ANNEX 1

Bank of America Corporation

Statement of Facts

<u>BANK OF AMERICA - RMBS</u>

In late 2007 and early 2008, Bank of America structured, offered and sold over $850 million in residential mortgage-backed security ("RMBS") certificates in a securitization trust known as the BOAMS 2008-A securitization to investors, including federally insured financial institutions. Bank of America marketed these RMBS as backed by Bank-originated, prime mortgages. Bank of America issued these RMBS certificates using a shelf registration statement and other offering documents filed with the U.S. Securities and Exchange Commission ("SEC") by a Bank of America affiliate, Banc of America Mortgage Securities, Inc. ("BOAMS").

In the BOAMS 2008-A offering documents, Bank of America represented that "each mortgage [backing the securitization] . . . is underwritten in accordance with guidelines established in Bank of America's Product and Policy Guides." It further represented that "[a] loan is considered to be underwritten in accordance with a given set of guidelines if, based on an overall qualitative evaluation, the loan is in substantial compliance with such underwriting guidelines." Bank of America also represented that it "permits [a loan applicant's debt-to-income ratio] to exceed guidelines when the applicant has documented compensating factors for exceeding ratio guidelines . . . ."

At the time Bank of America made these representations, its internal reporting showed that "wholesale" mortgages—that is, loans originated through third-party mortgage brokers—had decreased in performance and were experiencing an increase in underwriting exceptions. Additionally, a report that Bank of America prepared for qualified institutional buyers showed that wholesale loans from an industry lender, on average, experienced a higher Conditional Prepayment Rate ("CPR") than retail mortgages. These reports were received by Bank of America employees involved in the BOAMS 2008-A securitization prior to its marketing and sale. Bank of America did not disclose this information in the BOAMS 2008-A offering documents.

Bank of America also did not disclose in the BOAMS 2008-A offering documents the percentage of wholesale mortgage loans collateralizing the securitization. Over 70 percent of the mortgage loans collateralizing the BOAMS 2008-A securitization consisted of mortgages Bank of America originated through its wholesale channel. Approximately six weeks before the transaction closed, Bank of America disclosed preliminary data relating to the percentage of wholesale mortgage loans collateralizing the BOAMS 2008-A RMBS to certain investors but it did not disclose the percentage to all buyers of the BOAMS 2008-A offering.

The preliminary loan tapes containing the information about the wholesale loan percentage that Bank of America provided to certain investors were "ABS informational and computational material" because they were "factual information regarding the pool assets underlying the asset-backed securities, including origination . . . and other factual information concerning the parameters of the asset pool appropriate to the nature of the underlying assets, such as . . . the programs under which the loans were originated." Bank of America did not publicly file the preliminary loan tapes containing this information with the SEC and only disclosed it to the aforementioned investors, who ultimately invested.

Bank of America did not have third-party, loan-level due diligence conducted on the specific mortgage loans collateralizing the BOAMS 2008-A securitization. This was contrary to its past practice. Third-party, loan level due diligence had been conducted on previous BOAMS securitizations that closed in March, April, and August 2007; these diligence reviews revealed that some of the mortgages reviewed did not conform to Bank of America underwriting standards. Third-party due diligence also had revealed data errors in the preliminary loan tapes that Bank of America had provided to investors. Bank of America did not disclose in the BOAMS 2008-A offering documents that third-party, loan-level due diligence was not conducted on the loans collateralizing BOAMS 2008-A.

MERRILL LYNCH - RMBS

Throughout 2006 and 2007, Merrill Lynch issued approximately 72 RMBS consisting of thousands of subprime mortgage loans. Merrill Lynch acquired some of these loans from third-party originators in whole loan transactions. Merrill Lynch also securitized loans from two originators in which Merrill Lynch had an ownership interest: Ownit Mortgage Solutions, Inc. ("Ownit") and First Franklin Financial Corporation ("First Franklin").

Merrill Lynch made certain representations in the offering documents it filed with the SEC concerning the loans securitized in these RMBS. Merrill Lynch also submitted information about these RMBS to the ratings agencies. Prior to making these representations, Merrill Lynch received information as part of its due diligence process showing that, for certain loan pools, significant numbers of the loans it was considering for securitization did not conform to the representations made in the offering documents it filed with the SEC.

In particular, the offering documents for Merrill Lynch subprime RMBS regularly included representations that "[a]ll of the Mortgage Loans were originated generally in accordance with the [originator's] Underwriting Guidelines." The offering documents also regularly represented that exceptions were made to these guidelines on a "case-by-case basis" based on the presence of "compensating factors." (According to offering documents filed with the SEC, the underwriting guidelines were "primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan.") The offering documents also represented that the loans securitized by Merrill Lynch conformed to applicable federal, state, and local laws.

Prior to making these representations, employees at Merrill Lynch's Whole Loan Trading Desk conducted due diligence on the loans to be purchased. This due diligence process typically included a review of the files for a sample of the loans from each pool. This review was conducted by a third-party vendor and overseen by Merrill Lynch. The sample would contain randomly selected loans, as well as loans selected using "adverse sampling" techniques designed to identify loans that had particular characteristics that Merrill Lynch believed warranted further review. This loan file review included an evaluation of the loans' compliance with the originators' underwriting guidelines (the "credit review"), as well as an evaluation of whether the origination of the loans complied with federal, state, and local laws, rules, and regulations (the "compliance review").

The third-party vendors that performed the credit and compliance reviews assigned grades to each of the loans they reviewed. The vendor graded a loan an "Event Grade 1" loan, or EV1, if it determined that the loan was underwritten according to the originator's underwriting guidelines and in compliance with relevant rules and regulations. Loans that the vendor determined did not strictly comply with applicable underwriting guidelines, but that had sufficient compensating factors, were rated as an EV2. Vendors graded a loan an EV3 when the loan was not originated in compliance with applicable laws and regulations, the loan did not comply with applicable underwriting guidelines and lacked the sufficient offsetting compensating factors, or the loan file was missing a key piece of documentation.

The underwriting and compliance attributes considered by the vendors in grading loans as EV3 included, among other things, loans to borrowers who had recently declared bankruptcy in certain lending programs where bankrupt borrowers were not permitted; "high cost" loans that appeared to violate state lending laws; debt-to-income ratios that did not comply with applicable product guidelines; inadequate or missing documentation of income, assets, and rental or mortgage history for the relevant loan program; and stated incomes the vendors concluded were unreasonable.

Merrill Lynch's subprime due diligence manager received the vendors' reports and the results of the due diligence reviews throughout the whole loan acquisition process. The vendors' reports were also available to others in Merrill Lynch's RMBS business, including those on the trading desk and in the securitization group. These reports showed that some due diligence samples had an EV3 rate as high as 50% of the loans sampled. Merrill Lynch typically did not review the unsampled portion of the loan pools to determine whether they also included loans with material credit or compliance defects.

In addition, due diligence personnel and, in certain instances, traders on Merrill Lynch's Whole Loan Trading Desk, reevaluated certain loans graded EV3 by the vendor and, in certain circumstances, overruled the vendor's grade and "waived" particular loans into the purchased pool. Merrill Lynch's contemporaneous records did not in all cases document Merrill Lynch's reasons for directing the due diligence vendors to re-grade loans.

In an internal email that discussed due diligence on one particular pool of loans, a consultant in Merrill Lynch's due diligence department wrote: "[h]ow much time do you want me to spend looking at these [loans] if [the co-head of Merrill Lynch's RMBS business] is going to keep them regardless of issues? . . . Makes you wonder why we have due diligence performed other than making sure the loan closed."

In 2006 and 2007, Merrill Lynch's due diligence vendors provided Merrill Lynch with reports reflecting that the vendors graded certain of the sampled loans as EV3. For some pools, the reports showed that the vendors had graded more than 20 percent of the sampled loans as EV3. The following examples provide the approximate percentages of EV3 loans that were present in the samples taken from particular pools and the approximate percentage of those EV3 loans that were waived in by Merrill Lynch for acquisition:

- Sampled loans from five pools of loans originated by ResMAE Mortgage Corporation fed into four securitizations issued by Merrill Lynch Mortgage Investors Trust in 2006: MLMI 2006-RM1, MLMI 2006-RM2, MLMI 2006-RM3 and MLMI 2006-RM5. For one pool, the vendor graded 24% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 16% of these loans. For a second pool, the vendor graded 32% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 14% of these loans. For a third pool, the vendor graded 22% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 27% of these loans. For a fourth pool, the vendor graded 57% of the due diligence sample EV3. Finally, for a fifth pool, the vendor graded 40% of the due diligence sample EV3, and Merrill Lynch waived into the purchase pool 50% of these loans.

- Sampled loans from two pools of loans originated by Mortgage Lenders Network USA, Inc. fed into MLMI 2006-MLN1, a securitization issued by Merrill Lynch Mortgage Investors Trust in 2006. Vendors graded 22% and 23% of the due diligence sample EV3 for these two pools. For the latter sample, Merrill Lynch waived into the purchase pool 22% of the loans that had received an EV3 rating.

- Sampled loans from two pools of loans originated by WMC Mortgage Corporation fed into two securitizations issued by Merrill Lynch Mortgage Investors Trust in 2006: MLMI 2006-WMC1 and MLMI 2006-WMC2. For these two pools, the vendors graded 22% and 45% of the loans in the due diligence sample EV3. For the latter sample, Merrill Lynch waived into the purchase pool 26% of the loans that had received an EV3 rating.

- Sampled loans from a pool of loans originated by Accredited Home Lenders, Inc. fed into MLMI 2006-AHL1, a securitization issued by Merrill Lynch Mortgage Investors Trust in 2006. For this pool, vendors graded 55% of the due diligence sample EV3. Merrill Lynch waived into the purchase pool 31% of the loans that had received an EV3 rating.

Merrill Lynch securitized most of the EV3 loans it waived in and acquired in this fashion, typically within a matter of months.

These due diligence results are consistent with a “trending report” prepared for client marketing purposes by one of Merrill Lynch’s due diligence vendors (later described by the vendor to be a “beta” or test report) that tracked EV3 and waiver rates in the samples from the Merrill Lynch loan pools that the vendor reviewed from the first quarter of 2006 through the second quarter of 2007. During those six quarters, the vendor reported that it reviewed 55,529 loans for Merrill Lynch. The vendor reported that 12,888 of the loans reviewed, or 23%, received an initial grade of EV3. The report notes that 4,099 loans, or 31.8% of the loans that received an initial EV3 grade, were “waived” into the purchase pools by Merrill Lynch.

Through the due diligence process in 2005 and 2006, Merrill Lynch also learned that certain originators were loosening their underwriting guidelines, resulting in Merrill Lynch's identifying, for example, an increasing number of loans with unreasonable stated incomes. Merrill Lynch's due diligence manager brought this to the attention of Merrill Lynch's head of whole loan trading in a memorandum written in November 2005. Merrill Lynch, however, continued to acquire and securitize loans from some of these originators without substantially altering its disclosures to investors. A year later, in December 2006, Merrill Lynch's due diligence manager again brought the loosening of originator guidelines to the attention of the head of whole loan trading in another memorandum. Merrill Lynch still continued to acquire and securitize loans from some of those originators without substantially altering its disclosures to investors.

With its acquisition of originator First Franklin in December 2006, Merrill Lynch vertically integrated all significant aspects of its RMBS business, from origination through securitization. This integration gave Merrill Lynch greater visibility into First Franklin's loan origination practices. Following its acquisition of First Franklin, Merrill Lynch sometimes reviewed a smaller due diligence sample when securitizing First Franklin loans than it had when acquiring and securitizing loans from First Franklin prior to the acquisition. In an email, one Merrill Lynch employee stated that certain post-acquisition First Franklin loans were being securitized "without the equivalent of a whole loan due diligence" and as a result "valuation and other credit kickouts will not occur" to the same extent as prior to the First Franklin acquisition. Moreover, for a period of time in 2007, Merrill Lynch gave its wholly owned subsidiary First Franklin the authority in certain circumstances to make the final decision about what First Franklin loans should be waived in and securitized. For example, according to a May 2007 report, the due diligence vendor graded 7% of the loans in one sample of First Franklin loans EV3 and 58% of those loans were waived into the purchase pool. Most of these loans were ultimately securitized by Merrill Lynch.

The offering documents for Merrill Lynch subprime RMBS also made representations concerning the value of the properties that secured the mortgage loans it securitized. In particular, the offering documents made representations to investors concerning the loan to value ("LTV") and combined loan to value ("CLTV") ratios of the securitized loans. Originators generally made their LTV and CLTV determinations by comparing the appraised value of the property at the time of origination or the purchase price of the property (whichever was lower) to the amount of the loan or loans secured by the property.

Merrill Lynch hired third-party valuation firms to test the reasonableness of the appraised values of mortgaged properties. These checks were performed through a variety of methods that generated valuation estimates, including (i) "automated valuation models," or "AVMs," (ii) desk reviews of the appraisals by licensed appraisers, and (iii) broker price opinions. After reviewing the relevant data, the valuation firm would provide its results to Merrill Lynch. Merrill Lynch had an internal "tolerance" of 10 to 15%. As a result of this practice, Merrill Lynch accepted certain loans for purchase and securitization where the reported appraised value at the time of origination was as much as 10 to 15% higher than the valuation firm's estimated value of the property. In addition, some of the RMBS issued by Merrill Lynch potentially contained loans with an LTV in excess of 100%, based on valuations obtained from AVMs. The offering documents did not disclose facts about Merrill Lynch's "tolerance" levels.

The conduct described above with respect to Merrill Lynch all occurred prior to Bank of America's acquisition of Merrill Lynch in January 2009.

COUNTRYWIDE - RMBS

Between 2005 and 2007, Countrywide Financial Corporation ("CFC") was the parent corporation of Countrywide Home Loans ("CHL"), Countrywide Bank, FSB ("CB"), and Countrywide Securities Corporation ("CSC"). CHL originated and acquired residential mortgage loans. CB was a federally chartered savings bank, the deposits of which were federally insured. CSC was a registered broker-dealer that was engaged in underwriting RMBS, which were often backed by "pools" of loans originated by CHL. CFC, CHL, CB, and CSC are referred to herein collectively as "Countrywide."

As discussed below, from 2005 to 2007, Countrywide originated an increasing number of loans as exceptions to its Loan Program Guides. At the same time, employees of Countrywide received information indicating that there was an increased risk of poor performance for certain mortgage programs and products that were being included in RMBS. Despite having access to this information, Countrywide's RMBS offering documents generally did not disclose the extent to which underlying loans were originated as exceptions to its Loan Program Guides. Nor did Countrywide disclose in its RMBS offering documents the results of certain reviews and internal reports related to loan performance.

I. Countrywide Business Model

Between 2005 and 2007, Countrywide was a diversified financial services company engaged in mortgage lending, banking, mortgage loan servicing, mortgage warehouse lending, securities, and insurance. At this time, Countrywide was among the largest originators of residential mortgage loans in the United States. Countrywide's SEC filings show that it originated $229 billion in residential mortgage loans in 2005, $243 billion in 2006, and $205 billion in 2007.

Countrywide's business model was to serve as an intermediary between borrowers seeking residential mortgages and investors seeking to purchase loans in the secondary market. As disclosed in Countrywide's Form 10-K for 2005, most of the mortgage loans Countrywide produced were sold into the secondary mortgage market, primarily in the form of RMBS. From 2005 to 2007, Countrywide sponsored and sold approximately $332 billion of prime, Alt-A, second lien, home equity line of credit, and subprime RMBS backed by loans originated by, among others, CHL.

Countrywide employed, among others, a corporate strategy sometimes referred to as the "Supermarket Strategy." The Supermarket Strategy was developed to create a one-stop shopping experience for borrowers. In addition to offering its own products, Countrywide strove to offer to borrowers every kind of mortgage product that was available from legitimate competing lenders. A component of the Supermarket Strategy, which has sometimes been referred to as the "matching strategy," was a process by which Countrywide would learn about and evaluate loan product offerings from its competitors and expand its product offering to match or exceed its competitors' product offerings.

II. Countrywide Loan Origination Process

CHL originated and acquired residential mortgage loans through a variety of channels, including its own retail branches, mortgage brokers, and a network of third-party correspondent lenders. Countrywide's retail branches were referred to as the Consumer Markets Division ("CMD") and the Full Spectrum Lending Division ("FSL"). Countrywide provided its CMD and FSL branch underwriters with sets of lending guidelines, including Loan Program Guides, that listed borrower and loan characteristics, including credit scores and debt-to-income ("DTI") and LTV ratios, that branch underwriters were to consider when underwriting a potential loan. Branch underwriters had authority to approve loans that fit within the parameters outlined in the Loan Program Guides.

When branch underwriters received loan applications that did not meet the program parameters in the Loan Program Guides (*e.g.*, credit score, LTV, loan amount), the branch underwriters were authorized to refer the applications to more experienced underwriters at the relevant divisional "Structured Loan Desk" ("SLD") for consideration of an "exception." Underwriters at the SLD were authorized to approve requests to make an "exception" to the Loan Program Guides if the proposed loan and borrower complied with the characteristics described in another set of guidelines, referred to as so-called "Shadow Guidelines," and the loan contained compensating factors supporting the exception request. The Shadow Guidelines generally permitted loans to be made to borrowers with lower credit scores and allowed for higher LTV ratios than the Loan Program Guides. If the SLD underwriter did not believe that an exception was appropriate as presented, the SLD underwriter either could deny the exception request or could propose a counter-offer to the branch underwriter. A counter-offer was a rejection of the exception request accompanied by a proposal that the loan could be originated under a different set of terms from those originally proposed by the branch underwriter. For example, a counter-offer might propose a different loan product or program or request that the borrower increase the size of a down payment. Countrywide's policies indicated that after an exception approval or counter-offer was delivered to the branch underwriter, the branch underwriter would then be responsible for deciding whether to approve the loan.

If a loan application did not meet the credit standards of the Shadow Guidelines, Structured Loan Desk underwriters were authorized to submit a request to Countrywide's Secondary Marketing Structured Loan Desk ("SMSLD"), which would then determine whether the requested loan, if originated, could be priced and sold in the secondary market. If a loan could be priced and sold, SMSLD would provide a price for the loan and ultimately it would be returned to the branch underwriter.

III. RMBS Securitization Process

Countrywide sold the majority of the loans that it originated. Many such loans were sold in the form of RMBS underwritten by CSC. The CHL loans that CSC underwrote in these securitizations were sourced in a variety of ways, including through third-party correspondent lenders. Countrywide structured and securitized these CHL or third-party mortgage loans under its own shelf registrations, such as Countrywide Alternative Loan Trust.

Due Diligence

When Countrywide securitized loans into RMBS, it would typically engage a third-party due diligence provider to perform due diligence on a sample of the loans. During this process, third-party due diligence providers generally reviewed a sample of the loans to be securitized against underwriting guidelines provided by Countrywide. In certain instances, Countrywide provided the due diligence providers with what were known as "Seller Loan Program Guides," which were guidelines based on the characteristics of loans that Countrywide had been able to make and sell in the past. Seller Loan Program Guides reflected the credit attributes of the loans that Countrywide had previously made and sold, and as a result they frequently listed lower credit scores or higher DTI and LTV ratios than the applicable Loan Program Guides or the applicable Shadow Guidelines. For example, certain of the Seller Loan Program Guides stated that they allowed DTIs of up to 55% for certain loans. The due diligence providers would then report the results of their review of the loans that were contained in the selected samples, including whether they complied with the underwriting guidelines provided by Countrywide and/or whether exceptions to those guidelines were supported by compensating factors.

Offering Document Representations and Disclosures

Countrywide prepared and filed with the SEC certain documents in connection with offering RMBS. Those documents included Prospectuses and Prospectus Supplements (together, "Offering Documents"), as well as Pooling and Servicing Agreements that memorialized agreements among Countrywide entities that offered or serviced the RMBS and the trustee for the RMBS once they were issued. Portions of the Pooling and Servicing Agreements were described and/or incorporated by reference in the Offering Documents.

In certain of the Offering Documents that were provided to investors in RMBS, Countrywide represented that it maintained an underwriting system that was intended to evaluate residential borrowers' credit standing and repayment ability. Although the Offering Documents were not uniform, Countrywide typically represented in them that it originated loans substantially in accordance with its credit, appraisal and underwriting standards. For example, Countrywide typically represented that it applied its underwriting standards "to evaluate the borrower's credit standing and repayment ability" and that "a determination generally is made as to whether the prospective borrower has sufficient monthly income available to meet monthly housing expenses and other financial obligations and to meet the borrower's monthly obligations on the proposed mortgage loan." For certain RMBS, Countrywide also generally stated that "exceptions" to CHL's "underwriting guidelines may be made if compensating factors are demonstrated by a prospective borrower."

In certain of the Offering Documents, Countrywide stated that it originated loans under "Standard Underwriting Guidelines" and "Expanded Underwriting Guidelines." Countrywide stated that certain Standard Underwriting Guidelines generally permitted DTI ratios based on monthly housing expenses up to 33% and, when based on total debt, up to 38%.

Certain Offering Documents disclosed that under Countrywide's Standard Underwriting Guidelines, loans could be originated pursuant to the "Full," "Alt," "Reduced," "CLUES Plus," and "Streamlined" documentation programs, and that under certain of these programs, "some underwriting documentation concerning income, employment and asset verification is waived," that "information relating to a prospective borrower's income and employment is not verified," and that therefore DTI for those loans was calculated "based on the information provided by the borrower in the mortgage loan application."

Certain Offering Documents also disclosed that under Countrywide's Expanded Underwriting Guidelines, loans could be originated under additional documentation programs, namely "Stated Income/Stated Assets," "No Income/No Assets," and "No Ratio." Under the "Stated Income/Stated Asset" program, borrowers stated their incomes on a loan application without providing supporting documentation that could then be verified. The Offering Documents disclosed that in connection with the Stated Income/Stated Assets program, the loan application was reviewed to determine whether the income as stated by the borrower was reasonable for the borrower's stated employment. The description of the Expanded Underwriting Guidelines also stated that they generally permitted DTI ratios up to 36% on the basis of housing debt and up to 40% on the basis of total debt.

Countrywide entities made representations to securitization trustees in Pooling and Servicing Agreements. For example, CHL typically represented that each CHL mortgage loan supporting the subject RMBS was underwritten in all material respects in accordance with CHL's underwriting guidelines. In certain Pooling and Servicing Agreements, CHL also represented that the mortgage loan pools backing the subject RMBS were "selected from among the . . . portfolios of the Sellers at the Closing Date as to which the representations and warranties [set forth in the Pooling & Servicing Agreement] can be made" and were not "selected in a manner intended to adversely affect the interests of the Certificateholders." CHL also represented in certain Pooling and Servicing Agreements that, to the best of its knowledge, "there is no material event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration" as to any mortgage loan serving as collateral for the RMBS.

IV. Countrywide Expanded Its Loan Offerings Based on Salability

In the early to mid-2000s, mortgage originators across the mortgage lending industry began to offer more types of mortgage products. In furtherance of its goal to obtain a 30% market share and its "Supermarket Strategy," Countrywide began to offer products that featured more permissive lending criteria. Examples of these more permissive lending criteria included loans with higher combined-loan-to-value ratios or with lower credit scores. Countrywide also began to offer products that required less documentation from borrowers or offered flexible payment options. Examples of these mortgage products included "Stated Income" loans and Pay-Option Adjustable Rate Mortgages ("ARMs"). Stated Income loans did not require borrowers to substantiate their claimed incomes with tax forms or other documentary proof. Pay-Option ARMs featured variable interest rates and flexible repayment options, including the ability to pay only the interest due for a certain period of time.

In a memo sent in October 2004, CFC's then Chief Credit Officer wrote: "my impression since arriving here is that the Company's standard for products and Guidelines has been: 'If we can price it, then we will offer it.'" In a May 13, 2007 internal memorandum, the same executive wrote:

> A core principal [*sic*] underlying product guidelines is salability. The only exception to this principle is specific 'Bank only' programs where loans are originated or purchased for the Bank portfolio.

Similarly, in an email dated June 7, 2007, CFC's Chief Investment Officer wrote to CFC's President, "[W]hen credit was easily salable, SLD was a way to take advantage of the 'salability' and do loans outside guidelines and not let our views of risk get in the way."

Increase in Exception Loans

Countrywide originated an increasing number of loans as exceptions to its Loan Program Guides. A June 28, 2005, a Countrywide Financial Corporate Credit Risk Committee presentation noted that approximately 15% of nonconforming loans[1] that Countrywide was originating through CMD were exception loans.

On July 28, 2005, a Countrywide executive sent an email informing the SLD that it could begin to expand the programs for which it could approve "exception" loans to programs other than the 30 year fixed and 5/1 ARM loan products. He wrote:

> [T]o the widest extent possible, we are going to start allowing exceptions on all requests, regardless of program, for all loans less than $3 million, effective immediately.
>
> *** * * ***
>
> The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. We will assume securitization in all cases.

By June 7, 2006, less than a year later, an internal Countrywide email indicated that during May 2006, for prime loans, exceptions constituted by dollar amount approximately 30% of fundings for certain fixed loans, 40% for Pay-Option ARMs, and 50% for expanded criteria hybrid loans.

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[1] Loans that did not meet requirements for sale to Fannie Mae or Freddie Mac.

Extreme Alt-A Program

In late 2006, Countrywide, after analyzing the mortgage products offered by certain of its competitors, implemented an expansion of its underwriting guidelines used by SLD underwriters, internally referred to as “Extreme Alt-A.” The Extreme Alt-A initiative resulted in underwriting guidelines that, among other things, permitted higher LTV ratios and allowed for lower FICO scores from prospective borrowers. Extreme Alt-A loans were originated with the intent that they would be sold and that no credit risk would be retained by Countrywide. Some loans with Extreme Alt-A characteristics were sold in RMBS securitizations.

In connection with approving the Extreme Alt-A guideline expansion, Countrywide conducted various stress tests to model the loans’ expected performance. Under certain adverse economic assumptions, Countrywide’s models predicted that certain bands of Extreme Alt-A loans could perform more like subprime loans than like Alt-A loans.

In or around late March 2006, the Extreme Alt-A program was presented to Countrywide’s Responsible Conduct Committee (“RCC”) for consideration. The presentation included Model Foreclosure Frequency Estimates which projected that, under stressed economic conditions, certain bands of the loans originated under Extreme Alt-A guidelines could exceed a 21.62% foreclosure frequency. The model described in the presentation predicted that a number of categories of loans within the Extreme Alt-A program could experience default percentages into the high 30’s or low 40’s, and even a few in the 50’s. The presentation indicated that “poor performance should be expected.”

On April 5, 2006, a Countrywide executive sent an email regarding the Extreme Alt-A program that read, “[b]ecause this is a ‘hazardous product’ (direct quote from [another Countrywide executive]), ... [that Countrywide executive] wants to see a detailed implementation plan which addresses the process for originating and selling these loans such that we are not left with credit risk.” Countrywide began offering the Extreme Alt-A program in 2006 and began originating and selling loans under its expanded underwriting guidelines. As with most exception loans, the Extreme Alt-A guidelines called for Extreme Alt-A loans to be processed at the SLD level, but the Extreme Alt-A guidelines did not require SLD underwriters to identify compensating factors in connection with underwriting the loans.

V. Countrywide Received Information Concerning Risks and Quality of Its Mortgage Loans

During the period from August 2005 to 2007, Countrywide received information regarding the performance and characteristics of loans that it originated under various products and programs and securitized into RMBS. That information suggested that certain products had the potential to perform poorly, particularly in a challenging economic environment.

Exception Loan Performance

Using its SLD and SMSLD processes, Countrywide originated a substantial number of loans as exceptions to its Loan Program Guides. Internal reporting indicated that certain categories of exception loans performed poorly compared to loans originated within the parameters set out in Loan Program Guides. For example, a June 28, 2005 CFC Credit Risk

Committee report indicated that certain exception loans greater than $650,000 were "performing 2.8x worse overall" than non-exception loans.

Pay-Option ARM Loans

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

Starting in mid-2005, Countrywide received information indicating, among other things, that a majority of Pay-Option ARM borrowers were opting to make the minimum payment on their loans. In response to certain information, CFC and CB decided to limit the types of Pay-Option ARM loans that CB held for investment. On August 1, 2005, CFC's Chairman sent an email to CHL's President and head of loan production and CB's President stating:

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

On August 2, 2005, CHL's president responded to this email, writing that this approach had "securitization implications":

> We need to analyze what remains if the bank is only cherry picking and what remains to be securitized/sold is overly concentrated with higher risk loans. The concern and issue gets magnified as we put a bigger percentage of our pay option production into the Bank because the remaining production then increasingly looks like an adversely selected pool.

On August 2, 2005, CFC's Chairman responded to this email:

> I absolutely understand your position however there is a price no matter what we do. The difference being that by placing less attractive loans in the secondary market we will know exactly the economic price we will pay when the sales settle.

In accordance with the direction of CFC's Chairman, CB later limited the Pay-Option ARM loans that it held for its own investment to loans with relatively higher credit characteristics.

Beginning in October 2005, Countrywide tracked its Pay-Option ARM portfolio through monthly "Flash Reports." Countrywide's analysis showed that the percentage of borrowers who chose to make the minimum mortgage payment each month was trending higher than predicted and, thus, certain loans were at risk of "resetting" earlier than anticipated. This "resetting," which was an inherent risk of the Pay-Option ARM product, could result in higher payments and, thus, could cause "payment shock" for borrowers.

On February 3, 2006, an article in Inside Mortgage Finance Publications reported on a study that Countrywide presented at the American Securitization Forum Conference. The article reported that a Countrywide executive had stated that "Pay Option Arms were found to be the riskiest product on the market."

On April 3, 2006, CFC's Chairman sent to CHL's President and head of loan origination an email observing that there was:

> important data that could portend serious problems with [Pay-Option ARMs]. Since over 70% have opted to make the lower payments it appears that it is just a matter of time that we will be faced with a substantial amount of resets and therefore much higher delinquencies. We must limit [CB's retained investment in] this product to high ficos otherwise we could face both financial and regulatory consequences.

On May 18, 2006, CFC's Chairman sent to CFC's CFO, CHL's President, and others an email in which he warned: "As for pay options the Bank faces potential unexpected losses because higher rates will cause these loans to reset much earlier than anticipated and as [a] result caus[e] mortgagors to default due to the substantial increase in their payments."

On June 7, 2006, a Countrywide executive sent an email, observing that "exceptions" constituted 40% of prime Pay-Option ARM loans by dollar amount.

On September 13, 2006, CFC's Chairman spoke at a Countrywide Fixed Income Investor Forum and disclosed that, with respect to Pay-Option ARMs, "in the first year 78% of the borrowers employ the lower payment."

On September 26, 2006, CFC's Chairman sent an internal email in which he described Pay-Option ARM loans as "the lightening [*sic*] rod of 'exotic loans'" and then described his concern with how the product would perform in stressed market conditions:

> The bottom line is that we are flying blind on how these loans will perform in a stressed environment of higher unemployment, reduced value and slowing home sales . . . It [sic] therefore I [sic] believe the timing is right for us to sell all newly originated pay options and begin rolling off the bank balance sheet, in an orderly manner, pay options currently on their port[folio].

Throughout 2006 and 2007, Countrywide continued to originate Pay-Option ARMs, including as exceptions to its Loan Program Guides, and to securitize these Pay-Option ARMs into RMBS. As disclosed in Offering Documents, in certain RMBS backed by Pay-Option ARMs, as many as 90% of the loans that backed the certificates were originated under reduced documentation programs.

Stated Income Loans

Countrywide also received information indicating that some borrowers who applied for loans in which they stated their incomes without providing verification may have been overstating their incomes on their loan applications. In a May 26, 2006, CB Credit Risk Committee Report, CB presented the results of a review of the tax returns of a sample of borrowers who had filled out IRS Form 4506-Ts in connection with their mortgage applications. A form 4506-T allows a mortgage lender to request a borrower's previous year's income tax return from the IRS. The audit described in the CB Credit Risk Committee Report compared the income a borrower provided in connection with a mortgage application to the income reported on the borrower's income tax return in the prior tax year. The presentation, assuming that borrowers correctly reported (and did not understate) their income on their tax returns, suggested:

> that approximately 40% of the Bank's reduced documentation loans in the portfolio could potentially have income overstated by more than 10% and a significant percent of those loans would have income overstated by 50% or more.

The study further suggested that, among the group of borrowers who may have overstated their income by more than 10%, 68% had a variance of greater than 50%, 25% had a variance between 25% and 50%, and 7% had a variance between 10% and 25%. For Pay-Option ARM loans, the overwhelming majority of which were stated income loans, the study indicated that 72% of the Pay-Option ARM loans that showed greater than 10% variance showed greater than 50% variance.

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

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

If a borrower overstated his or her income, it would affect the accuracy of DTI calculations, and also could affect an underwriter's ability to evaluate a borrower's repayment ability.

VI. Disclosures in Offering Documents Did Not Reflect Certain Information That Countrywide Received

Although Countrywide originated an increasing number of mortgage loans as exceptions to its Loan Program Guides from 2005 to 2007, Countrywide generally did not disclose in its RMBS Offering Documents the scope of the exceptions to its Loan program Guides. Throughout this time period, Countrywide received information on risks associated with certain mortgage products and programs. Countrywide did not disclose in its RMBS Offering Documents the results of certain reviews and internal reports that analyzed this information.

Countrywide's Offering Documents did not include a description of its Supermarket Strategy, whereby Countrywide sought to achieve more market share and growth by creating a one-stop shopping experience for borrowers by offering a complete suite of mortgage products that were available in the industry from legitimate competing lenders.

Countrywide did not disclose in its Offering Documents that according to the June 28, 2005 CFC Credit Risk Committee report, non-conforming loans greater than $650,000 that were originated since 2004 via the retail branch network or mortgage brokers through the exception process were “performing 2.8x worse” than loans originated without exceptions. Nor did Countrywide’s Offering Documents identify the percentage of loans backing an offering that were originated as exceptions to Countrywide’s Loan Program Guides.

The Offering Documents also did not disclose certain information concerning specific mortgage products that served as collateral for certain of Countrywide’s RMBS offerings. For example, the Offering Documents did not disclose historical information on the percentage of Pay-Option ARM borrowers who chose to make the minimum payments. Although Countrywide disclosed in certain of its SEC filings (i) the attributes of Pay-Option ARMs that were held by CB and (ii) the increasing volume and dollar amount of loans that were experiencing negative amortization, the Offering Documents did not disclose that certain Pay-Option ARM loans included as collateral were loans that CB had elected not to hold for its own investment portfolio because they had risk characteristics that CFC management had identified as inappropriate for CB.

With respect to stated income loans, Countrywide did not describe in its Offering Documents the results of the tax return study described in the May 26, 2006 CB Credit Risk Committee Report. Nor did the Offering Documents describe the impact that an overstatement of income could have had on DTI calculations.

Although the Offering Documents included detailed loan-level statistics about the pool of loans serving as collateral for the RMBS, the Offering Documents were not revised to describe the Extreme Alt-A program. In particular, the Offering Documents did not disclose that under the Phase 1 (roll-out) of the Extreme Alt-A program Countrywide originated CMD and Wholesale Lending Division loans whose characteristics fell outside of the Loan Program Guides, and that documents drafted in connection with implementing the program indicated that in Phase 1“loans [would] be treated as exceptions and routed to SLD for guideline and price determination” without requiring compensating factors as a basis for approval. The Offering Documents also did not disclose whether Extreme Alt-A loans were included in the collateral for a given RMBS. Nor did the Offering Documents describe the default rates predicted by the model used to generate the March 2006 RCC presentation on Extreme Alt-A performance.

VII. Bank of America’s Acquisition of Countrywide

On July 1, 2008, after the events described herein, Countrywide was acquired by Bank of America Corporation.

FHA UNDERWRITING

Bank of America is a mortgage lender that participates in a federal program sponsored by the Department of Housing and Urban Development (“HUD”) called the “Direct Endorsement Program.” Subject to the requirements of the program, Bank of America is authorized to “originate” - i.e., make - and to underwrite mortgage loans to first-time and low-income home buyers and to low-income home owners refinancing mortgages, that are insured by the Federal Housing Administration (“FHA”), an agency within HUD. In exchange for having the authority to originate and underwrite FHA-insured loans, Bank of America is obligated to determine whether prospective borrowers meet minimal credit-worthiness criteria and to certify to HUD that borrowers who received loans met the criteria. In the event that an FHA-insured loan originated by Bank of America goes into default, the FHA guarantees payment of the outstanding portion of the mortgage principal, accrued interest, and costs owed by the borrower.

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

Many of Bank of America's borrowers have defaulted on their mortgage loans and have either lost or are in the process of losing their homes to foreclosure. As a result of Bank of America's conduct, HUD-FHA insured loans that were not eligible for FHA mortgage insurance and that HUD-FHA would not otherwise have insured. HUD consequently incurred hundreds of millions of dollars of losses when it paid insurance claims on those Bank of America-endorsed loans.

I. FHA MORTGAGE INSURANCE AND THE DIRECT ENDORSEMENT PROGRAM

The National Housing Act of 1934 authorizes the FHA to insure home mortgages for first-time and low-income home buyers. 12 U.S.C. § 1709. The FHA only insures mortgage loans issued by approved mortgage lenders or "mortgagees" to qualified borrowers.

Under the Direct Endorsement Program, approved mortgage lenders ("Direct Endorsers") determine whether loan applicants are eligible for FHA mortgage insurance. See 24 C.F.R. §203.5(a). A Direct Endorser must submit a mortgage insurance application for each borrower to HUD, with documentation of the borrower's income, assets and credit-worthiness, and of the Direct Endorser's review and analysis of the loan.

HUD authorizes some Direct Endorsers to endorse mortgage loans for FHA mortgage insurance on an expedited basis, after the company's own pre-endorsement review of the file. This endorsement occurs without a required pre-endorsement review of the mortgage insurance application file by HUD. This is known as the Lender Insurance Program. Under this program, Direct Endorsers are still required to comply with all HUD regulations concerning the origination of FHA-insured mortgages. Additionally, there is no reduction in the documents required, and the mortgage lender is required to retain all loan origination documents. Further, Direct Endorsers are required to submit the full mortgage loan file to HUD upon HUD's request. During the relevant time period, Bank of America participated in the Lender Insurance program.

Bank of America originated mortgages nationally through its direct lending branch. Direct lending branches of FHA-approved mortgage lenders contact consumers and originate mortgages through the internet, or through a call center.

A. Underwriting and Eligibility Requirements for FHA Mortgage Insurance

In determining whether a loan applicant qualifies for an FHA-insured mortgage loan, a Direct Endorser must comply with HUD underwriting requirements which establish the minimum standard of due diligence in underwriting mortgage loans. 24 C.F.R. § 203.5(c). Among other things, a Direct Endorser is required by law to "exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the [Direct Endorser] would be entirely dependent on the property as security to protect its investment." Id. Put another way, a Direct Endorser may not underwrite an FHA-insured mortgage loan less carefully than it would if the mortgage loan was not insured by the FHA.

1. Income, Credit History and Ability to Make Mortgage Payments

Specifically, HUD requires a Direct Endorser to be responsible for evaluating a borrower's credit characteristics, including past credit history and demonstrated willingness to pay debts. Additionally, a Direct Endorser must assess the adequacy of a borrower's income, including the adequacy and stability of income to meet periodic mortgage payments and any other recurring debt payments and the adequacy of a borrower's available assets to cover the statutory minimum down payment. 24 C.F.R. § 203.5(d).

For each FHA-insured loan, a Direct Endorser must establish that the borrower has the ability and willingness to repay the loan. A Direct Endorser's determination must be predicated on sound underwriting principles consistent with HUD's requirements and must be supported by requisite documentation. See HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance, One to Four Family Properties, May 10, 2009 ("Credit Analysis Handbook"),. A Direct Endorser must therefore pay specific attention to a borrower's rent or mortgage payment history, and any collection actions, judgments, foreclosures or bankruptcies. Id.

HUD requires a Direct Endorser to submit documentation that the borrower has the ability to responsibly manage his or her financial affairs. See Credit Analysis Handbook,. For example, if a borrower has gone through a bankruptcy, the Direct Endorser must document that the borrower's current situation indicates that the events that led to the bankruptcy are not likely to recur.

HUD regulations further require that a Direct Endorser calculate a borrower's verifiable income and determine the likelihood that the income will continue through at least the first three years of the mortgage. See Credit Analysis Handbook. In particular, a Direct Endorser must review:

a. salaries, wages, and other regular payments such as social security or retirement benefits;

b. alimony, child support or maintenance income; and

c. net rental income from property owned by the borrower.

A Direct Endorser may include rental income from properties owned by borrowers in its analysis, if the lender can document that the rental income is stable through a lease, an agreement to lease, or a rental over the past twenty-four months free of unexplained gaps.

A Direct Endorser must further verify and document a borrower's minimum required cash investment in the property by obtaining a Verification of Deposit form from the borrower's bank to verify its current bank deposits, along with the most recent bank statement. See Credit Analysis Handbook,. A Direct Endorser must also list a borrower's recurring obligations, including installment loans, charge accounts, and real estate loans, and consider their impact on the borrower's ability to pay the mortgage. Id.

2. Debt, Qualifying Ratios and Overall Merit of Loan Application

Additionally, a Direct Endorser must compute two "Qualifying Ratios" to determine whether the borrower can reasonably be expected to meet the expenses involved in home ownership, and otherwise provide for the borrower's family:

a. Mortgage Payment to Effective Income: the mortgage payment, including payments into an escrow account for taxes, insurance and any other assessments, should not exceed 31% of a borrower's effective income. See Credit Analysis Handbook; Mortgagee-Letter 2005-16, April 13, 2005.

b. Total Fixed Payment to Effective Income: the borrower's mortgage payments and all other recurring payment obligations should not exceed 43% of effective income. See Credit Analysis Handbook; Mortgagee-Letter 2005-16, April 13, 2005.

Where a borrower exceeds either Qualifying Ratio, a Direct Endorser must determine whether there are "Compensating Factors" that justify the making of the loan. See Credit Analysis Handbook. Compensating Factors include whether:

a. Housing Expense Payments: The borrower has successfully demonstrated the ability to pay housing expenses greater than or equal to the proposed monthly housing expenses for the new mortgage over the past 12-24 months;

b. Down Payment: The borrower makes a large down payment of 10 percent or higher toward the purchase of the property;

c. Accumulated Savings: The borrower has demonstrated:
   • an ability to accumulate savings, and
   • a conservative attitude toward using credit;

d. Previous Credit History: A borrower's previous credit history shows that he/she has the ability to devote a greater portion of income to housing expenses;

e. Compensation or Income Not Reflected in Effective Income: The borrower receives documented compensation or income that is not reflected in effective income, but directly affects his/her ability to pay the mortgage. This type of income includes food stamps, and similar public benefits;

f. Minimal Housing Expense Increase: There is only a minimal increase in the borrower’s housing expense;

g. Substantial Cash Reserves: The borrower has substantial documented cash reserves (at least three month’s worth) after closing. The lender must judge if the substantial cash reserve asset is liquid or readily convertible to cash, and can be done so absent retirement or job termination, when determining if the asset can be included as cash reserves, or cash to close. Funds and/or “assets” that are not to be considered as cash reserves include equity in other properties, and proceeds from a cash-out refinance.

   Lenders may use a portion of a borrower's retirement account, subject to the conditions stated below. To account for withdrawal penalties and taxes, only 60% of the vested amount of the account may be used. The lender must document the existence of the account with the most recent depository or brokerage account statement. In addition, evidence must be provided that the retirement account allows for withdrawals for conditions other than in connection with the borrower's employment termination, retirement, or death. If withdrawals can only be made under these circumstances, the retirement account may not be included as cash reserves. If any of these funds are also to be used for loan settlement, that amount must be subtracted from the amount included as cash reserves. Similarly, any gift funds that remain in the borrower's account following loan closing, subject to proper documentation, may be considered as cash;

h. Substantial Non-Taxable Income: The borrower has substantial non-taxable income;

i. Potential for Increased Earnings: The borrower has a potential for increased earnings, as indicated by job training or education in his/her profession; and

j. Primary Wage-Earner Relocation: The home is being purchased because the primary wage-earner is relocating, and the secondary wage-earner

   • has an established employment history

   • is expected to return to work, and

   • has reasonable prospects for securing employment in a similar occupation in the new area

HUD further requires that a Direct Endorser judge the overall merit of a borrower's loan application. Simply establishing that a loan transaction meets minimal standards does not necessarily constitute prudent underwriting. See Credit Analysis Handbook. A Direct Endorser must therefore analyze the probability that a borrower will repay the mortgage obligation. Id. .

A Direct Endorser must document each loan submitted for mortgage insurance. See Credit Analysis Handbook. A Direct Endorser must ask questions that will elicit a complete picture of the borrower's financial situation.

When a borrower's credit history reveals delinquent accounts, the Direct Endorser must document its analysis of whether the late payments were based on a disregard for, or inability to pay or manage debts. See Credit Analysis Handbook

3. Supporting Documents Must Come From Disinterested Parties

A Direct Endorser may receive Verification of Employment forms from a borrower's employer by fax, if the borrower's employer is clearly identified as the source of the fax. The lender is accountable for ascertaining the authenticity of employment verification documents, by examining information in its header and footer. See Credit Analysis Handbook.

Mortgage lenders may not accept or use documents relating to the employment, income or credit of borrowers that are handled or transmitted from or through interested third parties, including real estate agents, or by using their equipment. See Credit Analysis Handbook

B. Specific Due Diligence Required of Direct Endorsement Lenders

HUD relies on Direct Endorsement Lenders to conduct due diligence on Direct Endorsement loans. The purposes of due diligence include (a) determining a borrower's ability and willingness to repay a mortgage debt, thus limiting the probability of default and collection difficulties, see 24 C.F.R. § 203.5(d), and (b) examining a property offered as security for the loan to determine if it provides sufficient collateral, see 24 C.F.R. § 203.5(e)(3). Due diligence thus requires an evaluation of, among other things, a borrower's credit history, capacity to pay, cash to close, and collateral.

HUD has set specific rules for due diligence predicated on sound underwriting principles. In particular, HUD requires Direct Endorsement Lenders to be familiar with, and to comply with, governing HUD Handbooks and Mortgagee Letters, which provide detailed processing instructions to Direct Endorsement Lenders. These materials specify the minimum due diligence with which Direct Endorsement Lenders must comply.

With respect to ensuring that borrowers have sufficient credit, a Direct Endorsement Lender must comply with governing HUD Handbooks, such as HUD 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Family Properties, to evaluate a borrower's credit. The rules set forth in HUD 4155.1 exist to ensure that a Direct Endorsement Letter sufficiently evaluates whether a borrower has the ability and willingness to repay the mortgage debt. HUD has informed Direct Endorsement Lenders that past credit performance serves as an essential guide in determining a borrower's attitude toward credit obligations and in predicting a borrower's future actions.

To properly evaluate a borrower's credit history, a Direct Endorsement Lender must, at a minimum, obtain and review credit histories; analyze debt obligations; reject documentation transmitted by unknown or interested parties; inspect documents for proof of authenticity; obtain adequate explanations for collections, judgments, recent debts and recent credit inquiries; establish income stability and make income projections; obtain explanations for any gaps in employment; document any gift funds; calculate debt and income ratios and compare those ratios to the fixed ratios set by HUD rules; and consider and document any compensating factors permitting deviations from those fixed ratios.

With respect to appraising the mortgaged property (i.e., collateral for the loan), a Direct Endorsement Lender must ensure that an appraisal and its related documentation satisfy the requirements in governing HUD Handbooks, such as HUD 4150.2, Valuation Analysis for Home Mortgage Insurance. The rules set forth in HUD 4150.2 exist to ensure that a Direct Endorsement Lender obtains an accurate appraisal that properly determines the value of the property for HUD's mortgage insurance purposes.

C. Direct Endorser Certifications To HUD

1. Annual Certifications

As a condition for maintaining its participation in the Direct Endorsement Program, a Direct Endorser, by its President or Vice-President, must certify to HUD annually that the Direct Endorser conforms to all HUD-FHA regulations necessary to maintain its HUD-FHA approval. See Title II Yearly Verification Report, Home Office. The officer must further certify that the Direct Endorser is responsible for all its employees' actions. Id.

The Direct Endorsement Lender must make the following annual certification, in sum and substance:

> I know or am in the position to know, whether the operations of the above named mortgage conform to HUD-FHA regulations, handbooks, and policies. I certify that to the best of my knowledge, the above named mortgagee conforms to all HUD-FHA approval, and that the above named mortgagee is fully responsible for all actions of its employees including those of its HUD-FHA approved branch offices.

The annual certification requires compliance with the basic eligibility requirements for Direct Endorsement Lenders, which includes compliance with HUD rules concerning lender's quality control.

2. Loan Application Certifications

For each mortgage loan insured by FHA under the Direct Endorsement Program, a Direct Endorser and its Underwriter must make a number of certifications required by HUD. See Direct Endorsement Approval for a HUD/FHA Insured Mortgage form; HUD Handbook 4000.4 Rev-1, Single Family Direct Endorsement Program, 9/2/88 ("Direct Endorsement Handbook").

Specifically, a Direct Endorser and/or the Direct Endorsement Underwriter must make a series of certifications in the HUD 1003 Addendum, also known as the HUD/VA Addendum to Uniform Residential Loan Application and the Direct Endorsement Approval for a HUD/FHA Insured Mortgage, including:

a. The loan terms furnished in the Uniform Residential Loan Application and the Addendum are true, accurate and complete.

b. The information contained in the Uniform Residential Loan Application and the Addendum was obtained directly from the borrower by an employee of the undersigned lender or its duly authorized agent and is true to the best of the lender's knowledge and belief.

c. The verification of employment was requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief.

d. The verification of deposit was requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief.

e. The proposed loan to the borrower meets the income and credit requirements of the governing law in the lender's judgment.

f. That the statements made in its application for insurance and the Lender's Certificate as part of the Direct Endorsement Approval for a HUD/FHA Insured Mortgage are true and correct.

g. That complete disbursement of the loan has been made to the borrower, or to his/her creditors for his/her account and with his/her consent.

h. No charge has been made to or paid by the borrower except as permitted under HUD regulations.

i. The Lender has not paid any kickbacks, fee or consideration of any type, directly or indirectly, to any party in connection with the transaction except as permitted under HUD regulations and administrative instructions.

j. The Lender's officer has personally reviewed the mortgage loan documents, closing statements, application for insurance endorsement, and all accompanying documents.

k. All certifications required for the mortgage by the Direct Endorsement Handbook.

D. Submission To HUD

A Direct Endorser must submit a mortgage insurance application for each borrower to HUD, together with documentation of the borrower's assets and credit-worthiness, and documentation of the Direct Endorser's review and analysis of the loan, including:

a. The Uniform Residential Loan Application and Addendum signed and dated by all borrowers and the Direct Endorser. See Credit Analysis Handbook;

b. Mortgage Credit Analysis Worksheet where the Direct Endorser must truthfully and accurately break out and review the borrower's available assets and income, versus the expected costs of both the mortgage and other fixed payments owed by the borrower. The Direct Endorser further must truthfully apply HUD-mandated ratios and ratings of the borrower's credit as well as their current and future ability to pay their debts;

c. Credit Report for all borrowers;

d. Verification of employment;

e. Verification of available funds from borrower's bank, and the borrower's most recent bank statements;

f. Verification of Rent or Payment History of Present/Previous Mortgages; and

g. Settlement Statement (also known as the "HUD-1").

Direct Endorsers also electronically submit information for mortgage insurance applications to HUD, including the borrower's name and social security number, the property address, the appraiser's name, and the borrower's Qualifying Ratios.

After HUD receives a Direct Endorser's mortgage insurance application, HUD will issue a mortgage insurance certificate for the mortgage if several criteria are met, including that the application contains all the required documentation and that the Direct Endorser and its Underwriter have made their certifications. 24 C.F.R. § 203.255(c)(1)-(7). As noted above, at all times relevant to this action Bank of America participated in the Lender Insurance program, which permitted it to endorse mortgage loans for FHA mortgage insurance.

HUD monitors Direct Endorsers' compliance with HUD regulations. HUD tracks the delinquency and default rates (delinquencies of greater than ninety days) of borrowers from each approved branch office of a Direct Endorsement mortgage lender for the first two years of each loan, to detect whether the mortgage lenders may be violating HUD standards in originating insured mortgage loans.

HUD's primary means to monitor compliance with its underwriting regulations is through the Neighborhood Watch system. HUD monitors compliance with its underwriting regulations by mortgagees, like Bank of America, through its Neighborhood Watch system ("Neighborhood Watch"). Neighborhood Watch is a tool which identifies lenders, loan types, and locations by zip code that have a high incidence of single family insured mortgages going into default (90 days delinquent) within the first two years after loan origination ("Early Default Loans").

The system is designed to highlight exceptions, so that potential problems are readily identifiable. Neighborhood Watch is designed as an Early Warning System and is intended, inter alia, to aid HUD/FHA staff in monitoring lenders and our programs.

E. Automated Underwriting Systems

A Direct Endorsement Lender may use an FHA-approved automated underwriting system to review loan applications. The automated underwriting system processes information entered by the Direct Endorsement Lender and rates loans as either an "accept"/"approve" or a "refer"/"caution."

In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as an "accept" or "approve", the Direct Endorsement Lender must make the following certification:

> This mortgage was rated an "accept" or "approve" by a FHA-approved automated underwriting system. As such, the undersigned representative of the mortgagee certifies to the integrity of the data supplied by the lender used to determine the quality of the loan, that a Direct Endorsement Underwriter reviewed the appraisal (if applicable) and further certifies that this mortgage is eligible for HUD mortgage insurance under the Direct Endorsement program. I hereby make all certifications required by this mortgage as set forth in HUD Handbook 4000.4.

In cases where a Direct Endorsement Lender uses an FHA-approved automated underwriting system, and the system rates a loan as "refer" or "caution," or in cases where a Direct Endorsement lender does not use an FHA-approved automated underwriting system, the underwriter must make the following certification:

> This mortgage was rated as a "refer" or "caution" by a FHA-approved automated underwriting system, and/or was manually underwritten by a Direct Endorsement underwriter. As such, the undersigned Direct Endorsement Underwriter certifies that I have personally reviewed the appraisal report (if applicable), credit application, and all associated documents and have used due diligence in underwriting this mortgage. I find that this mortgage is

> eligible for HUD mortgage insurance under the Direct Endorsement program and I hereby make all certifications required by this mortgage as set forth in HUD Handbook 4000.4.

The certifications in HUD Handbook 4000.4, incorporated by reference in the certifications above, include the certification that the mortgage complies with HUD underwriting requirements contained in all outstanding HUD Handbooks and Mortgagee Letters.

Bank of America used an automated underwriting system referred to as the Countrywide Loan Underwriting Expert System ("CLUES"). Bank of America used CLUES to underwrite loans for FHA-insurance. CLUES interfaced with FHA's Technology Open to Approved Lenders ("TOTAL"), an automated tool that evaluates many of the new loans insured by the FHA. Lenders certify they are in compliance with requirements applicable to the use of TOTAL, including that they "not disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code or algorithm in TOTAL."

Absent a truthful mortgage eligibility certification, a Direct Endorsement Lender may not endorse a mortgage for FHA insurance.

II. BANK OF AMERICA'S NON-COMPLIANCE RELATED TO FHA-INSURED LOANS

As of December 31, 2013, Bank of America had submitted for payment claims for loans that were originated by the Bank of America and insured by the FHA on or after May 1, 2009, or for which the terms and conditions of the mortgage loan were approved by an FHA direct endorsement underwriter on or after May 1, 2009. Review of Bank of America's early default loans indicates that for many loans, Bank of America did not always meet FHA requirements. The deficiencies include non-compliance with the applicable regulations. Bank of America engaged in the following types of conduct: (a) it did not establish income stability; (b) it did not verify income; (c) it inaccurately evaluated borrower's previous mortgage or rental payment history; (d) it did not account for a major derogatory on a borrower's credit; (e) it did not verify and document earnest money; (f) it did not verify and document checking and savings account information; (g) it did not document gift fund monies and verify wire transfers of same; (h) it did not document and verify the borrower's investment in the property; (i) it under-reported borrower liabilities; (j) it did not always present adequate compensating factors when the borrower exceeded HUD-established income-to-debt ratios; and (k) it sometimes incorrectly calculated income for purposes of such ratios.

Review of samples of FHA loans originated by Bank of America showed unacceptable rates of material underwriting defects.

For example, in one instance, Bank of America refinanced a Countrywide-held non-FHA loan into a government-backed FHA loan. The loan, which was in the amount of $156,491 for a 24-year-old mobile home, contained numerous unresolved income discrepancies. The borrower was also delinquent on his initial loan at the time of closing. In addition, the borrower was improperly permitted to roll $12,623 of credit card and auto debt into the new FHA loan. The borrower made only two payments before defaulting on the new FHA loan.

In another example, Bank of America allowed a borrower to roll $65,356 of credit card debt into a new, larger refinanced loan insured by the FHA. Bank of America also failed to verify the borrower's employment and omitted the borrower's debts from the credit analysis. The original mortgage was $140,000 but Bank of America refinanced the loan for $207,824 in a declining market. With respect to another loan, Bank of America endorsed a loan for FHA insurance even though the borrower lived with a relative rent-free and, thus, had no history of paying rent or other housing expense. Bank of America also did not verify the borrower's income, and the borrower was on a leave of absence from employment eight days prior to closing. Despite the requirement that the borrower show two months' complete bank statements, the borrower's bank account was opened a mere twelve days prior to closing. The borrower made only four payments before defaulting on the $314,204 FHA loan.

When using the CLUES system, Bank of America sometimes changed an applicant's financial information and then re-submitted the loan multiple times in an effort to get a CLUES "accept". For example, in at least one instance, Bank of America's underwriter attempted to get a CLUES accept rating more than forty times and in other cases underwriters regularly changed the relevant data and re-submitted the loans through CLUES more than twenty times. In a case note, one underwriter characterized what she was doing as trying to "trick" the CLUES system into giving an "accept" rating.

COUNTRYWIDE AND BANK OF AMERICA - ORIGINATIONS SOLD TO GSEs

From at least 2004 through 2008, Countrywide Home Loans, Inc. and Countrywide Bank, FSB (collectively, "Countrywide") originated residential mortgage loans and sold certain of those loans to the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, "government-sponsored enterprises" or "GSEs"). After acquiring Countrywide in 2008, Bank of America, N.A. ("Bank of America") continued to originate residential mortgage loans and sell certain of those loans to the GSEs.

In selling residential mortgage loans to the GSEs, Countrywide and Bank of America made representations and warranties to the GSEs that the loans complied in all respects with the standards outlined in the Single Family Selling Guide (the "Fannie Guide"), Single-Family Seller/Servicer Guide (the "Freddie Guide"), and the applicable purchase contracts, including in the case of Fannie Mae, the Strategic Alliance Agreements entered into between Fannie Mae and Countrywide, which collectively set forth underwriting, documentation, quality control, and self-reporting requirements.

Countrywide and Bank of America made representations and warranties to Fannie Mae concerning each residential mortgage loan that they originated and sold to Fannie Mae, including but not limited to, the following:

a. The mortgage conformed to all the applicable requirements in the Fannie Guide and the purchase contracts;

b. The mortgage was an "acceptable investment";

c. All required loan data was true, correct, and complete;

d. Automated underwriting conditions were met for loans processed through an automated underwriting system; and

e. No fraud or material misrepresentation was committed by any party, including the borrower.

Countrywide and Bank of America made similar representations and warranties to Freddie Mac concerning each residential mortgage loan they originated and sold to Freddie Mac, including, but not limited to, the following:

a. The terms, conditions, and requirements stated in the Freddie Guide and purchase contracts were fully satisfied;

b. All warranties and representations of Countrywide and Bank of America were true and correct;

c. The loan was "investment quality"; and

d. Countrywide and Bank of America had not misstated or omitted any material fact about the mortgage.

Countrywide and Bank of America were also generally required to self-report to Fannie Mae and Freddie Mac any loans they identified as defective and/or otherwise ineligible for sale to the GSEs.

A significant percentage of the loans that Countrywide sold to the GSEs during 2004 to 2008 were originated by Countrywide's prime retail division, known as the Consumer Markets Division ("CMD"). During this time, Countrywide was aware that many of the residential mortgage loans originated through CMD were defective and/or otherwise ineligible for sale to the GSEs. After acquiring Countrywide Bank in 2008, Bank of America continued to originate mortgage loans for sale to the GSEs through its retail lending channel that were defective and/or otherwise ineligible for sale to the GSEs.

Thus, Countrywide and Bank of America sold residential mortgage loans that they originated to the GSEs with representations and warranties that the loans conformed to the Fannie Guide, Freddie Guide and/or applicable purchase contracts; that the loans were acceptable investments or investment quality; that all required loan data was true, correct, and complete; that automated underwriting conditions had been met; that no material misrepresentations were committed in connection with the loans; and that they had not misstated or omitted any material fact about the loans; when, in fact, many of those representations or warranties were not accurate, as many of the loans were defective and/or otherwise ineligible for sale to the GSEs.

Countrywide and Bank of America also did not self-report to the GSEs mortgage loans originated through CMD and Bank of America's retail lending channel that were internally identified as defective and/or otherwise ineligible for sale to the GSEs.

COUNTRYWIDE AND BANK OF AMERICA – "PIGGYBACK LOANS"

From at least 2006 through 2013, Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Bank, FSB, First Franklin Financial Corp., and Bank of America, N.A. (collectively, "Bank of America") originated residential mortgage loans and sold certain of them to Fannie Mae and Freddie Mac. Among the loans that were originated were "Piggyback Loans," *i.e.*, multiple residential mortgage loans made to the same borrower at the same time on the same property and which are subject to the same or similar representations and warranties. Given the nature of the representations and warranties made with respect to each loan, if one of the two Piggyback Loans is found to be defective or otherwise subject to repurchase, the other frequently will be as well.

Bank of America sold first lien loans from piggyback transactions to Fannie Mae and Freddie Mac and sold such first and second lien loans to RMBS trusts. In selling residential mortgage loans to the GSEs, representations and warranties were made to the GSEs that the loans complied in all respects with the standards outlined in the GSE selling guides and sales contracts, which set forth underwriting, documentation, quality control, and self-reporting requirements. Specifically, loans sold to Fannie Mae are sold with the representations and warranties contained in its Single Family Selling Guide (the "Fannie Guide") and the applicable purchase contracts, including in the case of Countrywide the Strategic Alliance Agreements entered into between Fannie Mae and Countrywide. Loans sold to Freddie Mac are sold with the representations and warranties contained in its Single-Family Seller/Servicer Guide (the "Freddie Guide") and purchase contracts.

Bank of America made representations and warranties to Fannie Mae concerning each residential mortgage loan that they originated and sold to Fannie Mae, including but not limited to, the following:

a. The mortgage conformed to all the applicable requirements in the Fannie Guide and the purchase contracts;

b. The mortgage was an "acceptable investment";

c. All required loan data was true, correct, and complete;

d. Automated underwriting conditions were met for loans processed through an automated underwriting system; and

e. No fraud or material misrepresentation was committed by any party, including the borrower.

Bank of America likewise made representations and warranties to Freddie Mac concerning each residential mortgage loan sold to Freddie Mac, including but not limited to, the following:

a. The terms, conditions, and requirements stated in the Freddie Guide and purchase contracts were fully satisfied;

b. All warranties and representations of the seller were true and correct;

c. The loan was "investment quality;" and

d. Bank of America had not misstated or omitted any material fact about the mortgage.

Bank of America was also generally required to self-report to Fannie Mae and Freddie Mac any loans it identified as defective and/or otherwise ineligible for sale to the GSEs. When purchasing or providing reimbursement for a second lien mortgage that violated its representations and warranties, Bank of America did not regularly review the corresponding first lien mortgage loan that had been sold to Fannie Mae and Freddie Mac to determine whether it was required to self-report that loan, and typically did not self-report the related first lien mortgage loan.