Higher Standards?

What America's biggest bank owes its customers and Countrywide borrowers

Introduction

Bank of America is an integral part of the American economy. As the nation's largest bank and credit card issuer, it provides important financial services to 59 million consumers and small businesses across the country. Its proposed acquisition of Countrywide Financial Corp. will magnify its impact on consumers by making it the nation's largest mortgage lender and mortgage servicer as well, and adding 9 million new customers to its mortgage portfolio.

On account of their importance to the economic system, Bank of America and other big banks are rewarded with taxpayer subsidies such as federal deposit insurance, access to the Federal Reserve's discount window, and if necessary, taxpayer bailouts to prevent bank failure. But with these massive public investments comes added responsibility to the banks' stakeholders—communities, consumers, taxpayers, bank employees, and shareholders. This is a responsibility that Bank of America has not borne well.

The bank's outsized role in the U.S. economy is most obvious at its home in Charlotte, N.C. Bank of America has been a tremendous boon to the Charlotte economy—in a sea of plummeting home values across the nation, Charlotte stands apart as an island of growth. Despite rising national unemployment, Charlotte added 14,000 new jobs in 2007. It has grown to become the nation's second-largest banking center, and one out of every five people in the region now works in the finance industry. Bank of America has also played an instrumental role in the redevelopment of Charlotte's downtown.

But the bank has two faces. While Bank of America may be the "bank of opportunity" for Charlotte, for many of the other communities and individuals with a stake in the bank, it creates more obstacles than opportunities. This report examines how the actions of Bank of America and other big banks have affected these stakeholders.

Communities

In acquiring Countrywide, Bank of America will become America's largest originator and servicer of mortgages, with more than twice as many loan originations as its next closest competitor. The acquisition represents a crossroads for Bank of America—an institution built on prime mortgages and retail banking—takes on the staff, assets, sales culture, and liabilities of one with a reckless business model. How Bank of America accommodates Countrywide will have a profound impact on communities across the country.

Countrywide's business practices have already wreaked havoc on America's communities. More than 100,000 of Countrywide's borrowers are currently in foreclosure, and more than 620,000 are delinquent on their mortgages. The lender is the subject of numerous lawsuits and is being investigated by the FBI, the U.S. Justice Department, and three different state attorneys general. According to The New York Times, Countrywide is "Exhibit A for the lax and, until recently, highly lucrative lending that has turned a once hot business ice cold and has touched off a housing crisis of historic proportions."

Countrywide was one of the nation's largest providers of nonprime and subprime loans. Pay-option adjustable rate mortgages (ARMs)—which in some cases can see the principal on the loan grow even as borrowers make payments—make up more than 32 percent of mortgage loans held by Countrywide's banking unit. More than $1.2 billion in foregone payments on pay-option ARMs had been turned into principal at the end of 2007. More than seven in 10 borrowers with these pay-option ARMs are currently making less than full-interest payments and approximately one in 20 is more than 90 days delinquent. Approximately 81 percent of these pay-option ARM loans were made to borrowers who did not prove their income with official documentation.

Delving into the details of Countrywide's servicing portfolio reveals the pernicious nature of Countrywide's business practices. Though they may have led to short-term profitability, their long-term effects have proved devastating to borrowers and shareholders alike. In 2007, Countrywide collected approximately $214 million in prepayment penalties on loans held in its servicing portfolio. While 2007 was a bad year for asset performance, it was a banner year for late fees, which increased more than 30 percent year-over-year to a total of $371 million. At the end of 2007, Countrywide had $15.1 billion in mortgages in foreclosure within its loan servicing portfolio, and more than 27 percent of its nonprime and subprime mortgages were delinquent.

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The acquisition will make Bank of America the largest underwriter of mortgage-backed securities (MBS) in the country. While Bank of America does not currently originate subprime mortgage loans, it continues to package subprime MBS. Countrywide itself was the leader in the high-priced, adjustable rate mortgages that have brought foreclosures to neighborhood after neighborhood. Bank of America has neither a plan nor adequate staffing to solve the problems that Countrywide has created.

Bank of America must make verifiable promises that it will not import Countrywide's method of doing business, as it has indicated. The announcement that Bank of America plans to place Countrywide President and COO David Sambol in charge of its new mortgage lending unit raises concerns. Sambol is not merely a symbolic hire. He was the leader of Countrywide's aggressive expansion in ARMs and other products that facilitated the current mortgage crisis. Rather than repudiating one of the architects of the crisis, Bank of America has offered him a $28 million retention bonus. Bank of America must make commitments to cleaning up Countrywide that can be verified by independent community groups.

North Carolina

Communities in Durham County, N.C., have been devastated by Bank of America and Countrywide mortgages. In the first 10 months of 2007, Countrywide ranked second in foreclosures in Durham County, and Bank of America ranked sixth. Together, the two institutions were the leading source of loans that ultimately went into foreclosure in Durham County. Bank of America actually held more loans that resulted in bank-owned sales than even Countrywide.

Consumers

The era of consolidation in the banking industry has proved costly for consumers. As banks have grown bigger through mergers, acquisitions, and buyouts, they have used their increased clout to push—directly and indirectly—predatory mortgage products, raise fees on consumers, impose abusive credit card practices, and lobby Congress against reforms aimed at protecting consumers. Bank of America and Countrywide have been leaders in this regard as they have grown to become the nation's largest consumer lenders. Bank of America's former CFO bragged to Wall Street analysts, "We don't compete on price. We compete on ubiquity …"

According to a 2008 Government Accountability Office (GAO) study, consumers paid $36 billion in fees on their bank accounts in 2006 through charges like overdraft fees, insufficient funds fees, and ATM fees. Americans actually paid more in overdraft fees that year than the actual amounts by which they overdrew their accounts, paying $17.5 billion in fees on just $15.8 billion worth of overdrafts.

In 2007, Bank of America collected $9.5 billion in bank fees, up from $4.1 billion in 2000—a growth of 132 percent. In fact, Bank of America 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.

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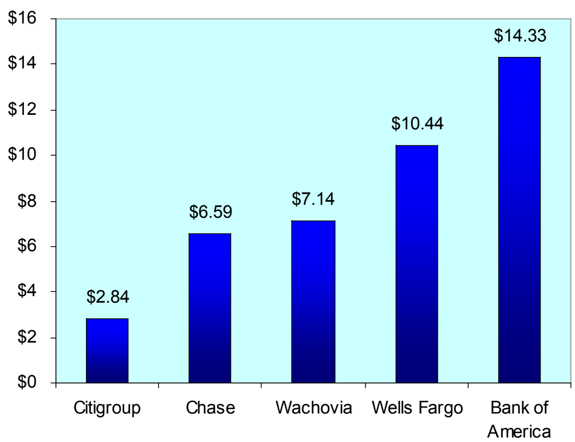
Service Charges per $1,000 at Top Five Banks (2007)



Bank of America made nearly 10 times as much money from consumers in 2007 through service charges and credit cards as it did from investment banking. In 2008, the bank's CFO told analysts, "consumer fee increases in mortgage, card, and service charge revenues" would drive Bank of America's noninterest income growth.

The story with credit cards is even bleaker. In 2007, banks collected $192 billion in penalty fees, interchange fees, and interest payments from consumers. That is more than $630 in fees and interest for every man, woman, and child in the United States in just one year.

Credit Card Fee and Interest Income (2007)

Credit card interest income, all issuers	$132 billion
Credit card fee income, all issuers	$18 billion
Credit card interchange fees from Visa and MasterCard	$42 billion
TOTAL	**$192 billion**

Bank of America is the largest credit card issuer in the United States and holds 21 percent of outstanding credit card debt in the country. Shortly after announcing its buyout of Countrywide and revealing a 95 percent fall in profits for the fourth quarter of 2007, Bank of America ran up interest rates for thousands of its American credit cardholders in January 2008, including those who had never missed a payment. In 2007, Bank of America raised interest rates on 1 million play-by-the-rules, pay-on-time credit card customers. "Any time for any reason" interest rate hikes such as these are among the banking industry's most abusive credit card practices. Citigroup has discontinued arbitrary rate increases, but according to market research firm Portales Partners, "Bank of America is bringing it to a new level."

Bank of America takes it one step further with its aggressive anti-consumer agenda on Capitol Hill. In March 2008, Bank of America 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. "Any time for any reason" rate hikes are among the practices the bill seeks to abolish.

Similarly, Bank of America and Countrywide were 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. MBNA, Bank of America's credit card arm, was also one of the chief proponents of the 2005 bankruptcy bill that can saddle consumers with debt and lead to wage garnishment for decades.

Bank of America has also come under fire for other consumer abuses. For example, between 1993 and 2003, the bank raided the bank accounts of elderly and disabled customers and took $284 million in Social Security funds to collect unpaid fees. Not only does Bank of America hit consumers with high fees, but it also pays lower interest rates on deposit accounts. A lawsuit by a Massachusetts couple in federal court charges Bank of America with "deceiving depositors into renewing certificates of deposit at below-market rates," according to Reuters. Forbes magazine also noted that Bank of America tends to pay lower interest rates on deposits than its peers, often 0.75 of a percentage point lower.

A recent study by Public Citizen, a consumer advocacy group, found that MBNA, Bank of America's credit card arm now known as FIA Card Services, used the National Arbitration Forum (NAF) to collect disputed debts from consumers, including debts from identity theft victims who never even had accounts with the bank. The Wall Street Journal reported in April 2008 that the city of San Francisco has sued both the NAF and FIA Card Services, alleging that, "in specific cases NAF approved an inflated award, improperly imposed attorneys fees, and didn't respond to a consumer's request to appear at an arbitration, among other things." According to the lawsuit, of the 18,085 consumer arbitrations the NAF resolved in California between 2003 and March 31, 2007, fewer than 0.2 percent were won by consumers.

Taxpayers

American taxpayers are also important stakeholders in Bank of America. Taxpayer dollars subsidize and guarantee many core elements of the banking system, from federal deposit insurance to the Federal Reserve's discount window. After its acquisition of Countrywide Financial Corporation, Bank of America will be the nation's largest depository bank, credit card issuer, mortgage lender, mortgage servicer, and underwriter of mortgage-backed securities. Bank of America and Countrywide are both already deemed "too big to fail." Together, they will be *much* too big to fail.

Like Bear Stearns, if the bank were to fall into a precarious financial position, regulators would have to use taxpayer dollars to bail it out. In fact, Bank of America has already lobbied Congress for a bailout of the banking industry, according to a February 2008 report by *The New York Times*, warning that the up to $739 billion in mortgages are at "moderate to high risk" of defaulting over the next five years. There is a law in place to prevent banks from growing too big and controlling more than 10 percent of domestic deposits, but Bank of America is relying on an unintended loophole to skirt the law in order to grow its deposit share to 11.8 percent, leaving taxpayers on the hook.

Even though Bank of America relies on taxpayers to underwrite its risk and looks to taxpayers for bailouts, it bites the hand that feeds it. The bank has a history rife with questions about its involvement in tax avoidance schemes:

- Bank of America has moved at least $8 billion into investment funds to shelter income from state taxes, and it also has several offshore subsidiaries in known tax havens, such as the Cayman Islands.
- Bank of America agreed to pay in 2005 the largest-ever anti-money laundering fine by a securities regulator—$3 million—to settle charges that it aided billionaires with tax evasion schemes.
- Bank of America has been involved in legal battles with the states of West Virginia and Massachusetts over state taxes.

Because of the magnitude of its revenue base (in 2006, Bank of America made more money on its U.S. operations than ExxonMobil, the world's most profitable company), Bank of America is one of the largest taxpayers in the country. When it tries to dodge taxes, it has an oversized effect on American taxpayers, who are left holding a rather hefty bag.

Bank Employees

Bank of America's most valuable asset is its workforce, another significant stakeholder in the bank. However, the bank has shown disregard for its workers at all levels of the company. Bank of America has cut tens of thousands of jobs to turn record profits from its series of buyouts. The bank cut:

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

Bank of America has also closed call centers and outsourced back-office jobs to India. In 2006, the same year that Bank of America cut 6,000 jobs, the bank's CEO Ken Lewis took home $99.8 million. Lewis says, "I feel bad about firing people, but at least I have the courage to do it."

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Bank of America's employees have also raised charges of racial discrimination. In 2007, African American employees in St. Louis, Atlanta, and Boston brought a class-action lawsuit against the bank, 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." Also in 2007, Bank of America paid an undisclosed amount to settle a racial discrimination lawsuit brought by an African American vice president of the bank in Aurora, Ill.

Shareholders

With a loss of $55 billion in shareholder value over the course of the year, Bank of America shareholders took a beating in 2007. The gross amount of lost value is among the largest of any company last year and rivals the loss of shareholder value in the collapse of Enron. Bank of America executives and directors failed to protect the interests of shareholders.

On top of the $5.3 billion in write-downs that Bank of America shareholders incurred in the fourth quarter of 2007, they can expect further losses from escalating charge-offs in consumer loan portfolios, primarily home equity and credit cards. Despite clear trends of a broader housing crisis and increasing delinquencies in Bank of America's own portfolio, the bank decided to plunge headlong into the riskiest segments of consumer lending through initiatives like making it as easy to get a home equity line of credit as a cup of coffee.

A recent analyst report predicted Bank of America would set aside a record $6.5 billion in the first quarter to cover loan losses. Earnings forecasts for the bank through 2010 were also slashed. This follows a loan loss provision of $3.31 billion in the fourth quarter of 2007 and a total of $8.39 billion for the full year, up 67 percent from 2006.

Despite the fact that the bank has grown into the largest and only truly national retail bank in America, its board is dominated by local business leaders from North Carolina who share close business and personal ties, plus half a dozen former Fleet Bank board members who bring with them a poor track record from their old bank.

The proposed merger with Countrywide presents a new set of potentially explosive problems for Bank of America shareholders. These problems are exacerbated by Bank of America's appointment of top Countrywide executives to run the combined mortgage operation and Bank of America's stated intent to adopt the Countrywide business model. Countrywide's bad loans could potentially impact Bank of America's earnings, and liabilities from lawsuits and investigations into Countrywide's business practices could harm shareholders and Bank of America's reputation. Will the acquisition of the firm that is synonymous with the subprime crisis serve the interests of shareholders?

Making Change/Faking Change

What They Say	What They Do
Bank of America claims to have an excellent environmental policy.	Bank of America is the leading financial backer of mountaintop removal coal mining in the U.S. and a top funder of new coal-fired power plants.
Bank of America claims to have gotten out of the subprime business in 2001.	Bank of America continues to securitize subprime mortgages.
Bank of America claims it does not use universal default with its credit card customers.*	Instead, Bank of America uses "risk-based repricing" to hike interest rates, which ultimately has a very similar effect to universal default.
Bank of America claims to be the nation's largest Small Business Administration lender.	This is the product of the bank's large size, not of its commitment. In its home county, Bank of America, NA was not among the top five originators to firms with less than $1 million in revenues in 2006.
Countrywide claims to have workout programs in place to help borrowers facing foreclosure.	In 2007, these workout programs left out 89 percent of borrowers facing the threat of foreclosure, and its foreclosure rate more than doubled.

** This is when the credit card company raises your interest rate even though you paid your bill on time, because you were late on a payment to an unrelated third-party.*

Commitment to Stakeholders

As Bank of America grows to unprecedented levels with its acquisition of Countrywide Financial Corp., it must renew its commitment to serving the interests of all of its stakeholders. The onus is now on Bank of America to take the following measures to ameliorate its impact on communities and other stakeholders and become a model for other financial institutions to follow. Here are specific and verifiable steps the bank must take in order to make a clear commitment to fair and sound banking practices:

1. Pledge not to import Countrywide's business model; present a detailed, transparent, and verifiable plan to reform Countrywide's servicing platform; end abusive practices such as prepayment penalties, pay-option ARMs, and no-documentation or low-documentation loans; and work with an independent organization to evaluate the fairness and effectiveness of the servicing unit on a quarterly basis, and make the results of the quarterly evaluations publicly available.

2. Commit to modifying the terms of mortgage loans for borrowers in a manner that realistically accounts for their ability to repay the loans; to publicly reporting the results of its workout efforts on a quarterly basis; to refinancing all ARMs into long-term fixed rate loans, with the goal of keeping homeowners in their homes; and to providing $10 million to pay for housing counseling services for borrowers.

3. Ensure that critical Countrywide staff who can underwrite loan modifications and other support staff are kept intact in their current offices to deal with the servicing needs of delinquent borrowers; appropriately train staff to meet this challenge; and commit to having trained loan underwriters on staff.

Bank of America needs to make these commitments prior to the Federal Reserve's public hearings in Los Angeles on April 28–29, 2008, to instill public confidence in the deal. Furthermore, it must work expeditiously to ensure that these policies are put into practice as soon as possible. The bank should also demand that Countrywide management adopt these policies for its operations as a precondition to the deal. Finally, Bank of America itself must implement these practices by the end of the first quarter in which it assumes control over Countrywide's operations.

4. Commit to changes in company policies that add much-needed consumer protections in credit cards, retail banking, and mortgages; discontinue abusive practices such as risk-based repricing of credit cards, and "anytime for any reason" credit card interest rate hikes; pledge to use its market power to bring down consumer fees rather than driving them up; end aggressive opposition at the federal level to legislative and regulatory reforms of predatory consumer practices, including the basic consumer protections in the Credit Cardholders Bill of Rights, and meaningful foreclosure prevention measures.

5. Pledge to take significant measures to improve corporate governance policies and practices to adequately protect shareholder interests.

As a result of its size and scope, Bank of America already has a business relationship with almost one out of every two households in the country. But its true reach is much greater. Its policies impact communities across the country and have implications for every American taxpayer and household. Bank of America has a responsibility to all of the communities and individuals with a stake in the bank, and it is time for the bank to take that responsibility seriously. While some of these measures may have short-term costs for those who have profited so handsomely in recent years, they are necessary to improving the long-term outlook for all of Bank of America's stakeholders.

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Report compiled by the California Reinvestment Corporation, the Community Reinvestment Association of North Carolina, the Service Employees International Union and with the support of U.S. PIRG. For more information visit www.bigbadbanks.org