:** 30% harmed, including instances of serious harm; described multiple instances of serious harm on other tests performed on his borrowers but could not readily quantify

**Reviewer C:** 67% harmed on his test; like B, saw multiple instances of serious harm in the borrower history not captured on his test as harm; could not readily quantify but specific examples cited during interviews alone exceed 10%

**Reviewer D:** 95% harmed, with 30% to 40% suffering serious harm

**Reviewer E:** 100% harmed, with 80% suffering serious harm

This level is consistent with the findings of a never-published GAO report on the foreclosure reviews that the rushed settlement appeared intended to terminate. The GAO review selected a random sample of foreclosure files and found an 11% error rate. The files the reviewers saw came to (depending on the reviewer) at least 80% and in most cases 100% from borrower requests for review through the Independent Foreclosure Review process or an executive request for review. One would expect to see a markedly higher level of serious problems in these files. The two whistleblowers who surfaced later in our investigation provided harm estimates within the range of the initial reviewers.

As we will describe in detail, these estimates considerably understate the actual harm suffered due to defects in the test design, active efforts to suppress findings of harm, and major gaps in Bank of America records. As one reviewer stated:

I really kind of went into it very naively, I guess, as a lot of us did, that we were actually there to do good and were being welcomed there to do good for people....I mean, I had gone from pretty gung ho to, “Hey, you guys need to knock this crap off. You guys are just — you’re, just, you’re turning this into a sham.”

Note that Bank of America and Promontory are likely to claim, as they did late last year when ProPublica published an article questioning the independence of the foreclosure reviews, that Promontory was doing the reviews and the contractors employed in Tampa Bay and other locations were simply doing document retrieval. In later posts, we will discuss in depth why this claim is ludicrous in light of how the organization was structured, how Bank of America managers interacted with the reviewers, and how the tests were designed and the reviewers were trained.

We found five major problems:

1. Predatory practices at Bank of America: The reviews showed overwhelming evidence of widespread, systematic abuses at Bank of America

No interviewee estimated harm as occurring in less than 30% of the files they reviewed; one put serious harm at 80%. The interviewees did not simply describe individual borrower suffering in graphic terms (as one put it, “I saw files that would make your stomach turn.”) Multiple interviewees would describe widespread, sometimes pervasive patterns of impermissible conduct.

The reviews confirm what both servicing experts and foreclosure defense attorneys have seen since the crisis: Bank of America’s servicing standards were poorly designed and thus unable to handle the deluge of troubled borrowers (suspense accounts, modifications, bankruptcy, etc.). In addition, BofA had a low level of competence in their servicing area and, as a result, the problems with their servicing was made worse. For instance, reviewers gave examples of types of behavior where Bank of America practices were clearly contrary to the law, yet the banks’ personnel confidently maintained they were proper

2. Weak, disorganized project management: Promontory’s absentee management produced confusion, waste, and unreliable results

**The review process itself lacked integrity due to Promontory, who was hired to oversee the project but delegated most of its work to Bank of America. That work, in turn, depended on records that were often incomplete and unreliable. Chaotic implementation of the project itself only made a bad situation worse.**

3. Unreliable systems and data: Bank of America’s information technology systems have such poor data integrity and usability that a good faith review process was impossible

Foreclosure records were unreliable, inconsistent, incomplete, and scattered across multiple systems that were poorly integrated and impossible to test for accuracy. Implementation was so hasty and inconsistent that even highly qualified examiners could not be trained properly.

4. Concerted cover-up: Bank of America and Promontory worked together to suppress and minimize evidence of damage to borrowers

The organizational design, the way the reviewers were managed, the elimination of areas of inquiry, and evidence of records tampering with Bank of America records all point to a multifaceted, if not necessarily well orchestrated, program to make sure as much damaging information as possible was not considered or minimized. To give one example: state law issues were eliminated from the G test, which covered loan modifications (see Appendix II below), reducing it over time from 2200 questions to 500.

5. Promontory’s incompetence and lack of principles: Promontory played a dubious role; it had multiple conflicts of interest and little to no relevant expertise

Promontory was a poor choice to perform the foreclosure review. It had virtually no internal expertise in mortgage servicing, provided little or no supervision, and, either by design or incompetence, managed to politicize the review process rather than make it independent.

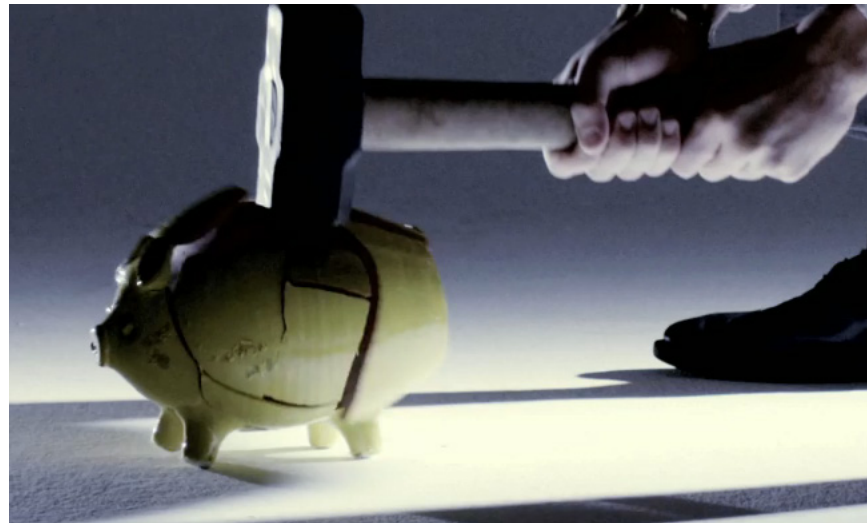
But this is hardly the first time that Promontory has made a hash of a major project. The firm's recent accomplishments include telling MF Global's board it had "robust enterprise-wide risk management" five months before it failed. It found only \$14 million of Standard Chartered wire transfers in a money laundering investigation to be out of compliance, when the bank eventually admitted the amount was \$250 billion. That is no typo, that is an over four order of magnitude difference.

Why does Promontory prosper despite such implausible, indeed, embarrassing performances? It is because financial firms are eager buyers of extreme management-flattering positions that are seldom subjected to scrutiny thanks to Promontory's roster of former regulators. Indeed, Promontory occupies a position no firm holds in any other heavily regulated space, that of being the dominant shadow regulator. As we will demonstrate in later posts, the claims made by Promontory about the review process as to its independence and completeness are at odds with considerable evidence on the ground.

We will present the evidence supporting each of the findings in the following chapters.

## CHAPTER II

# Overwhelming Evidence of Widespread, Systematic Abuses by Bank of America



CRITICS ANTICIPATED THAT THE FLAWED DESIGN, of having supposedly “independent” review firms hired by the banks themselves, meant the reviews were highly unlikely to find much, if any, damage to homeowners. Leaks during the course of the reviews confirmed these concerns, revealing that the review process at many of the major servicers was chaotic and the reviews were designed and scored so as to make a finding of harm virtually impossible.

As bad as that sounds, the reality is even worse. We obtained extensive review documentation from whistleblowers at Bank of America and debriefed them at length. They provided compelling evidence that the foreclosure reviews were plagued by persistent, widespread efforts by Bank of America to avoid any finding of borrower harm. These efforts were supported and enabled by its “independent” review firm, Promontory Financial Group.

The whistleblowers were told their role would be to act as investigators and help borrowers get compensation they deserved. They described the review process as seriously flawed. Yet even with those obstacles, they saw abundant evidence of serious damage to borrowers. The whistleblowers reviewed 1600 borrower files in a “live” environment, and saw hundreds more in the attenuated start-up period. Reviewer estimates of harm varied widely, primarily because they worked on different tests and thus focused on different documents and issues (see Appendix II at the end of Chapter I for a description of tests). Whistleblowers were asked to estimate the percentage of harm and serious harm in the files they reviewed. The lowest estimate of harm was 30% and the highest estimate of serious harm was 80% of files reviewed.

We said we would set forth the support for our major findings of problems. These five findings are:

1. **Predatory practices at Bank of America:** The reviews showed overwhelming evidence of widespread, systematic abuses at Bank of America.

2. **Weak, disorganized project management:** Promontory's absentee management produced confusion, waste, and unreliable results

3. **Unreliable systems and data:** Bank of America's information technology systems have such poor data integrity and usability that a good faith review process was impossible

4. **Concerted cover-up:** Bank of America and Promontory worked together to suppress and minimize evidence of damage to borrowers.

5. **Promontory's incompetence and lack of principles:** Promontory played a dubious role; it had multiple conflicts of interest and little to no relevant expertise.

We discuss the first finding of major problems:

■ **The reviews showed overwhelming evidence of widespread, systematic abuses at Bank of America**

In many cases, the abuses unearthed, as borrowers suspected, would be significant enough in and of themselves to qualify them for one of the large award categories. For completed foreclosures, that award would either be getting their home back plus \$15,000 or \$125,000 plus any equity in the home. As we will see, reviewers often saw foreclosures that looked to be the direct result of the predatory practices or sheer negligence.

**We have limited our compilation below to the activities that the reviewers saw often enough to suggest they were a frequent, if not pervasive, outcome for similarly situated homeowners.** Many of these systematic abuses have also been flagged by foreclosure defense attorneys as widespread. These major abuses by Bank of America include:

**Nine circles of modification hell.** We have jokingly depicted Timothy Geithner's comment. that the widely criticized HAMP mortgage modification program was

simply intended to "foam the runway," as evoking the image of an overloaded B-52 with its wheels up landing on an airstrip covered with borrowers lying down, side by side, who are crushed to a bloody pulp. It turns out that picture is not far off the mark.

The numerous public stories of borrowers getting confused because of often contradictory instructions, complying with all bank requests, making all required payments, and nevertheless being foreclosed on, are confirmed by over 450 borrower records reviewed by our whistleblowers on the modification tests (see "C and G Test" in the description of tests in Appendix II). For instance, one widespread complaint was that the servicers asked for borrower information and the borrower would fax it to the number given, The bank would then claim they had not gotten it and would ask for it again, with this cycle repeating not once, but four, five or more times until the borrower was foreclosed upon. To add insult to injury, the justification often was that the borrower had failed to send in the requested documents. The reviewers found numerous examples where they found notes in the servicers' files documenting borrowers calling in to make sure documents were received. The reviewer found the records every time even though the borrowers had been told the documents could not be located. That was far from the only problem:

We would put the numbers together to see whether they were offered the right modification and determine whether payments were actually made. And that was where a lot of the problems came in. They were oftentimes put into the wrong program, they would be told to make certain payments, then the bank would find out, "Oh, that's the wrong program, let's start all over again," and in the meantime we're six more months into it and it's just getting uglier and uglier, or a borrower may be given two or three or sometimes four different kinds of modifications at once, get very confused as to what they're supposed to be doing, told to make a payment on this and to make a payment on that, and

so often the payment amount of the modification was more than the original mortgage payment anyway. So people would just, they'd get very confused and they would give up. They'd just let their homes go. "We can't deal with this anymore."

Another widespread problem was that modifications were not counted as effective, despite the borrower signing a modification letter and making timely payments, because it was not boarded properly (as in loaded into the servicing platform). And note also in this exchange with Reviewer D, this was not treated by Promontory or Bank of America as a borrower harm:

**Reviewer D:** Well, and I think that's the biggest, the biggest disconnect about mods is, when we were looking at permissibility of fees, we were simply supposed to look at, compare each fee against each matrix and determine permissibility.

**Yves Smith:** Right.

**RD:** However, if I can clearly see on a file a signed modification –

**YS:** Mmhmm.

**RD:** — I can tell that it was received on time.

**YS:** Right.

**RD:** And I can tell that there's no reason why that mod should not have been boarded into the account, but it wasn't... And then the file ended up going into foreclosure.

**YS:** Yeah.

**RD:** Technically, per our guidance, those fees are not impermissible. But don't you and I both think that they should be all impermissible?

**YS:** Oh, and then, and then that wouldn't go over to the mod people [the G test reviewers who examined whether modification were appropriate for the borrower and handled correctly] because there was — because if it wasn't boarded it's not considered to be a mod, so that whole category wouldn't have been examined. You're saying there's a whole category that was basically missed...

**RD:** I do not believe the mod team was looking at that.

**YS:** Right. Right.

**RD:** So whether one hand talked to the other — you know, the mod team, even if it went over to test G or whichever one was doing the mods, and they were able to determine that the mod should have been boarded, whether or not they've been sent — I know they didn't get then sent back to test E and decided to make the fees impermissible.

**YS:** Wow, so say that again, so say that again. On permanent mods — just repeat that. So on permanent mods you saw...

**RD:** So we would see files where a permanent mod looked like it should have been 100% a go.

**YS:** Yes.

**RD:** It was signed by the borrower, it looked like it was returned on time, the borrower sent in the first mod payment on time, but then for some reason it never got boarded onto the account.

**YS:** Right.

**RD:** And then the foreclosure happened –

**YS:** Right.

**RD:** — because it never got boarded. So it still looked like –

**YS:** Right.

**RD:** — they were 90 days late or more.

**YS:** Yeah.

**RD:** And so all resulting foreclosure-related fees, inspections, attorney fees, etc., were still on the account.

**YS:** Yeah.

**RD:** According to each matrix, those fees were permissible because they fell within the guidelines of each matrix.

**YS:** Right.

**RD:** However, based on logic and circumstance, those fees should not be permissible because the mod should have taken place and the foreclosure never should have happened.

And even seemingly straightforward cases of borrower harm would be rejected. The files all contained audit notes, and many of the reviewers would check what happened to the cases they worked on. Here is one example from a reviewer of how a borrower, who sent in all the required payments, was nevertheless found to have suffered no damage:

It was a C test, so that was a Level III test, and this was one specific that the borrower had a trial mod that was granted. The trial mod was signed by both the bank and the borrower, and a copy of it was in the system. The borrower continued to make payments every month on the trial mod and the lender kept returning the payment.

So the actual reviewer, the level III reviewer that reviewed the loan, said that there was harm because the bank returned the agreed payment for the trial mod. So the QA reviewer [Quality Assurance, Bank of

America staffers who would push back against reviewer finding of harm, more in later chapters] found no harm. They disputed it and said that no harm was found because the borrower was not making the contractual payments according to the original loan mods. So that person didn't, wasn't even smart enough to realize that there was a whole new contract in place that amended the original one and this was the new payment.

When it made it to Promontory, and Promontory's response was the lender was returning the payment because the borrower was not making any. So I'm not sure how they were returning payments that were not made, but you would denote in the system where, you know, it would say received check number whatever and the amounts of this, you know, to apply towards trial payments, and then the next note you would see was, you know, an exception payment that would say "Please return this payment for this amount, it's not enough for the contractual payment." So it's like they were not even recognizing that there was a trial mod in place, although there was.

This reviewer found a 100% rejection rate by QA on all the finding of harm on his files, not just the ones he logged, but also the ones recorded by other reviewers doing the other tests on the same file.

**Suspense account abuses.** "Suspense accounts" are when borrower funds are received and held by the bank but not applied. Funds may be held in suspense for a "reasonable" amount of time, which is considered to be only a few days. A key precedent in bankruptcy court has stipulated that the limit for "reasonable" is 15 days if the amount in suspense equals or exceeds the full amount of the principal and interest due. Yet foreclosure reviewers were not given this information and were told to treat as "reasonable" funds held in suspense for months, even as long as 24 months. Of course the result of funds not being applied to interest and principal is an accumulation of late fees and

eventual foreclosure. This problem occurred routinely with modifications. As one reviewer observed:

Let's say someone made a payment and there seemed to be some very mass confusion among the bank employees themselves. The payment would be made and everything would be, the entire payment would be placed in or used to cover late fees not the payment. And then a letter would be sent to the borrower saying, you know, "You're still in arrears, — or this or that, and sometimes it would be charged to principal. Sometimes it would just sit in a — what do they call it, the account — a suspense account for months, and then all of a sudden appear as an interest payment, or half to an interest payment, half to escrow, half to — or, and a portion to late fees. This went on all the time, and that was one of the biggest questions, even as level 3s, most of us having been underwriters, we would look at these and say, you know, "I don't understand how this payment was broken up or why it sat in a suspense account for four or five months before anything was done with it. And it seemed the bank employees weren't always very clear where it should go.

This extract is even more troubling than it appears. There is a very clear hierarchy for the application of borrower payments, set forth both in loan documents and Federal law: interest first, then principal, then late fees, then various other charges. The idea that a payment would be divided between interest and escrow is a sign of, at best, gross incompetence. And per Fannie guidelines, full payments are never to be put in suspense. The Consumer Financial Protection Bureau's [new guidelines](#) track Fannie rules already in place:

**Payments Promptly Credited:** Servicers must credit a consumer's account the date a payment is received. If the servicer places partial payments in a "suspense account," once the amount in such an account

equals a full payment, the servicer must credit it to the borrower's account.

**Obvious padding in capitalized fees in mortgage modifications.** Two reviewers noted utterly implausible charges being wrapped into modifications. One did not keep close tabs but merely observed he saw overly large amounts too often. The other went into detail:

For a borrower that has merely been late, say six months, but let's be generous and call it 12, since they might have been in arrears and got current in the past, there's no way you can get to over \$5000 of legitimate charges and fees, particularly since many states, as well as Fannie and Freddie, limit the biggest item, which is attorney fees. On my test, 40% to 50% of the files had mods, and on them, I'd see offers with capitalized charges of \$10,000 or more, one of \$85,000, more than 50% of the time. It was mainly \$10,000 to \$20,000.

I'd ask for a modification analysis to get a breakdown and see where this came from. I'd do an RFI [request for information] and I'd always get the answer back in 24 hours, "uncollectable" [RFI could not satisfy the request].

While it is possible some of these cases could be justified, the combination of high frequency, startlingly high charges, and no support for them does not pass the smell test.

**Impermissible charges in bankruptcy.** Like the unboarded modifications and the suspense account abuses, this category was simply not captured, in part due to test design, but more important, active dissemination of misinformation. One abuse, cited repeatedly by foreclosure defense lawyers and bankruptcy lawyers, is of impermissible fees being charged after a Chapter 13. During the period when a borrower payment plan is being approved and the 60 months under the plan, all creditors are "stayed", meaning they cannot impose new



charges on the borrower. All claims (principal, interest, any fees owed) must be submitted to the court prior to the negotiation of the plan. The borrower must make his 60 months of payments under the plan. Chapter 13 plans are very demanding and contemplate that the borrowers live meagerly. The borrower emerges with no debts and no savings (unless there had been an unexpected windfall).

Servicers often (too often) accumulate late fees or other fees during a bankruptcy, even though these fees are impermissible (payments made pursuant to a Chapter 13 are timely irrespective of what the mortgage originally specified), and hit the borrower with them shortly after emerging from Chapter 13. The borrower is by design broke and can't afford court fees. Many borrowers lose their house this way.

Many of the reviewers were familiar with this issue, and asked about it in training. The only reference to it in the E test, on fees, was not even a question but a "tool tip" for how to answer the corresponding question next to it.

Note any additional items where potential harm could occur, including but not limited to: robo-signing, bankruptcy issues, BPP errors, etc.

Reviewers report that trainers said that fees may be incurred to the borrower during a bankruptcy, but not charged to the borrower during that time. This is simply inaccurate. These instructions were repeated by the various subject matter experts (known as Proficiency Coaches) as well as Bank of America staff (unit managers and Quality Assurance, see Appendix I; we'll discuss these roles in more detail later). Reviewers who nevertheless were troubled enough to look at borrower records on this issue report not only late fees accruing during bankruptcy, but also more sizable charges, such as attorney fees. Entire categories of loans were treated improperly in bankruptcy. I asked whether borrowers would be hit with large back payments shortly after emerging from bankruptcy:

**Reviewer B:** That would show up, but there were no questions that we would answer that would — there were no questions regarding a bankruptcy and fees other than if the borrower, if the lender filed a motion for release for a proof of claim and they charged a fee for it, we would just make sure that that amount was not over any investor limit or against bank policy, but as far as fees being charged during a bankruptcy, we answered no questions regarding that. In addition to that, the way they applied payment — and my, most of my bankruptcy experience is with Florida —

**Yves Smith:** Mmhmm.

**RB:** — and I know that it's a f— you know, bankruptcy is federal, however each state can opt out of some federal things and choose to follow their local rules, but with payments being made, I'm not exactly sure how banks' policies can trump federal law, but I was always under the understanding that when a person files bankruptcy, every post-decision payment they made should be filed to, should be applied to the current amount due and then any back payments are going to get paid through the trustees of the Chapter 13 plan.

**YS:** Mmhmm.

**RB:** Bank of America had a policy that that was the case with the exception of interest-only loans, adjustable-rate mortgages. They had like several exceptions to that. So there were a lot of people that had filed bankruptcies and the payments were never applied to post-decision payments. They were applying them to back payments that, you know, could have been two, three years in arrears.

**YS:** Oh, and those were supposed to be basically wiped out in the bankruptcy or addressed in the bankruptcy.

**RB:** Correct. And they said how — right, which then in turn would create those extra late fees that you were talking about.

**YS:** Mmhmm. Well that was one way those could be created. Okay. And how many cases like that did you see, or did you hear about those from your peers? I mean, how —

**RB:** I saw at least, almost every bankruptcy I looked at, when I was looking for fees and I was — and one of the questions too that we answered was, were payments applied, you know, according to the loan docs and were they applied according to investor guidelines and state laws, and almost every bankruptcy I looked at, I would say 95% of them, those payments were applied to back payments instead of current.

Reviewer E also flagged widespread problems with bankruptcy charges:

**Reviewer E:** Their fees in their system and their fees in the paperwork they submit to the bankruptcy court don't match.

**Yves Smith:** [indrawn breath alarmed huh]

**RE:** They don't match. They're not submitting full information to the bankruptcy court. And this is what I was told. "We just can't charge the borrower while they're in bankruptcy, but we can assess them." I said, "So you can rack up \$10,000 worth of fees and if you don't bill till them until after the fore— after the bankruptcy, it's legal?" They said, "That's exactly correct."

**YS:** Yeah. Yes, you're correct. So basically you are saying, basically you're saying that every bankruptcy you saw in the system was wrong? So that every bank—

**RE:** No, I can't say every one.

**YS:** But every one you saw. There's a difference. I mean, every one —

**RE:** But — oh, oh, well, yeah. Most of the files I looked at, they would submit minimal fees to the bankruptcy court. Or late fees assessed prior to the bankruptcy filing. Or they would, they were double charging fees. They would charge for the same thing and call it a bankruptcy fee and a foreclosure fee.

**YS:** Wow.

**RE:** And they would — they were — it's ugly. And we were told not look at them.

**YS:** So —

**RE:** "We're not looking at federal law. Federal law is not our problem."

Note that the OCC's order to Bank of America states the review will include:

(b) whether the foreclosure was in accordance with applicable state and federal law, including but not limited to the SCRA and the U.S. Bankruptcy Code;

**Zombie title.** It has only recently come to the public's attention how much borrowers are hurt by "zombie title", which is when a bank completes all the steps up to the sale of the home, including evicting the borrower, yet neither takes title itself nor sells the property to a third party. Recall that the reviews included foreclosure actions that started in 2009 and 2010 so foreclosures left in limbo that started during this period would be eligible for relief. Yet complaint letters that cited this sort of problem were rarely addressed properly and rejected when they were addressed because they did not fit in the review template:

**Reviewer A:** I'll give you an example of some, one in my case. I had a file that I had been working on and I had already answered the questions

regarding modifications and so forth, but I had, something just wasn't working as far as, in my opinion, because this particular borrower kept saying, "I'm being charged for the taxes. The county's coming after me for taxes, but you foreclosed on my home." And she kept writing and calling the bank and telling them, "Look, they're dinging my credit, they're coming after me, the county's coming after me for taxes, you foreclosed on my home, you evicted me — why are you insisting that I pay the taxes?" Well, that took me off in a whole different direction and I wanted to understand why this woman was convinced that her house was foreclosed, because the bank was showing that it hadn't been...

So I started digging, and I actually went to public records, which I wasn't supposed to do, and I found that what had happened was that she had gone through the foreclosure process, everything had gone accordingly. When the house was sold at the foreclosure steps, or on the courthouse steps, the attorney of record never finished the sale. So there was a foreclosure deed, there was everything, but it was never notarized and recorded. But it was in the docket as an unfinished sale. So she technically did own the home, but she couldn't sell it, she could do anything with it, because the bank had created a dirty title. So the bank wasn't paying the taxes, because the sale never happened, even though it got all the way to the courthouse steps and was technically sold, so she was getting billed for all the taxes.

**Yves Smith:** What did your supervisor say when you found that?

**RA:** That it was irrelevant to the C test that I had been working on. I was digging too deep and I needed to stop. But my issue was, there's serious harm here because the bank never finished, the bank and the attorney never finished the paperwork. She's got her HOA all over her for not doing the maintenance, they're suing her –

**YS:** When she's been evicted.

**RA:** The county is — yeah, she's been evicted. The county's suing her for back taxes. I mean, her life is a shambles because you guys never finished the paperwork, there's no harm. The bank's position was there was no sale. Well, yeah, there was. There was enough to make the title cloudy. And made her life miserable. She couldn't get credit. She couldn't rent anyplace. She was living with friends. I'm sorry, there's harm. "Well, that's not relevant to the C test you're working on. *Quit digging.*"

**Force placed insurance and force place escrow.** Reviewers reported frequent instances of force placed insurance, which is not surprising given that Countrywide has a captive insurer and was a recognized leader in this dubious practice. Force place escrow occurred on modifications that were not completed, whether due to Bank of America not approving the mod or failing to board it properly. Escrow was a requirement for a mod if the borrower did not have one already. The borrower would get the worst of all possible worlds, facing new escrow charges while not getting their modification. Forced escrow was not captured in the fees test, and if a mod was not completed it would not show up in the modification tests. These charges could become significant to borrowers and reviewers said they saw them often on the fee related tests.

As this list indicates, all the abuses were widespread and often resulted in a foreclosure, zombie foreclosure or a borrower experiencing other significant damage. Yet the OCC would have you believe that the reviews failed to uncover any real evidence of borrower harm.

The next chapter will describe the chaotic and badly managed review process and how it revealed underlying severe and widespread weaknesses in Bank of America's servicing platform.

## CHAPTER III

### Why the Cover Up Happened: **Promontory's Absentee Management Produced Confusion, Waste, and Unreliable Results**



**EARLIER WHISTLEBLOWER LEAKS** from Bank of America and other servicers described how frequent changes to the review process, both from the OCC and from the independent reviewers, made the process disorderly. This confusion is likely to serve as a convenient excuse for why the costs of the reviews exploded, which was one of the two major rationales for shutting the reviews down.

At Bank of America, the disorderliness of the project is only part of the story. Focusing on that aspect serves to exculpate OCC, Promontory and Bank of America. **The dirty secret of these reviews is they never could have been done properly.** There was no pre-existing, internally consistent, complete and provably correct account of customers and their loans in Bank of America's systems. All the dysfunction of the reviews was inevitable given the state of the bank's records. The only course of action possible was a cover-up; the only open question was how much effort would be expended to create the appearance that a thorough investigation was made. Ironically, we've been told by high level insiders that Bank of America made a more serious attempt at performing these reviews than other major servicers did.

Thus the blame for this epic and costly fiasco rests squarely on the OCC and Promontory. The OCC apparently never bothered understanding that the root of the foreclosure crisis was the lack of integrity in the underlying records. This failing has been tacitly acknowledged in the astoundingly high error rates permitted in the servicing performance metrics for the state/Federal foreclosure settlement of early 2012.

The combination of the 2012 state/Federal and 2013 OCC settlements putting band-aids on gangrene means that **anyone who buys a house with a mortgage in America is taking a gamble that his servicer will abuse him.**

Both of the roots of the foreclosure fraud crisis – strong servicer incentives to cheat on delinquent portfolios because they lose lots of money otherwise, and bad systems that result in borrower harm even in the absence of malign

intent – are alive and well and will continue to plague the housing market. Promontory, which occupies a unique status in America as a dominant shadow regulator, has simply treated this disaster as another profit opportunity. And profit it did.

Recall that these are our major findings:

1. **Predatory practices at Bank of America:** The reviews showed overwhelming evidence of widespread, systematic abuses at Bank of America.
2. **Weak, disorganized project management:** Promontory's absentee management produced confusion, waste, and unreliable results
3. **Unreliable systems and data:** Bank of America's information technology systems have such poor data integrity and usability that a good faith review process was impossible
4. **Concerted cover-up:** Bank of America and Promontory worked together to suppress and minimize evidence of damage to borrowers.
5. **Promontory's incompetence and lack of principles:** Promontory played a dubious role; it had multiple conflicts of interest and little to no relevant expertise.

In this chapter, we discuss the second major finding:

■ **Promontory's "Fire, Aim, Ready" Approach Produced Confusion, Waste, and Unreliable Results**

We describe what happened on the ground in the biggest review center for Bank of America, in Tampa Bay, in depth. The reason for this level of detail in Chapter III is to debunk some of the defenses that the major parties have, or are likely to offer, for their conduct.

One striking element is how murky the roles and responsibilities were. It is important to understand that this is contrary to how the reviews were intended to operate and to specific representations Promontory made to the OCC and Bank of America. Promontory was not simply ultimately responsible for the reviews; it was to handle all of the major tests directly or via consultants and contractors it engaged directly. As we will see, even from its early days, that was not how the project was set up.

With over 2500 employees and temps spread over multiple sites, the foreclosure reviews at Bank of America were a significant undertaking plagued by:

- **The bizarre and changing definition of the role of the claims reviewers**
- **The "mythical" participation of Promontory in critical data gathering and vetting**
- **The "garbage in-garbage out" problem of unintegrated, unreliable records**
- **The "Fire, aim, ready" approach to launching the tests**

We'll discuss the first two topics, the role of the claims reviewers and Promontory in this chapter, and the deficiencies in the underlying records and review process itself in Chapter IV.

**The bizarre and changing definition of the role of the claims reviewers**

One of the most peculiar features of the foreclosure review was the confused and contradictory role of the claims reviewers who worked on site at Bank of America. They were modestly-paid workers, subject to considerable regimentation in matters like their hours and attire, yet who were given substantial responsibility, at least until the content of their task was dumbed down by Promontory late in the review process.

The main task of the OCC mandated foreclosure reviews was to determine whether and what level of compensation was due to borrowers who requested foreclosure reviews. The maximum award was either \$15,000 plus the return of a foreclosed home or \$125,000 plus any equity in the home at the time of foreclosure. [495,000 borrowers responded](#) to letters sent by 14 servicers or to other outreach efforts implemented after a scathing June 2012 GAO analysis of the dismal borrower response rate. Even so, there is good reason to think many eligible borrowers did not participate because they were unaware of or were intimidated by the review process.

While both the bank and Promontory maintain that Promontory was conducting the reviews, as we'll show, the evidence strongly indicates otherwise.

Promontory was engaged by Bank of America to act as the independent reviewer in September 2011. By late summer 2012, roughly 2500 people,<sup>3</sup> both temps working on Bank of America premises and Bank of America employees, worked in multiple locations, with the center in Tampa Bay the largest.

The backbone of the project was a software program called CaseTracker. It was the tool that contained all the questions from all the tests performed on borrower files. It enabled all reviewers to upload documents and input information the reviewers obtained by reviewing Bank of America homeowner records, record computations and preliminary findings called "harm notes" and make additional comments. The program had extensive audit notes, so anyone who worked on a file could see how it was handled after the information was entered into the system, including how staff at Promontory acted on it.

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<sup>3</sup> Bank of America [reported that 1750 employees were working on the reviews as of October 2012](#). Our whistleblowers say that the number of participants on periodic project-wide conference calls prior to that date were roughly 2500. It is highly unlikely staffing was smaller in October. It is thus likely that the discrepancy results from the number of contractors working on the project, which were an estimated 750 in Tampa Bay alone.

Despite Promontory's commitment that it would handle the labor requirements of the reviews (see [Promontory engagement letter](#)), Bank of America began hiring temps to work in Tampa Bay in November 2011. By that point, Promontory and the bank had apparently decided to structure the process as a series of tests designated A to H, with each test corresponding to a lettered section of the requirements of the OCC's April 2011 consent order to Bank of America. For instance, test E was on the permissibility of fees and test F was frequency of fee assessment (as in, even if the fees were allowed, were they assessed more often than allowed). Here are the pertinent sections of the [OCC order](#):

**(e) whether a delinquent borrower's account was only charged fees and/or penalties that were permissible under the terms of the borrower's loan documents, applicable state and federal law, and were reasonable and customary;**

**(f) whether the frequency that fees were assessed to any delinquent borrower's account (including broker price opinions) was excessive under the terms of the borrower's loan documents, and applicable state and federal law;**

The bank organized and trained staff to work on tests A through G (see [Appendix II](#) for brief descriptions). Test H, the final determination of whether the deficiencies identified in Tests A through G hurt the borrower, was Promontory's responsibility.

Initial file review (test A) consisted of basic tasks: ascertaining whether the borrower actually had a loan serviced by Bank of America and met basic eligibility requirements for the review, and determining whether the bank had a promissory note and mortgage at the time of a foreclosure. This part of the review was performed by clerical staff within the bank.

Bank of America sought out contractors who had meaningful experience in mortgage documentation and foreclosure processes for the roles Claims

Reviewer Level II and III (see Appendix I for more detail). These Level II and III reviewers would work on the more demanding tests, B through G. In Tampa Bay, some Bank of America associates from the recently-shuttered correspondent lending department also worked on test B through G, but the whistleblowers estimated that over 80% of the staff in Tampa Bay were contractors.

The job description for the Level II and Level III roles make it clear the contract workers were expected to collect documents and compile data, then perform a significant amount of research, review, analysis, and finally, exercise discretion in determining results. These job descriptions came from Aerotek, the agency that recruited most of the Tampa Bay contractors. Notice the requirement that the reviewers be able to perform computations, like net present value and debt to income :

**Job Summary:** A Claim Process Reviewer III will be responsible for, but not limited to, evaluating default mortgage servicing loans and files during the Claim Review process, to determine if all required loss mitigation activities were handled and documented in accordance with the requirements of HAMP, proprietary modification or other programs' requirements. Ensure that all required processes and procedures were followed; system of record notated, documentation available/imaged and appropriate borrower communication (verbal and written) was performed accordance to SD Directives/Internal Operating Procedures. Review files in their entirety, and provide a recommendation whether or not any errors, misrepresentations or other deficiencies that may be identified in the review resulted in financial injury to the borrower or the mortgagee.

**Job Duties**

- Review foreclosed loans, evaluate whether or not they were processed in accordance with HAMP, Proprietary Modification or other applicable program guidelines and requirements
- Review and compile fully documented loan histories, imaged documents and information available from all sources to collectively determine if it validates the information used to make the home retention / loss mitigation decision
- Complete Claim Review according to clearly defined requirements; make a recommendation as to whether the Borrower / Customer has a valid claim
  - All files will be subsequently reviewed and decided by an independent consultant

Competency	7 Ranking	5 Ranking
Mortgage servicing and Default servicing (Foreclosure, Collections, Loss Mitigation, Bankruptcy, and/or Loan Modification)	Minimum 7 years (minimum 3 years Default Servicing)	Minimum 5 years (Minimum 3 years in Default Servicing)
Ability to complete claim review and perform evaluation	Minimum 4 years	Minimum 2 year
Understanding of Loss Mitigation, HAMP and Foreclosure processing	Excellent	Excellent
Understanding and ability to calculate NPV (Net Present Value) and DTI (Debt to Income)	Excellent	Excellent
Analytical, verbal and written communication skills	Excellent	Excellent
Computer skills (validation through testing required – test scores to be submitted in job seeker profile)	Word, Excel, PowerPoint, Outlook and web navigation	Word, Excel, PowerPoint, Outlook and web navigation
<b>Competency</b>	<b>Must have ALL of the soft skills listed below</b>	<b>Must have 8 out of 11 of the soft skills listed below</b>

The Level II job description similarly sets forth responsibilities well above that of simple document retrieval and compilation of information. Notice also how they track the tests described in the OCC consent order:

**Worksite Address: 4909 Savarese Circle, Tampa FL 33634**

**Job Summary:** A Claim Process Reviewer II will be responsible for preparing and reviewing Mortgage files for an initial screening to validate accuracy of the fees and/or penalties assessed, whether or not loss mitigation procedures were correctly executed within applicable state and federal laws and that all required procedures were followed.

- Conduct a complete review of the file to ensure all default timeframes were processed accurately.
- Review to determine if ownership of the note and mortgage was properly documented when foreclosure proceedings were initiated and document any exceptions.
- Determine if the foreclosure proceeding was processed in accordance with applicable state and federal laws, to include SCRA and US Bankruptcy Codes, and document any exceptions.
- Validate fees and penalties charged and assessed were reasonable, customary and within the applicable state and federal laws, and document any exceptions.
- Determine if there is evidence of a direct relationship between loss mitigation procedural errors and harm to the borrower.
- All files will subsequently be reviewed and decided by an independent consultant

Many of the early hires (November 2011 through March 2012) exceeded these job requirements. Moreover, many individuals who met or exceeded the Level III job requirements worked as Level II reviewers because the higher-paid Level III slots filled up quickly.<sup>4</sup>

The agencies recruiting the contractors presented the assignment as one where they would have an important part to play in helping wronged borrowers obtain a measure of justice, consistent with the Administration’s messaging about the initiative. The temps thus believed their role was to complete the tests rather than act as document-gatherers for Bank of America on behalf of Promontory. They received one week of training on the relevant systems and one and one half to two and a half weeks (depending on the tests they were assigned to) of training on their tests. They then spent an additional week to two weeks being certified. The training and certifications were performed by Bank of America employees, not Promontory.

<sup>4</sup> As the tests were simplified and the roles were downgraded, the bank recruited lower skilled workers at lower levels of pay to fill the Level II and III roles. More on that in Chapter IV.

Moreover, the Bank of America employees (the team leaders who oversaw groups of 12 to 15 reviewers, and the unit managers and adminisphere above them) maintained they were not managing the contractors.<sup>5</sup> All the whistleblowers discussed how confused the governance was. For instance:

**Reviewer B:** I couldn't even tell you what a Promontory person looked like. We would get advance notice that they were going to be in the building, and, you know, to keep your head in your computer and to focus on your work and make it look like you were working hard, and, you know, we would get told, "Oh, they may come around, and, you know \_\_\_\_" [crosstalk]

**Yves Smith:** So you'd get those kind of instructions from Bank of America people, even though they weren't your managers —

**RB:** Correct... We had basically no manager. We had a unit manager and a team manager, and there were probably five to six teams for every unit manager, and, I mean, if we had something, if we were wearing something that was inappropriate, they would contact our agency and tell our agency to call us and tell us to go home and change...

They could manage us through the project as far as making sure that we had training, which we'd never had, proper training, making sure that we were using the guides that we were told to use, but when it came to actual HR, we, you know, you couldn't even go to your manager and say, "Hey, can I talk to you for a minute alone?" They would say, "No, you have to contact your agency." But when it came to Promontory

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5 They may have meant that simply because the nature of the contractor relationship meant that human resource issues, like dress code infractions and changes in schedule, needed to be handled through the agency. However, all the interviews make clear that the immediate supervisors, meaning the team leaders and unit managers, interpreted the relationship more broadly.

being in the building, they had no problem making sure, you know, telling you what to do. It was a very odd situation.

**YS:** And when you had these questions, when you were told to interpret things in the most permissible manner, who told you that, gave you those kind of instructions?

**RB:** The team managers and the unit manager.

Before assuming the reviewer confusion simply reflects a lack of sophistication on the reviewer's part, the confidentiality agreement all the temps signed shows a similar pattern of managerial inattentiveness. It is defective legally: there is only one party to the agreement, the contractor, and no governing law or term is specified (although it does have the expected survivorship clause). It defines "Confidential Information" as propriety (etc.) information disclosed to the "Recipient" (the temp agency) when the temp agencies never received any access to customer records or the content of the tests, presumably the proprietary information the bank and Promontory were most concerned about.<sup>6</sup>

And in case you thought the agreements the contractors signed with their agencies meant the agencies constructively received the information, think again. Most of contractors we spoke to had no written agreement of any kind with their agency (and remember, some came from the agency that employed most of the Tampa Bay temps). Amusingly, the only document formalizing one contractor's

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6 Bank of America was not as reckless as the defective confidentiality agreement suggests. The reviewers sat in a cube farm and were monitored closely. They were fired if they e-mailed anything to personal e-mail accounts, even in cases when it was simply a joke or a stern message to a non-manager manager. Use of the printers was also monitored and regarded with suspicion. However, lapses involving Promontory information merely resulted in scoldings. As a practical matter, the bank's leverage over the employees was due to the fact that they wanted to remain employed and continue on the project.



relationship to his agency was a printout with his regular and overtime rates, sent *after* the assignment had started, stating the agreement was “oral.”

Documents provided to some of the contractors in advance of their first day on assignment included a [PowerPoint presentation on Bank of America’s servicer dress code](#), along with documents stating that Bank of America (as opposed to Promontory) was the agency’s client.

The peculiar work structure, with Bank of America distancing itself from certain types of management responsibility for temps it was paying for directly, may have resulted from the desire to preserve the fiction that Tests A through G were under the control of Promontory, not the bank. This is important because the [April 2011 OCC consent order](#) explicitly required the independent reviewer to conduct all the tests, not just the assessment of harm.

Although the contractors report that while the Bank of America managers exercised a great deal of control over their work environment (for instance, they were forbidden to sit at their desks more than five minutes prior to their shift and were hectored if they were more than a minute late), they nevertheless did not directly control their activities. Thanks to the instructions from the agency that the contractors were to help homeowners, plus the amount of time dedicated to training, many of the contractors were diligent about probing for and finding evidence of harm to homeowners. As we’ll see in Chapter V, Bank of America worked systematically against that, meaning it opposed the efforts of the low-level workers it was paying for.

Reviewer D confirms that the reviewers had considerable latitude in how they executed their tests:

**Reviewer D:** Yeah. That changed too. Initially, you know a lot of us were initially told to go look at the borrower complaint.

**Yves Smith:** Mmhmm.

**RD:** But then there was a different school of thought, don’t bother looking at the complaint because, you know — and this is my, the way I felt is, I’m not really going to put too much weight in the borrower’s complaint because the borrower doesn’t necessarily know all the ways they may have been wronged.

**YS:** Yeah.

**RD:** So the borrower may be complaining about something that, you know, was actually done correctly, but we might have screwed them over someplace else.

**YS:** Yeah. Yeah.

**RD:** So I didn’t really — I reviewed the whole file completely independently.

### **The “mythical” participation of Promontory in critical data gathering and vetting**

Despite the fact that the reviewers were putting extensive amounts of information and test harm notes into CaseTracker, Promontory spent virtually no time at the Tampa Bay site. They seemed content to rely on a “Quality Assurance” department which was staffed by and under the control of Bank of America.

The reviewers were told that Promontory would be visiting the site monthly, and the OCC every other month. Yet none of the whistleblowers, including the ones who were there 12 months, recall more than four visits by Promontory. When Promontory visited, Promontory employees did not walk the floor or chat with the reviewers freely. Instead, a few of the reviewers were chosen to meet with Promontory in small groups called “round tables” (and when the OCC visited, the OCC along with Promontory). These participants were briefed by Bank of America before the meetings and instructed not to volunteer information, only to answer questions. It was important to stay on good behavior in these

meetings. One reviewer was dismissed immediately after participating in a round table.

One of the whistleblowers had been included in a round table with both the OCC and Promontory and said the OCC was concerned mainly with whether Bank of America was pushing the reviewers to meet production goals. During one site visit, Promontory, along with the OCC, attended a training class given by one of the Proficiency Coaches to about 90 people on one of the major tests. Why was Bank of America and not Promontory conducting these sessions?

Otherwise, Promontory was inaccessible:

**Reviewer A:** And we couldn't, we were told time and time again, you can't e-mail Promontory and ask questions. You just can't.

**Yves Smith:** Mmhmm. Mmhmm.

**RA:** Which, oftentimes, you know, we would sit around for days and weeks waiting for answers from Promontory because we couldn't ask the question directly and we had to wait for it to —

**YS:** Filter through.

**RA:** — go through the proper Bank of America channels to finally get to Promontory and come back to us, and that always made it suspect because it always came out in favor of the bank, whatever the question might be.

Promontory would likely maintain that these criticisms are irrelevant, and would claim, as it did in [an October, 2012 in an article by ProPublica questioning the independence of the review process](#), that it was doing all the substantive work:

Promontory spokeswoman Debra Cope said Bank of America's employees "are responsible only for the clerical work of assembling the documents and files." Promontory employees analyze the material assembled by Bank of America "independently with no involvement from [Bank of America]," she said. "We perform all the tests."

When Promontory said "all the tests" that meant all the tests A through H as set forth in the OCC consent order.

However, if we look at the job descriptions, the number of tests performed by Bank of America employees and contractors, the structure of the workflow, and the ambiguity of many of the questions that the lower level employees were required to answer, it is apparent that the Level II and III workers were performing the overwhelming majority of the B through G tests, which were critical to any determination of harm. They also prepared extensive harm notes, which were clearly intended to be input to Promontory.

Moreover, prior to the very last week of December 2012, right before the project was shuttered, the workers did not provide enough in the way of underlying documentation and information from Bank of America systems for Promontory to be able to perform the B through G tests. It was only then that revised test questions and procedures were rolled out to reduce the Bank of America staffers to the purely clerical role described above.

In a surprising bout of candor, the OCC, a mere week after the grand Promontory assertion that it was performing "all" the tests, undermined that claim. The OCC [admitted](#) the review process had changed from that set forth in their orders. The OCC divulged that the banks were self scoring the files and sending their opinions to Promontory, with Promontory then making its own determination:

2) Servicer will collect, aggregate, and provide to the independent consultant the appropriate pertinent documents pursuant to standards set forth by the independent consultant, or the servicer will have previously instructed the independent consultant where the documents may be located for those independent consultants who directly pull all information from the servicer's systems.

3) Servicer generally performs its own review of how it administered the file, and will communicate its rationale and self-identified findings of harm/no harm to the independent consultant. That does not influence the independent consultant, nor does it substitute for the independent consultant responsibility to conduct its own review. How the servicer's internal review is conducted varies among each servicer.

4) The consultant independently evaluates the file using its own file review procedures/templates and personnel. The independent consultant may require that it be provided additional documentation when deemed warranted (this may involve what you described as "additional information" teams). The independent consultant may review the servicer's rationale/findings, but will conduct its own review and draw its own conclusions.

While this may not sound troubling, the structure of the work indicates that it was the reviewers, and not Promontory, who were making many important substantive decisions before the information was sent to Promontory. (This process could be used to subvert any findings of damage to borrowers. In Chapter V, we'll discuss in detail the many ways findings of harm were suppressed.)

For instance, the reviewers would compile “harm notes” on the detailed questions in each test. Reviewers on tests E and F would compute the amount of impermissible fees. As mentioned above, these findings would then be sent to a team called “Quality Assurance” which the whistleblowers called QA or QC and was under the control of Bank of America. QA would regularly push back on any findings of harm:

**Reviewer B:** Right. Well we would review the file, then it would go to our QA department, who would then review the file, and the QA department had less training than the rest of us. Some of them were brand new –

**Yves Smith:** Oh, wow.

**RB:** — and came to the project later on, so then they would inevitably take it back to us for, you know, something that they thought we should fix, and we were given the opportunity to either agree with them or, you know, just rebut it, and our manager would have to then send it back to them, and then it would go to Promontory from there if it passed their review too. So there were at least two different departments at Bank of America that touched it before it even got to Promontory.

Put it another way: why would the QA Department push back against reviewer findings, and why would the reviewers be given the opportunity to rebut it, if they were not doing substantive analytical work?

Similarly, if you look at the detail of the tests, you can see the reviewers are doing granular tasks that were highly unlikely to be replicated or independently verified by Promontory.

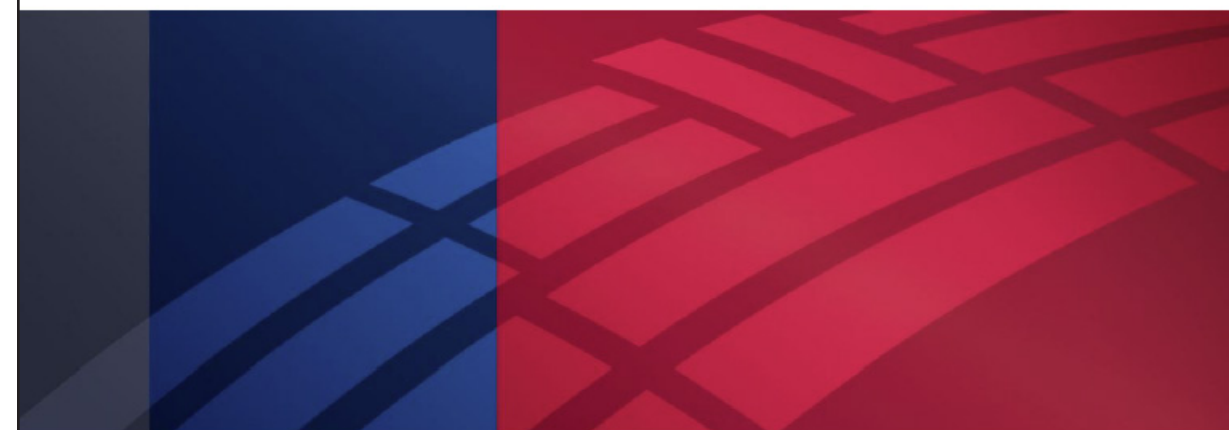
## Bank of America Foreclosure Reviews — EFAT Primer

EFAT Primer

E&F Analytical Tool

07-18-2012 version .04 (CaseTracker UAT version  
6.2012.07.17.1927)

Revised 08-22-2012



Bank of America 

For instance, on page 10 (heading “F. Add New fee”) the Level II reviewers were instructed how to break down a dollar amount into underlying components and record if any of those components were impermissible:

For example, the Capd Fees and Escrow fee (10153) is the lumped fee that includes both the escrows and fees capitalized as part of the loan modification that occurred on this loan. Since this fee includes multiple fee types or items, it might be necessary to break it down. Let’s say that during the review, the claim researcher has determined that the capitalized fee as part of the 10153 fee contains impermissible fees but the escrow portion is permissible/correct. The “Add New Fee” feature will allow you to split this fee into two distinct fees. Now you can exclude the escrow portion while applying limits to the fees.

Similarly, on page 11:

Once fee is located, manually input the limits for the fee based on loan docs, state or investor guidelines. Provide a concise comment to explain the reason on why the fee is being flagged as impermissible. Select the appropriate “Refund or ADJ.” Repeat this for all fees found to be impermissible.

In other words, CaseTracker did not capture underlying documents (the state or investor guidelines) for Promontory to reviews the accuracy of the work done by the reviewers. They received summary information that reflected a considerable amount of underlying analysis and judgment.

The reviewers did say there was an effort ongoing to simplify (“optimize”) the tests. But they did not believe it resulted from a recognition by Promontory that it was at risk if it continued to delegate as much responsibility to the low level claims reviewers as it had, or to lower costs to Bank of America. They instead noticed a pattern of simplifying the tests to eliminate questions that would lead to findings of harm. And they also reported they were not directed (at

least prior to the last week of December) to upload documents or information into CaseTracker that would allow someone at Promontory to do this sort of analysis instead. As one reviewer described it:

The 2200-question test that you just mentioned was actually the G test. That was the test that would examine modifications and forbearances and so forth in depth.... Oh, it was 2200 because it was 50 different states, so in each state it might be only so many, it would only be a fraction. Eventually narrowed it down to 500 questions because they took out state-specific laws...

These tests would start out in massive proportion and actually be whittled down to virtually nothing, and any question that would, in my opinion, that would direct you to harm was eliminated, and particularly in the G test where they took out questions on state-specific laws that would indicate a procedure wasn’t followed properly. So, yeah. Those tests were pretty much manipulated to become very benign.

As the tests were simplified over the course of 2012, Bank of America also lowered the pay rates and skill requirements of the temporary staffers it was bringing on board in Tampa Bay. But through November 2012, the Level II and Level III workers believed they were performing tests B through G, and the elaborate review process confirms that (recall that when a reviewer submitted a completed file, it went to the Quality Assurance department. QA could send the file back noting their objections to findings of harm or flagging other issues. The reviewer and the team leader would have the opportunity to rebut QA before the file was sent on for other tests and then to Promontory).

In November, in the wake of an article by ProPublica [questioning the independence of the reviews at Bank of America](#), the workers in Tampa Bay

were told Promontory had not been using their analyses or harm notes, and had been doing the tests themselves.<sup>7</sup> This was a typical reaction:

**Reviewer D:** So all the time we spent on all those files was just a waste because Promontory was supposedly not looking at anything we did.

**Yves Smith:** Do you believe that statement or not?

**RD:** No. No.

In keeping with the belief that Promontory was using their analysis, many of the reviewers continued to perform the tests the way they had been trained, which included making harm notes.

In December, [ProPublica](#) published an article that in its headline, “Cheat Sheet: BofA Supplied Default Answers for ‘Independent’ Foreclosure Claims Reviewers,” depicted the Bank of America controlled reviews on tests A thought G as a “cheat sheet.” Even though [the negotiation of the settlement was well underway](#), the story appeared to have provoked responses from Bank of America and Promontory. One reviewer reported:

Get this shit... The article was dated Dec 17th. Things were pretty slow at work that day. The very next day all the proficiency coaches received a last minute meeting invite for that morning. In that meeting I heard they were told that the optimization had been approved and that they had to scramble to *learn* the process and prepare materials so they could start the first training class the very next day at 9AM! From that moment forward they were holding 2 classes a day until everyone was trained. The urgency made no sense to me, especially since it was a

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7 If this were true, it also raises the question of why the contractors were hired in the first place, since Promontory had access to the same systems that the Tampa Bay staffers did.

few days before Christmas and we had so many people that were on vacation!

The other reviewers confirmed it was not until this rushed training was completed that the procedures were in place so that the workers in Tampa Bay were merely extracting and compiling information for further review by Promontory. That new process was effective for the one remaining week before the settlement was signed and the temps were dismissed.

In Chapter IV, we'll discuss why these reviews never could have been completed properly and how the half-baked implementation by Promontory only made a bad situation worse.

## CHAPTER IV

# Why the Cover-Up Happened: Shambolic Bank of America IT Systems Made Proper Reviews Impossible



CHAPTER IV FOCUSES ON HOW THE CONFUSION AND HIGH COST of the foreclosure reviews weren't simply the result of overly ambitious targets and poor design, oversight, and implementation of the reviews. These reviews never could have been done properly due to significant gaps and inaccuracies in the borrower records at Bank of America. That meant the only possible course of action was a cover-up.

Here we'll discuss:

- The “garbage in-garbage out” problem of unintegrated, unreliable records
- The “fire, aim, ready” approach to launching the tests

### The “garbage in-garbage out” problem of unintegrated, unreliable records

The foreclosure review revealed one of the root problems of the foreclosure crisis: records that were unreliable, difficult to use, and, in too many cases, incomplete.

Let's start by understanding the difficulty of the task even if everything had been in good order. We've taken this snapshot from the Excel training model for the E and F tests, which were on fees (see [here](#) to access the full model on ScribD or scroll down to the embedded version later in this chapter). This shows the top part of the computer screen the reviewers would use to perform their work.

AACER	AS400	Bank Policy	DISCOVERY SITE (reference)	EPW	FOCUS	HomeBase	HomeSaver	Hud son Cook State Survey	HUD State Matrix	New Worksheet			
I portal	ImageView	LAMP	LAFI	LHIS	LPS	OCC Doc Collection	PMO Drive	RUST	SCBA	Siebel	SRM	TrackSource	Urban
Bankruptcy	Bid Information	Breach Letter	Forced Place Escrows	Foreclosure	Late Charges	Judgment	Loan Information						
ShortSale/ Other Loss Mit	Loss Mitigation Activities	Miscalculated Fees	Payments	Payoff	Reinstatement								
Case Number	XXXX	Loan Number:	XXXXX	Borrower Name:	Lily White								

Each of the blue boxes is a separate system. To complete any of the B through G tests, a reviewer typically needed to access seven to ten of these systems. There were no subsets of borrowers for whom all the information could be retrieved via one system.

Having to go across so many systems to get basic information about a borrower is a sign of poorly integrated and managed computer systems. This problem alone made it costly and difficult to do the reviews, and greatly increased the odds that important information would be overlooked or not captured properly from one of the systems and entered into CaseTracker, a separate package used to perform the reviews.

The former Countrywide systems were the backbone of the Bank of America servicing platform. There were often gaps, even gaping chasms, in the information available on borrowers who did not have Countrywide-originated loans. For instance, comparatively little information could be retrieved on some mortgages Bank of America was servicing due to having acquired servicers, such as First Franklin (via Merrill Lynch), Wilshire,<sup>8</sup> and Nationspoint. As one reviewer stated, “on these files, proper review definitely could not be done.” That meant that Promontory and Bank of America would reject their allegations of harm, since they would not be able to find relevant information.

Even Bank of America legacy loans had important information that could not be retrieved via the system shown above. The data from old Bank of America borrowers had been uploaded into the Countrywide systems in early October 2008, a few months after the Countrywide acquisition closed. As one reviewer described it:

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<sup>8</sup> Wilshire was [acquired by IBM on March 1, 2010](#). Wilshire was not a party to the OCC consent orders but Bank of America was. If a borrower was foreclosed on in 2009, while Wilshire was owned by Bank of America, and asked Bank of America for a review, Bank of America would have had to obtain the records from IBM. The reviewers, in contact with members of the “non-I-series” team tasked to these problem children, were not aware of measures to obtain information from third parties.

Prior to the merger we were not able to access Bank of America servicing information. We could request a payment history from the old system, MSP, but we didn’t get everything and we could not verify it.

This was the same for the companies that were acquired by Bank of America. There was a large amount of information missing. There were times with these files, legacy Bank of America, Wilshire, First Franklin, etc. where we could not get servicing information, modification, invoices from attorneys and at times we could not get the HUD1 settlement statement that was used to close the loan, or the mortgage.

A third reviewer described how these information gaps undermined his work:

This created major problems in determining timelines. If a foreclosure started in 2008 I could not determine if procedures were followed at all. If modifications started prior to 2009 I was just out of luck to know if documents were received, signed, how and what modifications were offered. I had one case in which my notes actually started at the rescission of the sale and ended with the sale. I couldn’t determine anything about what had happened. Eventually that file was removed from my queue, because I had requested all notes from customer service, all notes on mods, all documents prior to the foreclosure sales deed and so on. The request became overwhelming.

That is not to say that reviewers were always fatally stymied when they requested information from the old Bank of America system, MSP. It could take anywhere from a day or two to over a month to get information back when it did come back. The output was pdfs, meaning images, from a DOS-prompt system. This sort of output was hard to work with and increased the odds of reviewer error.

Even where the records were complete and understandable, it’s not clear they had integrity. It is important to understand that in the reviews, the position Bank of America took was that the major Countrywide system, AS400 (the same data

that was also in a more user-friendly system called LAMP) was above question. As a reviewer described it:

We were told that AS400 was the system of record and it trumped everything. I had one file with a modification the borrower agreed to and made payments on but it was not in the system so I spoke to my manager at Bank of America.

I was told “That’s the system of record. That’s what you use.”

I asked: “You are telling me if I have the promissory note and it shows a \$100,000 mortgage and a 6% interest rate, and I can see it was entered into the system as \$150,000 at an 8% rate, I’m supposed to use that?”

“Yes, that’s the system of record.”

Incorrect or questionable information was not a hypothetical issue. The information in AS400 was data that had been input manually. Not only did it not contain images of the records from which the data entries had been made, reviewers could not locate images of documents stored or created by Countrywide elsewhere.

One major issue that illustrates the problems with relying on the data in the systems was reclassification of fees. Individuals working on tests on fees attest that on every single file they saw, fees were reclassified. Much of the time it was multiple reclassifications, from the borrower to the investor and back again, and on many files, it involved more than one fee. The reclassifications were so widespread that the training materials included sections on how to handle them, as the example below illustrates :

Fees in order of occurrence from the bottom up

Transaction Date	Transaction Code	Fee Description	Actg Typ	Debit	Credit	
3/18/2011	10071	ADVERTISE/PUBLISH	Z	\$235.00	\$0.00	*Z* accounting type = Accounting transaction only. NOT a new charge. Fee is "Reclass Reapplied" as Borrower-owed here and backdated to match the initial fee date. (Actually occurred on 8/28/11)
8/28/2011	55014	ADVERTISE/PUBLISH NB	Z	\$0.00	\$235.00	Fee being credited or "Reclassified"
3/18/2011	55014	ADVERTISE/PUBLISH NB	C	\$235.00	\$0.00	*C* accounting type = Initial Transaction. Initially assessed as "NB" aka Non Borrower owed.

One of the reviewers commented on the training example:

Not all reclassified fees were that simple. Some were reclassified and reapplied 4 or 5 times so they were very difficult to trail. (Borrower owed => Investor => Non Borrower => Back to Borrower, etc.) We had to learn how to trail the fees for Test F because any fee that was owed by the borrower more than once in that trail would look like a duplicate due to backdating when it actually wasn't.

Important information was also difficult to interpret:

**Reviewer A:** Well they simply gave us the notes that were in the system, which were often incomplete, sporadic — I mean, there were notes that came from India and incredibly difficult to understand, there were system notes from Countrywide, and it was incredibly difficult to decipher a lot of times simply because of the shorthand people were using — the Bank of America employees and the Countrywide employees were making up their own shorthand and sometimes it was very difficult to interpret exactly what was going on.

**Yves Smith:** Mmhmm.

**RA:** We would sometimes get together in little groups and say, “Hey, you read this and tell me what you think it says.” So. The notes came from everywhere and the systems were kind of a jumble.

Notice also that Bank of America relied on the Lender Processing Services Desktop system for its attorney information. A consultant to the foreclosure reviews said via e-mail:

At least at the B of A review, they went through the charade of assessing permissible/non-permissible fees.....at other reviewed servicers they didn't even bother....reviewers were asked to accept LPS system generated invoices (as input by conflicted LPS network attorneys) at face value and accept them



as legit with no questions asked. No coincidence that settlement negotiations ramped up about the same time (November) that reviewers with integrity were calling to review support behind inflated third party non-legal cost billings (service of process, title charges, publications costs, etc.), not to mention evaluating the attorney fees themselves against state and GSE limitations.

It was commonplace to see "third party" (not) legal costs billed through the LPS system at multiples of market rates given the blatant conflicts of interest that existed between servicers, LPS, their network attorneys, and the entities providing the "non-legal" foreclosure related services.

Why do you think David Stern and others were eventually delisted by Freddie Mac? And it should not go unnoticed that the excessive charges were borne by far more than those foreclosed upon..... they were borne by those who had their loans modified, reinstated, or may even have paid them off.... or, by taxpayers when sale proceeds at foreclosure did not exceed GSE loan balances. All of it, swept under the rug with the settlement, courtesy of our bank captured OCC. So just why is there an OCC? Main Street needs to demand an end to an agency that has long since ignored its interests.

Finally, one reviewer saw the person sitting next to him add a note to a Countrywide borrower record by mistake. Even though that was likely an isolated case, it should have been impossible for that to occur, again indicating major system deficiencies.<sup>9</sup>

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<sup>9</sup> The reviewers in Tampa Bay were handling only complaints involving completed foreclosures. Even if this lapse was material, it would undermine the integrity of the review but not result in other harm to the borrower. We did not hear of any gaffes that affected payment records. If this sort of mistake was possible and took place, meaning reviewers were accidentally adding credits or charges to a post-sale account, it would be a trailing charge or credit to a GSE or private label trust.

When Bank of America acquired Countrywide, it was considered to have the best systems of all major servicers. And as stunning as it sounds, Bank of America apparently comported itself better than most of its peers did in these reviews. Consider what the reviewers at the other banks must have encountered.

### **The "fire, aim, ready" approach to launching the tests**

The implementation of the foreclosure reviews was even more confused than the underlying systems. Promontory and Bank of America ramped up well before the tests were ready to go into production. This meant the temps sat around, after being trained, processing borrower records in a training mode, for weeks and, for some, months before the tests went into production.<sup>10</sup> From a reviewer who joined at the end of January 2012:

During the initial training week we were informed of tests A, B, C, D, E, F, and G. In that period we actually trained on the systems using test A to get us used to maneuvering in some of the systems. We were told that B and C were in the beta testing phase and would be ready for us to work shortly after we got to the floor. For the first few weeks we trained and then were certified on Test A. Then we Level IIIs began training on Test C and Level IIs then trained on Test B. Once we were certified on C we went live, so by early April I was live on C.

This was about as efficient as it ever got, and even this example was not that efficient. With five weeks maximum to train and certify a reviewer on a set of tests, this end of January hire could have been processing files in early March but wasn't until early April. He was in the first group to work on Test C, so other Level IIIs hired with or before him had even more unproductive time. In addition, some of the Level II reviewers were moved back and forth between

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<sup>10</sup> The reviewers speculated that some of their work in training mode may have been used to refine the tests. Even so, any debugging could easily have been accomplished with the 120 to 150 Bank of America employees from the shuttered correspondent lending department in Tampa Bay who were also assigned to this effort.

the B and D tests (one set of assignments) and the E and F tests (another set) which meant they wound up being trained on all four, resulting in two to three weeks of superfluous training and certification.

The Level IIs tasked to E and F test faced even more make-work. This is from a different contractor hired at the end of January 2012:

**Yves Smith:** When did they add the new tests? They added the E and F tests roughly when?

**Reviewer B:** I want to say about April.

**YS:** Okay.

**RB:** They — it was already in the system but none of us really got a chance to see it. We were told that the resource guides that we were to follow by the book, question by question, every single time we opened it, we were told that one for E and F had not been created yet. And then when it was released it was very vague and was not even something that we could use that would give us any guidance.

**YS:** Mmhmm.

**RB:** So, you know, we, I sat from probab— well, I didn't actually get to become an a live environment until August. So I literally sat for seven months waiting, you know, for these resource guides to be completed and waiting for the tests to be approved, I guess from everyone, so that we could actually go live.

**YS:** What \_\_\_\_ [crosstalk]...What were you doing for those seven months?

**RB:** Looked at — well, we could still pull loans in CaseTracker, we were just in a training environment, and so whatever work you did, every night at midnight would just be wiped out and disappear when

you were in a training environment. So we would have to pull loans and kind of go through the test questions and get familiar with, you know, what type of questions were being asked. And that's really about it. They never came around to say, you know, to provide more training

**YS:** So you did no useful work for seven months?

**RB:** Yes. It was miserable.

One of the reasons E and F tests were so slow to be launched was that they were revised numerous times. These questions from E Test are part of the tenth iteration; see the last two worksheet tabs of the Excel model workbook below:

#### **[Bank of America Foreclosure Reviews — Model for E and F Tests](#)**

The G test, which was on modifications and one of the most likely sources of valid homeowner complaints given the widespread reports of HAMP modification abuses, also did not go into production until August. From a Level III reviewer (recall that Level IIIs worked only on Tests C and G):

C [test for certain dual tracking and certain default-to-sale timeline violations of the mortgage] was in production first. As for test G, it went live in August. Up to that point, once C was basically over, everyone was either doing busy work and completely worthless spread sheets supposedly for G test. Everyone with any underwriting experience knew these spread sheets had no relevance to the task at hand. But it kept everyone busy.

Another reason the tests were delayed considerably was that the reviewers, who were apparently more diligent than the bank anticipated, asked for guidance on the often inexact questions and deficient resource guides. These queries were escalated first to Bank of America (problematic, particularly since the unit leaders were from Countrywide) and sometimes to Promontory. Several

reviewers often raised the same issue separately. They could, and often did, get conflicting answers to basic questions, such as “Does a modification cure default?” In other cases, questions led to further changes in the tests or test instructions.

These problems were common, as one reviewer recounted:

The tests were delayed for a couple of reasons, one was some questions were ambiguous. For example: Was the borrower in a permanent modification at the time of foreclosure?

While that question does not sound ambiguous, the instructions for answering the question made it that way. Example: the original instructions told us that a payment on the modification had to have been made to be a valid modification. However, different modification program documents said different things about what made a modification valid. Some said that a payment must be sent with the signed and notarized modification agreement. Others simply said for the modification to be in effect, signed and notarized documents had to be returned. The instructions changed constantly. At one point it was that a payment needed to have been received on time, then it became a payment had to be received and it became fully executed (borrower and bank) and a payment, then it was an offer had to have been made so the instructions made the question ambiguous.

Other questions that became ‘ambiguous’ were question regarding publication dates. That is, newspaper publications of sale information and then the postponement of a sale. Some states required repeated publication of sale information after a postponement, others required on the notice just before sale, some required only a filing of notice of sale with the court. So in determining a foreclosure timeline the question could lead to all kinds of rabbit trails (as well it should) as

to whether the time line was proper. Again, instructions changed repeatedly and more often than not the PC [Proficiency Coach] simply decided whether or not they wanted you on a particular rabbit trail and what was a proper timeline or not.

Another issue for the questions was that made a question ‘ambiguous’ were state and program specifics. A question in G, and I am paraphrasing, asked if the modification offered was one that the borrower was actually eligible for based on the specifics of his/her loan type. That question led to state specific information [e.g.: Hardest Hit Programs] since Michigan had certain criteria but so did all the other states so that question became very time consuming since we needed to know what Fannie Mae/Freddie/FHA/VA/conventional/state issues had to be covered but we did not necessarily have all the resources [resource guides] to cover that.

Moreover, it appears that completed reviews were not reopened in light of problems exposed later. A whistleblower explains:

The question of rescore/correction was a big issue. This was especially true of questions on Test C regarding trial mods/permanent mods/ forbearance. The instructions changed often and many times we complained that our answers on previous cases were now wrong. I cannot remember ever getting a test back because the details on how to answer the question had now changed and were clarified, rendering our previous determinations on that question incorrect. We were simply told not to worry about it. \

Consider what these sorry accounts show:

For many of the foreclosures included in the review, records were woefully incomplete, had critical information that was scattered and

hard to interpret and integrate, and some of the information, such as attorney charges from LPS, was suspect.

Bank of America and Promontory routinely had trouble providing directions and coming up with consistent answers to questions about the loans, sometimes extremely basic ones like “does a modification cure default”?

The implications of these failings go well beyond the aborted foreclosure reviews. They demonstrate how the most important asset most families ever own, a home that they acquire using a mortgage, winds up in the hands of servicers whose records are all too often inaccurate and incomplete, and where the servicers, even years after the fact, are unsure of how they should have operated to satisfy regulatory and contractual requirements. That’s before we get to how the servicers game systems. We discuss that issue in the context of the foreclosure reviews in our next offering, Chapter V, on how Bank of America sought to minimize evidence of damage to borrowers.

## CHAPTER V

# How the Cover-Up Worked



IN THIS CHAPTER, we discuss our fourth finding of fact:

- **Bank of America and Promontory worked together to suppress and minimize evidence of damage to borrowers.**

Both Bank of America and Promontory suppressed and ignored both broad categories and specific examples of borrower harm. We'll discuss how this occurred from two vantages. The first was **organizational**: that the reviews were structured and managed so as to make it hard for particular cases of borrower harm to get through the gauntlet. The second was **substantive**: that the bank and Promontory excluded some types of harm entirely and insisted other aspects of the review be focused as narrowly as possible. This served to minimize and exclude evidence of abuses to borrowers.

### Organizational obstacles to identifying borrower harm

After recruiting “claim reviewers” with meaningful mortgage document and foreclosure experience, with the understanding that their job was to ferret out evidence of damage to borrowers, Bank of America and Promontory put in place a structure to impede those efforts.

The two major elements were:

- **A “Quality Assurance” department that consistently rejected all but the most egregious instances of borrower harm and**
- **Bank of America management pressure against pursuing troubling evidence**

**The Orwellian “Quality Assurance” department.** After the claims reviewers completed a test on a borrower, they uploaded their files, including their “harm notes,” into CaseTracker, the program which was the backbone of the entire project. Promontory asserted that because it could see all the information

uploaded into CaseTracker, that they, and not the Bank of America-based staffers, were performing the reviews.

However, after the claims reviewers completed a test on a borrower, the files next went to the Quality Assurance department, which was in Bank of America and staffed with both permanent employees and contractors. The reviewers would have the opportunity to rebut any objections QA made before the file was sent on to Promontory.

Curiously, Bank of America had discussed the formation of QA, and some related efforts, with the reviewers:

**Reviewer B:** Like, when the QA department was formed, Promontory kind of questioned, “Well, why are you, you know, QAing the work that we’re going to be looking at,” and then they formed a group called [crosstalk]

**Yves Smith:** Oh, QA was BofA’s idea!

**RB:** Yes.

**YS:** Ohhhhh. That’s important to know.

**RB:** And then they formed the AI team, which was the Additional Information team, and the process was supposed to be that we were to review the loan, then it would go to QA, then it would go to Promontory, and then it went through whatever process at Promontory it went through, and if Promontory found harm, this was Bank of America’s original explanation, if Promontory found harm, it would then come back to the AI group to review again. Promontory at one point, it was a rumor that they had fought this and said, “No, we are the third party, you don’t need to review our work, we’re reviewing your work.” So then they, the Bank of America changed it to where the AI group was just going to be formed in case the reviewers didn’t upload some

information that Promontory might need, then they could contact the AI group and say, “Okay, we still need a copy of this loan mod or this workout analysis or whatever.” So that was all Bank of America’s idea.

The reviewers report that QA would regularly dispute findings of harm but would wave loan files that had no findings of harm on to Promontory. The temps were aware of the results because the initial reviewer would be given the opportunity to rebut QA objections (in fairness to Bank of America, the team leaders often assisted in these efforts). No reviewer knew of a single instance when QA sent a file back for an incomplete review or a querying whether a fact pattern amounted to harm. All reviewers had full access to CaseTracker, so they could also look at the audit notes and see what happened to borrower files when they went to QA.

All reviewers report serious pushback from QA.

**Reviewer A:** Oh. Gosh. I — we were all getting very frustrated, and I know that I was, I was running sometimes 50% of my files would come back and I would be, it would be suggested that I change my opinion.

**Yves Smith:** And what happened —

**RA:** Or change an answer as to whether or not something, you know, a modification was actually offered or not offered or improperly offered. I would say 50% of the time. And then I would have to go to my PC, my Proficiency Coach, and make my case as to why the Quality Control people were wrong, and if the Proficiency Coach — again, may or may not be a Bank of America employee — if I could not come to an agreement with them, then it was passed on to my section manager, who was always a Bank of America employee, and we were always butting heads because, first off, you asked my for my opinion and I feel that this happened in harm towards the borrow— for the borrower. And

you're telling me it didn't happen, and I'm reading it, and you're telling me that what I'm reading isn't the case...

**YS:** I just want, I just want to \_\_\_\_, so you were basically saying they were trying to say the things that you were saying were factual determinations, like the borrower, you know, made a \$25,000 payment that was lost, or something, and they were saying, "No, no, no, that's your opinion." I mean they were trying to recharacterize factual matters as opinion?

**RA:** Or –

**YS:** Is that part of it?

**RA:** Yes, as an opinion, or as that it didn't happen the way I am interpreting the notes.

**YS:** Mmhmm.

**RA:** That was very common.

**YS:** So the arguments really were not about your conclusion about the severity of the events, they were trying to deny that the events happened, to deny, to say that your harm conclusion was wrong.

**RA:** Oftentimes, yes.

From a different reviewer:

**Yves Smith:** You said you were very diligent in following things up. Did you — you know, you said you thought there were 30% of the cases you looked at, there was borrower harm....what percentage of the time, when you identified harm, did it seem to get flagged through, or you're basically saying you were told that was irrelevant?

**Reviewer B:** Yes....

**YS:** So every time when you identified, it got suppressed.

**RB:** Right.

**YS:** Right.

**RB:** Right.

**YS:** Okay, so 100% rejection.

### **Bank of America management pressure against pursuing troubling evidence**

Given the ambiguous and open-ended test questions (discussed in depth in Chapter III), many researchers strove to be thorough. Not surprisingly, that put them at odds with the Bank of America managers. "Digging" was discouraged:

**Yves Smith:** Now, we were told that people who were more diligent were labeled "diggers," and that was considered a bad thing.

**Reviewer B:** Yes...

**YS:** Were you ever criticized for digging?

**RB:** Initially I was. Initially — and I was the only person that had a lot of bankruptcy knowledge in my group, so if I brought something up, or if I would just say, you know, "How would this get addressed, because this is what I found," they would say, "Don't. You know, it's not going to get addressed. You have to stick to your questions." So I just, I learned very quickly what my place was there, and I just stuck to it.

Although Reviewer B learned to toe the line, he described how other reviewers were not as compliant. Reviewer E was one of them:

**Reviewer E:** I had one where the person got a modification. They capitalized everything — the back-due payments, the fees — and then they gave them a HAMP trial mod, and the homeowner was, like, "I

don't want HAMP. I have a mod." So they just took both mods out of the system but kept everything capitalized. A year later?

**Yves Smith:** Mmhmm.

**RE:** Another mod. Another HAMP trial mod. Capitalized everything. They said, "I don't want HAMP! I have a mod." What did they do? Took it all out of the system but kept it capitalized. So now it's been capitalized twice. [crosstalk]

**YS:** The same interest, the same fees –

**RE:** Same fees, same back-due payments, everything. Third mod finally stuck. But now the guy's payment is \$250 higher because we've recapitalized everything till he signs. That file got taken away from me because I was digging too deep.

Reviewer B discussed the "digging" of another reviewer:

**RB:** One person was this way, went to one of the managers, I think the last week that we were there, and said, "Hey, I have a problem with this test," and he just kind of rolled his eyes and said, "I know, just like every other test." And she's also the same person that found a borrower that made like a \$20,000 payment and the whole payment just disappeared out of the system.

**YS:** Mmmm.

**RB:** The borrower did not get the money back. It was never applied to any fees or any payments. It just was gone. And that was escalated to, you know, someone else. They pulled the loan out of her queue, and she would repeatedly ask, "Hey, did anybody hear about that loan?" And they would repeatedly tell them to stop digging.

Other terms of opprobrium were "going out of scope" and "going down rabbit holes." Reviewer A stressed that Bank of America had little tolerance for that:

You would, uh — you could also be dismissed for what they called being a digger, and — for instance if you had, if you were doing a C test but you found harm in a particular loan and it went off in a different direction other than specifically something addressed in the C test, you were called a digger. And if you made notes in the system regarding something outside of the scope of your test, you ran a risk of getting yourself in some pretty hot water and winding up with the call later that night from your agency saying, "Well, you know, you should — you're not allowed to go back."

### **Substantive efforts to limit or bar findings of borrower harm**

Predictably, Bank of America staff tried to eliminate and minimize any evidence of damage to borrowers. The main ways they did that were:

- **Excluding some major types of abuses from the reviews entirely**
- **Narrowing the scope of the reviews**
- **Document/record fixes and fabrications**

**Excluding some major types of abuses from the reviews entirely** In Chapter II, we described how the reviewers found that Bank of America systematically engaged in some practices that hurt borrowers. We need to underscore that some of these systematic, and perhaps pervasive, types of bad conduct were omitted completely from the reviews. Bear in mind that all of those practices have been flagged in the media and by foreclosure defense attorneys as frequent abuses.

One big abuse was impermissible charges in Chapter 13 bankruptcies and was the cause of many borrowers losing their homes.



During the period when a borrower payment plan is being approved, and the 60 months under the plan, all creditors are “stayed,” meaning they cannot impose new charges on the borrower. All claims (principal, interest, any fees owed) must be submitted to the court prior to the negotiation of the plan. The borrower must make his 60 months of payments under the court approved plan. Chapter 13 plans are very demanding and contemplate that the borrowers live meagerly. The borrower emerges with no debts and no savings (unless there had been an unexpected windfall).

Servicers often (too often) accumulate late fees or other fees during a bankruptcy, even though these fees are not allowed (payments made pursuant to a Chapter 13 are timely irrespective of what the mortgage originally specified), and hit the borrower with all the fees shortly after emerging from Chapter 13. The borrower is, by design, broke and can’t afford these fees, especially court fees. Borrowers often lose their house this way.

Many of the reviewers had bankruptcy experience and knew these charges weren’t legal. Yet when they asked about how to include them in their reviews, the trainers incorrectly told them it was permissible to incur fees during the bankruptcy but not charge them then. This appeared to be the belief of the Countrywide managers who were supervising the reviews. Perhaps more important, Promontory, which was responsible for the design of the reviews, was responsible for making sure all laws, including bankruptcy law, specifically mentioned in the OCC consent order, were complied with. Yet Promontory appears to have taken its view of what was kosher from Bank of America rather than from relevant law. The result is that this abuse was completely ignored.

Another type of borrower abuse the reviews wouldn’t consider was zombie title. This occurs when a servicer completes all the steps up to the sale of the home, sometimes including evicting the borrower, yet neither takes title itself nor sells the property to a third party. In other cases, the borrower, leaves on the assumption the bank is about to take the house. Recall that the reviews

included foreclosure actions that started in 2009 and 2010 so foreclosures that started during this period and left in limbo would be eligible for relief. Yet as we demonstrated earlier, complaint letters that cited this sort of problem were rarely addressed properly and when they were rejected it was because they did not fit in the review template.

Another conveniently-omitted abuse was the all-too-common HAMP trial modification hell. Here borrowers made all their trial modification payments, were told to ignore foreclosure notices (the foreclosure process would continue in parallel with the trial mod, reassured they were likely to get a permanent mod and then were foreclosed upon. Reviewer A described his frustration:

That was a big question was, was the modification offered and in place and what determined whether a modification was actually in place and were payments made? For instance, if someone was offered a trial modification and made their payments in a timely manner, the letters for the trial modification stated, “If you’ll make the next six payments, you will be offered a permanent modification.” Well later on, I mean, these, some people would make seven, eight, nine, ten payments. Nothing would happen in regard to a permanent modification. And so we would be asked, was a trial modification in place or was a permanent modification in place? Well, the letter said six months, a permanent — after six months of payment, a permanent modification would be offered. Well it wasn’t, and the person made 10, 12, some — I remember a case where someone made 18 trial modification payment, they were never offered a permanent modification. So the letter said six months. So I said, “Yes, there was a permanent modification in place. They paid as agreed, the letter said they would be offered the permanent modification, they exceeded the number of payments, nothing happened. So, yes, there was one in place.”

That would create a tremendous argument, because is it in place or isn't it? If I said it wasn't in place, there was no permanent modification in place, that stopped the investigation. Well, that's not right, because they made more than the required number of payments and you're saying, just, there was no permanent modification in place?

This example raises a much bigger issue. Reviewer A was almost certainly wrong, in that a permanent modification was not in place, the borrower had instead been left in a trial modification limbo and then foreclosed on. However, the media and policymakers discussed this type of abuse frequently. The tests at Bank of America by design omitted one of the biggest groups of harmed borrowers and Reviewer A was refusing to sanction that ruse.

**Narrowing the scope of the reviews.** All the reviewers complained that Bank of America personnel (not necessarily the team leaders, but QA and unit managers) would go to sometimes logic-defying lengths to narrow the scope of the tests, even though several of the major tests had open ended questions to allow the reviews to provide information about types of harm not captured elsewhere. See, for instance, this question from E test:

E-540 (H)	DID YOU NOTICE ANY OTHER ERRORS, MISREPRESENTATIONS OR DEFICIENCIES ON THE PART OF THE LENDER OR THE LENDER'S AGENT RELATING TO FEES, PENALTIES, PAYMENTS AND/OR FORCE-PLACED ESCROWS/INSURANCE THAT MAY HAVE CAUSED THE BORROWER FINANCIAL INJURY IN THE PAST OR COULD CAUSE FINANCIAL INJURY TO THE BORROWER IN THE FUTURE, ABSENT REMEDIATION?
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One of the regular battles was over the review period. The Bank of America contractors in Tampa Bay were processing borrower complaints relating to foreclosures completed in 2009 and 2010. Bank of America managers would instruct the reviewers to look back from the completed foreclosure to what it

called the nearest critical default and no further. But the questions form they used when undertaking the test told them to use earlier default dates if they saw fit (see the "General Guidance" column ):

A Q#	B QUESTION	C General Guidance
E-10	DID THE LENDER OR LENDER'S AGENT ASSESS/CHARGE A FEE OR PENALTY TO THE BORROWER'S ACCOUNT DURING THE FEE REVIEW PERIOD?	Review fee review period and fees within that time frame. <b>The fee review period starts</b> on the date the first payment defaulted that became the most recent critical default relevant to the foreclosure action being reviewed. In the case of multiple delinquencies leading up to the foreclosure action being reviewed, an "earlier date" may be selected by the Reviewer. Critical default means the first defaulted payment not received is more than 60 days delinquent (generally referred to as 90 days delinquent). <b>Fee review period ends</b> at the earliest of: Loan payoff, end of redemption after a foreclosure process is complete, or when BAC sells the loan or servicing rights. If the Foreclosure action is still ongoing/on hold, default to the date when the borrower submitted their RFR and their case loaded into CaseTracker as the "worst case" scenario for fee review end date. Answer NO and Case Tracker will skip to E-236.

Even when reviewers complied with that directive, they got resistance:

**Reviewer B:** Well, one was the very first question, which was question E10, and it would ask if the fees were charged to the borrower's account during the review period. Well, the review period for us was different than the review period for the whole rest of the project. So we were not just going by anything that was, you know, related to a foreclosure during 2009 and 2010, we were going by the original default date.

**Yves Smith:** Mmhmm.

**RB:** Now if they did bring the loan current, originally we were told six months, we were told three months, we were told all different kinds of things, but we were told if they brought the loan current for a specific amount of months, we could skip that default and go to the next one.

**YS:** Mmhmm.

**RB:** So if you answered the question yes, there were fees charged to borrower's account during the review period, inevitably the QA department would take it back and argue with you over review period.

**YS:** Well that also just sounds crazy, because the whole — one hates to say it, the whole point of foreclosure — not, well, the whole point, but foreclosures inevitably involve — I mean it just sounds Orwellian. Foreclosures inevitably involve charging extra fees, and yet if you say you did what was permitted during a foreclosure, even if they only did stuff that was permitted, it got kicked back. I mean, that's —

**RB:** Right.

**YS:** Is that what you're saying?

**RB:** Pretty much.

**YS:** Oh my God....

**RB:** Well, and sometimes too we had to go through a guide that was provided to us on an Excel spreadsheet, and it was all these investor allowable fees, so there was Fannie, Freddie, HUD, FHA, VA, all of them were on the spreadsheet that we had to go through and compare each fee with what was allowable. But the more — the bigger your review period, even though we had a different review period, you know there were, the easier chance you're going to have of finding something wrong, so it was almost like they would even argue with you about your review period, even though you were following what you were told and what was on the guide, just to shrink it down and make it just a shorter timeframe that you were reviewing. Now, if you even had a foreclosure that was in with that, say they had a foreclosure in 2004 and you had to review the fees as a part of that, because that

was in your review period, it would still get kicked back and QA would say that you were not reviewing fees within the scope of the project.

Reviewer C similarly pointed out that the reviewers on his tests (E and F) had latitude to choose longer review periods but still faced resistance:

**Reviewer C:** A lot of times we had what was called a fee review period, and we would, we would start with the latest default that had to do with the foreclosure action we were reviewing, and — default meaning 90 days. And there could have been several defaults, and a lot of times the quality analysis analysts didn't agree with what our fee review period was, although it was very subjective. So, most of the time if I got anything back for that, I would just say, "Well, this is what I'm choosing, this is what I'm sticking with." And normally, I had gone back farther than what they were saying to go back.

**Yves Smith:** And....what would your basis be? Your basis would be it started X because of X, this reason. What would their — why would they choose a narrower period?....

**RC:** So a lot of times borrowers will be late 90 days, catch up, you know, and it'll happen again and again.

**YS:** Right.

**RC:** So — you know, in our instructions we were told we can (go?) back further if we choose to do so.

Some files wound up not being subject at all to certain tests. It's one thing to have that be an accident, but when the team leaders were told about it and refused to remedy it, it was clearly intentional. Both the B and D tests (done together by one set of reviewers) and the E and F tests (done by a different group) had questions requiring them to confirm that a particular foreclosure

activity had occurred before proceeding.<sup>11</sup> The reviewers were directed to look at the “Foreclosure Account Followup Screen” in the main servicing system, AS400, for verification. That screen listed all the steps that had taken place relative to a foreclosure action.

But it turns out that screen was not always reliable. One reviewer would check the Foreclosure Review Account Followup Screen against court filings and found the screen would be wiped clean if a borrower who had had the foreclosure process start later got a modification. This was germane because any fees relating to a foreclosure that had started were often capitalized in the modification. If those foreclosure actions or the fees were not proper, the borrower would have been eligible for compensation, but most reviewers would miss that. This reviewer would perform his check of these earlier foreclosure actions, and flag that the earlier tests (B and D) had missed them in their file review (B and D included tests of whether the foreclosure process was executed in keeping with applicable laws). He would also raise the omissions with his team leader and unit manager, and was told “Don’t worry, Promontory will catch that.” He’d check these files periodically after they went to Promontory and never saw the omitted tests completed.

**Document/record fixes and fabrications.** Reviewer A discussed a problem with breach letters, which is the first letter sent to borrowers in the foreclosure process. Defective breach letters would point to harm under the tests that related to whether the foreclosure was executed properly:

Well, we were having a very difficult time locating breach letters, you know, the letters of acceleration, and our pipelines were getting clogged up with — because we would have to wait for these documents ... And so oftentimes we would have to have someone go find these, what we

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<sup>11</sup> For instance, question E-150: “Was a foreclosure sale initiated?” and question E-190: “If the foreclosure sale has not occurred, will the borrower be obligated to pay the amount of the impermissible miscalculated fees and/or penalties in the future if not corrected?”

call document retrieval unit, try and find these, and our pipelines were getting very clogged up waiting for someone to find these documents and eventually we started getting breach letters sent back to us, say, from a Countrywide file, but the breach letter was on Bank of America letterhead. But it was a Countrywide file. How did it get on Bank of America letterhead? So there was a big hue and cry through the, at least through the level 3s, saying, “What in the world is this? You know, this is a Countrywide loan, it has Countrywide loan numbers, it’s on Bank of America letterhead. How is this supposed to be legitimate?” Eventually all those files were taken away from us...it was causing enough of a stir so that we were simply told to stop what we were doing as far as these breach letters were concerned, and if we had a breach letter that was missing we were to notify management and it would be sent to another team...

And we were told at one point that the breach letters were sent out registered, and we oftentimes would ask, “Well, can you give us the receipt?” And of course there was, “No, those don’t exist anymore. They get thrown away.” Well, you know, I don’t necessarily believe that, but nonetheless these loans were taken away from us and given to another team, the breach letter team, who was then assigned to take care of them and we wouldn’t see them again for the most part.

In case you think this is one of those “mere paperwork” issues, a January 23, 2013 ruling in Florida, [Bank of America v. Casey](#), in favor of a borrower on this very issue, says otherwise (hat tip [Florida Foreclosure Fraud Weblog](#)):

In the most fundamental sense there is a world of difference between having to bring a court action to assert the non existence of a default or any other defense to acceleration and the right to assert in the foreclosure proceeding the non existence of a default or any other defense to acceleration. The former requires affirmative action on

the part of the borrower to file a complaint, which almost all are ill equipped to do, or pay an attorney to do so. It also requires the payment of a filing fee at a time when the borrower is least capable of doing so. It is significantly different from taking no action, waiting until the foreclosure proceeding is filed and then asserting why acceleration is not correct or specifying other defenses. To equate the two is to ignore both the terms of plaintiff's mortgage and the economic burden of the substituted language.

Also, equation of the two requires one to ignore the Supreme Court pronouncements in this area. This is one of the few times in the history of Florida jurisprudence where the Florida Supreme Court has deemed it necessary to subject an entire industry to special rule due to the industry's documented illegal behavior. The amendment of Fla. R. Civ. P. 1.110 (b) was a direct result of the robo-signing scandal. The comments to the rule amendment, *In re Amendments To The Florida Rules Of Civil Procedure*, 44 So.3d 555, 556 (Fla. 2010), indicate the depth of the court's concern with this industry. To suggest now that a non-party, to whom the owner of the note has delegated its obligations, has "substantially" complied with the Notice provision by wrongly telling the borrowers they have to file a separate law suit to assert their defenses turns logic on its head.

In Florida, many appellate cases have also reversed lower court foreclosures on this very issue,<sup>12</sup> often relying on Paragraph 22 of a standard Freddie/Fannie

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12 This is a partial list (hat tip [Evan Rosen](#)):

*Judy v. MCMC Venture, LLC.*, 100 So.3d 1287 (Fla. 2nd DCA 2012) (summary judgment reversed where notices of default failed to specify the breach);

*Konsulian v. Busey Bank, N.A.*, 61 So. 3d 1283 (Fla. 2d DCA 2011) (summary judgment of foreclosure reversed when bank did not defeat affirmative defense relating to failure to provide the acceleration notice);

mortgage form (used extensively for GSE and non-GSE mortgages alike).<sup>13</sup> It is

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*Sandoro v. HSBC Bank, USA National Association*, 55 So. 3d 730 (Fla. 2d DCA 2011) (final judgment of foreclosure after summary judgment reversed where record reflected genuine issues of material fact regarding whether Mr. Sandoro had been provided with a notice of acceleration because such notice was a condition precedent);

*Goncharuk v. HSBC Mortgage Services, Inc.*, 62 So. 3d 680 (Fla. 2d DCA 2011) (summary judgment of foreclosure reversed when issue of acceleration notice remained even though nonmoving party did not file an affidavit in opposition);

*Laurencio v. Deutsche Bank National Trust Co.*, 65 So. 3d 1190 (Fla. 2d DCA 2011) (plaintiff not entitled to summary judgment where it had not established that it had met the conditions precedent to filing suit, i.e. it had not established that it gave Homeowner a notice which the mortgage required);

*Frost v. Regions Bank*, 15 So. 3d 905 (Fla. 4th DCA 2009) (summary judgment of foreclosure reversed when bank did not factually refute the Frost's lack of notice and opportunity to cure defense);

*Lazuran v. Citimortgage, Inc.*, 35 So. 3d 189 (Fla. 4th DCA 2010) (summary judgment of foreclosure reversed when affirmative defense of improper acceleration not sufficiently addressed);

*Valencia v. Deutsche Bank National Trust Co.*, 67 So. 3d 325 (Fla. 4th DCA 2011) (foreclosure summary judgment reversed when there was a discrepancy between the date of default alleged in the foreclosure complaint and the dates referred to in the notice to cure letters that were allegedly sent to borrowers).

- 13 22. Acceleration; Remedies. Lender shall give notice to the Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and, (d) that the failure to cure the default on or before the date specified in the notice may result in an acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert

likely there are favorable rulings on this question in other states.

Moreover, in the case of the Bank of America letters in Countrywide files, it is not clear whether defective letters were sent out on time, or whether the files were sloppily doctored after the fact (as in letters on Bank of America rather than Countrywide letterhead were loaded in after the fact). The failure to send a breach letter would put homeowners in non-judicial foreclosure states with short timetables like Georgia and Texas at a severe disadvantage. In those states, after a letter is sent (or in these cases, perhaps not), the next step is the advertisement of the pending foreclosure sale, and that serves as the notification of the sale date. Those ads run two weeks prior to sale, which is hardly enough time to intervene even if the borrower manages to see or hear of the pending sale when the notice appears.

Another controversy discussed widely among the Tampa Bay reviewers (the open floor plan, team structures, and use of instant messaging facilitated gossip) were the missing fee notification to North Carolina borrowers during foreclosures.

In October 2012, the matrixes for the tests involving fees were updated, and it included new material on state fees. One major new item was that North Carolina law has a strict policy on fees, that the fee must be charged to the borrower within 30 days of being rendered and the borrower had to be notified

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in the foreclosure proceedings the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, a Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to all attorneys' fees and costs of title evidence.

in writing of the fee within 45 days of being charged (there were some minor exceptions to this rule).

Many reviewers on the fee tests were unable to find any such letters; even a more savvy reviewer who thought that some of his colleagues might not have been as diligent as they could have been about looking, said on average only 10% to 20% of the letters were in the system. Even a reviewer who was tasked to other tests mentioned them. He went looking for them in his North Carolina files and found none.

However, one reviewer who did find them pointed to a suspicious pattern of many of the letters turning up in the files after they found out about the new law:

**Reviewer E:** This didn't come down until October...or November. And –

**Yves Smith:** What do you mean, this “come down”? It wasn't included in your reviews, or — ?

**RE:** Yeah! We didn't know about this rule. It was a new rule that nobody knew about. Well, I was, I had a file that happened to be North Carolina that I was in with someone when this new rule came out. So I had to go back in and look for it. Nothing there. So I just let it sit for a minute and moved on to another file. About two weeks later, there were 50 of those letters that magically appeared in the system.

**YS:** Mmmm. Wow.

**RE:** Very common.

**YS:** So you're, you're saying that while the review was on, Bank of America was fixing the documents, uploading stuff in the system?

**RE:** They weren't there, and then magically when the law was brought to light?

**YS:** Mmhmm.

**RE:** Magically they started appearing, in the thousands.

**YS:** Yeah. Wow.

**RE:** Where there's no proof they got mailed? Nothing. It's –

**YS:** Yeah.

**RE:** — just a one-page document –

**YS:** Right.

**RE:** — that has a fee on it.

When I went back to the reviewer with the argument that he might have simply not looked thoroughly enough the first time, he replied:

There was only one place in the system for documents like this to be, which was in the I portal [[see the link to the program in the blue box, second row, on the left](#)] in Port Com Docs. When I was first looking at the borrower records I mentioned to you, there were only ten documents there, no fee notification letters at all. When I went back into the file, there were 20, and the new ones were all North Carolina fee letters. And I saw other letters appearing in borrower files. You'd see a document with a title, say, "Inspection fees" but if you clicked on it, it was a blank page. I'd come back later, and it would be completed, with a date and a fee amount.

This reviewer also stated that a colleague working in a different building claimed to be on a team of roughly 300 people that was altering documents, changing servicing notes, backdated fees, and reclassifying fees so they would look as if they had been charged to investors rather than borrowers. We have not obtained confirmation of this charge, but as we pointed out in an earlier

chapter, [virtually every borrower file had reclassified fees](#), well beyond the level that can be attributed to correction of mistakes. So while we are not certain there is a fire here, there is certainly a troubling amount of smoke.

## CHAPTER VI

# How the Cover-Up Happened: Further Cover-Ups by Bank of America, Including Document Fabrication



IN THE PREVIOUS CHAPTER, we discussed how Bank of America and Promontory made concerted efforts to suppress and minimize evidence of damage to borrowers. We covered five approaches Bank of America used to make it difficult for a homeowner's charges to get through the review gauntlet.

In this chapter, we will add these devices to the list:

- **Rejecting claims entirely and subjecting others to only a limited review**
- **Pulling files from reviewers if they were finding harm**
- **Refusing to consider institutionalized abuses, including extortion and psychological abuse**

In addition, we will provide more evidence of the most troubling charge made in Chapter V, that **Bank of America fabricated documents during the reviews.**

**Rejecting claims entirely and subjecting others to only a limited review.** As discussed previously, Bank of America and Promontory structured the foreclosure claims review as a series of tests, A through H, paralleling the requirements of the OCC's consent order to Bank of America. However, all tests were supposed to be performed by the independent reviewer, Promontory. As we discussed at considerable length in earlier chapters, the evidence overwhelmingly shows that the bulk of the work, tests A through G, were done by Bank of America through a large staff that it assembled, consisting mainly of temps (see [Appendix I](#) and [Appendix II](#) for details).

Two preliminary tests, test O and test S, often undermined homeowners' chances of getting a fair review. Both were performed by the least capable reviewers, the so-called Level I claim reviewers, who typically had only clerical and computer skills and little to no knowledge of the mortgage business.



The O test was to ascertain whether the borrower was eligible for a review at all. Some parts of that test were legitimate, such as determining whether the borrower's mortgage had indeed been serviced by Bank of America. But others looked like a deliberate effort to remove claimants from the system. For instance, some borrowers had claims rejected before the tests B through G had even been finalized. In some cases, the rejection letters asserted that Bank of America had no information about the loan in question, when in fact they had been originated by Bank of America and investor reports showed that they were still being serviced by Bank of America. That makes the "no information" claim impossible.

Borrowers who did get past the O test could still be rejected through what internally was called a "one and done." For four of the tests, borrowers would have their complaint considered only if a foreclosure had been completed. Yet the OCC consent order explicitly included not only foreclosure actions completed during 2009 and 2010, but foreclosure actions underway during this period as well. Also, borrowers could suffer significant harm if a foreclosure had begun and was not completed. For instance:

**Reviewer G:** Well, and considering, like I can think of one specific case that Promontory reviewed one of my files... It had gone from the C reviewer to our quality control at Bank of America, and then from there to Promontory, and then it came for the G test to me, and I caught it, and like, how did — they did what they called a "one and done," meaning they looked to see if there was a foreclosure and there wasn't, so they considered it a one and done, which meant they didn't order any legal documents. Because in test C you have to look for all legal docs— you know, make sure that they were, um — I actually need to think about this now — make sure that they were given the right notices, you know, in the time frames and that their notice of default

was sent, the breach letter, all these things were done in the allotted time frame.

**Yves Smith:** Right.

**RG:** Well, when it's a one and done, they don't do that because they said there's no foreclosure so there's no reason to do that. Well, and this particular case was a foreclosure. It not only was a foreclosure, but it went to the state attorney and then it was reversed. They rescinded it.

So by the time — by the time — what had happened is, and there's like logs, you know, of the call, and this lady happened to call in, and I'm not exaggerating, she — I think she must have probably set up a reminder in her — like I do — in my Outlook and it pops up every two weeks or 10 days or whatever it was, and she would call in religiously, even though they would tell her, "You know, it's going to take 30 days, you don't have to call back" — she would still call back, and kept calling back. And there would be notes that she'd call back and hear, "It's still in the review, it's still in review, it's in underwriting for review," you know, all this stuff. And then finally it comes to this — it came to, I think it was December 17th, if I remember right. She had called in and she's asking what's the status of her modification, and they go, and the person says, "Ma'am, you can't get a modification, it's an REO property." [Real Estate Owned, which means the bank has already foreclosed on it]

**YS:** *What?!*

**RG:** That's exactly. She's like, "What is an REO property?" Now I had read these all in chronological order. I started at the bottom, read them straight up, and I did the exact same thing you just did. I'm like, "*What?! Where did I miss this?*" She's calling in, and now, keep in mind, she also had, she's making these trial payments by auto debit.

Auto debit. They had been debiting her account for all these payments and the girl says, “Ma’am, your property went to foreclosure sale in September.” Now they had taken her September, October, November and December payment. And yet they foreclosed.

**YS:** How could they have done a foreclosure when she’s still living there? How c— she wasn’t evicted?

**RG:** Exactly — well, they hadn’t done the eviction or anything yet, and —

**YS:** Oh my God.

**RG:** I know...And she ended up, January, like January 7th I think it was, because this was December 17th — holidays — she ended up filing bankruptcy to keep from being evicted.

**YS:** Right.

**RG:** And so when I catch this case in G test, because, you know, when this — because we had done Cs before this and done G, and everything’s, you know, in C, “Oh, they’ll catch it in G.” You know, if something — and then in G, it’s “They’ll catch it in H,” I think. And I’m like, I don’t understand. So I go to my manager and I say to him, “This is a case that was done as a one and done.” I said, “It’s not a one and done,” and I explained the whole thing to him, and he says, “Well, let me review it and I’ll get back to you.”....

So he comes to me and goes, “It’s okay, because there’s no harm done to her, because ultimately she got her modification.”

Because I said, “Well, wait a minute. The C reviewer missed this. It went to QC [quality control]. QC missed it. Promontory reviews it and their notation is, “Borrower is currently in a modification.” Well, because

when they reversed it, rescinded it, they put her in a permanent mod then. So by the time Promontory reads it, they’re seeing — all they looked at was that she was in a permanent mod at the time. Not that she had gone through all this prior to that. And I said, “How can you say there’s no harm?”

**YS:** Yeah, the expense and the credit score damage and going through — [crosstalk]

**RG:** The credit score, everything. The expense of hiring an attorney to do the bankruptcy, all this stuff. And I said, “How can — ” Because ultimately — she goes — here’s what his quote unquote words were: “We don’t know that’s why she filed bankruptcy.” And I said, “Why do you think she filed bankruptcy? She went through this whole thing for two years so she could file bankruptcy? No. That is — come on.” I said, “What, within less than 30 days she filed bankruptcy of finding out that they had foreclosed on her house? Give me a break.” And I said, “It’s still we don’t know that she was noticed [given notice a foreclosure started]. We don’t know that they did the breach letters, all that stuff, because the legal file was never ordered.”

Another issue was a second test performed at the outset by the Level I reviewers called S test. That was to tag the complaint for particular tests. For instance, if a borrower letter discussed fees, it would go for tests E and F, which looked at the level and frequency of fees. But the onus was on the borrowers to write his letter in a way that it would be flagged for the proper tests. As Reviewer E explained:

I was on E and F test, and some of the time I’d see borrowers who should also have been reviewed for bankruptcy (tests B and D), I could see a bankruptcy in the record, and often questionable activity around it in the notes. But that didn’t fall in my review scope. I’d tell my team

leader and unit manager that the file needed to be sent to get a B and D test. They'd always say, "Just send it on. Promontory will take care of that."

I'd keep an eye on the audit notes [reviewers could see what happened to their files after they had completed their work] Promontory never did those tests.

Some of the ways "no harm could be found" were more sophisticated. From Reviewer F on a different set of tests:

**Reviewer F:** The woman was in the middle of modification and she sent up her up-front funds. Her husband had cancer. They were modified, on a perm[anent modification], and she was making her payments. And I went into the payment history and everything was there with her payments, and she had called in to see if she could get an extension for one 30-day of her modification, and they said no, and she had went ahead and paid it on the 28th and they started the foreclosure proceedings on the 30th, and she was — that was the only payment she was late on. In her permanent modification they foreclosed on her.

**Yves Smith:** Wow.

**RF:** She lost her home. She lost her husband and then she lost her home two months later...She wasn't even 28 days late. She was 15 days late...

I would have to say — and the way the questions were worded, it was very difficult to answer...The way that the question was written for you to answer it, there wasn't a part that you could like, okay yes, this was okay, but B, they failed to comply was this, and you couldn't break that out. So it had to be a yes or no answer, so you couldn't have a two-part, like an A and a B or anything like that. You couldn't put in your

comment. So you have to put in your comments such as like, like with the individual with the trial modification. She completed a successful trial modification, called in 15 days later on the 28th to make a late payment or to do some sort of a payment arrangement, was denied, and 30 days later — she was on a perm and denied and then, you know, foreclosed on 30 days later. Two months later she was out of her home, evicted out of her home. That's how quick they moved. So it was like, there was not enough, not enough categories to allow you to elaborate in there and answer the question, so if you answered the question as no, then it would take you and waterfall you down. There was a lot of waterfall issues with Test G [the test on modifications].

"Waterfall you down" means if you answer the question a certain way, you are directed to skip questions (e.g., "if 'no', go to Question 30"). So in this case, with the woman foreclosed upon based on a single 15 day late payment, the reviewer could not answer a two part question accurately. If the homeowner said "no" (as in the "no harm" answer to both) the Reviewer would be directed to skip over questions that were relevant (say details related to the foreclosure). But if he the Reviewer answered "yes," the homeowner was certain to have her response rejected by Quality Assurance.

And not only was the test structured to limit how the reviewers could answer questions, they were also given too little space:

**RF:** CaseTracker, CaseTracker for one, which is a Promontory system that we had to use and we uploaded everything into, and then we also had our issues where in AS400, which was the bank system that we had to use, that notes would then be cut off. There would not be enough notes. We could hit the, you know, F4, F12 to get more notes, but there were no more notes, you know, to retain in there.

**YS:** So it would only allow you so much space to record your problems, and there typically often wasn't enough room.

**RF:** It — yeah — right.

**Pulling files from borrowers if they were finding harm.** If you had any doubts that the low-level Bank of America contractors and employees were doing the reviews, the fact that management was so aggressive in its efforts to influence their work should dispel any doubts. We've discussed earlier how Bank of America would send all reviews to a "Quality Assurance" department under its control that would routinely push back if a reviewer found a borrower had been hurt. But since those objections would be sent back to the reviewer for a rebuttal, more effective methods to dismiss the Reviewers' findings of harm to borrowers were implemented:

**Reviewer F:** Our managers, our team managers, are the ones that placed these loans in our queue. Because if we weren't going to be a team player and we were going to say, "Nooo, I think that's harm, that's harm, that's harm" — if I wanted to be adamant about it and, you know, tell him, "No, that's harm, this is harm," and they'll start taking those away and start giving me other loans. If it gets too hard and I'm finding harm, they wouldn't give it to me. They would find another loan. And they would pass that off to another person [crosstalk]

**Yves Smith:** Oh, wowww.

**RF:** Yeah.

**YS:** So they were cherry picking your loans.

**RF:** Absolutely. And we started t— (angry laugh) we started taking notes and — let's see, [person A], [person B], there were several others that we started speaking about and speaking through here about how, why are they starting to give us the loans? "I put seven loans in there sending

into your queue," or "I put 10 loans into your queue." So I kind of like went along with the managers, nice, cordial, no upsets or nothing like that. I just did my job. And when I found harm, they would pull that one away from me. And I would have harm in there and they would pull it out of my queue. So I would like go to work, have it, work on it, and then all of a sudden if I said anything, that, you know, "Listen, look at this one with me," they would pull it the next day. "Oh, I don't know, you know, they were doing some revamp. We don't know what happened to it." We'd lose the loan.

**YS:** So if you started chatting with your colleagues about a really ugly loan, they would yank it before you completed the review.

**RF:** Yes.

**YS:** Wow.

**RF:** Yes. Yes.

**Refusing to consider institutionalized abuses, including extortion and psychological abuse.** It is not an exaggeration to call some of the abuses that some borrowers suffered extortion. As Reviewer A explained it:

I do remember a case where a collections person in the BofA collections department had instructed a person that to get modification help they needed to send a \$6,000 payment and bring the loan current. When the mod team responded to the collector that the borrower had made a payment to the collection department and not the mortgage department and were now current and could not be helped, I remember the collector stating that he was there to collect and that was his only job and he mentioned he had gotten his [they worked on commissions in the collection department].

I did read other instances of collectors taking payments, getting their commissions and then, whether through ignorance of the procedure or just meanness, placing the funds in a suspension account and not making proper notes or notifying the right departments. While most were not as vicious in the notes as the case above, it was common (10-15%) of the time that a collector would take a payment that they shouldn't have and then not process it to proper channels to the mortgage/modification department.

Often times those payments were not even credited to the mortgage department at all. They would actually be placed in a collections suspense account for weeks until someone figured out where it belonged and how it would be credited. The biggest or at least the worst part of this was that the collectors would do their best to keep these borrowers calling them back. They would tell these borrowers to call them back for 'special instructions' and tell them to make payments to them and have them schedule regular monthly payments thru the collection department systems for auto payments and so on. Then after several payments the borrower would realize that their payments weren't getting credited as they thought they would be and then once the complaints started, the borrower would be forwarded to the right mortgage department personnel to get the real ball rolling. At that point it would be anyone's guess how the payments in the collection suspense account would be posted in the mortgage department. It was a mess.

While this reviewer labeled this behavior as borrower harm, it did not fall within the normal scope of G test, which meant that other reviewers were unlikely to flag it. And predictably, the reviewer reported the Quality Assurance department contested these findings.

Another reviewer was disturbed by how some of the notes showed psychological abuse:

**Reviewer F:** But there again I'm telling you, the notes that I read were just horrendous notes that what bank management — Bank of America management would tell these account reps or customer service reps or whatever they're called, what they would tell them. You know, "My manager said, 'No, we cannot do this, you missed. You know, 'Pack up, move out, you're losing your home.'" Those situations I got — I had the hardest ones. It was like a team of seven of us that we got the most difficult ones, and the managers were...becoming very friendly with us? That we had to — you know, they were coming and standing at our desks a long period of time. They were coming in, you know, asking, "Is everything okay? How's that loan going? You've been on it for a couple of days." Stuff like that. Those were the, those were the issues that we were seeing. And it just kept going on and on and on.

**Yves Smith:** Wow. So you're basically saying that in addition to QA the management was trying to manipulate you just by being nice to you, like they knew you had the ugliest cases —

**RF:** Abso —

**YS:** — so they were trying to sweeten you up?

**RF:** Yeah.

**More evidence that Bank of America fabricated documents during the reviews.** The reviewers provided persuasive evidence that Bank of America was creating documents to fix problems the reviewers had unearthed.

**Reviewer G:** So, like on this test I was talking about. For instance, one, we don't know whether they ever breached them [sent the borrower proper breach letters which notify them they are delinquent and the

bank will foreclose unless they take action]. Did they send them a notice to tell them they were behind, this is how much they owed, and this is where to send your payment to catch up on all your payments?. We don't know if they ever did that, because we had no legal documents ordered. Then they had to file the Notice of Default. Was it filed 30 days after? We don't know because we don't have the breach [letter]. And in a lot of cases, a lot of them, a lot of these files we couldn't complete because we had to wait — we didn't have breach letters in the file. And so they were all put on hold.

We would hold them and hold them and hold them. And then all of a sudden — you know, we're waiting two and three months for these breach letters. All of a sudden one day we come in and, lo and behold, our RFI [Request for Information] team found all these breach letters. Hundreds! Hundreds of them overnight. And they all looked the exact same way. And they weren't like the breach letters we had been seeing. They were sent to "Dear Customer." Not "Dear Mr. and Mrs. Jones" at such and such address, it was "Dear Customer" at this address. And then there's this, and then, you know. They were supposed to have I think seven specifics to make it a legal breach.

**Yves Smith:** Mmmm!

**RG:** And so whoever did it, didn't make it. Barely. They didn't even have five in some cases, five of the legalities. So, but, we were told, "No, these are right. Go ahead and use them." Well, one of the managers that was there, he .... I want to say I think he came from Fannie or Freddie or something. And so we called him over, because he was a team manager, and I said, "Patrick, look at this breach." And I said, "And the thing is (?)it had a Bank of America logo on it. But it's a Countrywide loan number." So, I mean they didn't even do it right.

And the Bank of America logo is the new Bank of America logo, not the Bank of America logo they had back in 2007.

**YS:** Oh my God.

**RG:** I know! It's so — and Patrick took a look at it. He was pissed. He was so — you know, he was the one mana— that he did kind — he had — he was just very ethical about things, a lot like [another reviewer]. Very much like [another reviewer]. Like, no, this is — and he said, "Send that to me." And so I did, and I don't know what they did with it exactly, but probably a week later we were told we couldn't use those anymore. Because we don't know — you know, they're missing some i— yeah. They're missing some of the points. And which, [another reviewer] brought that up right away, coming from a law office, he said, you know, "You don't have where to make these payments to. You're telling them that they're in default for this amount of money but you don't tell them what they have to do to pay it and where to pay it to." So, that's when they finally — you know, but of course we brought that up right away, and of course we were told, "No, no, no," and then a week later, "No, you can't use it." But they were all — and they all suddenly disappeared. All those ones were no longer out there. They could no longer be accessed.

It looks like there was an inept document fabrication which had to be pulled back because it was botched. Reviewer F had another example:

**Yves Smith:** One of the people on E and F tests alleges that he saw that documents were fabricated over the course of the test. Did you see any evidence of anything like that?

**Reviewer F:** I could say that I had questions about documents.

**YS:** Okay, can you explain where you saw things that you thought were questionable? Examples?

**RF:** Um, well — like the modifications that they would have, they had one modification that I would ask for, and it was not at all in there. And then I would ask for it and then it looked like it was scratched. It never matched any of the other signatures with any of the other documents that they had sent in, but the one document that I needed for them to see that, you know, where it would sway where there was no harm, that was the document that I would receive from the RFI [Request for Information] team....We would have to have the RFI team go after them, and it would sit in my queue for weeks before I'd get it back.

And I could tell you the documents, you could see the difference in the signatures of — and I've been in title and closings for, I don't know, I did that for 12 years before I went into banking, financial and stuff, but it was just, it's just — you can tell a signature, whenever a signature is fraudulently signed on there, you can tell when it's signed differently. I saw that a couple of times. And I questioned those to my manager...

**YS:** Can you just unpack that a little and explain...why don't you just walk me through an example.

**RF:** Okay. Modification, that they were on a trial and then it was time for them to have a perm[anent modification], and they were to go on a perm — those documents were fabricated. They would have those fabricated with their signatures on them that they signed though because they didn't have them, to go along with the time frame that they offered them the perm, when in the RFR [Request for Review] claim form it would say that the borrower never received a perm modification....it was making us think that their, the claimer, the claim, um, the client,

the borrower, is lying about they never, you know — they did get a perm, we see their signature, that kind of thing. And we would have to wait and hold those for weeks for the RFI team to get them to us.

**YS:** Right. Right. Right. Okay. Okay. Okay. Because that's pretty serious.

Reviewer F also found instances where he saw that the computer system was open and servicing notes appeared to have been scrubbed and that he, and therefore pretty much anyone, could add to the notes:

**Reviewer F:** And there's — and then also in their systems, in the bank systems, we had lack of notes. Notes would be cut off. Where it started from Countrywide and came over to Bank of America, where the problems where there was notes concerning modification, the borrower had called in, spoke with an individual concerning modification, needed up-front funds of \$4,000 — they would have that in that system but then there would be nothing else after that as to did Bank of America or did Countrywide send out the package? Did the borrower? And then all of a sudden we would have these documents that would show up that the borrower had all these papers in there that they did submit at the time, but there was no notes concerning how they obtained them, at what time frame they came in — it was just a poorly executed gathering of details. Communication logs.

**Yves Smith:** So when the notes were missing for the borrower, was it typically a time issue that they would start at the beginning, or was it more like there was a limitation? Like, it seemed like there were so many words they could take in notes and it would get arbitr— you know, similar to CaseTracker, there would be a certain amount of notes [crosstalk]

**RF:** Actually it looked like it was just — no, it looked like it was just like cut off, deleted out.

**YS:** Oh, wow.

**RF:** It — yeah. And with myself, with my background with knowledge in technology, I actually played around with that system, very much so, and I was able to put in notes, which —

**YS:** Oh, wow.

**RF:** — should never have been —

**YS:** Possible.

**RF:** Yeah. Into the bank system. Yeah.

**YS:** Wow.

**RF:** So there could have been, you know, like there was potential, you know, right there that anyone could have put in — I mean, anyone if they had been there that had a foreclosure, let's say, that may have been or may not have been working — that may have been working there on the project, they could have put their notes into that system, because it allowed us to — so it wasn't a really good fail-safe system. Anyone could type in a note and it would show up in their AS400, their Home Base system, and their Home Saver system.<sup>14</sup>

Recall that we discussed in our last chapter that Bank of America claimed that AS400 was its “system of record” and information in it should be given priority if there was a conflict between it and other information, such as documents. Reviewer G got similar instructions, that if he could not find anything substantiating a note in AS400 (say that copy of a letter that was supposedly sent) he should still accept the note as true. This is further proof that here was no pre-existing, internally consistent, complete and provably correct account of a customer and his loan in the Bank of America systems. This meant the reviews

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<sup>14</sup> Home Base and Home Saver are two subsystems in AS400.

were doomed before they even began. And it also means the real problem of servicing, that of defective systems and procedures, remained unaddressed.

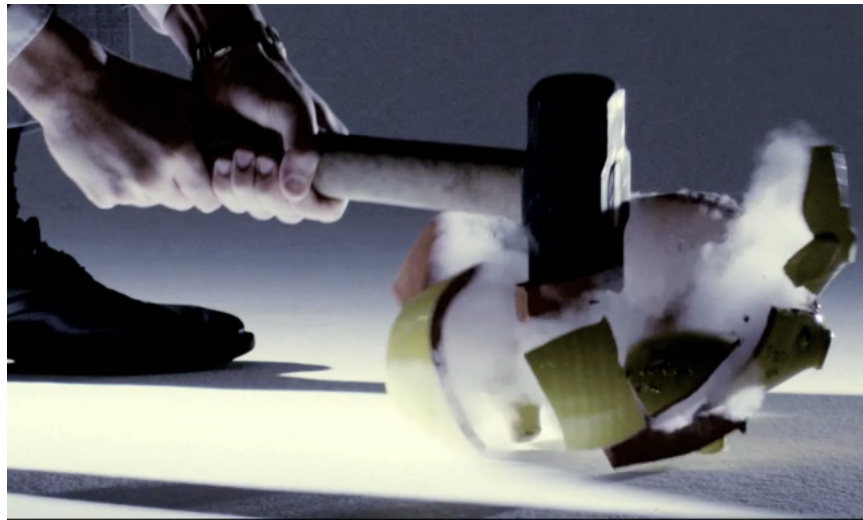


## CHAPTER VII

### Why the OCC Overlooked

### “Independent” Reviewer Promontory’s

### \$1 Billion Keystone Cops Act



THIS CHAPTER DISCUSSES the fifth finding:

- **Promontory played a dubious role; it had multiple conflicts of interest and little to no relevant expertise.**

We continue our discussion of the role of “independent” foreclosure review consultant Promontory Financial Group. Here we focus on what happened, or more important, didn’t happen in Promontory’s conduct of the reviews and how that contrasts with the staggering fees the firm is widely believed to have earned.

David Einhorn, of Greenlight Capital, has a saying about the companies he has shorted: “No matter how bad you think it is, it’s worse.” Promontory’s and the OCC’s performance on the foreclosure reviews epitomize this dictum.

As much as the foreclosure reviews were widely expected to be a charade, given the conflicted roles of supposedly independent review firms like Promontory, there was no reason to expect the reviews to also be an ineptly managed, costly fiasco. Promontory’s inability to man and adequately oversee the project meant what little useful work was accomplished was done overwhelmingly by contractors and temps, who were far enough removed to have gotten the wink and nod that no borrower harm was to be found. So individuals who have no lasting loyalty to Promontory and Bank of America, and whose confidentiality agreements are likely inoperative due to defective drafting, public policy exceptions to these agreements, and enhanced whistleblower protection under Dodd Frank, have unearthed widespread evidence at all of Promontory’s clients on the independent foreclosure reviews of borrower harm. No wonder the OCC rode to the rescue to shut the reviews down.

It is hard to overstate how badly the project at Bank of America and other sites was operated. We have spoken to multiple contractors who worked for Promontory on its OCC foreclosure reviews for PNC. (Promontory was acting as “independent” consultant to Bank of America, Wells Fargo, and PNC).

They also have knowledge of the process at Bank of America because some contractors moved between the Bank of America and PNC engagements and compared notes with their colleagues.

Doug Smith, a former McKinsey partner and co-author of the international best selling book, *The Wisdom of Teams*, reviewed their accounts. His reaction:

It's hard to imagine a more unprofessional, atrociously managed effort. In my more than three decades of working with, observing and advising teams and projects, I cannot identify a single worse example.

But the surprise was how inept Promontory proved to be in its efforts to hide how much damage was done to borrowers. The scale of the exercise, combined with the pervasive reliance on contractors and temps who were told only the official story that their mission was to find evidence of damage done to borrowers, meant they went down that path, often surprisingly far. That produced further complications as Promontory then had to stymie and redirect their efforts.

### **Promontory's Incompetence**

Promontory was not even remotely up to handling this foreclosure review assignment, either from a competence or an operational standpoint. And this wasn't simply due to the scale of the project at Bank of America. The whistleblowers who worked for Promontory on the considerably smaller engagement at PNC, present a picture of complete disorder. Moreover, some contractors went from PNC to Bank of America and they indicated that some pieces of the PNC engagement that had been organized by the contractors (as opposed to Promontory) were in **better** shape than the work at Bank of America.

One basic problem was that Promontory had no meaningful knowledge of mortgage securitization or servicing; if you look at its self-professed areas of expertise, there's nothing close. That put it in the dangerous position of not

knowing what it did not know, and also of being dependent on its client.<sup>15</sup> While that may not seem to be much of a problem if the name of the game is to find nothing, it turns out the OCC had unwittingly required that servicers like Bank of America make a serious-looking stab at it.

As we documented in detail in our earlier posts, the result was that the work of going through six of the seven substantive tests was performed on Bank of America premises with personnel under the control of Bank of America. Promontory did provide the software with the endlessly-revised questions that the personnel at Bank of America tried to answer, along with various information guides. It visited the staff in the biggest center, Tampa Bay, only four times in thirteen months, and its interaction with the people doing the review work was extremely limited. In other words, this was not a Promontory foreclosure review, it was a Promontory-decorated Bank of America foreclosure review.

By contrast, the project at PNC was modest in scale, yet it proved to be well beyond the managerial capabilities of Promontory. At a bank with a comparatively small servicing portfolio, Promontory put in place a team composed almost entirely of contractors (140 to 150 when staffed up) only one Promontory employee in a managerial role, Michael Joseph, the managing director on the project.<sup>16</sup>

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<sup>15</sup> One proof: the tool used by body shops to qualify candidates for Promontory work looked for expertise in mortgage underwriting and servicing. Underwriting experience is worth very little for analyzing foreclosure issues. Similarly, having servicing people review foreclosure issues is wrongheaded. While they might have experience in the area, the whole point of the foreclosure reviews was to analyze how servicers had managed the loans. It certainly isn't independent or a "review" to have the people check to see if their own type of work was legitimate or not. Lawyers should have been reviewing these issues.

<sup>16</sup> There were "staff attorneys" and IT people tasked to the project in Miamisburg, Ohio, the biggest site, who were also Promontory employees, but Michael Joseph was the only Promontory employee in a managerial role in the foreclosure review process. And it was light on supervision of any kind. The "underling" managers were contractors, one of which had had OCC experience, the other had worked at Countrywide.

PNC hired even more contractors to do clerical work to support this team's efforts.

Anyone who has worked in a real organization can appreciate how insane this arrangement was. One person cannot effectively lead 150 people, particularly on a customized project operating in several locations. The only professional firm activity that routinely has such an extreme ratio of partners to working oars is foreclosure mills and there it is more viable, since the work in rocket docket is routinized.

Predictably, the contractors (who were higher level than our earlier whistleblowers) describe a project in chaos. This contractor explained how no useful work was done for the first three to four months:

**Consultant D:** — essentially what I witnessed in the 10 to 12 months was the fact that Promontory did not manage the project. Their effort to manage the project with any real due diligence, to me, they just, they fell short from A to Z. For example, from the time I joined the project to the time it ended, I saw the leader of the PNC part of the project two times, and the total time was less than 10 minutes....

So, in any event, to address that question, very minimal management from Promontory. Essentially what we were, we were all contract people. I had seen from the bank's perspective and the OCC's perspective that, you know, maybe we weren't qualified, we didn't have the right skills, and there was a lot of back-and-forth about that,...What I'm trying to say is that the vast majority of the people I worked with as contractors, even the reviewer level people, were competent enough to get the job done. What I saw was that Promontory — they didn't come to the table. [Details of the types of review work done by some of the contractors] So there was borrower harm in almost every occurrence.

**Yves Smith:** Right. Right....

**CD:** As we started that review, like I said, Promontory played very little role in helping us do that, so we were essentially left to our own, our own devices, and the bank had provided us a bunch of information. PNC was very open in the beginning...But because Promontory didn't give us any guidance, we felt we were obligated to review all of these transactions, and obviously we were, you know, given the task of finding borrower harm....we would go out and do our own research online to find, you know, the different ...

**YS:** Applicable regulations, yeah, exactly...

**CD:** And our MO was essentially, "Hey, we're going to all treat it the same way and we're going to all include it in borrower harm when we see this and we see that, and that way if at some point in the future when Promontory catches up to us" — because, again, at this time we're giving Promontory the benefit of the doubt. We're just too busy. We're ahead of them. And we said, you know, "If we find out that this shouldn't be borrower harm, or etcetera, it should be treated this way, then we'll know that we all treated it consistently in our conclusions." So that was the way we proceeded. And, you know, I have to tell you we were finding significant borrower harm. So as that unfolded....

Well, as what I just described unfolded over several weeks, and then our results were then communicated to PNC, and immediately PNC, you know, their arms went up, their eyes got big, and they started to push back. "Wait a minute!" Their first, you know, I guess, exclamation was that, "Hey, you guys aren't supposed to be looking at all of this stuff," because again, remind you, Promontory didn't give us any guidelines...Because we hadn't been given those guidelines, again, we decided as a team that we would err on the side of the borrower and then we would get explanations and let the bank, you know, have their rebuttal period, etcetera.

**YS:** Right.

**CD:** So once they saw what we were doing, you know, they're like, "Wait a minute. You're supposed to only be looking at [X], not the actual integrity of [Y]." And we said, "Well, you know, Promontory said we're here to find borrower harm. They've given us no other guidance." And when that conversation took place, everything stopped.

The detailed work that was done to support the tests at Bank of America, such as matrixes with state and Fannie/Freddie/FHAVA fee limits and HAMP mod rules, was essential for PNC to do the work properly. It clearly couldn't afford to reinvent that wheel. So why didn't Promontory propose having PNC pay a modest license fee to use that work? Both sides would have been better off and Promontory would have cultivated a bit of good will. But aforethought was not Promontory's long suit. This came from Consultant B:

Well, there was — one thing I can tell you, generally speaking, the planning was piss poor. Piss poor. And when you have no planning whatsoever, you have chaos (laughs) until such time as people start to figure it out. And it took them four to five, six months to really get to the point where they were starting to figure out, well how are we going to do this, and about the time we got cranking then the whole question of independence came up and then we were going to have to trash everything we'd done and start all over again and design our own process without any interference from PNC.

Another observation:

After concluding that there were too many individual specialized pieces of a loan review to achieve consistency across the large number of reviewers, PNC pushed an attempt to break the reviews up into individual subsets that could address particular borrower harm issues, with the intent of bringing them all together at the end. That was the

plan, but then they couldn't figure out how they were going to bring all the subsets together at the end and gave up on that approach. Then, complaints as to "lack of independence" grew louder, and the OCC and Promontory were faced with junking what limited deliverables they had after 10 months of work, and starting all over with review procedures designed and blessed by Promontory alone. While that could have been done, the design stage was going to require a considerable amount of time, energy, and beta testing to get right.

Step back and understand what that section says. **After 10 months, there was virtually nothing to show for this effort.** Promontory had to junk what little it had done at PNC because the work to date was insufficiently "independent." And in fact that is what happened. The work done through October 2012 was thrown out.

Not that that mattered to Promontory:

**Contractor D:** We kept saying, you know, as we approached the end of the project, we kept — our confidence that Promontory was being truthful and was really going to come through with this stuff, was diminishing, obviously, over time. To the last month, in a meeting, I actually was in a meeting where it was called out once again, "When are we going to look at fee limits?" ...The last comment to come from Michael Joseph, the lead of Promontory, was, "We're not going there."

**Yves Smith:** Mmmm.

**CD:** So he finally came —

**YS:** Wow.

**CD:** He actually said in the meeting, "We're not going there."

**YS:** Wow...

**CD:** I — you know, so that was, that’s when it solidified it for me, that this was all by design, they never had any intentions of getting the right answers.

Another reviewer stressed that the bending-over-to-the-bank posture came not just from Promontory but also the OCC:

While the general lack of “hands on” oversight and planning by Promontory contributed mightily to the failure of the project, Promontory was compromised from the get go by the OCC’s cultural bias toward keeping their “client” happy. Review process design decisions by Promontory had to be blessed first by the OCC and then by PNC.

Obviously, any “independent” bank review that gives the bank the final say is fundamentally corrupt.

### **So How Much did Promontory Rip Out of Bank of America?**

One way to appreciate what a Guinness-record-level project management disaster the Bank of America review was is to try to understand how the fees charged related to any sort of discernible work product. The costs reported on how much the banks spent on the reviews are so stratospheric that most observers simply go into My Eyes Glaze Over mode. That serves to gloss over a very ugly fact: when you look at Bank of America, where the bank itself did the overwhelming majority of actual review work on its own nickel, with its own staff and temps, the amount that Promontory is rumored to have charged is so excessive that it raises questions of what exactly was being done on behalf of the bank.

We’re going to identify what we call “dark matter,” the magnitude of probable billings that are beyond any generous estimate of legitimate activity. Due to the extensive whistleblower reports, we can do a pretty decent job of estimating what the work at Bank of America (the part it paid for) cost, and what hefty

estimates of the Promontory costs directly related to that activity should have amounted to. We can also make a good stab at what another major undertaking that was included in the foreclosure reviews ought to have cost, *based on Promontory’s own statements as to how long it was taking*. We can then use those to show how much dark matter remains.

Admittedly, Promontory has never ‘fessed up to how much it billed to any of its clients on these reviews. While we could not definitively confirm the total, several informed sources indicated that the gross fees Promontory earned across its three clients, Bank of America, Wells Fargo, and PNC, were roughly \$1 billion. Because we have good information on the PNC team level and what the contractor’s rates were, it’s safe to say that that Promontory’s charges to PNC were probably not over \$60 million. The Wells Fargo reviews were contemplated in Promontory’s engagement letter to be somewhat smaller than the Bank of America effort. [Whistleblower accounts indicate](#) they were almost certainly smaller, since the bank was more stringent about reviewing borrower complaint letters in such a way to make it hard for any to be candidates for a real investigation (for instance, if a borrower failed to provide dates of particular incidents, the letter was rejected). So it’s reasonable to assume that Promontory earned \$500 million in gross fees from Bank of America.

Recall, as we have stressed, that the six of the seven substantive tests, B through G, were performed at Bank of America sites under the bank’s control.<sup>17</sup> Promontory performed test H, the determination of harm. Preliminary tests, which allowed it to exclude some borrowers, were also performed by Bank of America. As we’ll discuss below, Promontory helped design and provided critical components for this process, such as the frequently-revised CaseTracker program and the related information sources, such as “matrixes” of state fee

<sup>17</sup> In the unlikely event Promontory or the Bank of America rouses itself to protest that Promontory did perform tests B through G, we’ve provided not only detailed whistleblower reports but also documents used in the reviews that demonstrate otherwise. See Chapters III and IV.

limits. It is also the likely source of the “resource guides” that helped the claim reviewers understand where to look to answer questions. It also over time resolved the considerable ambiguities, gaps, and errors in these components.

Thank to extensive input from our seven Bank of America whistleblowers, we have been able to construct the staffing and pay levels at all of the Bank of America reviews sites. We’ve set out the assumptions in Appendix III at the end of this post. Please note that our assumptions are consistently “conservative” which also means “generous.” For instance, at all the sites, temps were added over time. The later temps were brought on at lower hourly rates than the earlier temps. We’ve used the hourly rates of the early hires.

Similarly, while most of the claim reviewers and related personnel were temps, there were also Bank of America full time employees in the same roles. The full time employees all in (even when you allow for benefits) were less costly than the temps’ hourly costs plus assumed agency markups. So for simplicity’s sake, we’ve assumed temp pay levels across the board, another generous assumption.

### Model of Costs Incurred at Bank of America Foreclosure Review Sites

Tampa Bay, Florida					
Number of Workers					
Job Description	Ramp Up Average Staffing Dec 2011 -June 2012 (1,232 hours)	Time Frame 2 Average Staffing July 2012-Sept 2012 (528 hours)	FULLY STAFFED Average Staffing Oct 2012- Jan 2013 (552 hours)	Hourly Rate	Agency Markup
<b>Temps/BoA Hourly Workers</b>					
Claim Reviewer I	60	120	120	\$18	15%
Claim Reviewer II	120	280	320	\$23	15%
Claim Reviewer III	130	260	260	\$29	15%
Request for Information	25	50	50	\$18	15%
Additional Information	21	21	42	\$26	15%
Quality Assurance	0	15	28*	\$32	15%
Proficiency Coaches	8	16	20	\$28	15%
<b>BoA Supervisors</b>					
				Monthly Salary	Employee Benefits
OpEx/Matrix	7	15	15	\$5,000	25%
Team Leader	25	48	54	\$5,000	25%
BoA Unit Manager	8	15	17	\$6,500	25%
BoA Senior Onsite Management	6	11	11	\$9,000	25%

\*Quality Assurance Workers were trained in quality assurance but never actually performed Quality Assurance tasks. Often these workers were reassigned to other, lower paying, job categories.

Staffing Costs				
	Ramp Up Average Staffing Dec 2011 -June 2012 (1,232 hours)	Time Frame 2 Average Staffing July 2012-Sept 2012 (528 hours)	FULLY STAFFED Average Staffing Oct 2012- Jan 2013 (552 hours)	TOTALS
Claim Reviewer I	\$1,530,144	\$1,311,552	\$1,371,168	\$4,212,864
Claim Reviewer II	\$3,910,368	\$3,910,368	\$4,672,128	\$12,492,864
Claim Reviewer III	\$5,341,336	\$4,578,288	\$4,786,392	\$14,706,016
Request for Information	\$637,560	\$546,480	\$571,320	\$1,755,360
Additional Information	\$773,573	\$331,531	\$693,202	\$1,798,306
Quality Assurance	\$0	\$291,456	\$568,781	\$860,237
Proficiency Coaches	\$317,363	\$272,026	\$355,488	\$944,877
<b>Subtotal</b>	<b>\$12,510,344</b>	<b>\$11,241,701</b>	<b>\$13,018,479</b>	<b>\$36,770,524</b>
OpEx/Matrix	\$306,250	\$281,250	\$294,656	\$882,156
Team Leader	\$1,093,750	\$900,000	\$1,060,763	\$3,054,513
BoA Unit Manager	\$455,000	\$365,625	\$434,127	\$1,254,752
BoA Senior Onsite Management	\$472,500	\$371,250	\$388,946	\$1,232,696
<b>SubTotal - BoA Employee Staffing</b>	<b>\$2,327,500</b>	<b>\$1,918,125</b>	<b>\$2,178,492</b>	<b>\$6,424,117</b>
Overhead 7%	\$1,038,649	\$921,188	\$1,063,788	\$3,023,625
<b>Total</b>	<b>\$15,876,493</b>	<b>\$14,081,014</b>	<b>\$16,260,759</b>	<b>\$46,218,266</b>

The part that is a bit trickier to estimate is the higher level supervision costs, legitimate start-up and wind down costs, and the cost of the special

information tools, which were essential but were clearly not contemplated in the engagement letter. Our<sup>18</sup> assumptions include what securitization experts see as an extremely generous allowance for these components (\$3 million, when they estimate a securitization law firm would have charged \$500,000 plus a premium for ongoing hand-holding) as well as an allowance for off site supervision in excess of the proportion provided for in the Promontory engagement letters. If you look at Appendix III below to see the salary and billing rates assumed for these personnel, you'll see that they are also generous.

What we get is:

- \$90 million of expenses at Bank of America foreclosure review sites
- \$5.5 million of Bank of America executive level involvement in project design, oversight, and wind-down
- \$22.6 million of Promontory billings for staff
- \$3 million additional Promontory billings for possible third party expenses for development of fee matrixes

TOTAL: \$121.1 million, of which \$25.6 million was Promontory billings

Recall that even though this process was extremely inefficient (the earlier hires report periods of one to seven months, depending on what test they were assigned, or performing no useful work), by August loans were being reviewed in a fairly orderly manner, even though the system was also designed to suppress finding of harm.

For this part of the project, the test that was clearly performed by Promontory was test H, the determination of harm. We'll return to that in a bit.

Promontory's other major task was to review a sample of 35,000 foreclosed loans separate from the reviews requested by borrowers. When the foreclosure reviews were abruptly halted, media sources claimed the banks were only 1/3

of the way through the process. We'll be generous and assume Promontory had gotten through half of the 35,000 loans. We'll also assume it had a learning curve, so it wasted 50% of its time figuring out how to review the loans. So that brings us to the equivalent of 3/4 of the loans, or 26,250.

Promontory told the Tampa Bay staff it took them only 8 hours to review a loan. That is remarkable, since just doing a proper fee review took a trained Tampa Bay staffer at least 10 hours. For 10 file reviewers, there was also one Quality Assurance staffer and one "Senior File Reviewer." There was also a 7.5% senior managers for every file reviewer. We've omitted a few roles to keep this simple; we'll compensate by increasing our result by 5%.

The highest figure ever reported in the press for file reviewers was \$250 an hour (the contractors on PNC were paid \$60 an hour and believe they were billed out at \$150 an hour, so again, our assumption is generous). We'll assume the Senior File Reviewers and Quality Assurance types billed at a 30% premium to the file reviewer rate or \$325 an hour. We'll assume the higher level managers were a mix of top billers (\$650) and more not quite as expensive people (\$400-\$500 an hour) for an average rate of \$500. So for every \$250 an hour file reviewer, you also have .4 x \$325 plus 0.75 x \$500 or \$417.5. You then have the 5% for ancillary people plus 15% for expenses, or \$501. So call it \$500. In other words, even that \$250 per hour per file reviewer has all sorts of project overhead and expenses piled on top of him.

We take that 26,250 loans time the fully loaded cost of a file reviewer of \$500 per hour times eight hours. That takes us to \$105 million.

Now go back to that \$121.1 million figure before for tests A through G. Of that, only \$25.6 million was actual Promontory billings. So far, we have accounted for:

- \$95.5 million spent by Bank of America on activities performed under its control
- \$130.6 million of generous but defensible Promontory billings

Compare that \$130.6 million to the estimate of \$500 million billed.

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18 Lisa Epstein worked on the Excel model.

## How can Promontory justify nearly \$370 million of dark matter?

\$370 million is an utterly implausible amount for the mystery test H.

There is at least one troubling way to fill the gap. Readers may recall [we interviewed a firm called SolomonEdwards](#) that advertised that it was in the “file scrubbing” business. We called one of the partners to understand what those services were about. He made clear, in his coded way, that his firm engages in document fabrication, specifically allonge fabrication (allonges are falsified to remedy the failure of the originators to transfer notes properly to the foreclosing party<sup>19</sup>). They also do other types of document “remediation.”

At the time of our conversation, March 2012, he said he had 600 people at a bank doing “OCC consent order work.” The partner made it sound as if his firm was engaged directly by his client. But the story may be more complicated.

That bank is almost assuredly Bank of America. At PNC, some of the contractors were recruited through a company that played a “staffing” role, Hilltop, which means it acted as a body shop to Promontory. Others were hired directly by Promontory. One of the PNC consultants was also approached by SolomonEdwards to work at Bank of America under a similar “staffing” arrangement and said that 975 SolomonEdwards people were working at Bank of America. That is confirmed indirectly by a 63 member “alumni of Solomon

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<sup>19</sup> Specifically, allonges are separate pieces of paper that are required per the Uniform Commercial Code to be “affixed” to the borrower note. They are used to create space for additional signatures when room on the note has run out. Allonges were simply unheard of prior to 2008, since it is permissible to use the sides and back of a note for signatures (notes are endorsed like a check to convey ownership to the next party [this is a simplified but adequate for this discussion]). There is no need for them in the ordinary course of business, but foreclosures have long ago ceased to resemble a legitimate business. Allonges, which remember are supposed to be affixed, have this funny way of appearing out of nowhere when a borrower about to lose his house points out that the note was never properly endorsed to the party that is trying to foreclose, and only the proper party can foreclose.

Edwards B of A project” group at LinkedIn. So it seems clear there was a large group of contractors working through SolomonEdwards at Bank of America.

Now on the one hand, this may simply mean that SolomonEdwards was doing file review and “remediation” with a 600+ person team and on the side was also acting as a body shop for Promontory. However, regardless, Promontory did bother getting Hilltop cleared for conflicts in with the OCC (Hilltop was mentioned in the PNC engagement letter) but not SolomonEdwards (in other words, neither firm was cleared for conflicts on the Bank of America conflicts by the OCC, even though Promontory did mention the names of each firm on other engagements, Hilltop for PNC and SolomonEdwards for Well Fargo. It would thus seem a matter of good order to have cleared them both for Bank of America, but that appears not to have happened).

And even if most of the 975 SolomonEdwards employees were working as contractors to Promontory, we still are in the dark as to what they could possibly have been doing, particularly since we believe their billing rates were lower than the levels we’ve assumed in our estimates above.

This is a long way of saying that even when you make allowance for high billing rates, the fact that so much of the real review “work” was actually done by Bank of America on its nickel means that there is a tremendous amount of dark matter in the Promontory billings. On the one hand, this may simply be egregious incompetence; there was certainly plenty of that on display at the far more manageable PNC project. Even so, it is extremely difficult to explain the numbers that credible sources (including people in senior oversight capacities in a position to get good intelligence) believe the Bank of America charges were with any plausible level of review related work. This strongly suggests that Promontory, either in concert with or separately, may have been aware of and was potentially involved in various file “remediation” and records-doctoring activities.



Keep in mind that we've provided accounts from the Tampa Bay contractors of document fabrication of multiple types as well as of deletions from servicer notes that appeared to be to remove incriminating evidence. So there seems to be a very strong likelihood that crimes were committed.<sup>20</sup> The only open questions are how wide ranging this activity was, who carried it out, who else was an accessory, and how much were they paid.

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20 For starters:

18 U.S.C. § 1512(c) (as amended by Sarbanes-Oxley Act § 1102) (offense encompasses any person who corruptly “alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding”; or corruptly “otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so.”).

18 U.S.C. § 1519 (created by Sarbanes-Oxley Act § 802(a)) (offense encompasses any person who “knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case . . .”).

See *United States v. Trauger*, No. 3 03330 (N.D. Cal. filed Sept. 25, 2003). In this complaint, the government alleges that the lead audit partner of a public company concealed the alteration of computer and hard copies of audit workpapers, as originally produced to Office of Comptroller of Currency (OCC) and then produced to the SEC, because he wanted to “beef up” the files to make it appear that he had thoroughly considered the accounting issues and available facts during the course of the audits and reviews. The partner allegedly found out how he could de-archive an audit in order to revise and then re-archive the working papers; directed a colleague to backdate the system date on his computer in order to make it appear that printed copies of the altered working papers had been created during the course of the audit; added an undated handwritten note to an original and all copies of a memorandum; and directed that the e-mail evidence of the requests to alter and delete documents itself be deleted.

## APPENDIX I

# Staffing of Bank of America Foreclosure Reviews

**BANK OF AMERICA HAD REVIEWS TAKING PLACE IN MULTIPLE CENTERS**, with the largest and longest-lived group in Tampa Bay, Florida, and other sizable teams in Westlake Village, California and Newark, New Jersey. A smaller group was located in Texas. Some tasks such as document retrieval (typically from legacy systems) were performed by specialized teams internal to the bank.

Contractors estimate that the project workforce on Bank of America premises (temps employed by agencies plus Bank of America employees) totaled 2500 at peak staffing with roughly 900 in the Tampa Bay operation. Of the team in Tampa Bay, an estimated 130 were Bank of America employees. The rest were contractor hired via temp agencies.

The ramp-up was lengthy and disorganized. The engagement letter between the independent reviewer, Promontory Group, and Bank of America is dated September 2011. The first group of temporary employees was hired in November 2011. Successive groups in Tampa were hired in numbers typically ranging between 20 and 50, with the largest group (72) starting January 30, 2012. Interviewees estimate that the effort was roughly 50% staffed by March.

Yet no useful work was done prior to April, and then only 40 went “live” on one test. The rest of the staffers were working with the then-current version of other tests for with actual consumer records in a training environment. The most elaborate and time consuming tests, E&F, did not go live till the end of August, and the G test (on modifications) went live even later. (see Appendix II for descriptions of the tests).

Level II and III employees had three weeks of orientation and training on Bank of America systems. For Tests E and F, the most time-consuming test, the total new hire training was approximately 5 weeks. All Level II and III reviewers were certified on the tests they were to perform before they were allowed to go live. The training time was reduced over time as the tests were simplified.

The Tampa Bay effort was in a warehouse with the staffers located on one floor, in cubicles that allowed workers to see each other. Reviewers were clustered together by level.

Major Roles (note these were roles; the titles for contractors were “Claim Reviewer Level I” etc, while Bank of America employees in these roles listed below were formally “associates”)

Staffers were dedicated to particular tests (see Appendix II), organized into teams of 12-15 each. Each team had workers dedicated to only one test group (Level IIs did either B and D tests or E and F tests; Level IIIs did C and G tests). Teams were either all contractors or all Bank of America employees

*Level I:* Low skilled workers, believed to be paid \$18 an hour or less. Responsible for verifying the original complaint and determining the claimant’s right or need to file a claim. Deployed on basic information retrieval and simple verification. Nearly all Bank of America employees

*Level II:* Among the applicants hired before the tests were simplified, most Level II reviewers considerably exceeded the not very high requirements for Level II but worked as Level II because the better-paid Level III positions were filled quickly. Minimum 2-3 years experience. Contractors were paid \$19 to \$23 an hour. Overwhelmingly contractors

*Level III:* Most experienced category, yet some agency job descriptions indicated it required only a high school degree and 2-5 years experience. Reviewers indicate that the contractors brought on before the summer had considerably more experience. Contractors were typically paid \$25 to \$28 an hour. Overwhelmingly contractors even more so than Level IIs

Proficiency coaches: Staffers who acted in a training and/or expert category on specific tests. Paid a bit more than the normal pay level for workers tasked to that test. Both contractors and Bank of America employees.

## Organization

The reviewers interacted with:

*Team leaders:* Bank of America employees who would regularly proclaim that they were not managing the reviewers, even though they would remind the various reviewers of program policies (keeping up the fiction of working during the protracted preliminary phase) and enforce compliance by getting the temp agency to terminate workers who violated Bank of America policies, for instance, by sending against sending e-mails, even innocuous ones, outside the bank). They would attempt to resolve any questions that couldn’t be agreed on by the proficiency coach and the reviewer. They were also responsible for daily production logs and ensuring that we were meeting the deadlines and quotas set by the bank. Of course, officially, these production goals did not exist.

*Unit managers:* Bank of America employees who supervised as many as 4 team leaders. There were two managers above them in Tampa Bay whose roles and job titles were not clear to the reviewers.

*Quality assurance:* Also referred to as QC by the reviewers. Would review the documentation, notes, and finding of harm compiled by reviewers, which in practice meant pushing back on reviewer findings of harm (done impersonally, via the software package known as CaseTracker). Again a mix of contractors and Bank of America employees. Most were in California or New Jersey

*Resource center:* Higher level subject matter experts, either Bank of America employees or employees of OpEx, a company that was a consultant to Bank of America (not clear if a direct contractor or a subcontractor to Promontory). Mentioned in passing only by one interviewee, who deemed them to be “mythical.”

Specialized support: Includes document retrieval team (known formally as RFI for Request for Information) and breach letter team. All Bank of America employees.

## APPENDIX II

### Description of Major Tests

NONE OF THE REVIEWERS AT ANY POINT IN THE PROCESS SAW PHYSICAL DOCUMENTS of any kind. All the data was retrieved from Bank of America systems or from court records, and were either images or data entries in borrower records. No contact was made with borrowers even on a sampling basis to verify whether the information in Bank of America systems was consistent with their payments histories or their records of communication with the bank.

For all tests performed by Level II and Level III reviewers, the software they used to compile findings (called CaseTracker) had them record “harm notes” relative to various questions. Even though the questions were detailed, both the E and F tests (Question 520) and the G test had a question that was open ended and asked the reviewers to describe harm they found aside from that described elsewhere.

*A Test:* Also described as “base file.” Consisted of checking whether a borrower who submitted a foreclosure review letter did indeed have a mortgage that had been serviced by Bank of America, the amount of the original mortgage, whether the borrower and a lender had endorsed the note, and checking other information such as property address, loan documentation, who the investor was, whether assignments were to be retrieved if available. OCC did not require any checks against the pooling & servicing agreement for private label securitizations to see that they conveyance to the mortgage trust was made as stipulated (endorsed as required through the specified intermediary parties to the trust by the cutoff date), so none was made..

Performed by minimally skilled employees (Level 1 reviewers). Higher-level reviewers interviewed volunteered that these staffers had no idea what a mortgage or note was, and did not understand what a proper endorsement or chain of endorsements was.

Estimated time required for a reviewer familiar with the test: 2-30 minutes per borrower.

*B and D Tests:* Foreclosure process and bankruptcy. Performed by Level II reviewers. Questions included identifying the documents that began the foreclosure process, whether a search had been made to determine whether the borrower was a member of the military and in active duty service, and whether the borrower had filed for bankruptcy. Most of the questions related to bankruptcies. These two tests were highly parallel, one for judicial foreclosure states, the other for non-judicial.

Estimated average time for a reviewer familiar with the tests: 2 to 2.5 hours

*E and F Tests:* Performed by Level II reviewers. The most elaborate and time consuming of all the tests. Bank of America solicited Level II reviewers who were particularly numerate and analytically oriented for these tests. Test E covered fees and F reviewed frequency of fees (as in whether they were charged too often.

Reviewers would check all fees against matrixes that identified permissible fees against state guidelines (this test had variants for each state), investor guidelines, market rates, and “customary and reasonable.” Late in the review process, (November 2012) E and F test reviewers were also asked to verify that they could find evidence of service rendered (such as inspection fees), meaning they were to locate every invoice supporting fees that resulted from third party charges (this was an elaboration of the original question E52, which merely required that these fees were permissible). They would also compute how much any fees exceed permissible guidelines and record those amounts. However, at the same time, they were instructed to exercise discretion in ways that seem questionable, for instance, to take the more permissive of Fannie and Freddie guidelines for each type of fee for all GSE loans.

Estimated average time for a reviewer familiar with the test: 10 to 20 hours.

*C and G Tests:* Performed by Level III reviewers. Determined whether a foreclosure sale had taken place and would identify whether a modification had

been implemented and the chronology of the modifications, if more than one had been put in place.

Reviewed whether borrowers who were given modifications were given appropriate modifications, and whether the borrowers made the payments as stipulated and otherwise complied with the requirements of the modification program.

Estimated average time for a reviewer familiar with the test: 30 minutes for what was called a “one and done.” This occurred when the foreclosure had not taken place yet or had been reversed. The other tests took anywhere from 1 hour to 6 or 7 depending on the number of modifications applied for and offered or whether the borrower might have been in a number of programs. This averaged to roughly 2.5 hours per file.

## APPENDIX III

# Bank of America Foreclosure Review Model Assumptions

**THE PURPOSE OF THE FINANCIAL MODEL** is to come up with a generous estimate of the costs that Bank of America incurred in performing foreclosure review tests on its premises and under its control in the OCC-mandated Independent Foreclosure Reviews.

As we have documented in our previous posts, Bank of America and its independent consultant Promontory Group, designed and implemented a process that was contrary to the requirements of the OCC consent order issued in April 2011. The OCC ordered, and the Promontory engagement letter confirmed, that Promontory was to perform all the substantive work. In actuality, Promontory and Bank of America devised ten tests, A through H, plus an additional two screening tests, O and S. A, O, and S tests were sufficiently clerical in nature that it was arguably acceptable for Bank of America to perform them, provided that Promontory did some sampling and oversight (note there is no evidence that that occurred). However, seven tests, B through H, were substantive, and of those seven tests, only one was performed by Promontory.

Our aim in the model is to estimate the cost of the tests performed by Bank of America, including the cost of the test tools provided by Promontory and Promontory guidance in refining these tools and resolving ambiguities. Our estimates include overheads.

### Staff Level Information and Assumptions

Staff levels, mix and the profile of the rampup in Tampa Bay are based on input from seven contractors who worked on site

Overall staff levels in the other centers are based on information from Bank of America personnel and direct observation of some of the contractors. We are reasonably confident in the overall headcount. We have estimated the mix of staff based on:

- Backing out the number of personnel known to be in specialized teams in the various centers (each has particular focuses and the Tampa Bay contractors had reports of their headcount)
- Assuming the same mix of Level I, II, III contractors and related personnel (team leaders, proficiency coaches, unit managers, etc) for the balance of the population
- The ramp-up profile in Tampa Bay is based on extensive checking with the contractors. The use of an average staff level during the December 2011-June 2012 period is conservative; more granular estimates would produce a lower average figure
- Due to the lack of information about the how the staff up proceeded in Westlake Village and Newark, we assumed they were fully staffed as of beginning of July 2012 (by contrast, Tampa Bay was between 85% and 95% staffed for July through and including September). So the assumption of having reached full staffing levels of July again biases the cost estimates to the high side

Executive level oversight from Charlotte is more difficult to estimate. The contractors had 4 executives visit Tampa Bay at various times. IT support (below the senior IT officer on the project) would be captured in the overhead assumption, see below). We have used 10 as an assumption over the course of the project (beginning of September 2011 to the end of December 2011), with an additional 15 FTE involved in the start-up period (September through December 2011) and the course changes that began in October 2012 as a result of adverse publicity about of lack of independence of the reviews and the settlement negotiations (three months in addition to the four in 2011, for a total of seven months)

The Promontory contribution to these tests appears to be narrow. Promontory was engaged September 6, 2011. The first group of contractors was hired in

Tampa Bay at the end of November 2011. The next group of temps was selected in early January but not brought on board until the very end of January 2012. Development and refinement of CaseTracker continued almost continuously though the project, first in creating the questions, then in debugging them (they were often ambiguous, incomplete and sometimes not accurate on a mechanical level), developing the related matrixes for Tests E and F (state level permitted fee levels and frequency of fees; a similar matrix for Fannie, Freddie, FHA and VA loans), and then “simplifying” as the contractors were finding too much harm.

Our estimates are:

- Throughout the project, 20 people at Promontory for development of CaseTracker, ongoing refinements, development of matrixes, and streamlining. This team consists of one managing director, two senior managers, and seventeen associates. We have also allowed for \$3 million of outside legal advice and review (this would consist of providing state law requirements on tests B and D, which covered foreclosure processes and the state and “investor” fee limit matrixes on tests E and F. “Investor” in this context is Fannie, Freddie, FHA and VA. Attorneys who are experts in securitization (and familiar with billing rates at the name brand firms in this field) believe that this exercise should in fact have cost no more than \$500,000 for a one-off product, but also indicated that a law firm could have extracted a good bit more from providing ongoing supervision. This could have been provided for by other means, but this was clearly a major exercise and we thought we’d allow for the high cost version of how this section of the test might have been created.
- We also note that the temps indicated the information on the matrixes was often ambiguous, which led to demands for clarification and frequent revisions.

- For the startup period (September-December 2011, working with Bank of America to design the structure of the tests and devise roles) and the regrouping/settlement period (October through December 2012) ten people, consisting of one managing director, two senior managers, and seven associates

The offsite management levels (the supervision by Bank of America staff in Charlotte and the input from Promontory, excluding the outside law firm input) plus the onsite supervisors exceed the level of managerial staffing assumed in the Promontory engagement letter (5.6% of total staffing) so we believe it to be conservative

### **Staff Costs**

The costs for the various contractors in Tampa Bay are based on rates actually paid to the contractors hired in the initial months of the project. Note that Bank of America lowered the rates paid to contractors as it simplified the tests. Use of the early rates thus produces a high estimate. Rates advertised for various roles were similar in Newark to those in Tampa Bay, so we have used the same pay levels. Texas is not a high-wage area, so we have also used the Tampa Bay levels for the small team there. For Westlake Village, we have assumed the pay levels are 20% higher.

In all the contractor roles (e.g. Level I, II, III), the bank also had employees working along with the temps. However, the permanent employees were paid markedly less than the contract workers. For simplicity we have costed all the workers out as if they were temps, since the temps were more expensive (when you include the higher wages plus the agency markups versus the benefits employees receive) on an all-in basis. This again produces a high estimate.

QA (quality assurance) is a blended rate, since QA staffers worked only on specific tests and were paid at the same level as the staff that were doing the test. Since the Level I reviews would be unlikely to lead to many QA issues,

we've used a rate that is an average of Level II and Level III rates. Again, this is a conservative assumption.

For the on-site managers, the contractors knew the compensation levels for some the managers immediately above them. The others were provided by headhunters in the financial services industry.

For the Bank of America executives, we assumed an average salary level of \$250,000.

For Promontory, we assumed associates billed at a rate of \$250 an hour (note outside consultants in these roles believe they were billed out at \$150 an hour, so this is generous) which for an 8 hour day, 22 billable day month, would be \$44,000 a month. Senior managers would be \$350 an hour, which we rounded up to \$62,000 a month and managing directors would be \$650 an hour or roughly \$115,000 a month. We assumed expenses were an additional 15%.

Our 7% overhead cost is for IT, security, communication, and facilities costs.