

Bank of America:

A Billionaire's Boondoggie



 **Change**
that **Works**

Over the last two years, millions of Americans have lost their homes, jobs, and savings, and the economy has plunged into a deep recession that experts worry could last years. But even as the warning signs for a serious economic downturn became clear in 2007, Ken Lewis “foresaw a watershed year for Bank of America (BoFA), a chance to inflict pain on competitors that lacked its scale, diversity and cash.”¹ Lewis, BoFA’s CEO, firmly proclaimed, “This is the time I think we could go for the jugular, really be disruptive and take market share.”² A few months later, shortly after announcing the acquisition of LaSalle Bank, BoFA raised its noncustomer ATM fee by 50 percent to a new industry high of \$3.³

Amidst the economic turmoil, BoFA, now the largest bank in the nation, has continued to hike up bank fees and credit card interest rates on consumers, cut jobs, and pay workers poverty-level wages. While his own workers have been forced to turn to state-funded healthcare programs, Lewis has sought opportunities to grow his business and buy banks on his “wish list.”⁴ Since the fall of 2007, BoFA has acquired LaSalle Bank, Countrywide Financial, and Merrill Lynch. In naming him “Banker of the Year,” American Banker noted, “Mr. Lewis has demonstrated an innate competency for taking advantage of others’ circumstances.”⁵

BoFA and Countrywide helped create the economic crisis by putting profits ahead of consumers, workers, and taxpayers. Now that their business practices have helped create the need for a \$700 billion banking industry bailout, Lewis is demonstrating his “innate competency” once again, this time by taking advantage of taxpayers. Rather than increasing lending to help revitalize the economy or stopping foreclosures, BoFA is using its share of the bailout money to further its own business interests. Meanwhile, small businesses are shuttering their doors and laying off workers because banks such as BoFA refuse to extend them credit.

Banking on the Bailout

In October, the federal government gave BoFA and Merrill Lynch \$25 billion in bailout funds. According to the Wall Street Journal, the move was designed “to keep money flowing through the financial system, ensuring that banks continue lending to companies, consumers and each other.”⁶ But rather than use the bailout money to increase lending and help revitalize the U.S. economy, BoFA has cut credit to consumers and businesses, announced plans for mass layoffs, and continued foreclosing on homes. Meanwhile, it is using bailout funds for the very things it promised Congress it would avoid—investments in healthy companies, and payouts to private investors—while preserving its ability to lobby for more favors.

“I don’t believe that the American people would have \$25 billion go to a bank while workers who need the support for that money are standing outside on the street with nothing in their pockets.”

— The Rev. Nelson Johnson, a pastor from North Carolina⁷

Laying Off Workers

As it expands, BoFA has closed call centers, outsourced back-office jobs to India, and cut tens of thousands of jobs to turn record profits from its series of buyouts.⁸ Lewis says, “I feel bad about firing people, but at least I have the courage to do it.”⁹ Since 2004, the bank has cut more than 34,000 jobs,¹⁰ including:

- 12,500 jobs after the Fleet Bank merger in 2004;
- 4,500 additional jobs after restructuring Fleet Bank;
- 6,000 jobs after acquiring credit card issuer MBNA in 2006;
- 4,000 jobs in Illinois and Michigan following the LaSalle Bank merger in 2007; and
- 7,500 jobs after the Countrywide merger in 2008.

Now, after receiving a \$25 billion taxpayer bailout to help restore the economy, BoFA is planning another round of cuts. BoFA recently announced plans to eliminate up to 35,000 jobs over the next three years in what would be one of the largest rounds of layoffs in the history of the financial services industry.¹¹ These cuts will amount to 12 percent of the company’s workforce following the Merrill Lynch acquisition.¹²

At its branches, BoFA has a record of paying low wages to its tellers. According to a salary survey by PayScale.com, the median salary of BoFA bank tellers was \$23,597 a year as of Dec. 28, 2008.¹³ By comparison, Lewis took home \$99.8 million in 2006, more than 4,000 times as much as a BoFA teller.¹⁴ Not surprisingly, with such low wages, BoFA employees and their families often have to turn to the state for taxpayer subsidized healthcare. Rhode Island and

Massachusetts are among the select states that publicly disclose the names of the top employers whose workers use state-funded healthcare for themselves and their dependents. In both states, BofA makes the list. In fact, it ranked fifth amongst employers in Rhode Island whose employees were receiving state medical insurance assistance in 2006.¹⁵ By providing its workers with low wages and inadequate health coverage, BofA is able to keep down its payroll costs at taxpayers' expense.

"I know BofA employees whose children are getting covered by Medicaid. We're the biggest bank in the country. Our CEO has taken home more than \$150 million in the last few years, and the bank just got \$25 billion in bailout money. But tellers and their kids still have to go to the government for health care. That's outrageous."

- Anonymous Bank of America worker.

Ken Lewis vs. Workers

"I feel bad about firing people, but at least I have the courage to do it."

- Ken Lewis, Bank of America
CEO

Ken Lewis 2006 compensation: \$99.8 million

Median salary for a BofA teller: \$23,597

Job cuts announced since 2004: 69,500

Decreased Lending

BofA has paid lip service to the objectives of the federal bailout, but a company spokesperson admitted at a November Senate hearing that BofA is "lending less than we were a year ago."¹⁶ Recent reports indicate that the company has pulled back its consumer lending, raising rates on existing credit card balances and cutting lines of credit even for creditworthy borrowers.¹⁷ Bank analyst Meredith Whitney says that BofA is a significant part of what she estimates to be a \$2 trillion contraction in U.S. consumer credit.¹⁸

BofA has also made cuts to its small business lending. In market after market in 2008, from Philadelphia to Charlotte, N.C., to South Florida, BofA has fallen in a significant indicator of small business lending, the volume and value of loans issued with Small Business Administration (SBA) guarantees.¹⁹ BofA's SBA loan volume declined 68 percent in these three markets between 2007 and 2008.

The case of Republic Windows and Doors in Chicago highlighted how BofA has restricted small business credit even after receiving federal funds. BofA denied new credit to the company, which was forced to shutter its doors and lay off more than 200 workers three weeks before Christmas. The workers took shifts at a sit-in of the company's plant demanding pay they were owed, and won the support of Americans around the country, including President-elect Barack Obama. One worker said, "I know the economy is bad, for everyone, but all I want to do is give my kids a nice Christmas. I'm going to stay until I get all the money we deserve."²⁰ BofA ultimately extended the company a new \$1.35 million loan, apparently in response to the public pressure,²¹ but it is not known how many other small businesses have been more quietly affected by reduced credit from BofA.

"I know the economy is bad, for everyone, but all I want to do is give my kids a nice Christmas. I'm going to stay until I get all the money we deserve."

- Apolinar Cabrera, Republic Windows and Doors worker

How is BofA Using the Bailout Money?

Instead of using the bailout funds to increase lending or preserve jobs, BofA and Merrill Lynch are instead using the \$25 billion for foreign investments, payouts to private investors, and lobbying.

Even though Bank of America claimed that it did not use bailout funds to invest in healthy banks, just three weeks after receiving the bailout money, BofA invested \$7 billion of it in China Construction Bank Corp. — a foreign bank with no presence in the United States. As Morningstar Inc. analyst Jaime Peters noted, "This is falling closely on the heels of their receiving [bailout] money, which was intended to spur lending in the United States or have bigger, stronger banks buy the failing banks ... But neither of these things is happening."²²

BofA also appears ready to reward shareholders and executives ahead of taxpayers. In October, BofA announced it will pay a dividend to its private shareholders. According to BailoutSleuth.com, a blog that monitors the banking industry bailout, that dividend actually provides shareholders a better return on their investment than taxpayers will get under the bailout package.²³ Furthermore, BofA has not agreed to stop lobbying in light of the taxpayer infusion it received. Together, BofA and Merrill Lynch spent nearly \$10 million in lobbying in the first nine months of 2008, but neither bank has indicated plans to cease lobbying until the bailout funds are returned to taxpayers.²⁴

Tax Avoidance Schemes

Even though Bank of America benefits from taxpayer bailouts, it bites the hand that feeds it. The bank has a history rife with questions about its involvement in tax avoidance schemes:

- In the past, BofA moved at least \$8 billion into investment funds to shelter income from state taxes.²⁵ Those funds wound down their activities shortly after officials investigated this practice. BofA also has several offshore subsidiaries in known tax havens, such as the Cayman Islands.²⁶
- BofA agreed in 2005 to pay the largest-ever money-laundering fine levied by a securities regulator—\$3 million—to settle charges that it aided billionaires with tax evasion schemes.²⁷
- BofA has been involved in legal battles with the states of West Virginia and Massachusetts over state taxes.²⁸ In both states, the courts ruled against BofA.²⁹

Banking on America's Misfortunes

For years, BofA and Countrywide took advantage of their customers, employees, and even taxpayers to turn a quick buck. Their business model has destroyed communities and helped destabilize the economy. This type of reckless, self-serving behavior is part of a larger pattern for BofA and Countrywide.

Skyrocketing Bank Fees

In 2007, BofA collected \$9.5 billion in bank fees, up from \$4.1 billion in 2000—132 percent growth.³⁶ In fact, BofA's American customers paid more than \$14 in fees for every \$1,000 in their bank accounts in 2007, 37 percent higher than its nearest competitor among the nation's top five banks at the time.³⁷ In January 2008, the bank's CFO told analysts, "consumer fee increases in mortgage, card, and service charge revenues" would drive BofA's noninterest income growth.³⁸ Shortly thereafter, Forbes Magazine reported that BofA was arbitrarily running up interest rates for thousands of its American credit cardholders, including those who had never missed a payment, apparently, to generate new income and stem their losses.³⁹ In 2007, BofA raised interest rates on about 1 million play-by-the-rules, pay-on-time credit card customers.⁴⁰

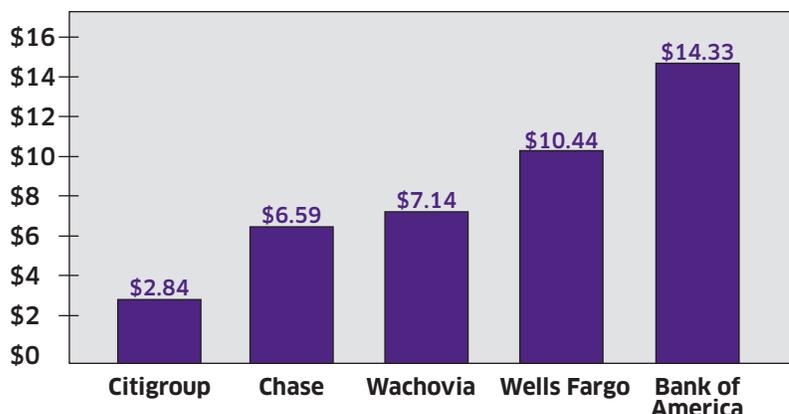
Size Matters

BofA truly is the bank of America. As a result of its size and scope, BofA has a business relationship with almost one out of every two households in the country.³⁰ BofA is America's largest depository bank, mortgage originator, mortgage servicer, and underwriter of mortgage-backed securities. It is also the largest wealth management firm, debt underwriter, and equity underwriter in the world.³¹

- BofA holds one of every 10 dollars deposited in U.S. banks.³²
- BofA originates one out of every four residential mortgages in the country.³³
- BofA is the creditor for one out of every six dollars of American credit card debt.³⁴
- BofA was among the top five banks by deposits in 29 states across the country in 2007.³⁵

In 2007, BofA raised interest rates on 1 million play-by-the-rules, pay-on-time credit card customers.

Service Charges per \$1,000 at Top Five Banks (2007)



Anti-Consumer Lobbying Agenda

BofA also pursues an aggressive anti-consumer agenda on Capitol Hill, lobbying directly for policies that would saddle consumers with substantially more credit card debt and prevent them from getting out from under the crush of predatory lending and advocated against policies that would have assisted homeowners facing foreclosure. In March 2008, BofA and other big banks successfully prevented credit card customers from testifying at a hearing on Rep. Carolyn Maloney’s (D-N.Y.) Credit Card Bill of Rights. The banks demanded that customers who had flown from all over the country sign waivers allowing their personal financial information to be revealed to the public before they could testify. They refused.⁴¹ Similarly, MBNA, BofA’s credit card arm, was one of the chief proponents of the 2005 bankruptcy bill that can saddle consumers with debt and lead to wage garnishment for decades.⁴² BofA and Countrywide were also among the banks that lobbied to block the passage of Sen. Harry Reid’s (D-Nev.) Foreclosure Prevention Act of 2008, which would have helped consumers facing the threat of foreclosure.⁴³

Discrimination in the Workplace

BofA employees have raised charges of racial discrimination. In 2007, African American employees in St. Louis, Atlanta, and Boston filed a class-action lawsuit charging that the bank assigns African American employees to predominantly minority communities because the bank says that clients “are more ‘comfortable’ dealing with sales professionals of their own race.”⁴⁴ The case is still pending.

Reckless Mortgage Lending

Last spring, BofA acquired Countrywide Financial, making it the biggest originator and servicer of mortgages in America. Countrywide had been one of the nation’s largest providers of nonprime and subprime loans,⁴⁵ and its business practices wreaked havoc on America’s communities. At the end of 2007, \$15.1 billion worth of mortgages in its loan servicing portfolio were in foreclosure.⁴⁶ Countrywide was investigated by the FBI, the U.S. Justice Department, and multiple state attorney general offices in 2008 for predatory lending and securities fraud.⁴⁷ BofA is still dealing with Countrywide’s legal problems, which included numerous lawsuits, some of which have settled, that were brought against the company for its allegedly abusive lending practices and financial practices.⁴⁸ For example, this past December, BofA agreed to refund \$11.5 million to North Carolina homeowners whom regulators claim Countrywide had illegally overcharged.⁴⁹

Since taking over Countrywide, BofA has failed to adequately change course. BofA initially praised the Countrywide business model and offered its president and COO a \$28 million retention bonus to stay and head BofA’s mortgage operations.⁵⁰ Although BofA agreed to get rid of him after a public outcry, he got to keep the \$28 million anyway.⁵¹ BofA also settled a predatory lending lawsuit brought against Countrywide by 15 state attorneys general, and agreed

to widespread loan modifications for borrowers facing foreclosure at an estimated cost of \$8.4 billion.⁵² However, investors who own the underlying mortgages say that BofA is shifting the cost of the settlement onto them, even though the lawsuit stemmed from Countrywide's predatory business practices.⁵³ Furthermore, BofA has a policy of evicting innocent renters who are current with their rent but live in buildings where the landlord has been foreclosed, rather than signing new leases with them like Fannie Mae does.⁵⁴

Following the Countrywide acquisition, BofA became the largest underwriter of mortgage-backed securities in the country.⁵⁵ While BofA itself stopped originating subprime mortgage loans in 2001, it continued to package subprime mortgage-backed securities.⁵⁶ This allowed subprime lenders to bundle up their loans and sell them to investors without worrying about the borrowers' ability to repay. It encouraged other banks to keep making subprime loans, and made it possible for the subprime crisis to grow.

Conclusion

The current economic crisis has been years in the making. At every step along the way, Bank of America has tried to profit from everything that was wrong with the economy. From predatory loans to abusive credit card practices, BofA and Countrywide have made millions on the backs of American consumers. While the economy collapsed around it, BofA seized the opportunity to buy up rival banks and grow its market share. Even after taking \$25 billion of taxpayers' money as part of the banking industry bailout, BofA continued its self-serving behavior. The bailout money was intended to serve taxpayers' interests and protect American consumers, not to help BofA fill its corporate wish list. Regulators must hold Bank of America accountable and demand that it:

- Pledge to use the money it typically pays out in executive bonuses to help keep more than 12,000 troubled borrowers in their homes. With the money it paid out in bonuses and stock-based awards to its top seven executives in 2007, BofA could save more than 12,000 homes from foreclosure.⁵⁷
- End the practice of unilaterally changing credit cardholder agreements. BofA should agree to clearly notify customers of any proposed changes to their cardholder agreements, and not implement the new terms unless customers actively opt into the changes.
- Follow Fannie Mae's lead by agreeing to sign new leases with renters who live in buildings that are being foreclosed rather than throwing families out of their homes.
- Commit to providing affordable healthcare to all of its employees and their dependents. Taxpayers should not be forced to subsidize BofA's payroll costs because its workers have to rely on state-funded healthcare programs.
- Protect bank workers to ensure greater accountability. Whistle-blowers could have saved taxpayers billions of dollars in the current banking crisis and helped protect consumers from bad credit cards, mortgages, and other loans. BofA must guarantee the strict enforcement of whistle-blower protections to workers who report bank fraud and predatory practices to regulators. In order to encourage worker whistle-blowing, BofA should have a system that results in the termination of any supervisor who retaliates against employees who engage in such conduct.

⁵⁷The Consumer Credit Counseling Service, an Atlanta-based nonprofit that provides mortgage counseling services to distressed homeowners, says that a typical client has a monthly mortgage payment of \$1,500 and has missed four payments. Bonuses and stock-based awards to top BofA executives in 2007 totaled \$74.6 million. That would be enough to save the homes of 12,400 such borrowers and make them current on their mortgages.

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